



# FEDERAL REGISTER

---

Vol. 78

Thursday,

No. 133

July 11, 2013

Pages 41677–41834

OFFICE OF THE FEDERAL REGISTER



The **FEDERAL REGISTER** (ISSN 0097-6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see [www.ofr.gov](http://www.ofr.gov).

The seal of the National Archives and Records Administration authenticates the **Federal Register** as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge at [www.fdsys.gov](http://www.fdsys.gov), a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6:00 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, 1 (January 2, 1994) forward. For more information, contact the GPO Customer Contact Center, U.S. Government Printing Office. Phone 202-512-1800 or 866-512-1800 (toll free). E-mail, [gpo@custhelp.com](mailto:gpo@custhelp.com).

The annual subscription price for the **Federal Register** paper edition is \$749 plus postage, or \$808, plus postage, for a combined **Federal Register**, **Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is \$165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register**, including postage, is based on the number of pages: \$11 for an issue containing less than 200 pages; \$22 for an issue containing 200 to 400 pages; and \$33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for \$3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Printing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see [bookstore.gpo.gov](http://bookstore.gpo.gov).

There are no restrictions on the republication of material appearing in the **Federal Register**.

**How To Cite This Publication:** Use the volume number and the page number. Example: 77 FR 12345.

**Postmaster:** Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Printing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

## SUBSCRIPTIONS AND COPIES

### PUBLIC

#### Subscriptions:

Paper or fiche 202-512-1800  
Assistance with public subscriptions 202-512-1806

**General online information** 202-512-1530; 1-888-293-6498

#### Single copies/back copies:

Paper or fiche 202-512-1800  
Assistance with public single copies 1-866-512-1800  
(Toll-Free)

### FEDERAL AGENCIES

#### Subscriptions:

Paper or fiche 202-741-6005  
Assistance with Federal agency subscriptions 202-741-6005

### FEDERAL REGISTER WORKSHOP

#### THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

**FOR:** Any person who uses the Federal Register and Code of Federal Regulations.

**WHO:** Sponsored by the Office of the Federal Register.

**WHAT:** Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

**WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

**WHEN:** Tuesday, September 17, 2013  
9 a.m.-12:30 p.m.

**WHERE:** Office of the Federal Register  
Conference Room, Suite 700  
800 North Capitol Street, NW.  
Washington, DC 20002

**RESERVATIONS:** (202) 741-6008



# Contents

Federal Register

Vol. 78, No. 133

Thursday, July 11, 2013

## Agency for Healthcare Research and Quality

### NOTICES

Meetings:

National Advisory Council for Healthcare Research and Quality, 41799–41800

## Agriculture Department

See Forest Service

### NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 41781–41782

## Bureau of Consumer Financial Protection

### RULES

Procedures for Bureau Debt Collection, 41677–41684

## Centers for Disease Control and Prevention

### NOTICES

Teen Dating Violence Prevention Public Service

Announcement Contest; Requirements and Registration: I VetoViolence Because, 41800–41801

## Children and Families Administration

### NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Evaluation of the Transitional Living Program, 41801–41802

## Coast Guard

### RULES

Safety Zones:

Fireworks Events in Captain of the Port New York Zone, 41694

Ohio River, Mile 469.4–470.0, Bellevue, KY, 41687–41689

Pamlico River and Tar River, Washington, NC, 41691–41693

Skagit River Bridge, Skagit River, Mount Vernon, WA, 41689–41691

## Commerce Department

See International Trade Administration

See National Oceanic and Atmospheric Administration

### NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Alaska Crab Rationalization Program Cooperative Report, 41784

NOAA Teacher At Sea Program, 41783

Southeast Region Logbook Family of Forms, 41784

## Comptroller of the Currency

### NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

OCC Supplier Registration Form, 41833–41834

## Department of Transportation

See Pipeline and Hazardous Materials Safety Administration

## Education Department

### RULES

Final Priority and Requirements:

Education Facilities Clearinghouse, 41694–41698

### NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Implementation of Title I/II Program Initiatives, 41785–41786

Applications for New Awards:

Education Facilities Clearinghouse Program, 41786–41791

## Energy Department

See Federal Energy Regulatory Commission

## Environmental Protection Agency

### RULES

Air Quality State Implementation Plans; Approvals and Promulgations:

Indiana; Redesignation of the Indianapolis Area to Attainment of the Standard for Fine Particulate Matter, 41698–41703

Regulation of Fuels and Fuel Additives:

Approval of Renewable Fuel Pathways for Giant Reed (*Arundo Donax*) and Napier Grass (*Pennisetum Purpureum*), 41703–41716

### PROPOSED RULES

Air Quality Implementation Plans; Approvals and Promulgations:

Indiana; Redesignation of the Indiana portion of the Louisville Area to Attainment of the 1997 Annual Standard for Fine Particulate Matter, 41735–41752

Ohio; Redesignation of the Ohio portion of the Steubenville–Weirton Area to Attainment of the 1997 Annual and 2006 24-Hour Standards for Fine Particulate Matter, 41752–41768

Chemical Substances and Mixtures Used in Oil and Gas Exploration or Production:

Toxic Substances Control Act Petition; Reasons for Agency Response, 41768–41771

Source Specific Federal Implementation Plans:

Implementing Best Available Retrofit Technology for Four Corners Power Plant; Navajo Nation, 41731–41735

### NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 41794

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

NESHAP for Organic Liquids Distribution (Non-Gasoline) Facilities, 41794–41795

Meetings:

Farm, Ranch, and Rural Communities Committee; Teleconference, 41795

## Federal Aviation Administration

### RULES

Amendment of Class E Airspace:

Worthington, MN, 41685–41686

Modification of VOR Federal Airway V–345:

Vicinity of Ashland, WI, 41686–41687

## Special Conditions:

Embraer S.A. Model EMB-550 Airplanes, Sudden Engine Stoppage, 41684-41685

**NOTICES**

## Waivers of Aeronautical Land-Use Assurance:

Bismarck Municipal Airport, Bismarck, ND, 41822-41823  
Wittman Regional Airport, Oshkosh, WI, 41823-41824

**Federal Communications Commission****PROPOSED RULES**

Petitions for Reconsiderations of Actions in Rulemaking Proceedings, 41771

**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 41795-41797

**Federal Deposit Insurance Corporation****NOTICES**

Meetings:  
Advisory Committee on Community Banking, 41797

**Federal Energy Regulatory Commission****NOTICES**

Combined Filings, 41791-41794  
Initial Market-Based Rate Filings Including Requests for Blanket Section 204 Authorization:  
XO Energy SW, LP, 41794

**Federal Motor Carrier Safety Administration****RULES**

Hours of Service of Drivers:  
Limited 90-Day Waiver from the 30-Minute Rest Break Requirement for the Transportation of Livestock, 41716-41718

**Federal Trade Commission****NOTICES**

Early Terminations of Waiting Period under Premerger Notification Rules, 41797-41799

**Federal Transit Administration****NOTICES**

Draft Guidance:  
Enhanced Mobility for Seniors and Individuals with Disabilities; Proposed Circular, 41824-41829

**Food and Drug Administration****NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:  
Manufactured Food Regulatory Program Standards, 41802  
Meetings:  
Orthopaedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee; Cancellation, 41803  
Public Dockets for Comments:  
Report under the Food and Drug Administration Safety and Innovation Act, 41803

**Forest Service****NOTICES**

Forest Plans:  
Nez Perce-Clearwater National Forests, ID; Revision, 41782-41783  
Proposed New Fee Sites, 41783

**Health and Human Services Department**

See Agency for Healthcare Research and Quality

See Centers for Disease Control and Prevention  
See Children and Families Administration  
See Food and Drug Administration

**Healthcare Research and Quality Agency**

See Agency for Healthcare Research and Quality

**Homeland Security Department**

See Coast Guard

**International Trade Administration****NOTICES**

Antidumping Duty Orders; Results, Extensions, Amendments, etc.:  
Uncovered Innerspring Units from the People's Republic of China, 41784-41785

**Justice Department****NOTICES**

Consent Decrees under the Clean Water Act; Proposed Amendments, 41803-41804

**National Aeronautics and Space Administration****NOTICES**

Meetings:  
NASA Advisory Council, 41804  
NASA Advisory Council; Audit, Finance and Analysis Committee, 41804-41805

**National Oceanic and Atmospheric Administration****RULES**

Fisheries of the Exclusive Economic Zone Off Alaska:  
Kamchatka Flounder in the Bering Sea and Aleutian Islands Management Area; Closure, 41718-41719

**PROPOSED RULES**

Fisheries of the Northeastern United States; Northeast Multispecies Fishery:  
Sector Vessels Access to Year-Round Closed Areas, 41772-41780

**National Science Foundation****NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 41805

**Nuclear Regulatory Commission****PROPOSED RULES**

Rulemaking Petitions:  
CampCo Petition to Allow Commercial Distribution of Tritium Markers, 41720-41721

**NOTICES**

License Modifications:  
FirstEnergy Nuclear Operating Co., Beaver Valley Power Station; Independent Spent Fuel Storage Installation, 41805-41810  
Standard Review Plans:  
Light Load Handling System and Operations; Revision, 41810-41812

**Pipeline and Hazardous Materials Safety Administration****NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:  
Revision to Annual Report for Hazardous Liquid Pipeline Systems, 41829-41831

**Postal Service****PROPOSED RULES**

New Standards to Enhance Package Visibility, 41721-41731

**Surface Transportation Board**

**NOTICES**

Acquisitions of Control Exemptions:

Charles Barenfanger, Jr.; Vandalia Railroad Co., 41831–41832

**Transportation Department**

*See* Federal Aviation Administration

*See* Federal Motor Carrier Safety Administration

*See* Federal Transit Administration

*See* Pipeline and Hazardous Materials Safety Administration

*See* Surface Transportation Board

**NOTICES**

Funding Availabilities:

Small Business Transportation Resource Center Program, Great Lakes Region, 41817–41822

Small Business Transportation Resource Center Program, Gulf Region, 41812–41817

**Treasury Department**

*See* Comptroller of the Currency

**NOTICES**

Meetings:

Debt Management Advisory Committee, 41832–41833

Financial Research Advisory Committee, 41832

---

**Reader Aids**

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

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to <http://listserv.access.gpo.gov> and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

**CFR PARTS AFFECTED IN THIS ISSUE**

---

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

**10 CFR****Proposed Rules:**

32.....41720

**12 CFR**

1073.....41677

**14 CFR**

25.....41684

71 (2 documents) .....41685,  
41686**33 CFR**165 (4 documents) .....41687,  
41689, 41691, 41694**34 CFR**

Ch. II.....41694

**39 CFR****Proposed Rules:**

111.....41721

**40 CFR**

52.....41698

80.....41703

81.....41698

**Proposed Rules:**

Ch. I.....41768

49.....41731

52 (2 documents) .....41735,  
4175281 (2 documents) .....41735,  
41752**47 CFR****Proposed Rules:**

90.....41771

**49 CFR**

395.....41716

**50 CFR**

679.....41718

**Proposed Rules:**

697.....41772

# Rules and Regulations

Federal Register

Vol. 78, No. 133

Thursday, July 11, 2013

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

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## BUREAU OF CONSUMER FINANCIAL PROTECTION

### 12 CFR Part 1073

[Docket No.: CFPB–2013–0021]

#### Procedures for Bureau Debt Collection

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Final rule.

**SUMMARY:** This rule implements the Bureau of Consumer Financial Protection's debt collection regulations. These regulations conform to requirements set forth in laws applicable to the collection of nontax debts owed to the United States.

**DATES:** This rule is effective July 11, 2013.

**FOR FURTHER INFORMATION CONTACT:** David Snyder, Attorney-Advisor, Legal Division, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552 at 202–435–7758.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

This rule implements the Debt Collection Improvement Act of 1996 (DCIA), which applies to non-tax debts owed to the United States government, with respect to the Bureau of Consumer Financial Protection (CFPB or Bureau). The DCIA requires Federal agencies to collect debts owed to the United States under regulations prescribed by the head of each agency and standards prescribed by the Department of Justice and the Department of Treasury. 31 U.S.C. 3711. These standards, known as the Federal Claims Collection Standards (FCCS), became effective on December 22, 2000. 31 CFR Parts 900 through 904.

The DCIA also requires agencies, prior to collecting debts owed to the United States by administrative offset, to: (1) Adopt without change the FCCS on

collecting debts by administrative offset; or (2) prescribe agency regulations for collecting such debts by administrative offset which are consistent with the FCCS. 31 U.S.C. 3716(b). Those agency regulations must set forth the procedural protections that the agency provides to a debtor when the agency seeks to collect a debt by administrative offset.

The Bureau has decided to issue its own regulations for debt collection and administrative offset. The regulations are consistent with the FCCS, as required by the DCIA. The salary offset portion of the regulations has been submitted to and approved by the Office of Personnel Management (OPM), as required by 5 U.S.C. 5514. In addition, the administrative wage garnishment provisions of the regulations satisfy the prerequisite in 31 CFR 285.11(f) that the Bureau adopt regulations for the conduct of administrative wage garnishment hearings consistent with 31 CFR 285.11. The tax refund offset provisions of the regulations satisfy the prerequisite in 31 CFR 285.2(c) that the Bureau adopt regulations authorizing its collection of debts by tax refund offset.

##### II. Summary of the Rule

###### *Subpart A—Scope, Purpose, and Definitions*

This part establishes Bureau procedures for the collection of certain debts owed to the United States. In addition to the procedures set forth in this rule, the Bureau shall also follow the procedures set forth in 5 CFR part 550, subpart K, for the collection by offset from indebted government employees, and in 31 CFR part 285 and the FCCS (31 CFR parts 900 through 904) for the collection of non-tax debts owed to the United States. These regulations govern the following areas of the debt collection process: Prompt demand of payment of the claim from the debtor; review, upon the debtor's demand for a final agency determination, of whether the amount claimed is accurate; collection of debts in installment payments; assessment of interest, penalties, and administrative costs on debts claimed; compromise of claims; determinations whether to suspend or terminate collection action; referral of delinquent debts to the Secretary of the Treasury for collection by means of centralized administrative offset under the Treasury Offset

Program; reporting of debts to consumer reporting agencies; use of credit reports; and the sale of delinquent debts. When the Bureau elects to pursue a specific debt collection remedy such as salary offset, administrative wage garnishment, or offset against tax refunds, the Bureau shall follow the applicable procedures for that debt collection remedy set forth in these regulations.

###### *Subpart B—Administrative Offset*

Pursuant to 31 U.S.C. 3716, the Bureau may, in appropriate circumstances, collect debts owed to the United States through administrative offset. Under the administrative offset regulations, the Bureau is authorized to collect debts owed to the United States by: (1) Withholding money payable by the Bureau to the debtor or held by the Bureau for the debtor; (2) requesting that another Federal agency withhold money payable to the debtor or held by the agency for the debtor; or (3) referring the debts to the Secretary of the Treasury or a designated debt collection center for collection under the Treasury's centralized offset program. Subpart B of the regulations satisfies the prerequisite under 31 U.S.C. 3716(b) that the Bureau promulgate regulations for administrative offset procedures that are consistent with the FCCS. Subpart B of the regulations also satisfies the prerequisite under 31 CFR 901.3 that the Bureau prescribe specified administrative offset regulations prior to conducting administrative offset.

###### *Subpart C—Salary Offset*

Subpart C of the regulations provides that when the Bureau collects a debt by means of deductions from the current pay account of a Bureau employee, or any individual currently employed by the Federal Government (including a former Bureau employee), the Bureau shall initiate salary offset under 5 U.S.C. 5514(a)(1). Salary offset is a form of administrative offset governed by statute (5 U.S.C. 5514) and by regulations issued by the Office of Personnel Management (OPM) (5 CFR part 550, subpart K). The statute authorizing salary offset requires agencies to promulgate regulations to carry out salary offset subject to OPM approval. 5 U.S.C. 5514(b)(1). Subpart C implements those statutory requirements.

#### Subpart D—Administrative Wage Garnishment

Subpart D of the regulations incorporates by reference 31 CFR 285.11, which sets forth procedures that agencies may use to collect debts by garnishing the wages of individuals employed outside the Federal Government. This includes persons employed by the private sector, as well as state and local governments. The administrative wage garnishment regulations do not apply to the collection of delinquent debts from the wages of Federal employees; Federal pay is subject to the Federal salary offset procedures set forth in 5 U.S.C. 5514 and other applicable laws, including Subpart C of these regulations. Subpart D of the regulations meets the requirement under 31 CFR 285.11(f) that the Bureau promulgate regulations governing the conduct of administrative wage garnishment hearings consistent with that section or adopt by reference the section without change.

#### Subpart E—Tax Refund Offset

Where collection by salary offset or administrative offset is not feasible, the Bureau also may seek to recover a legally enforceable, past-due debt owed to the United States by requesting that the Financial Management Service of the Department of the Treasury offset all or part of a tax refund to a debtor by the amount of the debt and pay such money to the Bureau. 31 U.S.C. 3720A; 26 CFR 301.6402–1 through .6402–6. In order to collect a debt by means of a tax refund offset, the Bureau is required to promulgate its own regulations under 31 U.S.C. 3716 and 31 U.S.C. 3720A, governing its authority to collect debts by administrative offset, including offset of tax refund payments. 31 U.S.C. 3720A(b)(4); 31 CFR 285.2(c). Subpart E of the regulations implements this requirement.

### III. Legal Authority and Effective Date

This rule is issued under the DCIA, 31 U.S.C. 3711 *et seq.*, which in part authorizes the Bureau to collect certain debts owed to the United States. It is also issued under 5 U.S.C. 5514, which in part authorizes the Bureau to collect certain debts owed to the United States via salary offset.

This rule is procedural and not substantive and, thus, is not subject to the 30-day delay in effective date required by 5 U.S.C. 553(d). The Bureau is making the rule effective immediately upon publication in the **Federal Register**.

### IV. Regulatory Requirements

No notice of proposed rulemaking is required under the Administrative Procedure Act (APA) because this rule relates solely to agency procedure and practice. 5 U.S.C. 553(b). Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis. 5 U.S.C. 603, 604.

The Bureau has determined that the Rule does not impose any new recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring OMB approval under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*

#### List of Subjects in 12 CFR Part 1073

Administrative practice and procedure, Government employees, Hearing and appeal procedures, Salaries, Wages.

#### Authority and Issuance

For the reasons set forth in the preamble, the Bureau adds Part 1073 to Chapter X in Title 12 of the Code of Federal Regulations to read as follows:

### PART 1073—PROCEDURES FOR BUREAU DEBT COLLECTION

#### Subpart A—Scope, Purpose, and Definitions

Sec.

