

health plans and health insurance issuers would be impacted by expanded use of VBIID methods? What direct or indirect costs and benefits would result? Which stakeholders will be impacted by such benefits and costs?

3. What impact would expanded use of VBIID methods have on small employers or small plans? Are there unique costs or benefits for small plans? What special considerations, if any, should the Departments take into account for small employers or small plans?

Signed at Washington, DC on December 20, 2010.

**Nancy J. Marks,**

*Division Counsel/Associate Chief Counsel, Tax Exempt and Government Entities, Internal Revenue Service, Department of the Treasury.*

Signed at Washington, DC on December 21, 2010.

**George H. Bostick**

*Benefits Tax Counsel, Department of the Treasury.*

Signed at Washington, DC on December 16, 2010.

**Phyllis C. Borzi**

*Assistant Secretary, Employee Benefits Security Administration, U.S. Department of Labor.*

Dated: December 21, 2010.

**Jay Angoff**

*Director, Office of Consumer Information and Insurance Oversight.*

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### 32 CFR Part 182

[DOD-2009-OS-0038; RIN 0790-A154]

#### Defense Support of Civilian Law Enforcement Agencies

**AGENCY:** Department of Defense.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule implements 32 CFR part 185 and legislation concerning restriction on direct participation by DoD personnel. It provides specific policy direction and assigns responsibilities with respect to DoD support provided to Federal, State, and local civilian law enforcement efforts, including responses to civil disturbances.

**DATES:** Comments must be received by February 28, 2011.

**ADDRESSES:** You may submit comments, identified by docket number and or RIN

number and title, by any of the following methods:

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

- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, OSD Mailroom 3C843, Washington, DC 20301-1160.

*Instructions:* All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** Mr. Tom LaCrosse, 703-697-5822.

#### SUPPLEMENTARY INFORMATION:

#### Executive Order 12866, "Regulatory Planning and Review"

It has been certified that 32 CFR part 182 does not:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities;

- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

#### Section 202, Public Law 104-4, "Unfunded Mandates Reform Act"

It has been certified that 32 CFR part 182 does not contain a Federal mandate that may result in the expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any 1 year.

#### Public Law 96-354, "Regulatory Flexibility Act" (5 U.S.C. 601)

It has been certified that 32 CFR part 182 is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule establishes procedures and

assigns responsibilities within DoD for assisting civilian law enforcement agencies, therefore, it is not expected that small entities will be affected because there will be no economically significant regulatory requirements placed upon them.

#### Public Law 96-511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been certified that 32 CFR part 182 does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

#### Executive Order 13132, "Federalism"

It has been certified that 32 CFR part 182 does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

- (1) The States;
- (2) The relationship between the National Government and the States; or
- (3) The distribution of power and responsibilities among the various levels of Government.

#### List of Subjects in 32 CFR Part 182

Armed forces, Law enforcement.

Accordingly, 32 CFR part 182 is proposed to be added to read as follows:

#### PART 182—DEFENSE SUPPORT OF CIVILIAN LAW ENFORCEMENT AGENCIES

Sec.

- 182.1 Purpose.
- 182.2 Applicability and scope.
- 182.3 Definitions.
- 182.4 Policy.
- 182.5 Responsibilities.
- 182.6 Procedures.

**Authority:** Legal authorities include title 10 U.S.C. 113, 331-334, 371-382, 2576, and 2667; title 14 U.S.C. 141; title 16 U.S.C. 23, 78, 593, and 1861; title 18 U.S.C. 112, 351, 831, 1116, 1385, and 1751; title 22 U.S.C. 408, 461-462; title 25 U.S.C. 180; title 31 U.S.C. 1535; title 42 U.S.C. 97, 1989, and 5121-5207 (Stafford Act); title 50 U.S.C. 1621-1622; Public Law 94-524, and Executive Order 12656.

#### § 182.1. Purpose.

This part implements 32 CFR part 185 and title 10, United States Code (U.S.C.) 375 concerning restriction on direct participation by DoD personnel. It provides specific policy direction and assigns responsibilities with respect to DoD support provided to Federal, State, and local civilian law enforcement efforts, including responses to civil disturbances.

#### § 182.2. Applicability and scope.

This part:

- (a) Applies to the Office of the Secretary of Defense (OSD), the Military

Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense (IG DoD), the Defense Agencies, the DoD Field Activities, and all other organizational entities within the Department of Defense (hereafter referred to collectively as the "DoD Components").

(b) Governs all DoD Component planning for and response to civil disturbance operations (CDO) (formerly referred to as "military assistance for civil disturbances").

(c) Applies to the Army National Guard and the Air National Guard (hereafter referred to collectively as the "National Guard") personnel when under Federal command and control. Also applies to National Guard personnel when the Secretary of Defense determines that it is appropriate to employ National Guard personnel in title 32, U.S.C., status to fulfill a request for defense support of civil authorities (DSCA), the Secretary of Defense requests the concurrence of the Governors of the affected States, and those Governors concur in the employment of National Guard personnel in such a status.

(d) Does not apply to:

(1) Counter narcotics operations, DoD Directive 5111.13,<sup>1</sup> and aircraft piracy. Responsibilities of the DoD Components for aircraft piracy and counterdrug operations shall be communicated by the Chairman of the Joint Chiefs of Staff for the Secretary of Defense under authorities other than this part.

(2) Assistance to law enforcement officials in foreign governments.

(3) The U.S. Coast Guard when acting under its Title 14 U.S.C. authorities, except when operating as a service in the Navy, 14 U.S.C. 3.

(4) The Defense Intelligence and Counterintelligence Components when providing assistance in accordance with paragraph 2.6. of Executive Order 12333.

(5) Requests for sensitive support requirements, which are governed by DoDD S-5210.36<sup>2</sup>.

### § 182.3. Definitions.

*Civil disturbance.* Group acts of violence and disorder prejudicial to public law and order.

*Civilian law enforcement official.* An officer or employee of a civilian Federal, State, local, and tribal agency, law enforcement agency with responsibility

for enforcement of the laws within the jurisdiction of that agency.

*Emergency authority.* A Federal military commander's authority, in extraordinary emergency circumstances where prior authorization by the President is impossible and duly constituted local authorities are unable to control the situation, to engage temporarily in activities that are necessary to quell large-scale, unexpected civil disturbances because (1) such activities are necessary to prevent significant loss of life or wanton destruction of property and are necessary to restore governmental function and public order or (2) duly constituted Federal, State, or local authorities are unable or decline to provide adequate protection for Federal property or Federal governmental functions.

*Law enforcement agency.* Any of a number of agencies (outside the Department of Defense) chartered and empowered to enforce U.S. laws in the following jurisdictions: The United States, a State (or political subdivision) of the United States, a territory (or political subdivision) of the United States, a federally recognized Native American tribe or Alaskan Native Village, or within the borders of a host nation.

### § 182.4. Policy.

It is DoD policy that:

(a) The Department of Defense shall cooperate with civilian law enforcement officials consistent with the needs of national security and military readiness, while recognizing and conforming to the legal limitations of direct DoD involvement in civilian law enforcement activities as prescribed in this part.

(b) Support of civilian law enforcement officials by DoD personnel shall be consistent with the restrictions of title 18 U.S.C. 1385, the Posse Comitatus Act, and title 10 U.S.C. 375; and those authorities provided in title 18 U.S.C. 112, 351, 831, and 1116; and title 10 U.S.C. 382; Federal laws protecting the civil rights and civil liberties of individuals, and other applicable law.

(1) The restrictions in these authorities shall apply to all actions of DoD personnel within and without the territorial boundaries of the United States.

(c) Exceptions to the restrictions on the direct assistance of DoD personnel in executing the law for DoD actions conducted outside the territorial jurisdiction of the United States may be granted only by the Secretary or Deputy Secretary of Defense.

(d) Requests for law enforcement support shall use the criteria in 32 CFR part 185.

### § 182.5. Responsibilities.

(a) The Under Secretary of Defense for Policy (USD(P)) shall establish DoD policy governing defense support of civilian law enforcement agencies and facilitate the coordination of that policy with Federal departments and agencies, State and local agencies, and the DoD Components, as appropriate.

(b) The Assistant Secretary of Defense for Homeland Defense and Americas' Security Affairs (ASD(HD&ASA)), under the authority, direction, and control of the USD(P) and in accordance with DoD Directive 5111.13, shall develop, coordinate, recommend, and supervise the implementation of policy for defense support of civilian law enforcement agencies and DSCA, including law enforcement support activities. In executing this responsibility for DoD law enforcement support activities, the ASD(HD&ASA) shall:

(1) Act on behalf of the Secretary of Defense in accordance with this part and any supplemental guidance or direction provided by the Secretary. This includes, when authorized by the President, and directed by the Secretary of Defense, tasking the DoD Components to plan for and to commit DoD resources in response to requests from civil authorities for CDO.

(2) Serve as the principal point of contact between the Department of Defense and the Department of Justice for planning and executing CDO.

(3) Coordinate with civilian law enforcement agencies on policies to further DoD cooperation with civilian law enforcement officials, including CDO and law enforcement support to the District of Columbia and U.S. Territories, as appropriate.

(4) Provide guidance to and oversight of the DoD Components for support of civilian law enforcement authorities, including CDO and law enforcement support of the District of Columbia and U.S. Territories, as appropriate.

(5) Develop policy guidance for support of civilian law enforcement authorities as specified in § 182.5(a), taking into account the requirements of the Under Secretary of Defense for Personnel and Readiness (USD(P&R)), the Under Secretary of Defense for Intelligence (USD(I)) and DoD Intelligence Components, as well as the interests of the Assistant Secretary of Defense for Health Affairs, the Assistant Secretary of Defense for Reserve Affairs (ASD(RA)), and the Assistant to the Secretary of Defense for Nuclear and

<sup>1</sup> Available at <http://www.dtic.mil/whs/directives/corres/pdf/511113p.pdf>.

<sup>2</sup> Authorized users may obtain a copy at <http://www.dtic.mil/whs/directives>. Others may send a written request by e-mail to [USDI.Pubs@osd.mil](mailto:USDI.Pubs@osd.mil).

Chemical and Biological Defense Programs.

(6) Assist in the development of policy governing plans, procedures, and requirements of the DoD Components with authority over defense resources that may be employed to provide law enforcement support to the District of Columbia and U.S. Territories, as appropriate.

(7) Inform the ASD(RA) and the Chief of the National Guard Bureau (NGB) of all requests for assistance concerning National Guard and Reserve Component personnel and resources in support of civilian law enforcement officials, including CDO and law enforcement support to the District of Columbia and U.S. Territories, as appropriate; coordinate with ASD(RA) and others as appropriate regarding performance of duty pursuant to title 10 U.S.C. 331–334 and 371–382, and title 32 U.S.C. 502(f) and other appropriate authorities.

(8) Coordinate with the Chairman of the Joint Chiefs of Staff in advance any commitment to CDO of DoD forces assigned to the Combatant Commands.

(9) Oversee reimbursement for assistance provided to civilian law enforcement officials, including CDO and law enforcement support of the District of Columbia and U.S. Territories, as appropriate.

(c) The USD(I) shall:

(1) Establish DoD processes and procedures to provide domestic intelligence support to civilian law enforcement officials in accordance with appropriate statutory authorities and DoD and Intelligence Community policy.

(2) Facilitate the coordination of DoD policy governing intelligence support of law enforcement officials, including CDO and law enforcement support to the District of Columbia and U.S. Territories, as appropriate, with Federal departments and agencies, State, local, and tribal agencies, and the DoD Components, as required.

(d) The IG, DoD, shall issue guidance on cooperation with civilian law enforcement officials with respect to audits and investigations conducted, supervised, monitored, or initiated pursuant to DoD Directive 5106.01<sup>3</sup>, subject to coordination with the General Counsel of the Department of Defense.

(e) The ASD(RA), under the authority, direction, and control of the USD(P&R), shall assist the ASD(HD&ASA) in the development of guidance for use by approving authorities in evaluating the effect on military readiness of requests for civilian law enforcement assistance

directed to units of the Reserve Components and National Guard.

(f) The Heads of the DoD Components shall:

(1) Strictly comply with and disseminate throughout their Components the guidance established by USD(P) pursuant to paragraph (a) of this section.

(2) Dedicate appropriate resources for law enforcement support to carry out the purposes of this part that are consistent with defense policies, goals, and objectives.