- 1073.101 Scope.
- 1073.102 Purpose.
- 1073.103 Definitions.

#### Subpart B—Administrative Offset

- 1073.201 Applicability and scope.
- 1073.202 Collection.
- 1073.203 Omission of procedures.
- 1073.204 Debtor's rights.
- 1073.205 No requirement for duplicate notice.
- 1073.206 Interest, penalties, and administrative costs.
- 1073.207 Termination or suspension of collection action.
- 1073.208 Refunds.
- 1073.209 Requests for offset to other Federal agencies.
- 1073.210 Requests for offset from other Federal agencies.

#### Subpart C—Salary Offset

- 1073.301 Scope.
- 1073.302 Notice requirement where CFPB is creditor agency.
- 1073.303 Procedures to request a hearing.
- 1073.304 Failure to timely submit request for a hearing.
- 1073.305 Procedures for hearing.
- 1073.306 Salary offset process.
- 1073.307 Voluntary repayment agreements as alternative to salary offset where the CFPB is the creditor agency.

- 1073.308 Special review of repayment agreement or salary offset due to changed circumstances.
- 1073.309 Interest, penalties, and administrative costs.
- 1073.310 Refunds.
- 1073.311 Non-waiver of rights by payment.
- 1073.312 Exception to procedures.

#### Subpart D—Administrative Wage Garnishment

- 1073.401 Administrative wage garnishment.

#### Subpart E—Tax Refund Offset

- 1073.501 Tax refund offset.

**Authority:** 5 U.S.C. 301; 5 U.S.C. 5514; 31 U.S.C. 3711, *et seq.*

### Subpart A—Scope, Purpose, and Definitions

#### § 1073.101 Scope.

This part establishes Bureau procedures for the collection of certain debts owed to the United States.

(a) This part applies to collections by the Bureau from:

- (1) Federal employees who are indebted to the Bureau;
- (2) Employees of the Bureau who are indebted to other agencies; and
- (3) Other persons, organizations, or entities that are indebted to the United States, except those excluded in paragraph (b) of this section.

(b) This part does not apply:

- (1) To debts or claims arising under the Internal Revenue Code (Title 26, U.S. Code), the Social Security Act (42 U.S.C. 301 *et seq.*), or the tariff laws of the United States;
- (2) To a situation to which the Contract Disputes Act (41 U.S.C. 7101 *et seq.*) applies; or
- (3) To debts arising out of acquisition contracts subject to the Federal Acquisition Regulation. These debts shall be determined, collected, compromised, terminated, or settled in accordance with that regulation (see 48 CFR part 32).

(4) In any other case where collection of a debt is exclusively provided for or prohibited by another statute or applicable regulation.

(c) In addition to the procedures set forth in this part, the Bureau shall also follow the procedures set forth in 5 CFR part 550, subpart K, for the collection by offset from indebted government employees, and in 31 CFR part 285 and the Federal Claims Collection Standards (FCCS) (31 CFR chapter IX and parts 900 through 904) for the collection of debts owed to the United States.

(d) Nothing in this part precludes the compromise, suspension, or termination of collection actions, where appropriate, under standards implementing the Debt Collection Improvement Act (DCIA) (31

U.S.C. 3711 *et seq.*), the FCCS, or any other applicable law.

**§ 1073.102 Purpose.**

The purpose of this part is to implement Federal statutes and regulatory standards authorizing the Bureau to collect debts owed to the United States. This part is intended to be consistent with the following Federal statutes and regulations:

(1) DCIA at 31 U.S.C. 3711 (collection and compromise of claims), section 3716 (administrative offset), section 3717 (interest and penalty on claims), and section 3718 (contracts for collection services); 31 CFR part 285 (debt collection authorities under the DCIA)

(2) 31 CFR chapter IX and parts 900 through 904 (FCCS);

(3) 5 U.S.C. 5514, 5 CFR part 550, subpart K (salary offset);

(4) 5 U.S.C. 5584 (waiver of claims for overpayment);

(5) 31 U.S.C. 3720D, 31 CFR 285.11 (administrative wage garnishment); and

(6) 26 U.S.C. 6402(d), 31 U.S.C. 3720A, and 31 CFR 285.2 (tax refund offset).

**§ 1073.103 Definitions.**

Except where the context clearly indicates otherwise, the following definitions shall apply to this part.

*Administrative offset* means withholding funds payable by the United States to, or held by the United States for, a person to satisfy a debt.

*Agency* means a department, agency, court, court administrative office, or instrumentality in the executive, judicial, or legislative branch of the Federal government, including government corporations.

*Bureau* or *CFPB* means the Bureau of Consumer Financial Protection.

*Centralized administrative offset* means an offset initiated by referral to the Secretary of the Treasury, or where applicable a debt collection center designated by the Department of the Treasury, by a creditor agency of a past due debt for the purpose of collection under the Treasury's centralized offset program.

*Certification* means a written statement transmitted from a creditor agency to a paying agency for purposes of administrative or salary offset, to the Financial Management Service (FMS) for offset or to the Secretary of the Treasury for centralized administrative offset. The certification confirms the existence and amount of the debt and verifies that the creditor agency has afforded the debtor the required procedural protections. Where the debtor requests a hearing on a claimed

debt, the decision by a hearing official or administrative law judge constitutes a certification.

*Compromise* means the settlement or forgiveness of a debt under 31 U.S.C. 3711, in accordance with standards set forth in the FCCS and applicable Federal law.

*Creditor agency* means an agency of the Federal Government to which the debt is owed, or a debt collection center when acting on behalf of a creditor agency to collect a debt. An agency may be both the creditor agency and the paying agency.

*Debt or claim* means an amount of money, funds, or property that has been determined by an agency official to be due the United States from any person, organization, or entity, except another Federal entity. For purposes of this part, a debt or claim owed to the Bureau constitutes a debt or claim owed to the United States.

*Debt collection center* means the Department of the Treasury or other government agency or division designated by the Secretary of the Treasury with authority to collect debts on behalf of creditor agencies in accordance with 31 U.S.C. 3711(g).

*Debtor* means a person who owes a debt or a claim. The term "person" includes any individual, organization, or entity, except another Federal agency.

*Director* means the Director of the Bureau of Consumer Financial Protection or the Director's designee.

*Disposable pay* means that part of current adjusted basic pay, special pay, incentive pay, retired pay, retainer pay, and, in the case of an employee not entitled to adjusted basic pay, other authorized pay, remaining for each pay period after the deduction of any amount required by law to be withheld.

*Federal Claims Collection Standards (FCCS)* means standards published at 31 CFR Parts 900 through 904.

*Financial Management Service (FMS)* is a Bureau of the Department of the Treasury.

*Garnishment* means the process of withholding amounts from the disposable pay of a person employed outside the Federal Government, and the paying of those amounts to a creditor in satisfaction of a withholding order.

*Non-centralized administrative offset* means offsets that an agency conducts, at the agency's discretion, internally or in cooperation with the agency certifying or authorizing payment to the debtor.

*Notice of Intent to Offset* or *Notice of Intent* means a written notice from a creditor agency to an employee, organization, entity, or restitution

debtor that claims a debt and informs the debtor that the creditor agency intends to collect the debt by administrative or salary offset. The notice also informs the debtor of certain procedural rights with respect to the claimed debt and respective offset procedure.

*Paying agency* means the agency of the Federal Government that withholds funds payable to a person who owes a debt to an agency of the Federal Government. The term "person" includes any individual, organization, or entity, except another Federal agency. An agency may be both the creditor agency and the paying agency.

*Recoupment* means a special method of adjusting debts arising under the same transaction or occurrence.

*Salary offset* means an administrative offset to collect a debt under 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of a Federal employee without his or her consent.

*Withholding order* means any order for withholding or garnishment of pay issued by an agency, or judicial or administrative body.

**Subpart B—Administrative Offset**

**§ 1073.201 Applicability and scope.**

(a) *Applicability.* The provisions of this subpart apply to the collection of debts owed to the United States arising out of the activities of, or referred to, the Bureau. This subpart is intended to be consistent with the Federal Claims Collection Standards (31 CFR chapter IX and parts 900 through 904) on administrative offset issued by the Department of Treasury and the Department of Justice.

(b) *Centralized administrative offset.*

(1) The Director will refer any eligible debt over 180 days delinquent to the Department of the Treasury or a designated debt collection center for collection by centralized administrative offset. The Director may also refer any eligible debt less than 180 days delinquent to the Department of the Treasury for offset.

(2) At least 60 days prior to referring a debt to the Department of the Treasury in accordance with paragraph (b)(1) of this section, the Director will send notice to the debtor in accordance with the requirements of § 1073.204 of this subpart.

(c) *Non-centralized administrative offset.* (1) When centralized administrative offset is not available or appropriate, the Director may collect past-due, legally enforceable debts through non-centralized administrative offset. In these cases, the Director may

offset a payment internally or make an offset request directly to a paying agency.

(2) At least 30 days prior to offsetting a payment internally or requesting a paying agency to offset a payment in accordance with paragraph (c)(1) of this section, the Director will send notice to the debtor in accordance with the requirements of § 1073.204 of this subpart.

**§ 1073.202 Collection.**

(a) The Director may collect a claim from a person by administrative offset of monies payable by the Government only after:

(1) Providing the debtor with the procedures of this subpart; and

(2) Providing the paying agency with written certification that the debtor owes the debt in the amount stated and that the Bureau, as creditor agency, has complied with this part.

(b) The Director will initiate collection by administrative offset of only those debts for which that remedy is permissible under 31 CFR 901.3(a).

(c) Unless otherwise provided, debts or payments not subject to administrative offset under 31 U.S.C. 3716 may be collected by administrative offset under common law, or any other applicable statutory authority.

**§ 1073.203 Omission of procedures.**

The Bureau shall not be required to follow the procedures described in § 1073.204 where:

(a) The offset is in the nature of a recoupment;

(b) The debt arises under a contract as set forth in *Cecile Industries, Inc. v. Cheney*, 995 F.2d 1052 (Fed. Cir. 1993); or

(c) In the case of non-centralized administrative offsets, the Bureau first learns of the existence of the amount owed by the debtor when there is insufficient time before payment would be made to the debtor/payee to allow for prior notice and an opportunity to review. When prior notice and an opportunity to review are omitted, the Director shall give the debtor such notice and an opportunity for review as soon as practicable and shall promptly refund any money ultimately found not to be due to the U.S. Government.

**§ 1073.204 Debtor's rights.**

(a) *Debtor's rights prior to collection or referral.* Prior to collecting any claim by administrative offset or referring such claim to another agency for collection through administrative offset, the Director shall provide the debtor with the following:

(1) A Notice of Intent to Offset, which shall include written notice of the type

and amount of the debt, the intention of the Director to use administrative offset to collect the debt, and an explanation of the debtor's rights under 31 U.S.C. 3716;

(2) An opportunity to inspect and copy Bureau records related to the debt, unless such records are exempt from disclosure;

(3) An opportunity for review within the Bureau of the determination of indebtedness; and

(4) An opportunity to enter into a written agreement to repay the debt.

(b) *Opportunity for review.* (1) Any request by the debtor for such review shall be in writing and shall be submitted to the Bureau within 30 calendar days of the date of the Notice of Intent to Offset. The Director may waive the time limit for requesting review for good cause shown by the debtor;

(2) Upon receipt of a request for review by the debtor, the Director shall provide the debtor with a reasonable opportunity for an oral hearing when the Director determines that the question of the indebtedness cannot be resolved by review of the documentary evidence alone (e.g., when the determination turns on an issue of credibility or veracity). Unless otherwise required by law, an oral hearing under this section is not required to be a formal evidentiary hearing, although all significant matters discussed at the hearing shall be documented.

(3) In cases where an oral hearing is not required by this section, the Bureau shall make its determination based on a documentary hearing consisting of a review of the written record.

**§ 1073.205 No requirement for duplicate notice.**

Where the Director previously has given a debtor any of the required notice and review opportunities with respect to a particular debt, the Director is not required to duplicate such notice and review opportunities prior to initiating administrative offset.

**§ 1073.206 Interest, penalties, and administrative costs.**

(a) Pursuant to 31 U.S.C. 3717, the Director shall assess interest, penalties, and administrative costs on debts owed to the United States. Interest, penalties, and administrative costs will be assessed in accordance with 31 CFR 901.9.

(b) The Director shall waive collection of interest on a debt or any portion of the debt which is paid in full within 30 days after the date on which the interest began to accrue.

(c) The Director may waive interest accrued during a period a disputed debt is under investigation or review by the Bureau, *i.e.*, from the date the Bureau receives a request for review until the date the Bureau issues a final agency decision. The Director may only grant this waiver for good cause shown by the debtor. This waiver must be requested by the debtor before the expiration of the 30-day waiver period described in paragraph (b) of this section.

(d) The Director may at any time waive collection of interest, penalties, or administrative costs if he or she finds that one or more of the following conditions exists:

(1) The Debtor is unable to pay any significant sum toward the debt within a reasonable period of time;

(2) Collection of interest, penalties, or administrative costs will jeopardize collection of the principal of the debt;

(3) The Bureau is unable to enforce collection in full within a reasonable period of time through collection proceedings; or

(4) Collection is against equity and good conscience or is not in the best interest of the United States.

(e) The Director is authorized to assess interest, penalties, administrative costs, or other related charges on debts that are not subject to 31 U.S.C. 3717 to the extent authorized under the common law or other applicable statutory authority.

**§ 1073.207 Termination or suspension of collection action.**

The Director may suspend or terminate collection action on a claim not in excess of \$100,000, or such other amount as the Attorney General may direct, exclusive of interest, penalties, and administrative costs, after deducting the amount of partial payments or collections, if any. Any such termination or suspension shall be conducted in accordance with the requirements of 31 U.S.C. 3711 under the procedures established in 31 CFR part 903.

**§ 1073.208 Refunds.**

Amounts recovered by administrative offset but later found not to be owed to the Government shall be promptly refunded. Unless required by law or contract, such refunds shall not bear interest.

**§ 1073.209 Request for offset to other Federal agencies.**

The Director may request that a debt owed to the Bureau be administratively offset against funds due and payable to a debtor by another Federal agency. In requesting administrative offset, the

Bureau, as the creditor agency, will provide written certification to the Federal agency holding funds payable to the debtor, stating:

- (a) That the debtor owes the debt;
- (b) The amount and basis of the debt; and
- (c) That the Bureau has fully complied with the requirements of its own administrative offset regulations and the applicable provisions of 31 U.S.C. 3716.

**§ 1073.210 Request for offset from other Federal agencies.**

Any Federal agency may request that funds due and payable to its debtor by the Bureau be administratively offset by the Bureau in order to collect a debt owed to such agency by the debtor. The Director shall initiate the requested offset only upon:

- (a) Receipt of written certification from the creditor agency stating:
  - (1) That the debtor owes the debt;
  - (2) The amount and basis of the debt; and
  - (3) That the creditor agency has fully complied with its own administrative offset regulations and with the applicable provisions of 31 U.S.C. 3716; and
- (b) A determination that collection by offset against funds payable by the Bureau would be in the best interest of the United States and that such offset would not be contrary to law.

**Subpart C—Salary Offset**

**§ 1073.301 Scope.**

(a) These salary offset regulations should be read in conjunction with 5 U.S.C. 5514 and 5 CFR part 550, subpart K, and apply to the collection of debts owed by employees of the Bureau or other Federal agencies.

(b) These salary offset procedures do not apply:

- (1) Where an employee consents to the recovery of a debt from his current pay account;
- (2) To debts arising under the Internal Revenue Code (Title 26, U.S. Code), the tariff laws of the United States, or to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute.

(c) These procedures do not preclude an employee from requesting a waiver of an erroneous payment under 5 U.S.C. 5584, or from questioning the amount or validity of a debt, in the manner specified by law or these agency regulations. This subpart also does not preclude an employee from requesting waiver of the collection of a debt under any other applicable statutory authority.

(d) When possible, salary offset through centralized administrative

offset procedures should be attempted before seeking salary offset from a paying agency different than the creditor agency.

**§ 1073.302 Notice requirement where CFPB is creditor agency.**

Where the Bureau seeks salary offset under 5 U.S.C. 5514 as the creditor agency, the Director shall first provide the employee with a written Notice of Intent to Offset at least 30 calendar days before salary offset is to commence. The Notice of Intent to Offset shall include the following information and statements:

- (a) That the Director has determined that a debt is owed to the Bureau, and the origin, nature, and amount of the debt;
- (b) That the Director intends to collect the debt by means of deduction from the employee's current disposable pay account;
- (c) The frequency and amount of the intended deduction, stated as a fixed dollar amount or as a percentage of disposable pay, not to exceed 15 percent of disposable pay;
- (d) That the Director intends to continue the deductions until the debt is paid in full or otherwise resolved;
- (e) The opportunity (under terms agreeable to the Director) to establish a schedule for the voluntary repayment of the debt or enter into a written agreement to establish a schedule for repayment of the debt in lieu of offset. The agreement must be in writing, signed by both the employee and the Director, and documented in the Bureau's files;
- (f) The Bureau's policy concerning interest, penalties, and administrative costs, including a statement that such assessments must be made unless excused in accordance with the FCCS or these regulations;
- (g) That the employee has the right to inspect and copy Bureau records not exempt from disclosure that relate to the debt or, if the employee or his or her representative cannot personally inspect the records, to request and receive a copy of such records;
- (1) Such requests must be made in writing, and identify by name and address the designated individual to whom the request should be sent.
- (2) Upon receipt of such a request, the designated official shall notify the employee of the time and location where the records may be inspected and copied;
- (h) That the employee has a right to a hearing regarding the existence and amount of the debt claimed or the salary offset schedule proposed by the Director, provided that the employee

files a request for such a hearing with the Bureau in accordance with § 1073.303. Such a hearing will be conducted by an impartial official who is an administrative law judge or who is an other hearing official not under the supervision or control of the Director;

(i) The procedure and deadline for requesting a hearing, including the name, address, and telephone number of the designated individual to whom a request for hearing must be sent;

(j) That a request for hearing must be received by the Bureau within 15 calendar days following receipt of the Notice of Intent, and that filing of a request for hearing will stay the commencement of collection proceedings;

(k) That the Director will initiate salary offset procedures not less than 30 days from the date of the employee's receipt of the Notice of Intent to Offset, unless the employee files a timely request for a hearing;

(l) That if a hearing is held, the administrative law judge or other hearing official will issue a decision on the hearing at the earliest practical date, but not later than 60 days after the filing of the request for the hearing, unless the employee requests and the hearing official grants a delay in the proceedings;

(m) That any knowingly false or frivolous statements, representations, or evidence may subject the employee to:

(1) Disciplinary procedures appropriate under 5 U.S.C. chapter 75, 5 CFR part 752, or any other applicable statutes or regulations;

(2) Penalties under the False Claims Act, 31 U.S.C. 3729 through 3731, or under any other applicable statutory authority; or

(3) Criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002 or under any other applicable statutory authority;

(n) That the employee also has the right to request waiver of overpayment pursuant to 5 U.S.C. 5584, and may exercise any other rights and remedies available under statutes or regulations governing the program for which the collection is being made; and

(o) That amounts paid on or deducted from the debt which are later waived or found not to be owed to the United States will be promptly refunded to the employee, unless there are applicable contractual or statutory provisions to the contrary.