(3) Review training and operational programs to determine how and where assistance can best be provided to civilian law enforcement officials consistent with the responsibilities established in this section. This review should include preparation of recommendations regarding activities for which reimbursement could be waived in accordance with § 182.6(e) of this part.

(4) Issue implementing documents in consultation with the Attorney General incorporating the guidelines and procedures in this part, including:

(i) Procedures for prompt transfer of relevant information to law enforcement agencies.

(ii) Procedures for establishing local contact points in subordinate commands for purposes of coordination with Federal, State, and local civilian law enforcement officials.

(iii) Guidelines for evaluating requests for assistance in terms of impact on national security and military readiness.

(5) Inform the Chairman of the Joint Chiefs of Staff of all requests for support for, and support provided to, civilian law enforcement officials.

(g) The Secretaries of the Military Departments, in addition to the responsibilities in paragraph (f) of this section, shall provide resources to the DoD Components, consistent with defense policies, goals, and objectives, to carry out the purpose of this part.

(h) The Chairman of the Joint Chiefs of Staff, in addition to the responsibilities in paragraph (f) of this section, shall:

(1) Assist the ASD(HD&ASA) in developing CDO policy; in coordination with the ASD(HD&ASA), develop policy guidance for use by approving authorities in evaluating the effect of requests for civilian law enforcement assistance on national security and military readiness.

(2) Provide advice on the effect on national security and military readiness of any request for defense assistance with respect to CDO, at the request of the Secretary of Defense or the DoD Components.

(i) The Combatant Commanders, through the Chairman of the Joint Chiefs of Staff shall, in addition to the responsibilities in paragraph (f) of this section:

(1) Develop operational policies, plans, and procedures, as necessary, to support the provisions of this part.

(2) Implement the provisions of this part in appropriate training and exercises.

(3) When designated as a supported commander, coordinate with supporting DoD components all reimbursement for assistance provided under the provisions of this part.

(j) The Commanders of U.S. Northern Command (USNORTHCOM) and U.S. Pacific Command (USPACOM), through the Chairman of the Joint Chiefs of Staff and in addition to the responsibilities in paragraphs (f) and (i) of this section, shall:

(1) Serve as the DoD planning agents for CDO, following the guidance of the ASD(HD&ASA) and in coordination with the Chairman of the Joint Chiefs of Staff.

(2) Lead the CDO planning activities of the DoD Components in accordance with § 182.6(b)(3)(ii) of this part; serve as the DoD financial managers for CDO operations executed in their areas of responsibility in accordance with § 182.6(e)(2)(ii) of this part.

(k) The Chief, NGB shall:

(1) Assist the ASD(HD&ASA) in the development of policy guidance on civilian law enforcement assistance directed to units of the National Guard in accordance with title 10 U.S.C. chapter 1011.

(2) Assist the ASD(RA) in the development of policy guidance for use by approving authorities in evaluating the effect on military readiness of requests for civilian law enforcement assistance directed to units of the National Guard.

(3) Serve as an advisor to the Combatant Commands on National Guard matters pertaining to Combatant Command missions, and support planning and coordination for such activities as requested by the Chairman of the Joint Chiefs of Staff or the Commanders of the Combatant Commands.

(4) Serve as the channel of communication on all matters pertaining to National Guard homeland defense activities between:

(i) the Secretary of Defense and the Heads of the DoD Components (including the Secretary of the Army and the Secretary of the Air Force), and  
(ii) the States.

Direct liaison between the entities in paragraphs (k)(4)(i) and (k)(4)(ii) should

<sup>3</sup> Available at <http://www.dtic.mil/whs/directives/corres/pdf/510601p.pdf>.

occur only in an emergency when time does not permit compliance with this part. In each such instance, the Chief, NGB, should be informed of the communication.

#### § 182.6. Procedures.

##### (a) *Restrictions on Participation of DoD Personnel in Civilian Law Enforcement Activities.*

###### (1) *Guiding Statutory Requirements and Supporting Policies.*

(i) *Posse Comitatus Act.* The primary restriction on DoD participation in civilian law enforcement activities is the Posse Comitatus Act. It provides that unless expressly authorized by the Constitution or an act of Congress, whoever willfully uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute the law shall be fined or imprisoned for not more than 2 years, or both. In accordance with title 18 U.S.C. 3571, fines may not be more than \$250,000.

(ii) *Permissible Direct Assistance.* Activities not restricted by the Posse Comitatus Act are:

(A) Actions taken for the primary purpose of furthering a DoD or foreign affairs function of the United States, regardless of incidental benefits to civilian authorities. This provision, known as the Military Purpose Doctrine, must be used with caution, and does not include actions taken for the primary purpose of aiding civilian law enforcement officials or otherwise serving as a subterfuge to avoid the restrictions of the Posse Comitatus Act. Actions under this provision may include the following (depending on the nature of the DoD interest and the authority governing the specific action in question):

(1) Investigations and other actions related to enforcement of the Uniform Code of Military Justice (chapter 47 of title 10 U.S.C. chapter 47).

(2) Investigations and other actions that are likely to result in administrative proceedings by the Department of Defense, regardless of whether there is a related civil or criminal proceeding. (See DoD Instruction 5525.07<sup>4</sup> and the Memorandum of Agreement Between the Attorney General and the Secretary of Defense with respect to matters in which the Department of Defense and the Department of Justice both have an interest.)

(3) Investigations and other actions related to a commander's inherent authority to maintain law and order on a DoD installation or facility.

(4) Protection of classified defense information or equipment.

(5) Protection of DoD personnel, equipment, and official guests, as authorized by statute and in conjunction with civilian authorities that may also have jurisdiction.

(B) Audits and investigations conducted by, under the direction of, or at the request of the IG, DoD, pursuant to section 8(g) of Appendix 3 to title 5, U.S.C., subject to applicable limitations on direct participation in law enforcement activities.

(C) When specifically authorized by the President in accordance with applicable law (e.g., title 10 U.S.C. chapter 15) or permitted under emergency authority (32 CFR part 185), for quelling civil disturbances or performing civilian law enforcement functions (e.g., search, seizure, arrest, and surveillance). When permitted under emergency authority, those DoD officials and commanders responsible for determining appropriate action have the authority, in extraordinary emergency circumstances where prior authorization by the President is impossible and duly constituted local authorities are unable to control the situation, to engage temporarily in activities that are necessary to quell large-scale, unexpected civil disturbances because:

(1) Such activities are necessary to prevent significant loss of life or wanton destruction of property and are necessary to restore governmental function and public order; or,

(2) When duly constituted Federal, State, or local authorities are unable or decline to provide adequate protection for Federal property or Federal governmental functions. Federal action, including the use of DoD forces, is authorized when necessary to protect Federal property or functions (32 CFR part 185).

(D) DoD actions taken pursuant to title 10 U.S.C. 331–334, relating to the use of DoD forces with respect to insurrection, domestic violence, or conspiracy that hinders the execution of State or Federal law in specified circumstances.

(E) Actions taken under express statutory authority to assist officials in executing the laws, subject to applicable limitations. The laws that permit direct DoD participation in civilian law enforcement include:

(1) Protection of national parks and certain other Federal lands. (See title 16 U.S.C. 23, 78, and 593)

(2) Enforcement of the Fishery Conservation and Management Act of 1976, title 16 U.S.C. 1861.

(3) Assistance in the case of crimes against foreign officials, official guests of the United States, and other

internationally protected persons. (See title 18 U.S.C. 112 and 1116)

(4) Assistance in the case of crimes against members of Congress. (See title 18 U.S.C. 351)

(5) Assistance in the case of crimes involving nuclear materials. (See title 18 U.S.C. 831)

(6) Protection of the President, Vice President, and other designated dignitaries. (See title 18 U.S.C. 1751)

(7) Actions taken in support of the neutrality laws. (See title 22 U.S.C. 408 and 461–462)

(8) Removal of persons unlawfully present on Indian lands. (See title 25 U.S.C. 180)

(9) Execution of quarantine and certain health laws. (See title 42 U.S.C. 97)

(10) Execution of certain warrants relating to enforcement of specified civil rights laws. (See title 42 U.S.C. 1989)

(11) Removal of unlawful enclosures from public lands. (See title 43 U.S.C. 1065)

(12) Protection of rights of a discoverer of an island covered by the Guano Islands Act (See title 48 U.S.C. 1418)

(13) Support of territorial governors if a civil disorder occurs. (See title 48 U.S.C. 1422 and 1591)

(14) Actions in support of certain customs laws. (See title 50 U.S.C. 220)

(15) Support of the Attorney General in emergency situations involving chemical or biological weapons of mass destruction. (See title 10 U.S.C. 382)

(iii) *Restrictions on Direct Assistance.* (A) Except as authorized by law, the Constitution, or this instruction, the prohibition on the use of DoD personnel as a posse comitatus or to otherwise execute the law includes these forms of direct assistance:

(1) Interdiction of a vehicle, vessel, aircraft, or other similar activity.

(2) A search or seizure.

(3) An arrest, apprehension, stop and frisk, or similar activity.

(4) Evidence collection, security functions, and crowd and traffic control.

(5) Surveillance or pursuit of individuals, or acting as undercover agents, informants, investigators, or interrogators.

(B) The use of deputized DoD uniformed personnel by State or local law enforcement authorities shall be in accordance with DoD Instruction 5525.13, Limitation of Authority to Deputize DoD Uniformed Law Enforcement Personnel by State and Local Governments.

(C) The use of deadly force and/or the carrying of firearms by DoD uniformed personnel while engaged in law enforcement or security duties for

<sup>4</sup> Available at <http://www.dtic.mil/whs/directives/corres/pdf/552507p.pdf>.

protecting personnel, protecting vital Government assets, or guarding prisoners shall be in accordance with CJCSI 3121.01B, Standing Rules of Engagement Standing Rules for the Use of Force for U.S. Forces.

(D) Requests for exceptions to policy outside the territorial jurisdiction of the United States when compelling and extraordinary circumstances justify them may only be granted by the Secretary or Deputy Secretary of Defense.

(iv) *Use of DoD Personnel to Operate or Maintain Equipment.* The use of DoD personnel to operate or maintain, or to assist in operating or maintaining, equipment shall be limited to situations when the use of non-DoD personnel for operation or maintenance of such equipment would be unfeasible or impractical from a cost or time perspective and would not otherwise compromise national security or military readiness. In general, the head of the civilian law enforcement agency may request a DoD Component to provide personnel to operate or maintain, or to assist in operating or maintaining, equipment for the civilian agency. This assistance shall be subject to this guidance:

(A) Except as otherwise authorized by law, such assistance may not involve DoD personnel in a direct role in a law enforcement operation. (See paragraph (a)(1)(iii) of this section.)

(B) Except as otherwise authorized by law, the performance of such assistance by DoD personnel shall be at a location where there is not a reasonable likelihood of a law enforcement confrontation.

(C) The use of DoD aircraft to provide point-to-point transportation and training flights for civilian law enforcement officials may be provided only in accordance with DoD 4515.13-R<sup>5</sup>.

(D) A request for DoD personnel to operate or maintain, or to assist in operating or maintaining, equipment may be made by the head of a civilian agency empowered to enforce these laws:

(1) Title 21 U.S.C. 801–904, and 951–971.

(2) Title 8, U.S.C. 1324–1328.

(3) A law relating to the arrival or departure of merchandise as defined in title 19 U.S.C. 1401, into or out of the customs territory of the United States, as defined in title 19 U.S.C. 1401, or any other territory or possession of the United States.

(4) Title 46, U.S.C. chapter 705.

(5) Any law, foreign or domestic, prohibiting terrorist activities.

(E) In addition to the assistance authorized under this section:

(1) DoD personnel may be assigned to operate or assist in operating equipment:

(i) To the extent the equipment is used in a supporting role, and

(ii) When the equipment is used for monitoring and communicating to civilian law enforcement officials the movement of air and sea traffic with respect to any criminal violation of the laws specified in paragraph (a)(1)(iv) of this section; or

(iii) When the agency providing assistance is authorized to furnish assistance to a State, local, or foreign government that is involved in the enforcement of laws similar to those in paragraph (a)(1)(iv)(D) (title 10 U.S.C. 374(b)).

(2) DoD personnel made available to a civilian law enforcement agency pursuant to title 10 U.S.C. 374(b) may operate equipment for:

(i) Detection, monitoring, and communication of the movement of air and sea traffic.