**§ 1073.303 Procedures to request a hearing.**

(a) To request a hearing, an employee must send a written request to the designated official indicated in the Notice of Intent stating why the

employee believes the determination concerning the existence or amount of debt is in error. The request must be received by the Bureau within 15 calendar days following the employee's receipt of the Notice of Intent.

(b) The request must be signed by the employee and fully identify and explain with reasonable specificity all the facts, evidence, and witnesses, if any, which the employee believes support his or her position. The request for hearing must state whether the employee is requesting an oral or documentary hearing. If an oral hearing is requested, the request shall explain why the matter cannot be resolved by a review of documentary evidence alone.

**§ 1073.304 Failure to timely submit request for a hearing.**

If the Bureau does not receive an employee's request for hearing within the 15-day period set forth in § 1073.303, the employee shall not be entitled to a hearing, and salary offset may be initiated. However, the Bureau may accept an untimely request for hearing if the employee can show that the delay was because of circumstances beyond his or her control or because of failure to receive notice of the time limit (unless otherwise aware of it).

**§ 1073.305 Procedures for hearing.**

(a) *Obtaining the services of a hearing official.* The Director must obtain the services of an impartial hearing official who is an administrative law judge or who is an other official not under the supervision or control of the Director. The Director shall designate an administrative law judge or contact an agent of another agency designated in appendix A to 5 CFR part 581 to arrange for a hearing official.

(b) *Notice and format of hearing—(1) Notice.* The hearing official shall determine whether the hearing shall be oral or documentary and shall notify the employee of the form of the hearing. If the hearing will be oral, the notice shall set forth the date, time, and location of the hearing, which must be held within 30 calendar days after the request is received, unless the employee requests that the hearing be delayed. If the hearing will be documentary, the employee shall be notified to submit evidence and written arguments in support of his or her case to the hearing official within 30 calendar days.

(2) *Oral hearing.* The hearing official may grant a request for an oral hearing if he or she determines that the issues raised by the employee cannot be resolved by review of documentary evidence alone (e.g., where credibility or veracity is at issue). Witnesses who

testify in oral hearings shall do so under written or recorded oath or affirmation. An oral hearing is not required to be a formal evidentiary hearing. Oral hearings may take the form of, but are not limited to:

(i) Informal conferences with the hearing official in which the employee and Bureau representative are given full opportunity to present evidence, witnesses, and argument;

(ii) Informal meetings in which the hearing official interviews the employee; or

(iii) Formal written submissions with an opportunity for oral presentation.

(3) *Documentary hearing.* If the hearing official determines that an oral hearing is not necessary, he or she will make the determination based upon a review of the available written record, including any documentation submitted by the employee in support of his or her position.

(4) *Record.* The hearing official shall maintain a summary record of any hearing conducted under this section.

(c) *Rescheduling of the hearing date.* The hearing official shall reschedule a hearing if requested to do so by both parties, who shall be given reasonable notice of the time and place of this new hearing.

(d) *Failure to appear or submit documentary evidence.* In the absence of good cause shown, an employee who fails to appear at an oral hearing, or fails to submit documentary evidence for a documentary hearing, will have waived the right to a hearing. Furthermore, the employee will have been deemed to admit the existence and amount of the debt as described in the Notice of Intent. If the representative of the creditor agency fails to appear without good cause shown, the hearing official shall proceed with the hearing as scheduled, and issue a decision based upon the oral testimony presented and the documentation submitted by both parties.

(e) *Date of decision.* The hearing official shall issue a written decision based upon the evidence and information developed at the hearing, as soon as practicable after the hearing, but not later than 60 calendar days after the date on which the request for hearing was received by the Bureau, unless the hearing was delayed at the request of the employee. In the event of such a delay, the 60-day decision period shall be extended by the number of days by which the hearing was postponed. The decision of the hearing official shall be final.

(f) *Content of decision.* The written decision shall include:

(1) The facts purported to evidence the nature and origin of the proposed debt;

(2) The hearing official's analysis, findings and conclusions, in light of the hearing, as to the employee's and/or Bureau's grounds, the amount and validity of the alleged debt and, where applicable, the repayment schedule.

**§ 1073.306 Salary offset process.**

(a) *Method and source of deductions.* Salary offsets under this subpart shall be deducted from current disposable pay, except as provided in paragraph (e) of this section.

(b) *Determination of disposable pay.* The Bureau's Office of the Chief Financial Officer will consult with the Bureau's Office of Human Capital to determine the amount of a Bureau employee's disposable pay and will implement the salary offset. If the debtor is not employed by the Bureau, the agency employing the debtor will determine the amount of the employee's disposable pay and will implement the salary offset.

(c) *When salary offset may begin.* Deductions shall begin within three official pay periods following, as applicable, the initiation of salary offset without a hearing under § 1073.304, the decision of the hearing official under § 1073.305, or receipt of the creditor agency's request for offset where the Bureau is not the creditor agency.

(d) *Amount of salary offset.* The amount to be offset from each salary payment will be up to 15 percent of a debtor's disposable pay, as follows:

(1) If the amount of the debt is equal to or less than 15 percent of the disposable pay, such debt generally will be collected in one lump sum payment;

(2) If the employee is financially unable to pay in one lump sum or the amount of the debt exceeds 15 percent of disposable pay for an officially established pay interval, collection will be made in installments. Installment deductions will be made over a period of no greater than the anticipated period of employment, except as provided in paragraph (e) of this section. Installment deductions must ordinarily bear a reasonable relationship to the size of the debt and the employee's ability to pay. An installment deduction will not exceed 15 percent of the disposable pay from which the deduction is made unless the employee has agreed in writing to the deduction of a greater amount. The creditor agency may determine that smaller deductions are appropriate based on the employee's ability to pay.

(e) *Final salary or other payment.* After the employee has separated either

voluntarily or involuntarily from the payment agency, the payment agency may, pursuant to 31 U.S.C. 3716, make a lump sum deduction exceeding 15 percent of disposable pay from any final salary or other payments in order to satisfy a debt. If the debt cannot be liquidated by offset from any final payment due the former employee as of the date of separation, it may be offset under 31 U.S.C. 3716 from later payments of any kind due the former employee from the United States, unless prohibited by law.

**§ 1073.307 Voluntary repayment agreements as alternative to salary offset where the CFPB is the creditor agency.**

(a) In response to a Notice of Intent, an employee may propose to voluntarily repay the debt through scheduled voluntary payments, in lieu of salary offset. An employee who wishes to repay a debt in this manner shall submit to the Bureau a written agreement proposing a repayment schedule. This proposal must be received by the Bureau within 30 calendar days following the date of the Notice of Intent.

(b) The Director shall notify the employee whether the employee's proposed voluntary repayment agreement is acceptable. It is within the discretion of the Director whether to accept or reject the debtor's proposal, or whether to propose to the debtor a modification of the proposed repayment agreement:

(1) If the Director decides that the proposed repayment agreement is unacceptable, he or she shall notify the employee and the employee shall have 30 calendar days from the date he or she received notice of the decision in which to file a request for a hearing on the proposed repayment agreement, as provided in § 1073.303; or

(2) If the Director decides that the proposed repayment agreement is acceptable or the debtor agrees to a modification proposed by the Director, the agreement shall be put in writing and signed by both the employee and the Director.

**§ 1073.308 Special review of repayment agreement or salary offset due to changed circumstances.**

(a) An employee subject to a voluntary repayment agreement or salary offset payable to the Bureau as creditor agency may request a special review by the Director of the amount of the salary offset or voluntary repayment, based on materially changed circumstances, including, but not limited to, catastrophic illness, divorce, death, or disability. A request for special review may be made at any time.

(b) In support of a request for special review, the employee shall submit to the Bureau a detailed statement and supporting documents for the employee, his or her spouse, and dependents indicating:

- (1) Income from all sources;
- (2) Assets;
- (3) Liabilities;
- (4) Number of dependents;
- (5) Monthly expenses for food, housing, clothing, and transportation;
- (6) Medical expenses; and
- (7) Exceptional expenses, if any.

(c) The employee shall also file an alternative proposed offset or payment schedule and a statement, with supporting documents, showing why the current salary offset or payments result in extreme financial hardship to the employee.

(d) The Director shall evaluate the statement and supporting documents and determine whether the original salary offset or repayment schedule imposes extreme financial hardship on the employee, for example, by preventing the employee from meeting essential subsistence expenses such as food, housing, clothing, transportation, and medical care. The Director shall notify the employee in writing within 30 calendar days of his or her determination.

(e) If the special review results in a revised salary offset or repayment schedule, the Director shall provide a new certification to the paying agency.

**§ 1073.309 Interest, penalties, and administrative costs.**

Where the Bureau is the creditor agency, it shall assess interest, penalties, and administrative costs pursuant to the procedures set forth in § 1073.206 and in accordance with 31 U.S.C. 3717 and 31 CFR parts 900 through 904.

**§ 1073.310 Refunds.**

(a) Where the Bureau is the creditor agency, it shall promptly refund any amount deducted under the authority of 5 U.S.C. 5514 when the debt is waived or otherwise found not to be owing to the United States (unless expressly prohibited by statute or regulation), or when an administrative or judicial order directs the Bureau to refund amounts deducted from the employee's current pay.

(b) Unless required by law or contract, such refunds shall not bear interest.

**§ 1073.311 Non-waiver of rights by payment.**

An employee's involuntary payment of all or any portion of a debt being collected under 5 U.S.C. 5514 shall not be construed as a waiver of any rights

which the employee may have under 5 U.S.C. 5514 or any other provision of contract or law, unless there are statutory or contractual provisions to the contrary.

**§ 1073.312 Exception to procedures.**

(a) The procedures set forth in this subpart shall not apply to the following:

(1) Any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less;

(2) A routine intra-agency adjustment of pay that is made to correct an overpayment attributable to clerical or administrative errors or delays in processing pay documents, if the overpayment occurred within the four pay periods preceding the adjustment and, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and amount of the adjustment and a point of contact for contesting such adjustment; or

(3) Any adjustment to collect a debt amounting to \$50 or less, if, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and amount of the adjustment and a point of contact for contesting such adjustment.

(b) In the event of a negative adjustment to pay, as described in subsection (a)(1), the Bureau will provide a clear and concise statement in the employee's earnings statement advising the employee of the previous overpayment at the time the adjustment is made.

**Subpart D—Administrative Wage Garnishment**

**§ 1073.401 Administrative wage garnishment.**

The Director may collect debts from a debtor's wages by means of administrative wage garnishment in accordance with the requirements of 31 U.S.C. 3720D under the procedures established in 31 CFR 285.11.

**Subpart E—Tax Refund Offset**

**§ 1073.501 Tax refund offset.**

The provisions of 26 U.S.C. 6402(d) and 31 U.S.C. 3720A authorize the Secretary of the Treasury to offset a debt owed to the United States Government from the tax refund due a taxpayer. The Director may administer tax refund offsets in accordance with the requirements of 31 U.S.C. 3720A under the procedures established in 31 CFR 285.2.

Dated: July 1, 2013.

**Richard Cordray,**

*Director, Bureau of Consumer Financial Protection.*

[FR Doc. 2013-16470 Filed 7-10-13; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 25

[Docket No. FAA-2012-0260; Special Conditions No. 25-494-SC]

#### Special Conditions: Embraer S.A. Model EMB-550 Airplanes, Sudden Engine Stoppage

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions.

**SUMMARY:** These special conditions are issued for the Embraer Model EMB-550 airplane. This airplane has novel or unusual design features as compared to the state of technology envisioned in the airworthiness standards for transport-category airplanes. These design features include engine size and the potential torque loads imposed by sudden engine stoppage. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** *Effective Date:* August 12, 2013.

**FOR FURTHER INFORMATION CONTACT:** Cindy Ashforth, FAA, International Branch, ANM-116, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057-3356; telephone (425) 227-2768; facsimile (425) 227-1320.

#### SUPPLEMENTARY INFORMATION:

##### Background

On May 14, 2009, Embraer applied for a type certificate for their new Model EMB-550 airplane. The Model EMB-550 airplane is the first of a new family of jets designed as a corporate jet, and for fractional, charter, and private-owner operations. The airplane is a conventional configuration with a low wing and T-tail empennage. The primary structure is metal with composite empennage and control surfaces. The Model EMB-550 airplane is designed for eight passengers, with a maximum of 12 passengers (including

toilet seat). It is equipped with two Honeywell HTF7500-E medium-bypass-ratio turbofan jet engines mounted on aft-fuselage pylons. Each engine produces approximately 6,540 lb of thrust for normal takeoff. The primary flight-control systems are electronically controlled using fly-by-wire (FBW) technology.

The Model EMB-550 airplane incorporates novel or unusual design features involving engine size and torque load that affect the airframe as it relates to sudden engine-stoppage conditions.

##### Type Certification Basis

Under the provisions of Title 14, Code of Federal Regulations (14 CFR) 21.17, Embraer must show that the Model EMB-550 airplane meets the applicable provisions of part 25, as amended by Amendments 25-1 through 1-127.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model EMB-550 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model.

In addition to the applicable airworthiness regulations and special conditions, the Model EMB-550 airplane must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34 and the noise-certification requirements of 14 CFR part 36; and the FAA must issue a finding of regulatory adequacy under § 611 of Public Law 92-574, the "Noise Control Act of 1972."

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type-certification basis under § 21.17(a)(2).

##### Novel or Unusual Design Features

The Model EMB-550 airplane incorporates a novel or unusual design:

The Embraer Model EMB-550 airplane will incorporate a medium-bypass-ratio turbofan jet engine that will neither seize nor produce transient torque loads in the same manner that is envisioned by current § 25.361(b)(1) regarding "load that affect sudden engine stoppage" conditions.

##### Discussion of Comments

Notice of Proposed Special Conditions No. 25-12-05-SC, for the Embraer Model EMB-550 airplane, was published in the **Federal Register** on September 25, 2012 (77 FR 58970). No comments were received, and the special conditions are adopted as proposed.

##### Discussion

The size, configuration, and failure modes of jet engines have changed considerably from those envisioned by 14 CFR 25.361(b), when the engine-seizure requirement was first adopted. Engines have become larger and are now designed with large bypass fans capable of producing much larger and more complex dynamic loads. Relative to the engine configurations that existed when the rule was developed in 1957, the present generation of engines is sufficiently different and novel to justify issuance of a special condition to establish appropriate design standards for the Embraer Model EMB-550 airplane type design.

Consideration of the limit engine torque load imposed by sudden engine stoppage due to malfunction or structural failure (such as compressor jamming) has been a specific requirement for transport-category airplanes since 1957. In the past, the design torque loads associated with typical failure scenarios have been estimated by the engine manufacturer and were provided to the airframe manufacturer as limit loads. These limit loads were considered simple and pure torque static loads.

It is evident from service history that the engine-failure events that tend to cause the most severe loads are fan-blade failures, which occur much less frequently than the typical "limit" load condition.

The regulatory authorities and industry have developed a standardized requirement in the Aviation Rulemaking Advisory Committee (ARAC) forum. The technical aspects of this requirement have been agreed upon and have been accepted by the ARAC Loads and Dynamics Harmonization Working Group, and incorporated in EASA CS-25. The proposed special conditions outlined below reflect the ARAC recommendation and CS-25. In addition, the ARAC recommendation includes corresponding advisory material that is considered an acceptable means of compliance to the proposed special conditions outlined below.

To maintain the level of safety envisioned in § 25.361(b), more

comprehensive criteria are needed for the new generation of high-bypass engines. The special conditions would distinguish between the more common engine-failure events and those rare events resulting from structural failures. The more-common events would continue to be treated as static torque limit load conditions. The more-severe events resulting from extreme engine-failure conditions (such as loss of a full fan blade at redline speed), would be treated as full dynamic-load conditions. These would be considered ultimate loads, and include all transient loads associated with the event. An additional safety factor would be applied to the more-critical airframe supporting structure.

#### Applicability

As discussed above, these special conditions are applicable to the Model EMB-550 airplane. Should Embraer apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

#### Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability.

#### List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

#### The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Embraer Model EMB-550 airplane.

In lieu of 14 CFR 25.361(b), the following special conditions apply:

1. For turbine-engine installations, the engine mounts, pylons, and adjacent supporting airframe structure must be designed to withstand 1g level flight loads acting simultaneously with the maximum limit torque loads imposed by each of the following:

(a) Sudden engine deceleration due to a malfunction, which could result in a temporary loss of power or thrust, and

(b) The maximum acceleration of the engine.

2. For auxiliary power unit (APU) installations, the APU mounts and adjacent supporting airframe structure

must be designed to withstand 1g level flight loads acting simultaneously with the maximum limit torque loads imposed by each of the following:

(a) Sudden APU deceleration due to malfunction or structural failure; and

(b) The maximum acceleration of the APU.

3. For engine-supporting structure, an ultimate loading condition must be considered that combines 1g flight loads with the transient dynamic loads resulting from:

(a) The loss of any fan, compressor, or turbine blade; and separately

(b) Where applicable to a specific engine design, any other engine structural failure that results in higher loads.

4. The ultimate loads developed from the conditions specified in paragraphs 3(a) and 3(b) of these special conditions are to be multiplied by a factor of 1.0 when applied to engine mounts and pylons, and multiplied by a factor of 1.25 when applied to adjacent supporting airframe structure.

5. Any permanent deformation that results from the conditions specified in paragraph 3 of these special conditions must not prevent continued safe flight and landing.

Issued in Renton, Washington, on June 21, 2013.

**Jeffrey E. Duven,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2013-16596 Filed 7-10-13; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Docket No. FAA-2012-1139; Airspace Docket No. 12-AGL-12]

#### Amendment of Class E Airspace; Worthington, MN

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action amends Class E airspace at Worthington, MN. Additional controlled airspace is necessary to accommodate new Area Navigation (RNAV) Standard Instrument Approach Procedures at Worthington Municipal Airport. This action enhances the safety and management of Instrument Flight Rule (IFR) operations at the airport. Geographic coordinates of the airport are also updated.