(ii) Detection, monitoring, and communication of the movement of surface traffic outside of the geographic boundary of the United States and within the United States, not to exceed 25 miles of the boundary if the initial detection occurred outside of the boundary.

(iii) Aerial reconnaissance (does not include satellite reconnaissance or technical means).

(iv) Interception of vessels or aircraft detected outside the land area of the United States for the purposes of communicating with such vessels and aircraft to direct such vessels and aircraft to go to a location designated by appropriate civilian officials.

(v) Operation of equipment to facilitate communications in connection with law enforcement programs specified in paragraph (a)(1)(iv)(D) of this section and title 10 U.S.C. 374.

(vi) Transportation of civilian law enforcement personnel and operation of a base of operations for civilian law enforcement personnel, subject to joint approval by the Secretary of Defense and the Attorney General (and the Secretary of State in the case of a law enforcement operation outside of the land area of the United States).

(F) DoD personnel made available to operate equipment for the purposes in paragraph (a)(1)(iv)(E)(2)(iv) of this section may continue to operate such equipment into the land area of the United States in cases involving the

pursuit of vessels or aircraft where the detection began outside such land area.

(G) The Secretary of Defense may make DoD personnel available to any Federal, State, or local civilian law enforcement agency to operate equipment for purposes other than described in paragraph (a)(1)(iv)(E) of this section, only to the extent that such support does not involve direct participation by such personnel in a civilian law enforcement operation unless such direct participation is otherwise authorized by law.

(H) Nothing in this part restricts the authority of DoD personnel to take emergency action to prevent loss of life or wanton destruction of property, or to restore governmental functioning and public order, or provide adequate protection for Federal property or Federal government functions when sudden and unexpected civil disturbances occur, and if duly constituted local authorities are unable to control the situation and circumstances preclude obtaining prior authorization by the President as provided in paragraph (a)(1)(ii)(C) of this section.

(I) When DoD personnel are otherwise assigned to provide assistance with respect to the laws specified in paragraph (a)(1)(ii)(E) of this section, the participation of such personnel shall be consistent with the limitations in such laws, if any, and such restrictions as may be established by policy, including policy of the DoD Components concerned.

(v) *Expert Advice.* The DoD Components may provide expert advice to Federal, State, or local law enforcement officials in accordance with title 10 U.S.C. 373. This does not permit regular or direct involvement of DoD personnel in activities that are fundamentally civilian law enforcement operations, except as otherwise authorized in this section.

(vi) *Training.* (A) The DoD Components may provide training to Federal, State, and local civilian law enforcement officials. Such assistance may include training in the operation and maintenance of equipment made available under paragraph (d)(1) of this section. This does not permit large-scale or elaborate training, or advanced DoD training, and does not permit regular or direct involvement of DoD personnel in activities that are fundamentally civilian law enforcement operations, except as otherwise authorized in this section.

(B) Training of Federal, State, and local civilian law enforcement officials shall be provided according to this guidance:

<sup>5</sup> Available at <http://www.dtic.mil/whs/directives/corres/pdf/451513r.pdf>.

(1) Assistance shall be limited to situations when the use of non-DoD personnel would be unfeasible or impractical from a cost or time perspective and would not otherwise compromise national security or military readiness.

(2) Assistance may not involve DoD personnel in a direct role in a law enforcement operation, except as otherwise authorized by law.

(3) Assistance of DoD personnel shall be provided at a location where there is not a reasonable likelihood of a law enforcement confrontation, except as otherwise authorized by law.

(vii) *Other Permissible Assistance.* These forms of indirect assistance are not restricted by the Posse Comitatus Act (title 18 U.S.C. 1385):

(1) Transfer of information acquired in the normal course of DoD operations that may be relevant to a violation of any Federal or State laws.

(2) Such other actions, approved in accordance with procedures established by the DoD Components concerned, that do not subject civilians to the use of DoD power that is regulatory, prescriptive, or compulsory.

(2) *Exceptions Based on Status.* The restrictions in paragraph (a) of this section do not apply to these persons:

(i) A member of a Reserve Component when not on active duty, active duty for training, or inactive duty for training.

(ii) A member of the National Guard when not in title 10, U.S.C., status, including when called into Federal service.

(iii) A civilian employee of the Department of Defense. If the civilian employee is under the direct command and control of a DoD officer, assistance will not be provided unless it is permitted by paragraph (a)(1)(ii) of this section.

(iv) A member of a Military Service when off duty and in a private capacity. A Service member is acting in a private capacity when he or she responds on his or her own volition to assist law enforcement officials instead of acting under the direction or control of DoD authorities.

(v) A member of the U.S. Coast Guard acting under the established authorities of that Service.

(vi) A member of the Civil Air Patrol when performing non-Air Force-directed missions.

(3) *Exceptions Based on Military Service.* DoD guidance on the Posse Comitatus Act is applicable to the Department of the Navy as a matter of policy with such exceptions as may be provided by the Secretary of the Navy on a case-by-case basis.

(i) Such exceptions shall include requests from the Attorney General for assistance pursuant to title 21 U.S.C. 873(b).

(ii) Prior approval from the Secretary of Defense shall be obtained for exceptions that are likely to involve participation by members of the Navy or Marine Corps in an interdiction of a vessel or aircraft; a law enforcement search or seizure; or an arrest, apprehension, or other activity that is likely to subject civilians to the use of DoD power that is regulatory, prescriptive, or compulsory.

(4) *Military Readiness.* Assistance may not be provided if such assistance could adversely affect national security or military readiness. The implementing documents issued by the DoD Components shall ensure that approval for the operation of equipment is vested in officials who can assess the effect of such operation on national security and military readiness.

(5) *Approval Authority.* Requests by civilian law enforcement officials for use of DoD personnel in civilian law enforcement functions shall be forwarded to the appropriate approval authority.

(i) The President, through an executive order to the Secretary of Defense, is the approval authority for requests for assistance for CDO and those other operations that include responding with assets with the potential for lethality, except as provided in paragraph (a)(1)(ii) of this section for emergency authorities and in 32 CFR part 185.

(ii) Requests that involve the Defense Intelligence and Counterintelligence Components are subject to approval by the Secretary of Defense and the guidance in DoD Directive 5240.01<sup>6</sup> and DoD 5240.1-R<sup>7</sup>.