**DATES:** Effective date: 0901 UTC, October 17, 2013. The Director of the

Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

#### FOR FURTHER INFORMATION CONTACT:

Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone 817-321-7716.

#### SUPPLEMENTARY INFORMATION:

##### History

On March 26, 2013, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend Class E airspace for the Worthington, MN, area, creating additional controlled airspace at Worthington Municipal Airport (78 FR 18263) Docket No. FAA-2012-1139. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9W dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

##### The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class E airspace extending upward from 700 feet above the surface to ensure that required controlled airspace exists from the current 7-mile radius of the airport to 11.6 miles north and 11.1 miles south of the airport to contain aircraft executing new standard instrument approach procedures at Worthington Municipal Airport, Worthington, MN. This action enhances the safety and management of IFR operations at the airport. Geographic coordinates of the airport are updated to coincide with the FAA's aeronautical database.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated

impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

#### Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, "Environmental Impacts: Policies and Procedures," paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

#### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

#### Adoption of the Amendment

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

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

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

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

#### **§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, and

effective September 15, 2012, is amended as follows:

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

\* \* \* \* \*

#### **AGL MN E5 Worthington, MN [Amended]**

Worthington, Municipal Airport, MN  
(Lat. 43°39'18" N., long. 95°34'45" W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Worthington Municipal Airport, and within 2 miles each side of the 000° bearing from the airport extending from the 7-mile radius to 11.6 miles north of the airport, and within 2 miles each side of the 176° bearing from the airport extending from the 7-mile radius to 11.1 miles south of the airport.

Issued in Fort Worth, Texas, on June 24, 2013.

**David P. Medina,**

*Manager, Operations Support Group, ATO Central Service Center.*

[FR Doc. 2013–16441 Filed 7–10–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Docket No. FAA–2013–0236; Airspace Docket No. 13–AGL–5]

RIN 2120–AA66

#### **Modification of VOR Federal Airway V–345 in the Vicinity of Ashland, WI**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action modifies VHF Omnidirectional Range (VOR) Federal airway V–345 in the vicinity of Ashland, WI. The Ashland, WI, VOR Distance Measuring Equipment (VOR/DME) navigation aid, which forms the northern end point of the airway, has been out of service for over ten months and is scheduled to be decommissioned. The FAA is removing the portion of V–345 affected by the loss of service by the Ashland, WI, VOR/DME.

**DATES:** Effective date 0901 UTC, October 17, 2013. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Colby Abbott, Airspace Policy and ATC Procedures Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence

Avenue SW., Washington, DC 20591; telephone: (202) 267–8783.

#### **SUPPLEMENTARY INFORMATION:**

##### **History**

On March 26, 2013, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to modify V–345 in the vicinity of Ashland, WI (78 FR 18271). Interested parties were invited to participate in this rulemaking effort by submitting written comments on this proposal to the FAA. No comments were received.

##### **The Rule**

The FAA is amending Title 14, Code of Federal Regulations (14 CFR) part 71 by modifying VOR Federal airway V–345 in the vicinity of Ashland, WI, due to the scheduled decommissioning of the Ashland, WI, VOR/DME. This action removes the airway segment between the Hayward, WI, VOR/DME and the Ashland, WI, VOR/DME navigation aids.

VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.9W signed August 8, 2012 and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airway listed in this document would be subsequently published in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to

assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies a VOR Federal airway due to navigation aid infrastructure changes.

#### Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, Environmental Impacts: Policies and Procedures, paragraph 311a. This airspace action consists of a modification of an existing airway and is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

#### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

#### Adoption of the Amendment

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

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

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

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

#### § 71.1 [Amended]

- 2. The incorporation by reference in 14 CFR 71.1 of the FAA Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, and effective September 15, 2012, is amended as follows:

*Paragraph 6010(a)—Domestic VOR Federal Airways*

\* \* \* \* \*

#### V-345 [Amended]

From Dells, WI; INT Dells 321° and Eau Claire, WI, 134° radials; Eau Claire; to Hayward, WI.

Issued in Washington, DC, on July 1, 2013.

**Gary A. Norek,**

*Manager, Airspace Policy and ATC Procedures Group.*

[FR Doc. 2013–16443 Filed 7–10–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG–2013–0558]

RIN 1625–AA00

#### Safety zone; Ohio River, Mile 469.4–470.0; Bellevue, KY

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for all waters of the Ohio River, surface to bottom, extending from Ohio River mile 469.4 to mile 470.0. This temporary safety zone is necessary to protect commercial and recreational vessels from fireworks fallout associated with the City of Bellevue Beach Park Concert fireworks display. During the period of enforcement, no vessels may be located within this Coast Guard regulated area and entry into this Coast Guard regulated area is prohibited unless specifically authorized by the Captain of the Port Ohio Valley or other designated representative.

**DATES:** This rule is effective from 10 p.m. to 10:45 p.m. on July 13, 2013.

**ADDRESSES:** Documents mentioned in this preamble are part of docket USCG–2013–0558. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Petty Officer Denise Buckingham, Marine Safety Detachment Cincinnati, Coast Guard; telephone 513–921–9033, email [Denise.M.Buckingham@uscg.mil](mailto:Denise.M.Buckingham@uscg.mil). If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

#### SUPPLEMENTARY INFORMATION:

##### Table of Acronyms

DHS Department of Homeland Security  
FR Federal Register  
NPRM Notice of Proposed Rulemaking

USACE United States Army Corps of Engineers

#### A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. The Coast Guard was made aware of this fireworks display on June 17, 2013. An NPRM is impracticable in the time remaining before the event. This display presents potential hazards associated with a fireworks display over or on the Ohio River and a safety zone is required to protect persons and property on or near the waterway during the display. Providing notice and comment through the NPRM process would be impracticable as it would delay this rule and the safety measures it provides.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Providing a full 30 days notice would be impracticable and would unnecessarily delay the effective date of this rule. Delaying the effective date would also be contrary to public interest since immediate action is necessary to protect persons and property from potential hazards associated with a fireworks display on the Ohio River.

#### B. Basis and Purpose

A fireworks display is planned to conclude the City of Bellevue Beach Park Concert on July 13, 2013. This display will feature fireworks being launched between miles 469.4 and 470.0 on the Ohio River at Bellevue, Kentucky. The Coast Guard determined that a safety zone is necessary to keep persons and property clear of any potential hazards associated with the launching of fireworks on or over the waterway.

The legal basis and authorities for this rule are found in 33 U.S.C. 1231, 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; and Department of Homeland Security Delegation No.

0170.1, which collectively authorize the Coast Guard to establish and define regulatory safety zones.

The purpose of the rule is to establish a temporary safety zone that provides protection for persons and property, including spectators, commercial and recreational vessels, and others that may be in the area during the noticed display times from the hazards associated with the fireworks display on and over the waterway.

### C. Discussion of the Final Rule

The Coast Guard is establishing this temporary safety zone from 10 p.m. to 10:45 p.m. on Saturday, July 13, 2013, for the City of Bellevue Beach Park Concert fireworks display. The Coast Guard will enforce the temporary safety zone and may be assisted by other federal, state and local agencies and the Coast Guard Auxiliary. Fireworks will be occurring on the Ohio River between miles 469.4 and 470.0 of the Ohio River at Bellevue, Kentucky. During the period of enforcement, no vessels may be located within this Coast Guard regulated area and entry into this Coast Guard regulated area is prohibited unless specifically authorized by the Captain of the Port Ohio Valley or other designated representative.

### D. Regulatory Analyses

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

#### 1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. This rule prohibits vessels from entering into or being located within this Coast Guard regulated area unless specifically authorized by the Captain of the Port Ohio Valley or other designated representative. Based on the location, limited size, and short 45 minute duration of the safety zone, this rule is not a significant regulatory action. Additionally, notice of this safety zone or any changes will be made via broadcast notices to mariners and deviation from this rule may be

requested from the COTP and will be considered on a case-by-case basis.

#### 2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor between Ohio River miles 469.4 and 470.0 from 10 p.m. to 10:45 p.m. on July 13, 2013.

This safety zone would not have a significant economic impact on a substantial number of small entities due to the fact that this safety zone would be activated, and thus subject to enforcement, for only 45 minutes and before the activation of the zone, a broadcast notice to mariners will be issued and will be widely available to users of the river.

#### 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

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

#### 4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

#### 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has 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. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

#### 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### 7. Unfunded Mandates Reform Act

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

#### 8. Taking of Private Property

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

#### 9. Civil Justice Reform

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

#### 10. Protection of Children

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

#### 11. Indian Tribal Governments

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

because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### 12. Energy Effects

This action is not a “significant energy action” under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

#### 13. Technical Standards

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

#### 14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishment of a temporary safety zone for all waters of the Ohio River, surface to bottom, extending from mile 469.4 to 470.0 on the Ohio River at Bellevue, Kentucky. This safety zone is necessary to protect commercial and recreational vessels from fireworks fallout associated with the City of Bellevue Beach Park Concert fireworks display. During the period of enforcement, no vessels may be located within this Coast Guard regulated area and entry into this Coast Guard regulated area is prohibited unless specifically authorized by the Captain of the Port Ohio Valley or other designated representative. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**.

#### List of Subjects in 33 CFR Part 165

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

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

### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T08-0558 to read as follows:

#### § 165.T08-0558 Safety Zone; Ohio River, Mile 469.4-470.0, Bellevue, KY.

(a) *Location.* The following area is the safety zone: All waters of the Ohio River, surface to bottom, from mile 469.4 to mile 470.0 on the Ohio River at Bellevue, Kentucky. These markings are based on the USACE’s *Ohio River Navigation Charts* (Chart 115 June 2010).

(b) *Effective Date.* This section is effective from 10 p.m. to 10:45 p.m. on July 13, 2013.

(c) *Periods of Enforcement.* This rule will be in effect for a total of 45 minutes (10 p.m. through 10:45 p.m.) on July 13, 2013. The Captain of the Port Ohio Valley or a designated representative will inform the public through broadcast notice to mariners of the enforcement period for the safety zone as well as any changes in the planned schedule.

(d) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, movement within, or departure from this zone is prohibited unless authorized by the Captain of the Port Ohio Valley or a designated representative.

(2) Persons or vessels requiring entry into, departure from, or movement within a regulated area must request permission from the Captain of the Port Ohio Valley or a designated representative. They may be contacted on VHF-FM Channel 13 or 16, or through Coast Guard Sector Ohio Valley at 1-800-253-7465.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port Ohio Valley and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel includes Commissioned, Warrant, and Petty Officers of the U.S. Coast Guard.

Dated: June 26, 2013.

**R. Timme,**  
Captain, U.S. Coast Guard, Captain of the Port Ohio Valley.

[FR Doc. 2013-16613 Filed 7-10-13; 8:45 am]

**BILLING CODE 9110-04-P**

### DEPARTMENT OF HOMELAND SECURITY

#### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2012-0449]

RIN 1625-AA00

#### Safety Zone; Skagit River Bridge, Skagit River, Mount Vernon, WA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a safety zone around the Skagit River Bridge located in Mount Vernon, WA. This action is necessary to protect vessels and persons from dangers associated with the collapse of the Interstate 5 Skagit River Bridge and to ensure the safety of the emergency response, salvage, and construction crews on scene. The safety zone will prohibit any person or vessel from entering or remaining in the safety zone unless authorized by the Captain of the Port or his Designated Representative.

**DATES:** This rule will be enforced with actual notice from 12 a.m. on June 25, 2013, until July 11, 2013. This rule is effective in the Code of Federal Regulations from July 11, 2013, until 11:59 p.m. on November 10, 2013.

**ADDRESSES:** Documents mentioned in this preamble are part of docket [USCG-2012-0449]. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email LTJG Nathaniel Clinger, Waterways Management Division, Coast Guard Sector Puget Sound; Coast Guard; telephone (206) 217-6045, email [SectorPugetSoundWWM@uscg.mil](mailto:SectorPugetSoundWWM@uscg.mil). If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Table of Acronyms

DHS Department of Homeland Security

FR Federal Register  
NPRM Notice of Proposed Rulemaking

### A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable to do so. This safety zone is being issued in response to an emergency bridge collapse. Delayed promulgation may result in injury or damage to persons and vessels on the Skagit River, Mount Vernon, WA from the hazards created by the collapse of the bridge, including potential debris and ongoing emergency response operations.

Under 5 U.S.C. 553(d)(3), for the same reasons previously mentioned, the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date until 30 days after publication would be impracticable and contrary to the public interest, as it would eliminate the safety zone’s effectiveness and usefulness in protecting persons, property, and the safe navigation of maritime traffic during the 30-day period.

### B. Basis and Purpose

On May 23, 2013, at approximately 7 p.m. the Interstate 5 Skagit River Bridge collapsed. When Skagit County and Snohomish County responders arrived on scene they witnessed three partially submerged automobiles and floating bridge debris in the Skagit River. Following the initial response and assessment of the bridge collapse, it was determined that the time to repair the bridge would exceed the timeline of the previously established safety zone. Due to ongoing salvage and restoration operations, which may include cranes and vessels utilizing dive teams, the Coast Guard will establish a safety zone to prevent navigation in areas that may contain debris and hazards relating to the Skagit Bridge collapse and ensure the safety of the maritime public and personnel involved in salvage, and restoration operations.

### C. Discussion of the Final Rule

The Coast Guard is establishing a safety zone encompassing all waters on the Skagit River, Mount Vernon, Washington enclosed by the following points: 48° 26’41” N, 122° 20’35” W; thence north to 48° 26’46” N, 122° 20’35” W; thence east along the shoreline to 48° 26’44” N, 122° 20’20” W; thence south to 48° 26’41” N, 122° 20’20” W; thence west back to the point of origin.

Vessels wishing to enter the zone must request permission for entry by contacting the Joint Harbor Operations Center at 206–217–6001, or the on-scene patrol craft via VHF–FM CH 13. Once permission for entry is granted vessels must proceed at a minimum speed for safe navigation.

### D. Regulatory Analyses

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

#### 1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. This rule is not a significant regulatory action as it is limited in size and duration.

#### 2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit the affected waterway during the period mentioned. This safety zone will not have a significant economic impact on a

substantial number of small entities because the zone established in this rule is limited in size, temporary in duration, and vessels may still transit the southern portion of the waterway.

#### 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

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

#### 4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

#### 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has 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. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

#### 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

### 7. *Unfunded Mandates Reform Act*

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

### 8. *Taking of Private Property*

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

### 9. *Civil Justice Reform*

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

### 10. *Protection of Children*

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

### 11. *Indian Tribal Governments*

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

### 12. *Energy Effects*

This action is not a “significant energy action” under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

### 13. *Technical Standards*

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

### 14. *Environment*

We have analyzed this rule under Department of Homeland Security

Management Directive 023–01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a temporary safety zone. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination will be available in the docket where indicated under **ADDRESSES**.

#### List of Subjects in 33 CFR Part 165

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

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

#### **PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

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

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

- 2. Add § 165.T13–248 to read as follows:

#### **§ 165.T13–248 Safety Zone; Skagit River Bridge, Mount Vernon, WA.**

(a) *Location.* The following area is designated as a safety zone: All waters on the Skagit River, Mount Vernon, Washington enclosed by the follow points: 48° 26′41″ N, 122° 20′35″ W; thence north to 48° 26′46″ N, 122° 20′35″ W; thence east along the shoreline to 48° 26′44″ N, 122° 20′20″ W; thence south to 48° 26′41″ N, 122° 20′20″ W; thence west back to the point of origin.

(b) *Regulations.* In accordance with the general regulations in 33 CFR Part 165, Subpart C, vessels wishing to enter the zone must request permission for entry by contacting the Joint Harbor Operation Center at 206–217–6001 or the on-scene patrol craft on VHF–FM CH13. Once permission for entry is granted vessels must proceed at a minimum speed for safe navigation.

(c) This rule is effective from 12 a.m. on June 25, 2013, until 11:59 p.m. on November 10, 2013, unless cancelled sooner by the Captain of the Port.

Dated: June 25, 2013.

**S.J. Ferguson,**

*Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.*

[FR Doc. 2013–16615 Filed 7–10–13; 8:45 am]

**BILLING CODE 9110–04–P**

## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

#### **33 CFR Part 165**

[Docket No. USCG–2013–0517]

**RIN 1625–AA00**

#### **Safety Zone; Pamlico River and Tar River; Washington, NC**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a safety zone on the navigable waters of the Pamlico and Tar Rivers in Washington, NC in support of a fireworks display that was delayed due to Tropical Storm Andrea. This action is necessary to protect the life and property of the maritime public and spectators from the hazards posed by aerial fireworks displays. Entry into or movement within this safety zone during the enforcement period is prohibited without approval of the Captain of the Port.

**DATES:** This rule is effective on July 26, 2013, from 7 p.m. until 10 p.m.

**ADDRESSES:** Documents mentioned in this preamble are part of docket [USCG–2013–0517]. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email BOSN4 Joseph M. Edge, Coast Guard Sector North Carolina, Coast Guard; telephone 252–247–4525, email [Joseph.M.Edge@uscg.mil](mailto:Joseph.M.Edge@uscg.mil). If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

## Table of Acronyms

DHS Department of Homeland Security  
FR Federal Register  
NPRM Notice of Proposed Rulemaking

### A. Regulatory History and Information

The town of Washington has an established safety zone for fireworks displays in 33 CFR 165.506(d)(7). Due to the effects of Tropical Storm Andrea, the event as listed in § 165.506(d)(7) was delayed.

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the final details for this event were not provided to the Coast Guard until June 13, 2013. Delaying the effective date for comment is impracticable, since immediate action is needed to ensure the safety of the event participants, patrol vessels, spectator craft and other vessels transiting the event area. The Coast Guard will provide advance notifications to users of the affected waterways via marine information broadcasts, local notice to mariners, commercial radio stations, and area newspapers.

For the same reasons mentioned previously, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Providing 30 days notice would be impracticable and contrary to public interest since immediate action is necessary to protect persons and property from potential hazards associated with a fireworks display on the Pamlico River and Tar Rivers.

### B. Basis and Purpose

The legal basis and authorities for this rule are found in 33 U.S.C. 1231, 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish and define safety zones.

On July 26, 2013, the town of Washington, NC will sponsor a fireworks display originating from

latitude 35°32′25″ N, longitude 077°03′42″ W. The fireworks debris fallout area will extend over the navigable waters of the Pamlico and Tar Rivers. Due to the need to protect mariners and spectators from the hazards associated with the fireworks display, including accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris, vessel traffic will be temporarily restricted from transiting within fireworks launch and fallout area.

### C. Discussion of the Final Rule

The Coast Guard is establishing a safety zone on the navigable waters of Pamlico and Tar Rivers in Washington, NC. The regulated area of this safety zone includes all water of the Pamlico and Tar Rivers within a 300 yards radius of latitude 35°32′25″ N, longitude 077°03′42″ W.

This safety zone will be established and enforced from 7 p.m. to 10 p.m. on July 26, 2013. In the interest of public safety, general navigation within the safety zone will be restricted during the specified date and times. Except for participants and vessels authorized by the Coast Guard Captain of the Port or his representative, no person or vessel may enter or remain in the regulated area.

### D. Regulatory Analyses

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

#### 1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. Although this regulation restricts access to a small segment of the Pamlico and Tar Rivers, the effect of this rule will not be significant because: (i) The safety zone will be in effect for a limited duration; (ii) the zone is of limited size; and (iii) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

#### 2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor on the Pamlico and Tar rivers where the fireworks event is being held. This regulation will not have a significant impact on a substantial number of small entities because it will be enforced only during the fireworks display event that has been permitted by the Coast Guard Captain of the Port. The Captain of the Port will ensure that small entities are able to operate in the regulated area when it is safe to do so. In some cases, vessels will be able to safely transit around the regulated area at various times, and, with the permission of the Patrol Commander, vessels may transit through the regulated area. Before the enforcement period, the Coast Guard will issue maritime advisories so mariners can adjust their plans accordingly.

#### 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The

Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### 4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

#### 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has 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. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

#### 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### 7. Unfunded Mandates Reform Act

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

#### 8. Taking of Private Property

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

#### 9. Civil Justice Reform

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

#### 10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health

Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

#### 11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### 12. Energy Effects

This action is not a “significant energy action” under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

#### 13. Technical Standards

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

#### 14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishing a safety zone for a fireworks display launch site and fallout area and is expected to have no impact on the water or environment. This zone is designed to protect mariners and spectators from the hazards associated with aerial fireworks displays. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**.

#### List of Subjects in 33 CFR Part 165

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

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

### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T05–0517 to read as follows:

#### § 165.T05–0517 Safety Zone; Pamlico River And Tar River; Washington, NC.

(a) *Definitions.* For the purposes of this section, Captain of the Port means the Commander, Sector North Carolina. *Representative* means any Coast Guard commissioned, warrant, or petty officer who has been authorized to act on the behalf of the Captain of the Port.

(b) *Location.* The following area is a safety zone: specified waters of the Captain of the Port, Sector North Carolina, as defined in 33 CFR 3.25–20, all waters of the Pamlico and Tar Rivers within a 300 yard radius of approximate position latitude 35°32'25" N, longitude 077°03'42" W.

(c) *Regulations.* (1) The general regulations contained in § 165.23 of this part apply to the area described in paragraph (b) of this section.

(2) Persons or vessels requiring entry into or passage through any portion of the safety zone must first request authorization from the Captain of the Port, or a designated representative, unless the Captain of the Port previously announced via Marine Safety Radio Broadcast on VHF Marine Band Radio channel 22 (157.1 MHz) that this regulation will not be enforced in that portion of the safety zone. The Captain of the Port can be contacted at telephone number (910) 343–3882 or by radio on VHF Marine Band Radio, channels 13 and 16.

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

(e) *Enforcement period.* This section will be enforced on July 26, 2013, from 7 p.m. to 10 p.m. unless cancelled earlier by the Captain of the Port.

Dated: June 26, 2013.

#### A. Popiel,

*Captain, U.S. Coast Guard, Captain of the Sector North Carolina.*

[FR Doc. 2013–16614 Filed 7–10–13; 8:45 am]

**BILLING CODE 9110–04–P**

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

[Docket No. USCG-2013-0572]

**Safety Zone; Fireworks Events in Captain of the Port New York Zone**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce safety zones in the Captain of the Port New York Zone on the specified dates and times. This action is necessary to ensure the safety of vessels and spectators from hazards associated with fireworks displays. During the enforcement period, no person or vessel may enter the safety zones without permission of the Captain of the Port (COTP).

**DATES:** The regulation for the safety zones described in 33 CFR 165.160 will be enforced on the dates and times

listed in the table in the **SUPPLEMENTARY INFORMATION** section of this notice.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this notice, call or email Lieutenant Junior Grade Kristopher Kesting, Coast Guard Sector New York; telephone 718-354-4154, email *Kristopher.R.Kesting@uscg.mil*.

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce the safety zones listed in 33 CFR 165.160 on the specified dates and times as indicated in Table 1 below.

TABLE 1

<p>1. Midland Beach Sea Turtle Fireworks Display, Midland Beach, Staten Island Safety Zone.</p> <p>33 CFR 165.160(2.11) .....</p>	<ul style="list-style-type: none"> <li>• Launch site: A barge located in approximate position 40°34'12" N, 074°04'29.6" W (NAD 1983), approximately 800 yards southeast of Midland Beach. This Safety Zone is a 500-yard radius from the barge.</li> <li>• Dates: June 29, July 13, August 17 2013.</li> <li>• Times: 8:30 p.m.–10:00 p.m.</li> </ul>
---	---

Under the provisions of 33 CFR 165.160, a vessel may not enter the regulated area unless given express permission from the COTP or the designated representative. Spectator vessels may transit outside the regulated area but may not anchor, block, loiter in, or impede the transit of other vessels. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

This notice is issued under authority of 33 CFR 165.160 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide mariners with advanced notification of enforcement periods via the Local Notice to Mariners and marine information broadcasts. If the COTP determines that the regulated area need not be enforced for the full duration stated in this notice, a Broadcast Notice to Mariners may be used to grant general permission to enter the regulated area.

Dated: June 24, 2013.

**G. Loebel,**

*Captain, U.S. Coast Guard, Captain of the Port New York.*

[FR Doc. 2013-16618 Filed 7-10-13; 8:45 am]

**BILLING CODE 9110-04-P**

**DEPARTMENT OF EDUCATION**

**34 CFR Chapter II**

[Docket ID ED-2013-OESE-0062; CFDA Number: 84.215T]

**Final Priority and Requirements; Education Facilities Clearinghouse**

**AGENCY:** Office of Elementary and Secondary Education, Department of Education.

**ACTION:** Final priority and requirements.

**SUMMARY:** The Assistant Secretary for Elementary and Secondary Education announces a priority and requirements under the Education Facilities Clearinghouse (EFC) program and may use one or more of the priority and requirements for competitions in fiscal year (FY) 2013 and later years. Through this action, we intend to support the collection and dissemination of best practices for the planning, design, financing, procurement, construction, improvement, operation, and maintenance of safe, healthy, and high-performing elementary and secondary education facilities. Specifically, this priority and requirements will support the establishment of a clearinghouse to help stakeholders recognize the linkages between the school facility and three areas: Academic instruction, student and community well-being, and school fiscal health.

**DATES:** *Effective Date:* These priority and requirements are effective August 12, 2013.

**FOR FURTHER INFORMATION CONTACT:** Pat Rattler, U.S. Department of Education, 400 Maryland Avenue SW., Room 3E254, Washington, DC 20202.

Telephone: (202) 453-6718 or by email: *Pat.Rattler@ed.gov*.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

**SUPPLEMENTARY INFORMATION:**

*Purpose of Program:* The purpose of the Education Facilities Clearinghouse program is to provide technical assistance and training on the planning, design, financing, procurement, construction, improvement, operation, and maintenance of safe, healthy, and high-performing elementary and secondary education facilities.

**Program Authority:** 20 U.S.C. 7131; 7243-7243b.

We published a notice of proposed priority and requirements in the **Federal Register** on May 9, 2013 (78 FR 27129). That notice contained background information and our reasons for proposing the particular priority and requirements.

*Public Comment:* In response to our invitation in the notice of proposed priority and requirements, four parties submitted comments on the proposed priority and requirements. We group major issues according to subject. Generally, we do not address technical and other minor changes.

*Analysis of Comments and Changes:* An analysis of the comments and of any changes in the priority and requirements since publication of the notice of proposed priority and requirements follows.

*Comment:* One commenter expressed concerns about whether the initiatives proposed in the priority and requirements could be maintained or

lead to change on a long-term basis. The commenter also suggested that other variables affecting student achievement, such as inequality of funding or the effect of the community on the school, should be addressed in the priority and requirements.

*Discussion:* We believe that the proposal to award a grant under this program for multiple years will help sustain the effort to support the collection and dissemination of best practices for the planning, design, financing, procurement, construction, improvement, operation, and maintenance of safe, healthy, and high-performing elementary and secondary education facilities. By providing support to help increase the capacity of States and local educational agencies (LEAs), the priority will help support long-term change in these specific areas by increasing the knowledge and skills that education providers have to support effective improvements to their facilities. We provide funding and support through other programs, such as Title I, Part A of the Elementary and Secondary Education Act of 1965, as amended (Title I) to help meet the additional needs of disadvantaged students and to support parent and community engagement. For example, Title I targets more than \$13.7 billion in resources to LEAs and schools with high numbers or percentages of children from low-income families to provide additional services that improve the teaching and learning of educationally at-risk children to help ensure they meet State academic standards. In order to receive Title I funds, LEAs are required under ESEA to ensure that their Title I schools, which tend to be those with the highest poverty levels, receive resources from local and State sources that are comparable to those received by non-Title I schools.

*Changes:* None.

*Comment:* Several commenters recommended we specify in the notice of final priority and requirements the designations of the priority as absolute, competitive preference, or invitational.

*Discussion:* We appreciate these recommendations and have considered them in developing the notice inviting applications for the fiscal year 2013 EFC competition. However, specifying a priority as absolute, competitive preference, or invitational in a notice of final priority commits the Department to using the priority that way in all future competitions. In order to preserve our ability to use this priority as needed and to better serve States and LEAs, we are not specifying in this notice of final priority and requirements whether the priority is absolute, competitive

preference, or invitational. We do so in the notice inviting applications for the 2013 competition, published elsewhere in this issue of the **Federal Register**.

*Changes:* None.

*Comment:* One commenter recommended that we add specific qualifications that a successful applicant funded under the EFC program should have beyond the educational sector, namely expertise in recognizing and disseminating information about specific definitions of high-performance buildings identified in the Energy Independence and Security Act, securing connections to relevant professional societies and other key stakeholders, executing a complex outreach and engagement program, managing a robust Web site, and influencing decision makers.

*Discussion:* We appreciate the importance of the EFC provider having expertise in specific areas; however, we decline to require more specific qualifications that an applicant must meet in order to be eligible for funding. Because the EFC will have to disseminate information on a range of facilities topics, we do not want to limit specific areas in which the grantee must have knowledge. In addition, some of the qualifications recommended by the commenter, namely the ability to execute outreach and engagement programs and manage a Web site, may be evaluated through selection criteria for this program. Finally, the purpose of the EFC is to disseminate information on facilities and provide assistance to facilities managers; and specifically influencing decision makers is beyond the scope of this program.

*Changes:* None.

*Comment:* One commenter stated that the EFC should provide balanced information on best practices for school safety and security and school facilities. The commenter emphasized that it is important for school staff to be able to make informed choices about school facilities.

*Discussion:* In the notice of proposed priority and requirements, we included a requirement that an applicant for the EFC grant must have a plan to track and compile research and best practices, as well as develop resources that support safe, healthy, and high-performing school facilities. In addition, this grant will be a cooperative agreement, which will allow us to work with the grantee to ensure that the resources presented are supported by evidence, comprehensive, and balanced. These resources will help support education stakeholders in making informed decisions about improvements to school facilities.

*Changes:* None.

*Comment:* One commenter recommended that we establish an absolute priority requiring the grantee to collect and disseminate information on Green Schools. The commenter indicated that having an absolute priority would help ensure alignment between the ED-Green Ribbon Schools program and the EFC program and maximize the use of limited resources.

*Discussion:* We agree that providing information to support the maintenance and creation of Green Schools is important, and we envision that Green Building may be one area in which the EFC may provide technical assistance, training, and products. However, there are numerous organizations that provide information to support the adoption of green practices in schools. Since this information is already provided by many organizations and because we have limited funds to provide support for improving educational facilities, we do not believe that including a priority on Green Schools would be the most effective use of these funds.

*Changes:* None.

*Comment:* One commenter recommended that we expand the work of the EFC to include both collecting and analyzing data about the state of elementary and secondary school facilities and publishing these analyses so that they can inform research on the relationship between school facilities and school quality.

*Discussion:* We understand that there is a need for data to support additional research on the effect of school facilities on a number of elements related to student learning; however, the central purpose of the EFC grant is to provide technical assistance and training on the planning, design, financing, procurement, construction, improvement, operation, and maintenance of elementary and secondary school facilities. Toward this end, the EFC may provide links to appropriate collections of this information, or develop briefs summarizing what research and statistics currently exist. However, with limited funds, we cannot support original data collection and analysis, especially if the collection and analysis are duplicative of what currently exists.

*Changes:* None.

*Comment:* One commenter expressed support for the important balance between student safety and creating a learning environment that supports trust and collaboration. The commenter recommended that we include language to support this balance in the priority.

*Discussion:* We appreciate the importance of the EFC provider

understanding the various aspects of, and the links between, the school's physical environment and the creation of a learning environment that supports safety and nurtures trust and collaboration. We believe that we have included language that supports the balance between student safety and creating a learning environment that supports trust and collaboration. Specifically, through the priority and requirements, we have included specifications that the EFC should disseminate research and best practices. We consider facilities that serve to keep students secure, while supporting a nurturing environment, to be an example of best practice.

*Changes:* None.

*Comment:* One commenter recommended that the Web site created by the EFC should include tools to facilitate interaction between site visitors. The commenter specifically recommended using blogs or forums to support interaction.

*Discussion:* We envision that the Web site created by the EFC grantee may support a number of resources and services to encourage interaction between site visitors. However, we do not want to be overly prescriptive about the specific functions of the Web site, which would inhibit applicant flexibility to propose and build a site that fulfills the goals of the EFC.

*Changes:* None.

*Comment:* A few commenters expressed concern over the training requirements for the EFC grantee. One commenter recommended that the requirement to provide trainings be changed to an invitational priority so that the grantee could focus on resource collection and dissemination. This commenter also pointed out that an entity that is highly skilled at collecting and disseminating information on school facilities may not be very skilled at providing technical assistance and training. Other commenters stated that by holding only two trainings per year, the EFC grantee would not be able to provide services to a large number of schools that need assistance with their facilities. One commenter recommended that the trainings occur more than twice a year, be open to all stakeholders, and include a follow-up component to ensure that trainees can effectively implement the practices they learned.

*Discussion:* We believe that training is an important component of the EFC grant because it is essential that the resources collected and disseminated by the EFC also have practical application. Providing training helps ensure that the resources selected by the EFC support the work of school administrators and

should be a mandatory component of a project. Therefore, we decline to change requirement 3 to an invitational priority.

Although requirement 3 states that the EFC grantee must conduct a minimum of two trainings per year, this does not limit the grantee to this minimum. With regard to the comment about the training audience, we recognize that training could be a very valuable tool for all education stakeholders; however, this grant program provides a limited amount of funding and likely cannot support training for potentially thousands of education stakeholders. We believe that the most effective use of resources is to focus training on those individuals in leadership positions who can use their training to effect change for a large number of schools.

Finally, while we recognize that follow-up activities would be valuable to support the lessons taught at the training sessions, we do not want to be too prescriptive about the specific structure of these trainings. Detailed requirements for training provided by the EFC will be established in the EFC's cooperative agreement with the Department.

*Changes:* None.

### Final Priority

#### *Establishment of the Clearinghouse*

Establish a Clearinghouse to collect and disseminate research and other information on effective practices regarding the planning, design, financing, procurement, construction, improvement, operation, and maintenance of safe, healthy, and high-performing facilities for elementary and secondary schools in order to—

(a) Help education stakeholders increase their use of education facilities to turn around low-performing schools and close academic achievement gaps;

(b) Increase understanding of how education facilities affect community health and safety and student achievement;

(c) Identify potential cost-saving opportunities through procurement, energy efficiency, and preventative maintenance;

(d) Increase the use of education facilities and outdoor spaces as instructional tools and community centers (e.g., outdoor classrooms, school gardens, school-based health centers); and

(e) Increase capacity to identify hazards and conduct vulnerability assessments, and, through facility design, increase safety against hazards, natural disasters, and intruders.

### Types of Priorities

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

*Absolute priority:* Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

*Competitive preference priority:* Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

*Invitational priority:* Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

### Final Requirements

The Assistant Secretary for Elementary and Secondary Education announces the following requirements for this program. We may apply one or more of these requirements in any year in which this program is in effect.

#### *Requirement 1—Establish and Maintain a Web Site*

An applicant must include in its application a plan to establish and maintain a dedicated, easily-accessible Web site that will include electronic resources (e.g., links to published articles and research) about the planning, design, financing, procurement, construction, improvement, operation, and maintenance of safe, healthy, and high-performing facilities for elementary and secondary schools. The Web site must be established within 120 days of receipt of the award and must be maintained for the duration of the project.

#### *Requirement 2—Track and Compile Best Practices and Develop Resource Materials*

An applicant must include in its application a plan to track and compile best practices at the State, LEA, and school levels and a plan to develop resources that support the planning, design, financing, procurement, construction, improvement, operation, and maintenance of safe, healthy, and

high-performing facilities for elementary and secondary schools.

#### *Requirement 3—Training*

An applicant must include in its application a plan to develop and conduct at least two training programs per year for individuals in leadership positions (such as business or operations managers) in elementary or secondary schools or LEAs, who are responsible for the construction and or maintenance of elementary and secondary education facilities. Training topics must include information on the planning, design, financing, procurement, construction, improvement, operation, and maintenance of education facilities in order to improve the capacity of elementary and secondary schools or LEAs to make quality decisions regarding safe, healthy, and high-performing elementary and secondary education facilities. Training must be conducted upon request by the Department, elementary and secondary schools, States, or LEAs, and must be conducted by appropriate Clearinghouse staff or contractors.

#### *Requirement 4—Technical Assistance*

An applicant must include in its application a plan to provide technical assistance, including a plan for providing on-site technical assistance to elementary schools, secondary schools, or LEAs, about issues related to the planning, design, financing, procurement, construction, improvement, operation, and maintenance of education facilities. The technical assistance may be provided in the form of electronic or telephone assistance when requested by these schools, LEAs, or the Department. On-site technical assistance visits will be conducted upon request by, or based on input from, the Department, elementary schools, secondary schools, or LEAs and must be completed using appropriate Clearinghouse staff or contractors. The Department must approve in advance all technical assistance visits.