(iii) Except as provided in paragraph (a)(1)(iii) of this section, the ASD(HD&ASA) may approve the use of DoD personnel:

(A) To provide training or expert advice in accordance with paragraphs (a)(1)(v) and (a)(1)(vi) of this section.

(B) For equipment maintenance in accordance with paragraph (a)(1)(iv) of this section.

(C) To monitor and communicate the movement of air and sea traffic in accordance with paragraph (a)(1)(iv)(E)(2) of this section.

(iv) All requests shall be submitted promptly to the ASD(HD&ASA) for action by the Secretary of Defense, as appropriate.

(v) The views of the Chairman of the Joint Chiefs of Staff shall be obtained on all requests that are considered by the Secretary of Defense or the ASD(HD&ASA) or that otherwise involve personnel assigned to a unified or specified command and that may affect military readiness.

(vi) All requests that are to be considered by the Secretary of Defense or the ASD(HD&ASA) that involve Reserve Component personnel or equipment shall be coordinated with the ASD(RA).

(b) *DoD Support of CDO—(1) Guiding Statutory Requirements and Supporting Policies.* (i) The President is authorized by the Constitution and laws of the United States to employ the Armed Forces of the United States to suppress insurrections, rebellions, and domestic violence under various conditions and circumstances. Planning and preparedness by the Federal Government and the Department of Defense for civil disturbances is important due to the potential severity of the consequences of such events for the Nation and the population.

(ii) The primary responsibility for protecting life and property and maintaining law and order in the civilian community is vested in the State and local governments. Supplementary responsibility is vested by statute in specific agencies of the Federal Government other than the Department of Defense. The President has additional powers and responsibilities under the Constitution of the United States to ensure that law and order are maintained.

(iii) Responsibility for the management of the Federal response to civil disturbances rests with the Attorney General of the United States.

(iv) Any employment of DoD forces in support of law enforcement operations shall maintain the primacy of civilian authority. Requests from the Attorney General to the Department of Defense for this support may be provided at the direction of the President in response to an official request by State or Federal authorities.

(v) The employment of DoD forces to control civil disturbances must be authorized by the President through an executive order directing the Secretary of Defense to act in a specified civil jurisdiction under specific circumstances.

(vi) Planning by the DoD Components for CDO shall be compatible with contingency plans for national security emergencies, and with planning for DSCA pursuant to 32 CFR part 185. For example:

<sup>6</sup> Available at <http://www.dtic.mil/whs/directives/corres/pdf/524001p.pdf>.

<sup>7</sup> Available at <http://www.dtic.mil/whs/directives/corres/pdf/524001r.pdf>.

(A) Pursuant to Executive Order 12656, it is the policy of the Federal Government to have sufficient capabilities at all levels of government to meet essential defense and civilian needs during any national security emergency. The policy directs the heads of the Federal departments and agencies to identify facilities and resources, both Government and private, essential to the national defense and national welfare, and to develop strategies, plans, and programs to provide for the security of such facilities and resources, and to avoid or minimize disruptions during any national security emergency. In some circumstances, risks to such facilities and resources may coincide with or constitute civil disturbances.

(B) The Department of Defense will support civil authorities in civil defense, including facilitating the use of the National Guard in each State for response in both peacetime disasters and national security emergencies. In some circumstances, an attack may coincide with or encompass civil disturbances.

(C) Guidelines concerning the use of deputized DoD uniformed personnel by State or local law enforcement authorities is outlined in DoDI 5525.13<sup>8</sup>.

(D) Guidelines concerning the carrying of firearms and/or the use of deadly force by DoD uniformed personnel while engaged in law enforcement or security duties for protecting personnel, protecting vital Government assets, or guarding prisoners is outlined in DoDD 5210.56<sup>9</sup> and CJCSI 3121.01B.

(2) *DoD Requirements.* (i) Federal military forces shall not be used for CDO unless specifically authorized by the President, except under emergency authorities as provided in title 48 U.S.C. 1422 and 1591 and paragraph (a)(1)(ii)(C) of this section.

(ii) DoD forces shall be made available for CDO, consistent with DoD priorities, as coordinated by designated representatives, as directed by the President.

(iii) DoD forces employed in CDO shall remain under Secretary of Defense command and control at all times.

(iv) The pre-positioning of DoD forces for CDO shall not exceed a battalion-sized unit unless a larger force is authorized by the President.

(v) The DoD Components shall not take charge of any function of civil government unless absolutely necessary

under conditions of extreme emergency (e.g., situations that require the exercise of emergency authorities as described in 32 CFR part 185 and paragraph (a)(1)(ii)(C) of this section). Any commander who is directed, or undertakes, to control such functions shall strictly limit DoD actions to the emergency needs, and shall facilitate the reestablishment of civil responsibility at the earliest time possible.

(3) *CDO Planning and Execution.* (i) To ensure essential control and sound management of all DoD forces employed in CDO, centralized direction from the Secretary of Defense, through the ASD(HD&ASA), shall guide planning by the DoD Components, whether alone or with civil authorities. Execution of CDO missions shall be decentralized through the DoD planning agents for CDO, or through joint task force commanders, and only when specifically directed by the Secretary of Defense or as described in paragraph (a)(1)(ii) of this section.

(ii) The Commanders of USNORTHCOM and USPACOM, as the DoD planning agents for CDO in accordance with § 182.5(j) of this part, shall lead the CDO planning activities of the DoD Components in these areas:

(A) USNORTHCOM. The 48 contiguous States, Alaska, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands.

(B) USPACOM. Hawaii and the U.S. possessions and territories in the Pacific area.

(iii) CDO plans and readiness measures shall foster efficient employment of Federal equipment controlled by National Guard forces, whether employed under State or Federal authority, as well as resources of the DoD Components.

(iv) For a CDO response: (A) If the President directs the use of DoD forces for CDO, the ASD(HD&ASA) shall obtain direction from the Secretary of Defense for implementation of the President's direction. The Secretary of Defense will communicate his or her approval to the Combatant Commanders through the Chairman of the Joint Chiefs of Staff.