The technical assistance must consist of consultation regarding the planning, design, financing, procurement, construction, improvement, operation, and maintenance of education facilities. Specific technical assistance topics may include information related to: assessing facilities and construction plans for energy efficiency; conducting vulnerability assessments; and developing written plans to retrofit education facilities to address identified hazards and security concerns. Technical assistance may also address low-cost measures that can be taken to

enhance the safety and security of schools.

This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

**Note:** This notice does *not* solicit applications. In any year in which we choose to use this priority or one or more of these requirements, we invite applications through a notice in the **Federal Register**.

#### **Executive Orders 12866 and 13563**

##### *Regulatory Impact Analysis*

Under Executive Order 12866, the Secretary must determine whether this regulatory action is “significant” and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a “significant regulatory action” as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities in a material way (also referred to as an “economically significant” rule);

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

(3) Materially alter the budgetary impacts of entitlement 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 stated in the Executive order.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this final regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things

and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency “to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.” The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include “identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.”

We are issuing this final priority and these requirements, only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We have determined, also, that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department’s programs and activities.

*Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

**Accessible Format:** Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

**Electronic Access to This Document:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys). At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: [www.federalregister.gov](http://www.federalregister.gov). Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: July 8, 2013.

**Deborah S. Delisle,**

*Assistant Secretary for Elementary and Secondary Education.*

[FR Doc. 2013-16668 Filed 7-10-13; 8:45 am]

**BILLING CODE 4000-01-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[EPA-R05-OAR-2009-0839; FRL-9832-3]

#### Approval and Promulgation of Air Quality Implementation Plans; Indiana; Redesignation of the Indianapolis Area to Attainment of the 1997 Annual Standard for Fine Particulate Matter

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving Indiana's request to redesignate the Indianapolis, Indiana nonattainment area (Hamilton, Hendricks, Johnson, Marion, and Morgan Counties) to attainment for the 1997 annual National Ambient Air Quality Standard (NAAQS or standard) for fine particulate matter (PM<sub>2.5</sub>) because the request meets the statutory requirements for redesignation under the Clean Air Act (CAA). The Indiana

Department of Environmental Management (IDEM) submitted this request to EPA on October 20, 2009, and supplemented it on May 31, 2011, January 17, 2013, and March 18, 2013. EPA's approval involves several related actions. EPA is making a determination that the Indianapolis area has attained the 1997 annual PM<sub>2.5</sub> standard. EPA is approving, as a revision to the Indiana State Implementation Plan (SIP), the state's plan for maintaining the 1997 annual PM<sub>2.5</sub> NAAQS through 2025 in the area. EPA is approving the comprehensive emissions inventories submitted by IDEM for Nitrogen Oxides (NO<sub>x</sub>), Sulfur Dioxide (SO<sub>2</sub>), primary PM<sub>2.5</sub>, Volatile Organic Compounds (VOC), and ammonia as meeting the requirements of the CAA. Finally, EPA finds adequate and is approving Indiana's NO<sub>x</sub> and PM<sub>2.5</sub> Motor Vehicle Emission Budgets (MVEBs) for 2015 and 2025 for the Indianapolis area.

**DATES:** This final rule is effective July 11, 2013.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2009-0839. All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Kathleen D'Agostino, Environmental Engineer, at (312) 886-1767 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Kathleen D'Agostino, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-1767, [dagostino.kathleen@epa.gov](mailto:dagostino.kathleen@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

I. What is the background for the actions?

- II. What actions is EPA taking?
- III. What is EPA's response to comments?
- IV. Why is EPA taking these actions?
- V. Final Action
- VI. Statutory and Executive Order Reviews

#### I. What is the background for the actions?

On October 20, 2009, IDEM submitted its request to redesignate the Indianapolis, Indiana nonattainment area (Hamilton, Hendricks, Johnson, Marion, and Morgan Counties) to attainment for the 1997 annual PM<sub>2.5</sub> NAAQS, and for EPA approval of the SIP revision containing an emissions inventory and a maintenance plan for the area. IDEM supplemented its submission on May 31, 2011, January 17, 2013, and March 18, 2013. On September 27, 2011, EPA published proposed (76 FR 59599) and direct final (76 FR 59512) rules making a determination that the Indianapolis area is attaining the 1997 annual PM<sub>2.5</sub> standard and that the area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. EPA subsequently received adverse comments on the direct final rule and withdrew it on November 27, 2011 (76 FR 70361). The proposal was not withdrawn. EPA published a supplemental proposal on April 8, 2013 (78 FR 20856). EPA received an adverse comment on the supplemental proposal.

#### II. What actions is EPA taking?

EPA is making a determination that the Indianapolis area has attained and continues to attain the 1997 annual PM<sub>2.5</sub> standard, that the area has attained this standard by its applicable attainment date of April 5, 2010, and that the area meets the requirements for redesignation under section 107(d)(3)(E) of the CAA. EPA proposed this determination based on monitoring data showing attainment of the standard for the 2006-2008, 2007-2009, and 2008-2010 time periods. Quality-assured, certified monitoring data for 2011 show that the area continues to attain the standard, with a 2009-2011 design value of 13.1 µg/m<sup>3</sup> (see <http://www.epa.gov/pm/2012/20092011table.pdf>). Monitoring data that are now available for 2012 have been certified and are consistent with continued attainment as well (see <http://www.epa.gov/ttn/airs/airsaqs/>).

Because the area continues to attain the standard and meets all other requirements for redesignation under CAA section 107(d)(3)(E), EPA is approving the request from Indiana to change the legal designation of the Indianapolis area from nonattainment to

attainment for the 1997 annual PM<sub>2.5</sub> NAAQS.

EPA is taking several actions related to Indiana's PM<sub>2.5</sub> redesignation request, as discussed below.

EPA is approving, pursuant to CAA section 175A, Indiana's 1997 annual PM<sub>2.5</sub> maintenance plan for the Indianapolis area as a revision to the Indiana SIP (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plan is designed to keep the Indianapolis area in attainment of the 1997 annual PM<sub>2.5</sub> NAAQS through 2025.

EPA is approving, pursuant to CAA section 172(c)(3), both the 2006 emission inventories for primary PM<sub>2.5</sub>,<sup>1</sup> NO<sub>x</sub>, and SO<sub>2</sub>,<sup>2</sup> and the 2007/2008 emission inventories for VOC and ammonia. These emission inventories satisfy the requirement in section 172(c)(3) of the CAA for a comprehensive, current emission inventory.

Finally, for transportation conformity purposes EPA finds adequate and is approving Indiana's NO<sub>x</sub> and PM<sub>2.5</sub> MVEBs for 2015 and 2025 for the Indianapolis area.

### III. What is EPA's response to comments?

EPA received adverse comments on the September 27, 2011, proposal from Robert Ukeiley, on behalf of both Midwest Environmental Defense Center Inc. and two citizens. Valley Watch joined these comments. EPA received an adverse comment on the April 8, 2013, supplemental proposal from Thomas Cmar of Earthjustice on behalf of Sierra Club. A summary of the comments received, and EPA's responses, follow.

*Comment:* The commenter contends that Indiana does not have an adequate prevention of significant deterioration (PSD) program. He further asserts that the PSD program is part of the SIP that an area being redesignated needs to have to ensure that the area will stay in attainment. As a result, the commenter takes the position that EPA cannot approve the redesignation request because Indiana does not have an adequate PM<sub>2.5</sub> PSD program. The commenter bases his conclusion that Indiana's PSD program is inadequate for PM<sub>2.5</sub> on the fact that the program does not contain specific "significant

emission rates"<sup>3</sup> for PM<sub>2.5</sub> and its precursors, and that the program does not include PM<sub>2.5</sub> increments.

*Response:* On October 29, 2012, EPA approved revisions to Indiana's PSD SIP. Specifically, EPA approved changes to 326 Indiana Administrative Code (IAC) 2-2-1(ss), "Regulated NSR pollutant," that explicitly identify SO<sub>2</sub> and NO<sub>x</sub> as precursors to PM<sub>2.5</sub> that will be evaluated in NSR permit contexts. EPA also approved revisions to the definition of "Significant" at 326 IAC 2-2-1(ww)(1)(F) to identify the significant emissions rates for primary PM<sub>2.5</sub>, and SO<sub>2</sub> and NO<sub>x</sub> as its precursors, consistent with the 2008 NSR Rule.

On July 12, 2012, IDEM submitted PM<sub>2.5</sub> increments for approval into the Indiana SIP. EPA is currently in the process of taking action on this submission. While Indiana's approved PSD SIP currently lacks PM<sub>2.5</sub> increments, this does not prevent the program from addressing and helping to assure maintenance of the PM<sub>2.5</sub> standard in accordance with CAA section 175A. A PSD increment is the maximum increase in concentration that is allowed to occur above a baseline concentration for a pollutant. Even in the absence of an approved PSD increment, Indiana's PSD program prohibits air quality from deteriorating beyond the concentration allowed by the applicable NAAQS. See 326 IAC 2-2-5(a)(1). Thus Indiana's PSD program is adequate for purposes of assuring maintenance of the 1997 annual PM<sub>2.5</sub> standard as required by section 175A.

For the reasons explained above, EPA concludes that the features of the PSD program in Indiana's SIP do not detract from the program's adequacy for purposes of maintenance of the standard and redesignation of the area. It is, therefore, sufficient for the purposes of maintaining the 1997 annual PM<sub>2.5</sub> NAAQS in the Indianapolis area.

*Comment:* The commenter claims that there has not been a sufficient showing that recent decreases in PM<sub>2.5</sub> concentrations reflected in monitoring data are due to enforceable and permanent emission reductions.

*Response:* In accordance with longstanding practice and policy,<sup>4</sup> Indiana calculated the change in emissions between 2002, one of the years used to designate the area as nonattainment, and 2008, one of the years the Indianapolis area monitored attainment of the annual PM<sub>2.5</sub> standard.

See Tables 3, 4 and 5 at 76 FR 59518-59519. Because PM<sub>2.5</sub> concentrations in the Indianapolis area are impacted by the transport of sulfates and nitrates, local controls as well as controls implemented in upwind areas are relevant to the improvement in air quality in the Indianapolis area. The change in emissions in upwind areas over this time period can be found in Table 6 at 76 FR 59519. The reduction in emissions and the corresponding improvement in air quality over this time period can be attributed to a number of permanent and enforceable regulatory control measures that the Indianapolis area and upwind areas have implemented in recent years and will continue to implement in the future.

Reductions in fine particle precursor emissions have occurred statewide and in upwind areas as a result of several Federal mobile source control measures including: Tier 2 Emission Standards for Vehicles and Gasoline Sulfur Standards, the Heavy-Duty Diesel Engine Rule, the Nonroad Diesel Rule, and Nonroad Large Spark-Ignition Engine and Recreational Engine Standards. See 76 FR 59517.

The Tier 2 Emission Standards for Vehicles and the associated Gasoline Sulfur Standards were estimated to result in a 69 to 95 percent reduction in NO<sub>x</sub> emissions (depending on vehicle type) and a reduction in the sulfur content of gasoline to 30 parts per million (ppm).<sup>5</sup> These Federal rules were phased in from 2004 to 2009.

The Heavy-Duty Diesel Engine Rule reduced the highway diesel fuel sulfur content to 15 ppm, with the total program estimated to achieve a 90 percent reduction in primary PM<sub>2.5</sub> emissions and a 95 percent reduction in NO<sub>x</sub> emissions. This rule took effect in 2007.

The Nonroad Diesel Rule and the associated Gasoline Sulfur Standards are expected to reduce NO<sub>x</sub> and PM emissions from large nonroad diesel engines by over 90 percent and have reduced the sulfur content in nonroad diesel fuel by over 99 percent. The engine emission standards required by this rule are being phased in between 2008 and 2014.

The Nonroad Large Spark-Ignition Engine and Recreational Engine Standards are being phased in from 2004 through 2012. Full implementation of these engine standards are projected to result in an overall 80 percent reduction in NO<sub>x</sub> emissions.

<sup>5</sup> Most gasoline sold in Indiana prior to January 2006 had a sulfur content of about 500 ppm.

<sup>1</sup> Fine particulates directly emitted by sources and not formed in a secondary manner through chemical reactions or other processes in the atmosphere.

<sup>2</sup> NO<sub>x</sub> and SO<sub>2</sub> are precursors for fine particulates through chemical reactions and other related processes in the atmosphere.

<sup>3</sup> "Significant" emissions rates are listed in 326 IAC 2-2-1(ww).

<sup>4</sup> See September 4, 1992 memorandum from John Calcagni entitled "Procedures for Processing Requests to Redesignate Areas to Attainment," ("Calcagni Memorandum") at 4 and 8-9.

For all of the engine standards described above, some of the expected emissions reductions occurred during the 2008–2010 attainment period; however, additional reductions will continue to occur throughout the maintenance period as the fleet of older engines turns over. It should be noted, though, that the reduction in fuel sulfur content yielded an immediate reduction in sulfate particle emissions from all engines using the low-sulfur fuel.

On October 27, 1998 (63 FR 57356), EPA issued a SIP call under CAA section 110(k)(5), commonly referred to as the NO<sub>x</sub> SIP Call. This rule required the District of Columbia and 22 states to reduce emissions of NO<sub>x</sub> in order to comply with CAA section 110(a)(2)(D)(i)(I)—the “good neighbor” provision of the CAA. Affected states were required to comply with Phase I of the SIP Call beginning in 2004, and Phase II beginning in 2007. Overall, sources covered by the NO<sub>x</sub> SIP Call reduced NO<sub>x</sub> emissions 62 percent between 2000 (prior to implementation of the NO<sub>x</sub> SIP call) and 2008. Emission reductions requirements from the NO<sub>x</sub> SIP Call still exist. Most states that were subject to the NO<sub>x</sub> SIP Call, including Indiana, are now complying with those requirements through participation in the Clean Air Interstate Rule (CAIR) ozone-season NO<sub>x</sub> trading program. However, while EPA has acknowledged that participation in the CAIR ozone-season NO<sub>x</sub> trading program is one acceptable way for states to meet their NO<sub>x</sub> SIP Call obligations, the NO<sub>x</sub> SIP Call obligations exist independent of CAIR and are independently permanent and enforceable.

On May 12, 2005, EPA published CAIR, which requires significant reductions in emissions of SO<sub>2</sub> and NO<sub>x</sub> from electric generating units to limit the interstate transport of these pollutants and the ozone and fine particulate matter they form in the atmosphere. See 76 FR 70093. The D.C. Circuit initially vacated CAIR, *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008), but ultimately remanded the rule to EPA without vacatur to preserve the environmental benefits provided by CAIR, *North Carolina v. EPA*, 550 F.3d 1176, 1178 (D.C. Cir. 2008). In response to the Court’s decision, EPA issued the Cross-State Air Pollution Rule (CSAPR) to address interstate transport of NO<sub>x</sub> and SO<sub>2</sub> in the eastern United States. See 76 FR 48208 (August 8, 2011).

On December 30, 2011, the D.C. Circuit issued an order addressing the status of CSAPR and CAIR in response to motions filed by numerous parties seeking a stay of CSAPR pending judicial review. In that order, the Court

stayed CSAPR pending resolution of the petitions for review of that rule in *EME Homer City Generation, L.P. v. EPA* (No. 11–1302 and consolidated cases). The Court also indicated that EPA was expected to continue to administering CAIR.

On August 21, 2012, the D.C. Circuit issued the decision in *EME Homer City*, to vacate and remand CSAPR and ordered EPA to continue administering CAIR “pending . . . development of a valid replacement.” *EME Homer City at 38*.<sup>6</sup> To the extent that attainment is due to emission reductions associated with CAIR, as explained in greater detail in the subsequent comment response, EPA is determining that those reductions are sufficiently permanent and enforceable for purposes of CAA sections 107(d)(3)(E)(iii) and 175A.

As directed by the D.C. Circuit, CAIR remains in place and enforceable until EPA promulgates a valid replacement rule to substitute for CAIR. Indiana’s SIP revision lists CAIR as a control measure that was adopted by the State in 2006 and required compliance by January 1, 2009. CAIR was thus in place and getting emission reductions when Indianapolis began monitoring attainment of the 1997 annual PM<sub>2.5</sub> standard during the 2006–2008 time period. The quality-assured, certified monitoring data continues to show the area in attainment of the 1997 PM<sub>2.5</sub> standard through 2011.

*Comment:* The commenter urges EPA not to rely upon future emissions reductions from CAIR as permanent and enforceable for purposes of approving the Indianapolis redesignation and maintenance plan. The commenter argues that reliance on CAIR would be arbitrary, capricious, and contrary to law, because of the D.C. Circuit’s decision in *North Carolina v. EPA*, which found CAIR to be legally defective and remanded the rule to EPA. Thus, the commenter argues that CAIR is temporary. The commenter notes that EPA’s decision to rely on CAIR reductions as sufficiently permanent and enforceable for the purposes of the Indianapolis redesignation is a change in EPA’s position, and, contrary to EPA’s assertion, that decision is in tension with the D.C. Circuit’s order to replace CAIR as expeditiously as practicable in *EME Homer City Generation, LLP v. EPA*, 696 F.3d 7 (D.C. Cir. 2012).

<sup>6</sup> On June 24, 2013, the Supreme Court granted certiorari and agreed to review the D.C. Circuit’s decision in *EME Homer City*. The Supreme Court’s grant of certiorari, by itself, does not alter the status of CAIR or CSAPR. At this time, CAIR remains in place.

Furthermore, the commenter states that EPA has not provided “a specific analysis of the extent to which redesignation of the Indianapolis area to attainment and Indiana’s plan for maintaining that attainment status depend upon future emission reductions from CAIR.” The commenter argues that without such an analysis it is impossible to evaluate whether CAIR’s sunset and replacement by a different rule would have an impact on the attainment status of Indianapolis. The commenter points out that a replacement rule may require a different distribution of reductions than CAIR, and states that the agency’s “implied promise” that a future replacement rule will be comparable to CAIR “does not withstand scrutiny in the absence of an area-specific analysis.” The commenter urges the agency to act quickly to promulgate a new rule to replace CAIR if it wants to rely on emission reductions in this context for purposes of redesignation.

*Response:* EPA disagrees with the commenter that it is arbitrary, capricious, or contrary to law to approve the Indianapolis redesignation because CAIR cannot be relied upon in this context. Section 107(d)(3)(E) of the CAA sets out the requirements for redesignation, and states in relevant part that the Administrator must “determine[] that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions.” 42 U.S.C. 7407(d)(3)(E)(iii).