(B) The ASD(HD&ASA) shall provide any request, contingency plan, directive, or order affecting the employment of U.S. special operations forces to the Assistant Secretary of Defense for Special Operations and Low-Intensity Conflict and Interdependent Capabilities (ASD(SO/LIC&IC), who supervises the employment of those forces on behalf of the Secretary of

Defense in accordance with DoDD 5111.10<sup>10</sup>.

(C) Additionally, the ASD(HD&ASA), in coordination with ASD(SO/LIC&IC) for the employment of special operations forces, shall provide overall supervision of the employment of DoD personnel and resources for homeland defense activities for domestic terrorist incidents and other purposes in coordination with the Chairman of the Joint Chiefs of Staff.

(4) *Role of the National Guard.* (i) Army and Air National Guard forces have primary responsibility for providing support to State and local government agencies in civil disturbances.

(ii) DoD forces (including National Guard forces called into Federal service under title 10, U.S.C.) shall support the primary Federal agency to assist State law enforcement authorities to conduct CDO. Federal forces will always remain under the President's authority as Commander in Chief and will maintain a Federal chain of command. Federal forces may conduct CDO in close coordination with State National Guard forces using direct liaison.

(iii) National Guard forces may be ordered to active duty or called into Federal service to ensure unified command and control of all DoD forces for CDO when the President determines that action to be necessary.

(iv) The Chief, NGB, will inform, as appropriate, the responsible Combatant Commander of plans developed by States for contingency use of non-federalized National Guard forces for CDO.

(5) *Cooperation with Civil Agencies.* (i) The Attorney General of the United States receives and coordinates preliminary requests for CDO from other civil agencies pursuant to title 10 U.S.C. 331–334.

(A) Formal requests for CDO must be presented to the President, who will determine the Federal action to be taken.

(B) In the Department of Justice, the Federal Bureau of Investigation may lead the operational response to a civil disturbance incident.

(C) The President will, through the Attorney General, communicate the President's policy guidance to the DoD commander for CDO. In addition, the Attorney General may designate a senior civilian, known as the Senior Civilian Representative of the Attorney General (SCRAG), as his or her representative.

(ii) The ASD(HD&ASA) shall represent the Department of Defense in

<sup>8</sup> Available at <http://www.dtic.mil/whs/directives/corres/pdf/552513p.pdf>.

<sup>9</sup> Available at <http://www.dtic.mil/whs/directives/corres/html/521056.htm>.

<sup>10</sup> Available at: <http://www.dtic.mil/whs/directives/corres/pdf/511110p.pdf>.

coordinating CDO planning and execution with the Department of Justice, and with other Federal and State law enforcement agencies.

(c) *Use of Information Collected During DoD Operations*—(1) *Acquisition and Dissemination*. The DoD Components are encouraged to provide to Federal, State, or local civilian law enforcement officials any information collected during the normal course of military operations that may be relevant to a violation of any law within the jurisdiction of such officials. The DoD Components shall prescribe procedures for releasing information upon reasonable belief that there has been such a violation.

(i) The assistance provided shall be in accordance with title 10 U.S.C. 371 and other applicable laws.

(ii) The acquisition and dissemination of information under this section shall be in accordance with DoDD 5200.27, DoDD 5240.1, and DoD 5240.1–R.<sup>11</sup>

(iii) The DoD Components shall establish procedures for “routine use” disclosures of such information in accordance with 32 CFR part 310.

(iv) Under guidance established by the DoD Components concerned, the planning and execution of compatible DoD training and operations shall, to the maximum extent practicable, take into account the needs of civilian law enforcement officials for information when the collection of the information is an incidental aspect of training performed for a DoD purpose (title 10, U.S.C. 371).

(v) The needs of civilian law enforcement officials shall, to the maximum extent practicable, be considered when scheduling routine training missions. This does not permit the planning or creation of missions or training for the primary purpose of aiding civilian law enforcement officials, and it does not permit conducting training or missions for the purpose of routinely collecting information about U.S. citizens (title 10 U.S.C. 371).

(vi) Local law enforcement agents may accompany routinely scheduled training flights as observers for the purpose of collecting law enforcement information. This provision does not authorize the use of DoD aircraft to provide point-to-point transportation and training flights for civilian law enforcement officials. Such assistance may be provided only in accordance with title 10 U.S.C. 371–382 and DoD 4515.13–R.

(vii) Under procedures established by the DoD Components concerned,

information concerning illegal drugs that is provided to civilian law enforcement officials under provisions of DoD 5240.1–R shall also be provided to the El Paso Intelligence Center.

(viii) Nothing in this section modifies DoD procedures for dissemination of information for foreign intelligence or counterintelligence purposes.

(ix) The DoD Components are encouraged to participate in the Department of Justice law enforcement coordinating committees situated in each Federal judicial district.

(x) The assistance provided under this section may not include or permit direct participation by a member of a Military Service in the interdiction of a vessel, aircraft, or land vehicle, or in a search or seizure, arrest, or other similar activity, unless the member’s participation in such activity is otherwise authorized by law. (See paragraph (a)(1)(ii) of this section)

(2) *Military Readiness*. Information shall not be provided under this section if it could adversely affect national security or military readiness.

(d) *Use of DoD Equipment and Facilities*—(1) *Equipment and Facilities*. The DoD Components may make equipment, base facilities, or research facilities available to Federal, State, or local civilian law enforcement officials for law enforcement purposes in accordance with the guidance in this section.

(i) ASD(HD&ASA) shall issue guidance to ensure that the assistance provided under this section is in accordance with applicable provisions of title 10 U.S.C. 372, 2576, and 2667; title 31 U.S.C. 1535; the Federal Property and Administrative Services Act of 1949, title 40, U.S.C.; title 41 U.S.C. 5, 251–255, and 257–260; title 44, U.S.C. chapters 21, 25, 29, and 31; and other applicable laws.

(ii) ASD(HD&ASA) guidance shall also ensure compliance with DoDDs 4165.6<sup>12</sup> and 5410.12,<sup>13</sup> and other guidance that may be issued by the Under Secretary of Defense (Comptroller)/Chief Financial Officer, Department of Defense.

(2) *Limitations on the Use of Personnel*. The DoD Components shall follow the guidance in paragraph (a)(1)(iv) of this section in considering requests for DoD personnel to operate or maintain, or to assist in operating or maintaining, equipment made available in (a)(1)(iv) of this section.