EPA recognizes that the D.C. Circuit’s instruction in both *North Carolina v. EPA*, 550 F.3d 1176, 1178 (D.C. Cir. 2008), and *EME Homer City Generation L.P. v. EPA*, 696 F.3d 7 (D.C. Cir. 2012), that CAIR must be replaced necessarily means that CAIR will at some point cease to be in effect. However, EPA disagrees that the Court’s instruction in those two cases forecloses the Agency and states from relying on CAIR for purposes such as redesignating an area from nonattainment to attainment. Subsection (iii) of section 107(d)(3)(E) is a backwards looking requirement; it requires that the attainment air quality in the area is “due to” permanent and enforceable emissions reductions. The purpose of this requirement is to ensure that in redesignating areas from nonattainment to attainment, EPA does not rely on ephemeral, temporarily improved air quality that results from circumstances such as temporary shutdowns of plants or reduced

emission rates because of slowed production. See “Procedures for Processing Requests to Redesignate Areas to Attainment,” Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (Calcagni memorandum) at 4. The structure of section 107(d)(3)(E)(iii) indicates that the CAA generally considers reductions resulting from SIPs and Federal regulations as permanent and enforceable. It references “other” reductions that are comparable to measures adopted into SIPs or Federally adopted regulations and can therefore also qualify as permanent and enforceable reductions, indicating that, in general, SIP reductions and reductions from Federal regulations are the types of reductions that the CAA views in the first instance as having the requisite permanence and enforceability for purposes of redesignation.

EPA acknowledges that prior to the *EME Homer City* decision, it did not rely solely on CAIR to meet section 107(d)(3)(E)(iii)’s requirements, but rather the combination of CAIR being in place through the time period of the area coming into attainment, with CSAPR achieving similar or greater emission reductions in the area in 2012 and beyond. See, e.g., Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Kentucky; Redesignation of the Kentucky Portion of the Cincinnati-Hamilton 1997 Annual Fine Particulate Matter Nonattainment Area to Attainment, 76 FR 65458, 65460 (Oct. 21, 2011); Regional Haze: Revisions to Provisions Governing Alternatives to Source-Specific Best Available Retrofit Technology (BART) Determinations, Limited SIP Disapprovals, and Federal Implementation Plans, 77 FR 33642, 33645 (June 7, 2012). It is not unreasonable or arbitrary for the agency to reassess its position about whether the reductions of CAIR alone can be considered sufficiently permanent and enforceable for purposes of redesignation, in light of the D.C. Circuit’s vacatur of CSAPR in *EME Homer City* and related decision that EPA should continue administering CAIR.

Contrary to the commenters’ assertions, EPA’s decision to rely on CAIR for purposes of redesignating the Indianapolis area is not in tension with the Court’s instruction in *EME Homer City* to act expeditiously on remand. *EME Homer City*, 696 F.3d at 38 n.35. The D.C. Circuit in *EME Homer City* held that “a SIP logically cannot be deemed to lack a “required submission”

before EPA quantifies the good neighbor obligation.” *Id.* at 32. Under this holding states have no obligation to submit “good neighbor” SIPs until EPA has quantified their “good neighbor” obligations and EPA may not promulgate a FIP to address such obligations until the Agency first quantifies the state’s obligations, and provides the state an opportunity to submit a plan consistent with that defined obligation. 696 F.3d at 28–37. The *EME Homer City* decision thus significantly lengthens the time it will take to get in place regulations to replace the remanded CAIR. Under the *EME Homer City* decision SIP provisions to replace CAIR could not go into effect until EPA has undertaken analysis and rulemaking to define states’ obligations in accordance with the other statutory requirements identified by the *EME Homer City* court, provided states adequate time to develop implementation plans consistent with the defined obligations, and EPA has reviewed and approved the SIP submissions in notice-and-comment rulemakings. Similarly, no FIP to replace CAIR could go into effect unless EPA found a state failed to submit a SIP within the time given to develop such implementation plans or disapproved such a SIP submittal. It is not unreasonable for EPA to determine that in light of these circumstances, CAIR will be in place for a significant amount of time. The commenter suggests that EPA may not redesignate Indianapolis until it has completed all of the steps required by *EME Homer City* to promulgate a replacement rule. EPA disagrees. As noted in the April 8, 2013, supplemental proposal (78 FR 20856), EPA believes that relying on CAIR emission reductions in order to redesignate the Indianapolis area, which has been attaining the NAAQS for many years and continues to maintain the standard, is precisely the type of “reliance interest” that the D.C. Circuit was concerned about in ordering the agency to continue administering CAIR. *EME Homer City*, 696 F.3d at 38.

EPA also disagrees that it must conduct the type of specific analysis requested by the commenter in order to approve Indianapolis’ maintenance plan under section 175A. Section 175A requires states to submit a maintenance plan that provides for the maintenance of the NAAQS for the relevant air pollutant for ten years following redesignation. 42 U.S.C. 7505a(a). In the April 8, 2013, supplemental proposal, EPA provided projected emissions of direct PM<sub>2.5</sub>, SO<sub>2</sub>, NO<sub>x</sub>, VOCs and ammonia in the Indianapolis area for

the relevant maintenance period. See 78 FR 20864, tbls. 1–4. Under its existing suite of control measures, including CAIR, Indianapolis is attaining the 1997 PM<sub>2.5</sub> NAAQS. Over the maintenance period, emissions for each pollutant and precursor are expected to further decrease in the Indianapolis area. EPA therefore does not believe that an “area-specific analysis” as requested by the commenter is necessary or appropriate in order to redesignate the Indianapolis area.

The anticipation that CAIR may be replaced during the maintenance period by another rule requiring upwind sources to reduce emissions does not require EPA to disapprove the redesignation request for Indianapolis currently before it. EPA’s longstanding interpretation of section 107(d)(3)(E) in the Calcagni Memorandum contemplates that some reductions required by existing control measures may be replaced in the future by other measures. Specifically, it states that “the State will be expected to maintain its implemented control strategy despite redesignation to attainment, unless such measures are shown to be unnecessary for maintenance or are replaced with measures that achieve equivalent reductions.” Calcagni Memorandum at 10. As noted in the supplemental proposal, upon promulgation of the replacement rule for CSAPR and CAIR, EPA will review existing SIPs as appropriate, including maintenance plans, to identify whether discrepancies in emission reductions from the control measures will pose a threat to the maintenance of the NAAQS for that pollutant. Therefore, the commenter’s concern that a future replacement rule might not require the same reductions as CAIR is not a bar to approving Indiana’s redesignation request today. The commenter’s statement that “if EPA wants to rely on emissions reductions for a CAIR replacement rule to support the redesignation of areas such as Indianapolis and their maintenance plans, then EPA should move without delay to develop and promulgate a legally defensible rule to replace CAIR” misstates EPA’s position. EPA is not relying on emissions reductions from a CAIR replacement rule in approving the maintenance plan for Indianapolis. Rather, EPA is relying on CAIR, which is currently in place and will remain in place for a significant period of time, in approving the maintenance plan. EPA further notes that any rule promulgated to replace CAIR with respect to PM<sub>2.5</sub> will need to ensure that the “good neighbor” provisions have been

satisfied with regard to the 1997 annual PM<sub>2.5</sub> NAAQS.

#### IV. Why is EPA taking these actions?

EPA has determined that the Indianapolis area has attained and continues to attain the 1997 annual PM<sub>2.5</sub> NAAQS and that the area has attained this standard by its applicable attainment date of April 5, 2010. EPA has also determined that all other criteria have been met for the redesignation of the Indianapolis area from nonattainment to attainment of the 1997 annual PM<sub>2.5</sub> NAAQS and for approval of Indiana's maintenance plan for the area. See CAA sections 107(d)(3)(E) and 175A. The detailed rationale for EPA's findings and actions is set forth in the proposed and direct final rulemakings of September 27, 2011 (76 FR 59599 and 76 FR 59512), in the supplemental proposed rulemaking of April 8, 2013 (78 FR 20856) and in this final rulemaking.

#### V. Final Action

EPA is making a determination that the Indianapolis area has attained the 1997 annual PM<sub>2.5</sub> standard by its attainment date and that the area continues to attain the standard. EPA is determining that the area has met the requirements for redesignation under section 107(d)(3)(E) and 175A of the CAA. EPA is thus approving the request from Indiana to change the legal designation of the Indianapolis area from nonattainment to attainment for the 1997 annual PM<sub>2.5</sub> NAAQS. EPA is also approving Indiana's PM<sub>2.5</sub> maintenance plan for the Indianapolis area as a revision to the Indiana SIP because the plan meets the requirements of section 175A of the CAA. EPA is approving 2006 emissions inventories for primary PM<sub>2.5</sub>, NO<sub>x</sub>, and SO<sub>2</sub>, and 2007/2008 emission inventories for VOC and ammonia as satisfying the requirement in section 172(c)(3) of the CAA for a comprehensive, current emission inventory. Finally, EPA finds adequate and is approving 2015 and 2025 primary PM<sub>2.5</sub> and NO<sub>x</sub> MVEBs for the Indianapolis area. These MVEBs will be used in future transportation conformity analyses for the area.

In accordance with 5 U.S.C. 553(d), EPA finds there is good cause for these actions to become effective immediately upon publication. This is because a delayed effective date is unnecessary due to the nature of a redesignation to attainment, which relieves the area from certain CAA requirements that would otherwise apply to it. The immediate effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that

rulemaking actions may become effective less than 30 days after publication if the rule "grants or recognizes an exemption or relieves a restriction," and section 553(d)(3) which allows an effective date less than 30 days after publication "as otherwise provided by the agency for good cause found and published with the rule." The purpose of the 30-day waiting period prescribed in section 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Today's rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, today's rule relieves the State of planning requirements for this 8-hour ozone nonattainment area. For these reasons, EPA finds good cause under 5 U.S.C. 553(d)(3) for these actions to become effective on the date of publication of these actions.

#### VI. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA 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 CAA. Accordingly, these actions merely do not impose additional requirements beyond those imposed by state law and the CAA. For that reason, these actions:

- Are not "significant regulatory actions" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are 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.*);

- Do 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);

- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Are 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 CAA; and

- Do 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 a determination of attainment is an action that affects the status of a geographical area and does not impose any new regulatory requirements on tribes, impact any existing sources of air pollution on tribal lands, nor impair the maintenance of ozone national ambient air quality standards in tribal lands.

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**. These actions are not "major rules" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 9, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of these actions 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. These actions may not be challenged later in proceedings to enforce their requirements. (See section 307(b)(2).)

**List of Subjects**

*40 CFR Part 52*

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter.

*40 CFR Part 81*

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: June 26, 2013.

**Susan Hedman,**

*Regional Administrator, Region 5.*

40 CFR Parts 52 and 81 are amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

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

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

■ 2. Section 52.776 is amended by adding paragraphs (v)(2) and (w)(2) to read as follows:

**§ 52.776 Control strategy: Particulate matter.**

\* \* \* \* \*

(v) \* \* \*

(2) The Indianapolis area (Hamilton, Hendricks, Johnson, Marion and Morgan Counties), as submitted on October 20, 2009, and supplemented on May 31, 2011, January 17, 2013, and March 18, 2013. The maintenance plan establishes 2015 motor vehicle emissions budgets for the Indianapolis area of 853.76 tpy for primary PM<sub>2.5</sub> and 25,314.49 tpy for NO<sub>x</sub> and 2025 motor vehicle emissions budgets of 460.18 tpy for primary PM<sub>2.5</sub> and 13,368.60 tpy for NO<sub>x</sub>.

INDIANA PM<sub>2.5</sub> (ANNUAL NAAQS)

(w) \* \* \*

(2) Indiana's 2006 NO<sub>x</sub>, primary PM<sub>2.5</sub>, and SO<sub>2</sub> emissions inventories and 2007/2008 VOC and ammonia emission inventories, as submitted on October 20, 2009 and supplemented on May 31, 2011 and March 18, 2013, satisfy the emission inventory requirements of section 172(c)(3) of the Clean Air Act for the Indianapolis area.

\* \* \* \* \*

**PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES**

■ 3. The authority citation for part 81 continues to read as follows:

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

■ 4. Section 81.315 is amended by revising the entry for Indianapolis, IN in the table entitled "Indiana PM<sub>2.5</sub> (Annual NAAQS)" to read as follows:

**§ 81.315 Indiana.**

\* \* \* \* \*

Designated area	Designation <sup>a</sup>	
	Date <sup>1</sup>	Type
Indianapolis, IN:		
Hamilton County .....	7/11/2013	Attainment.
Hendricks County .....	7/11/2013	Attainment.
Johnson County .....	7/11/2013	Attainment.
Marion County .....	7/11/2013	Attainment.
Morgan County .....	7/11/2013	Attainment.

<sup>a</sup> Includes Indian Country located in each county or area, except as otherwise specified.

<sup>1</sup> This date is 90 days after January 5, 2005, unless otherwise noted.

\* \* \* \* \*  
[FR Doc. 2013-16478 Filed 7-10-13; 8:45 am]  
BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 80**

[EPA-HQ-OAR-2011-0542; FRL-9822-7]

RIN 2060-AR85

**Regulation of Fuels and Fuel Additives: Additional Qualifying Renewable Fuel Pathways Under the Renewable Fuel Standard Program; Final Rule Approving Renewable Fuel Pathways for Giant Reed (*Arundo Donax*) and Napier Grass (*Pennisetum Purpureum*)**

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

**ACTION:** Final rule.

**SUMMARY:** This final rule approves pathways for production of renewable

fuel from giant reed (*Arundo donax*) and napier grass (*Pennisetum purpureum*) as feedstocks. These pathways are for cellulosic biofuel, for purposes of the Renewable Fuel Standard Program (RFS), under Clean Air Act (CAA) as amended by the Energy Independence and Security Act of 2007 (EISA). EPA has determined that renewable fuel made from napier grass and giant reed meet the greenhouse gas (GHG) reduction requirements for cellulosic biofuel under the requirements of the RFS program. In response to comments on the proposal concerning the potential for these crops to behave as invasive species, EPA is adopting additional registration, recordkeeping, and reporting requirements that were developed to address the potential for GHG emissions related to these concerns. Approval of

these pathways combined with the related provisions will create additional opportunities for regulated parties to comply with the advanced and cellulosic renewable fuel requirements of the RFS program, while ensuring that these feedstocks do not pose a significant likelihood of spread into areas outside the intended planting area.

**DATES:** This rule is effective on July 11, 2013.

**FOR FURTHER INFORMATION CONTACT:** Edmund Coe, Office of Transportation and Air Quality (MC6401A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564-8994; fax number: (202) 564-1686; email address: *Coe.edmund@Epa.gov*.

**SUPPLEMENTARY INFORMATION:**

**Does this action apply to me?**

Entities potentially affected by this action are those involved with the production, distribution, and sale of transportation fuels, including gasoline and diesel fuel or renewable fuels such as ethanol and biodiesel. Regulated categories and entities affected by this action include:

Category	NAICS <sup>1</sup> Codes	SIC <sup>2</sup> Codes	Examples of potentially regulated entities
Industry .....	324110	2911	Petroleum Refineries.
Industry .....	325193	2869	Ethyl alcohol manufacturing.
Industry .....	325199	2869	Other basic organic chemical manufacturing.
Industry .....	424690	5169	Chemical and allied products merchant wholesalers.
Industry .....	424710	5171	Petroleum bulk stations and terminals.
Industry .....	424720	5172	Petroleum and petroleum products merchant wholesalers.
Industry .....	454319	5989	Other fuel dealers.

<sup>1</sup> North American Industry Classification System (NAICS).  
<sup>2</sup> Standard Industrial Classification (SIC) system code.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could be potentially regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your entity is regulated by this action, you should carefully examine the applicability criteria of Part 80, subparts D, E and F of title 40 of the Code of Federal Regulations. If you have any question regarding applicability of this action to a particular entity, consult the person in the preceding **FOR FURTHER INFORMATION CONTACT** section above.

**Outline of This Preamble**

- I. Executive Summary
  - A. Purpose of the Regulatory Action
  - B. Summary of the Major Provisions of This Regulatory Action
- II. Additional Qualifying Renewable Fuel Pathways Under the Renewable Fuel Standard (RFS) Program, Using Giant Reed and Napier Grass
  - A. Feedstock Production and Distribution
  - B. Fuel Production, Distribution, and Use
  - C. Summary
- III. Additional Provisions Addressing Invasiveness Concerns for Giant Reed and Napier Grass
  - A. Discussion of Comments on Invasive Species
  - B. Registration, Reporting, and Record Keeping Requirements to Address Potential Invasiveness
- IV. Statutory and Executive Order Reviews
  - A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory 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 Risks 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. Executive Order 13112: Invasive Species
- L. Congressional Review Act
- V. Statutory Provisions and Legal Authority

**I. Executive Summary**

*A. Purpose of the Regulatory Action*

In this final rule, EPA is approving a pathway for production of renewable fuel from giant reed (*Arundo donax*) and napier grass (*Pennisetum purpureum*) as feedstock for purposes of the RFS program. EPA has determined that renewable fuel made from napier grass and giant reed meet the lifecycle greenhouse gas (GHG) reduction requirements for cellulosic biofuel under the requirements of the RFS program. EPA is also adopting additional registration, recordkeeping, and reporting requirements to minimize the potential spread outside of the intended planting areas of giant reed or napier grass that was planted for the purpose of producing renewable fuels under the RFS program. These additional requirements are necessary to minimize the potential that the

feedstock will spread to areas outside the intended planting area. Such unintended growth could result in additional GHG emissions from activities needed to control and remove the invasive plants, which have not been factored into our lifecycle analysis.

EPA is issuing this final rule based on its evaluation of the lifecycle greenhouse gas emissions of this pathway for production of renewable fuel from these feedstocks. The approach for establishing a renewable fuel pathway is based on the requirements related to greenhouse gas reductions that are part of the RFS program, under Clean Air Act (“CAA”) Section 211(o) as amended by the Energy Independence and Security Act of 2007 (“EISA”). This rulemaking modifies the RFS regulations published at 40 CFR 80.1400 *et seq.* The RFS program regulations specify the types of fuels eligible to participate in the RFS renewable fuel program and the procedures by which renewable fuel producers and importers may generate Renewable Identification Numbers (“RINs”) for the qualifying renewable fuels they produce through approved fuel pathways. See 75 FR 14670 (March 26, 2010); 75 FR 26026 (May 10, 2010); 75 FR 37733 (June 30, 2010); 75 FR 59622 (September 28, 2010); 75 FR 76790 (December 9, 2010); 75 FR 79964 (December 21, 2010); 77 FR 1320 (January 9, 2012); 77 FR 74592 (December 17, 2012); and 78 FR 14190 (March 5, 2013).