(3) *Military Readiness*. Assistance may not be provided under this section

if such assistance could adversely affect national security or military readiness. Each request shall be evaluated using criteria provided in 32 CFR part 185 for determining legality, lethality, risk, cost, appropriateness, and readiness. The implementing documents issued by the DoD Components shall ensure that approval for the disposition of equipment is vested in officials who can assess the impact of such disposition on national security and military readiness.

(4) *Approval Authority*. (i) Requests by civilian law enforcement officials for DoD assistance shall be forwarded to the appropriate approval authority under the guidance in this section. All requests, including those in which subordinate authorities recommend denial, shall be submitted promptly to the approving authority. Requests will be forwarded and processed according to the urgency of the situation.

(A) Requests for the use of equipment or facilities outside the continental United States, other than for arms, ammunition, combat vehicles, vessels, and aircraft, shall be approved in accordance with procedures established by the applicable DoD Component.

(B) Requests from Federal agencies for purchase of equipment (permanent retention) between Federal agencies that are accompanied by appropriate funding documents may be submitted directly to the DoD Components. Requests for transferring equipment to Federal agencies must be processed pursuant to the Economy Act of 1932, title 31, U.S.C. 1535.

(C) Requests for training, expert advice, or use of personnel to operate or maintain equipment shall be forwarded in accordance with paragraph (a)(5) of this section.

(D) For loans pursuant to the Federal Property and Administrative Services Act of 1949, as amended, title 40, U.S.C.; or the Economy Act of 1932, as amended, title 31 U.S.C. 1535, which are limited to agencies of the Federal Government; and for leases pursuant to title 10, U.S.C. 2667, which may be made to entities outside the Federal Government, this guidance applies:

(1) Requests for arms, ammunition, combat vehicles, vessels, and aircraft shall be submitted through the ASD (HD&ASA) for approval by the Secretary of Defense.

(2) Requests for loan or lease or other use of equipment or facilities are subject to approval by the DoD Components, unless approval by a higher official is required by statute or DoDD applicable to the particular disposition.

(ii) The DoD Components shall issue implementing policy and direction for taking action on requests for loan, lease,

<sup>12</sup> Available at <http://www.dtic.mil/whs/directives/corres/pdf/416506p.pdf>.

<sup>13</sup> Available at <http://www.dtic.mil/whs/directives/corres/html/541012.htm>.

<sup>11</sup> Available at <http://www.dtic.mil/whs/directives/corres/pdf/520027p.pdf>.

or other use of equipment or facilities that are not governed by paragraph (a)(1)(iv) of this section. Such implementing policy and direction shall ensure compliance with applicable statutes and DoDDs requiring specific levels of approval with respect to particular dispositions.

(e) *Funding—(1) General.*

Reimbursement is required when equipment or services are provided to agencies outside the Department of Defense. The primary sources of reimbursement requirements are the Economy Act, title 31 U.S.C. 1535 for Federal agencies; the Robert T. Stafford Disaster Relief and Emergency Act of 1988, title 42, U.S.C. 5121–5207; and title 10, U.S.C. 377 and 2667, provide guidance regarding Secretary of Defense waivers of reimbursement for support to civilian law enforcement agencies. Other statutes may apply to particular types of assistance or assistance to specific civilian law enforcement entities.

(2) *Procedural Requirements.* (i) Defense support of civilian law enforcement agencies is normally an unprogrammed requirement for the Department of Defense. DoD 7000.14–R,<sup>14</sup> prescribes procedures for financing and reporting costs. DoD Components shall comply with these procedures and shall consider the factors presented in paragraph (e)(1) of this section to determine or recommend whether financing is to be accomplished on a reimbursable or non-reimbursable basis.

(ii) The Commanders of USNORTHCOM and USPACOM shall serve as the financial managers responsible for DoD oversight of all operations executed in their areas of responsibility (§ 182.5(j)(1) of this part).

(iii) The Secretary of Defense may waive reimbursement for DoD support to civilian law enforcement agencies in accordance with title 10 U.S.C. 377, or support provided by National Guard personnel performing duty pursuant to title 32 U.S.C. 502(f) in accordance with title 10, U.S.C. 377 if such support:

(A) Is provided in the normal or incidental course of DoD training or operations; or

(B) Results in a benefit to the element of the Department of Defense or personnel of the National Guard providing the support that is substantially equivalent to what would otherwise be obtained from DoD operations or training.

(3) *Personnel Duty Status.* Funding for State active duty of National Guard

personnel is the responsibility of the State involved.

Dated: December 22, 2010.

**Morgan F. Park,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2010–32552 Filed 12–27–10; 8:45 am]

**BILLING CODE 5001–06–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R05–OAR–2009–0808; FRL–9243–4]

#### Approval and Promulgation of Air Quality Implementation Plans; Minnesota; Sulfur Dioxide SIP Revision for Marathon Petroleum St. Paul Park

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a sulfur dioxide State Implementation Plan revision request for Marathon Petroleum in St. Paul Park, Minnesota. This submittal updates the State Implementation Plan to reflect the installation of new boilers and a sulfur recovery unit and changes to three existing heaters. Overall, this update represents a decrease in sulfur dioxide emissions.

**DATES:** Comments must be received on or before January 27, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R05–OAR–2009–0808, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *E-mail:* [aburano.douglas@epa.gov](mailto:aburano.douglas@epa.gov).

3. *Fax:* (312) 408–2279.

4. *Mail:* Douglas Aburano, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. *Hand Delivery:* Douglas Aburano, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this

**Federal Register** for detailed instructions on how to submit comments.

**FOR FURTHER INFORMATION CONTACT:**

Mary Portanova, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–5954, [portanova.mary@epa.gov](mailto:portanova.mary@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 adverse comments are received in response to this rule, 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: December 15, 2010.

**Susan Hedman,**

*Regional Administrator, Region 5.*

[FR Doc. 2010–32483 Filed 12–27–10; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R03–OAR–2010–0857; FRL–9243–7]

#### Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Allegheny County's Adoption of Control Techniques Guidelines for Large Appliance and Metal Furniture; Flat Wood Paneling; Paper, Film, and Foil Surface Coating Processes; and Revisions to Definitions and an Existing Regulation

**AGENCY:** Environmental Protection Agency (EPA).

<sup>14</sup> Available at <http://www.defenselink.mil/comptroller/fmr/>.