Approving the new fuel pathways according to the provisions of this rule will provide biofuel producers opportunities to increase the volume of advanced, low-GHG cellulosic biofuels

under the RFS program. EPA's comprehensive lifecycle analyses in the January 5, 2012 proposal show significant lifecycle GHG emission reductions from fuels produced from giant reed and napier grass, as compared to the baseline (petroleum-based) gasoline or diesel fuel that they replace. However, the lifecycle analyses assume no significant indirect greenhouse gas emissions associated with actions to remove or remediate the unintended spread of these feedstocks outside of the intended planting area. This rule includes provisions designed to ensure that this assumption is realized, and were developed in response to comments raised during the public comment period.

### B. Summary of the Major Provisions of this Regulatory Action

This rule approves new pathways for production of cellulosic biofuel from giant reed and napier grass as feedstocks. The rule also includes several provisions addressing invasiveness concerns regarding giant reed or napier grass when it is grown as a feedstock for production of renewable fuel.<sup>1</sup> These provisions require either a demonstration by the renewable fuel producer that the giant reed or napier grass will not pose a significant likelihood of spread beyond its intended planting area, or approval by EPA of a Risk Mitigation Plan developed by the fuel producer that demonstrates the giant reed or napier grass will not pose a significant likelihood of spread beyond its intended the planting area. EPA's use of the term "no significant likelihood of spread beyond the planting area" means that it is highly unlikely there will be such spread. EPA is also including related registration, reporting, and recording keeping requirements.

## II. Additional Qualifying Renewable Fuel Pathways Under the Renewable Fuel Standard (RFS) Program, Using Giant Reed and Napier Grass

EPA's analysis of renewable fuel pathways using giant reed and napier grass as feedstocks was originally published in the **Federal Register** on January 5, 2012 as a direct final rule, with a parallel publication of a proposed rule. Because relevant adverse comments were received, EPA withdrew the direct final rule on March 5, 2012 (77 FR 13009). A second comment

period was not issued, since the simultaneous publication of the proposed rule provided an adequate notice and comment process.

For this rulemaking, EPA considered the lifecycle GHG impacts of two types of high-yielding perennial grasses similar in cellulosic composition to *Panicum virgatum* (switchgrass) and comparable in status as an emerging energy crop. The grasses considered in this rulemaking are giant reed (*Arundo donax*), and napier grass (*Pennisetum purpureum*), also known as elephant grass. In the March 2010 RFS rule, EPA analyzed the lifecycle GHG impacts of producing and using cellulosic ethanol and cellulosic Fischer-Tropsch diesel from switchgrass. The midpoint of the range of switchgrass results showed a 110% GHG reduction (range of 102% to 117%) for cellulosic ethanol (biochemical process), a 72% (range of 64% to 79%) reduction for cellulosic ethanol (thermochemical process), and a 71% (range of 62% to 77%) reduction for cellulosic diesel (F-T process) compared to the petroleum baseline. In the March 2010 RFS final rule, we indicated that some feedstock sources can be determined to be similar enough to those modeled that the modeled results could reasonably be extended to these similar feedstock types. For instance, information on miscanthus indicated that this perennial grass will yield more feedstock per acre than the modeled switchgrass feedstock without additional inputs with GHG implications (such as fertilizer).<sup>2</sup> Therefore in the final rule EPA concluded that since biofuel made from the cellulosic biomass in switchgrass was found to satisfy the 60% GHG reduction threshold for cellulosic biofuel, biofuel produced from the cellulosic biomass in miscanthus would also comply. In the final rule we included cellulosic biomass from switchgrass and miscanthus as eligible feedstocks for the cellulosic biofuel pathways included in Table 1 to § 80.1426.

We did not include other perennial grasses such as giant reed or napier grass as feedstocks for the cellulosic biofuel pathways in Table 1 at that time, since we did not have sufficient time to adequately consider them. Based in part on additional information received through the petition process for EPA approval of giant reed and napier grass pathways, EPA has evaluated these feedstocks and is now including these

feedstocks in Table 1 to § 80.1426 as approved pathways for cellulosic biofuel pathways.

As described in detail in the following sections of this preamble, because of the similarity of these feedstocks to switchgrass and miscanthus, EPA believes that new agricultural sector modeling is not needed to analyze them. We have instead relied upon the switchgrass analysis to assess the relative GHG impacts of biofuel produced from giant reed and napier grass. As with the switchgrass analysis, we have attributed all land use impacts and resource inputs from use of these feedstocks to the portion of the fuel produced that is derived from the cellulosic components of the feedstocks. Based on this analysis and currently available information, we conclude that biofuel (ethanol, cellulosic diesel, jet fuel, heating oil and naphtha) produced from the cellulosic biomass of giant reed or napier grass has similar lifecycle GHG impacts to switchgrass biofuel and meets the 60% GHG reduction threshold required for cellulosic biofuel.

### A. Feedstock Production and Distribution

For the purposes of this rulemaking, Giant reed refers to the perennial grass *Arundo donax* of the *Poaceae* family. Giant reed thrives in subtropical and warm-temperate areas and is grown throughout Asia, southern Europe, Africa, the Middle East, and warmer U.S. states for multiple uses such as paper and pulp, musical instruments, rayon, particle boards, erosion control, and ornamental purposes.<sup>3,4</sup> Based in part on discussions with industry, EPA anticipates continued development of giant reed as an energy crop particularly in the Mediterranean region and warmer U.S. states.

Napier grass is a tall bunch-type grass that has traditionally been grown as a high-yielding forage crop across the wet tropics. There is a considerable body of agronomic research on the production of napier grass as a forage crop. More recently, researchers have investigated ways to maximize traits desirable in bioenergy crops. Practices have been developed by USDA and other researchers to lower fertilization rates and increase biomass production. Based in part on discussions with industry, EPA anticipates continued development of napier grass as an energy crop

<sup>3</sup> See <http://www.fs.fed.us/database/feis/plants/graminoid/arudon/all.html>.

<sup>4</sup> See Lewandowski, I., Scurlock, J.M.O., Lindvall, E., Christou, M. (2003). The development and current status of perennial rhizomatous grasses as energy crops in the U.S. and Europe. *Biomass and Bioenergy* 25, 335–361.

<sup>1</sup> For purposes of this proposal, the term "giant reed" refers to the species *Arundo donax* and "napier grass" refers to the species *Pennisetum purpureum*.

<sup>2</sup> See the Final Regulatory Impact Analysis in support of the March 2010 RFS Final Rule, available at <http://www.epa.gov/otaq/renewablefuels/420r10006.pdf>.

particularly in Gulf Coast Region of the United States (more specifically the growing region includes Florida and southern portions of Texas, Louisiana, Georgia, Alabama and Mississippi).<sup>5</sup>

### 1. Crop Yields

For the purposes of analyzing the GHG emissions from giant reed and napier grass production, EPA examined crop yields and production inputs in relation to switchgrass to assess the relative GHG impacts. Current national yields for switchgrass are approximately 4.5 to 5 dry tons per acre. Giant reed field trials conducted in Alabama over a 9-year period showed an average yield of 15 dry tons per acre with no nitrogen fertilizer applied after the first year.<sup>6</sup> Fertilized field trials have shown yields around 13 to 28 dry tons per acre in Spain, and 12 dry tons per acre in Italy (based on annual yields of 3, 14, 17, 16, and 12).<sup>7</sup> High yields have been demonstrated with unimproved giant reed populations, and therefore there is potential for increased biomass productivity through improved growing methods and breeding efforts.<sup>8</sup> Napier grass field trials have produced dry biomass yields exceeding 20 tons per acre per year in north-central Florida. Using currently available technology, average yields for full-season napier grass should range from 14 to 18 tons per acre with future improvements expected. Yield depends greatly on the type of cultivar and the amount and distribution of rainfall and fertilization rates. There is potential for increased biomass productivity through improved growing methods and breeding efforts.<sup>9</sup> In general, the yields for both of the energy grasses considered here will have higher yields than switchgrass, so from a crop yield perspective, the switchgrass analysis would be a conservative estimate when comparing

<sup>5</sup> For a map depicting the northern limit for sustained napiergrass production in the United States see Figure 1 in Woodard, K., R. and Sollenberger, L. E. 2008. Production of Biofuel Crops in Florida: Elephantgrass. Institute of Food and Agricultural Sciences, University of Florida. SS AGR 297.

<sup>6</sup> Huang, P., Bransby, D., and Sladden, S. (2010). Exceptionally high yields and soil carbon sequestration recorded for giant reed in Alabama. Poster session presented at: ASA, CSSA, and SSSA 2010 International Annual Meetings, Green Revolution 2.0; 2010 Oct 31–Nov 4; Long Beach, CA.

<sup>7</sup> Mantione, M., D'Agnosta, G.M., Copani, V., Patanè, C., and Cosentino, S.L. (2009). Biomass yield and energy balance of three perennial crops for energy use in the semi-arid Mediterranean environment. *Field Crops Research* 114, 204–213.

<sup>8</sup> Lewandowski et al. 2003.

<sup>9</sup> Based on discussions with industry and USDA and Woodard and Sollenberger (2008).

against the napier grass, and giant reed pathways.

Furthermore, EPA's analysis of switchgrass for the March 2010 RFS rule (75 FR 14791) assumed a 2% annual increase in yield that would result in an average national yield of 6.6 dry tons per acre in 2022. EPA anticipates a similar yield improvement for giant reed and napier grass due to their similarity as perennial grasses and their comparable status as energy crops in their early stages of development. Given this, our analysis assumes an average giant reed yield of approximately 18 dry tons per acre by 2022 and an average napier grass yield of approximately 20 dry tons per acre by 2022.<sup>10</sup> The ethanol yield for all of the grasses is approximately the same so the higher crop yields for napier grass and giant reed result directly in greater ethanol production compared to switchgrass per acre of production.

Based on these yield assumptions, in areas with suitable growing conditions, giant reed would require less than 40% of the land area required by switchgrass to produce the same amount of biomass and napier grass would require approximately 33% of the land area required by switchgrass to produce the same amount of biomass due to their higher yields. Even without yield growth assumptions, their currently higher crop yield rates means the land use required for these crops would be lower than for switchgrass. Therefore less crop area would be converted and displaced resulting in smaller land-use change GHG impacts than that assumed for switchgrass to produce the same amount of fuel. Furthermore, we believe napier grass will have a similar impact on international markets as assumed for switchgrass. Like switchgrass, napier grass is not expected to be traded internationally and its impacts on other crops are expected to be limited. Increased giant reed demand in the U.S. for biofuels is not expected to impact existing markets for giant reed, which are relatively small niche markets (e.g., musical instrument reeds).

### 2. Land Use

In EPA's March 2010 RFS final rule analysis, switchgrass plantings displaced primarily soybeans and wheat, and to a lesser extent hay, rice, sorghum, and cotton. Napier grass, with production focused in the southern United States, is likely to be grown on land once used for pasture, rice, commercial sod, cotton or alfalfa, which

<sup>10</sup> These yields assume no significant adverse climate impacts on world agricultural yields over the analytical timeframe.

would likely have less of an international indirect impact than switchgrass because some of those commodities are not as widely traded as soybeans or wheat. Given that napier grass will likely displace the least productive land first, EPA concludes that the land use GHG impact for napier grass per gallon should be no greater and likely less than estimated for switchgrass. Given that giant reed is in early stages of development as an energy crop, there is limited information on where it will be grown and what crops it will displace. We expect giant reed will displace the least productive land first and would likely have a similar or smaller indirect impact associated with crop displacement than what we assumed for switchgrass.

Considering the total land potentially impacted by all the new feedstocks included in this rulemaking would not impact these conclusions. In the switchgrass ethanol scenario done for the March 2010 RFS final rule, total cropland acres increases by 4.2 million acres, including an increase of 12.5 million acres of switchgrass, a decrease of 4.3 million acres of soybeans, a 1.4 million acre decrease of wheat acres, a decrease of 1 million acres of hay, as well as decreases in a variety of other crops. Given the higher yields of the energy grasses considered here compared to switchgrass, there would be ample land available for production without having any anticipated adverse impacts beyond what was considered for switchgrass production. This analysis took into account the economic conditions such as input costs and commodity prices when evaluating the GHG and land use change impacts of switchgrass.

One commenter stated that by assuming no land use change for giant reed and napier grass, the Agency may have underestimated the increase in GHG emissions that could result from breaking new land. According to the commenter, EPA assumed that these feedstocks will be grown on the least productive land without citing any specific models or studies.

The commenter appears to have misinterpreted EPA's analysis. EPA did not assume these crops would be grown on fallow acres, nor did EPA assume that switchgrass would only be produced on the least productive lands. EPA assumed these crops would be grown on acres similar to switchgrass, and therefore applied the land use change impacts of switchgrass analyzed in the March 2010 RFS final rule. In that rule, EPA provided detailed information on the types of crops (e.g., wheat) that would be displaced by switchgrass. This

analysis took into account the economic conditions such as input costs and commodity prices when evaluating the GHG and land use change impacts of switchgrass.<sup>11</sup>

3. Crop Inputs and Feedstock Transport

EPA also assessed the GHG impacts associated with planting, harvesting, and transporting giant reed and napier grass feedstocks in comparison to switchgrass. Table 1 shows the assumed 2022 commercial-scale production inputs for switchgrass (used in the March 2010 RFS final rule analysis), average giant reed and napier grass production inputs (USDA projections and industry data) and the associated GHG emissions.

Available data gathered by EPA suggest that giant reed may require on average less nitrogen and insecticide than switchgrass, but more phosphorous, potassium, herbicide, diesel, and electricity per unit of biomass. Napier grass may require similar amounts of nitrogen fertilizer application as switchgrass, less phosphorous, potassium and insecticide than switchgrass, but more herbicide, lime, diesel and electricity per unit of biomass. See Table 1 below.

This assessment assumes production of these two new feedstocks uses electricity for irrigation given that growers will likely irrigate when possible to improve yields. Irrigation

rates will vary depending on the timing and amount of rainfall, but for the purpose of estimating GHG impacts of electricity use for irrigation, we assumed a rate similar to what we assumed for other irrigated crops in the Southwest, South Central, and Southeast as shown in Table 1.

Applying the GHG emission factors used in the March 2010 RFS final rule, giant reed production results in slightly lower GHG emissions relative to switchgrass production (a decrease of approximately 2 kg CO<sub>2</sub>eq/mmBtu). Napier grass production results in slightly higher GHG emissions relative to switchgrass production (an increase of approximately 6 kg CO<sub>2</sub>eq/mmBtu).

TABLE 1—PRODUCTION INPUTS AND GHG EMISSIONS FOR SWITCHGRASS, GIANT REED, AND NAPIER GRASS (BIOCHEMICAL ETHANOL), 2022

	Emission factors	Switchgrass		Giant Reed		Napier grass	
		Inputs (per dry ton of biomass)	Emissions (per mmBtu fuel)	Inputs (per dry ton of biomass)	Emissions (per mmBtu fuel)	Inputs (per dry ton of biomass)	Emissions (per mmBtu fuel)
Nitrogen Fertilizer.	3,29 kgCO <sub>2</sub> e/ton of nitrogen.	15.2 lbs .....	3.6 kgCO <sub>2</sub> e .....	5 lbs .....	1 kgCO <sub>2</sub> e .....	10 lbs .....	2.4 kgCO <sub>2</sub> e.
N <sub>2</sub> O .....	N/A .....	N/A .....	7.6 kgCO <sub>2</sub> e .....	N/A .....	4.8 kgCO <sub>2</sub> e .....	N/A .....	7.6 kgCO <sub>2</sub> e.
Phosphorus Fertilizer.	1,12 kgCO <sub>2</sub> e/ton of phosphate.	6.1 lbs .....	0.5 kgCO <sub>2</sub> e .....	7.4 lbs .....	0.6 kgCO <sub>2</sub> e .....	1.1 lbs .....	0.1 kgCO <sub>2</sub> e.
Potassium Fertilizer.	743 kgCO <sub>2</sub> e/ton of potassium.	6.1 lbs .....	0.3 kgCO <sub>2</sub> e .....	7.4 lbs .....	0.4 kgCO <sub>2</sub> e .....	4.0 lbs .....	0.2 kgCO <sub>2</sub> e.
Herbicide .....	23,45 kgCO <sub>2</sub> e/tons of herbicide.	0.002 lbs .....	0.003 kgCO <sub>2</sub> e .....	0.02 lbs .....	0.03 kgCO <sub>2</sub> e .....	0.4 lbs .....	0.6 kgCO <sub>2</sub> e.
Insecticide (average across regions).	27,22 kgCO <sub>2</sub> e/tons of pesticide.	0.025 lbs .....	0.04 kgCO <sub>2</sub> e .....	0 lbs .....	0 kgCO <sub>2</sub> e .....	0 lbs .....	0 kgCO <sub>2</sub> e.
Lime .....	408 kgCO <sub>2</sub> e/ton of lime.	0 lbs .....	0 kgCO <sub>2</sub> e .....	0 lbs .....	0 kgCO <sub>2</sub> e .....	100 lbs .....	2.9 kgCO <sub>2</sub> e.
Diesel .....	97 kgCO <sub>2</sub> e/mmBtu diesel.	0.4 gal .....	0.8 kgCO <sub>2</sub> e .....	1.4 gal .....	2.5 kgCO <sub>2</sub> e .....	1.3 gal .....	2.2 kgCO <sub>2</sub> e.
Electricity (irrigation).	220 kgCO <sub>2</sub> e/mmBtu.	0 kWh .....	0 kgCO <sub>2</sub> e .....	10 kWh .....	1 kgCO <sub>2</sub> e .....	25 kWh .....	2.7 kgCO <sub>2</sub> e.
Total Emissions.	.....	.....	13 kgCO <sub>2</sub> e/mmBtu	.....	11 kgCO <sub>2</sub> e/mmBtu	.....	19 kgCO <sub>2</sub> e/mmBtu.

Assumes 2022 switchgrass yield of 6.59 dry tons/acre and 92.3 gal ethanol/dry ton, 2022 giant reed yield of 18 dry tons/acre and 92.3 gal ethanol/dry ton, and 2022 napier grass yield of 20 dry tons/acre and 92.3 gal ethanol/dry ton. More detail on calculations and assumptions is included in materials to the docket.

GHG emissions associated with distributing giant reed and napier grass feedstocks are expected to be similar to EPA’s estimates for switchgrass feedstock because they are all herbaceous agricultural crops requiring similar transport, loading, unloading, and storage regimes. Our analysis therefore assumes the same GHG impact for feedstock distribution as we assumed for switchgrass, although distributing giant reed and napier grass feedstocks could be less GHG intensive because higher yields could translate to shorter overall hauling distances to storage or biofuel production facilities per gallon or Btu of final fuel produced.

B. Fuel Production, Distribution, and Use

Giant reed and napier grass are suitable for the same conversion processes as other cellulosic feedstocks, such as switchgrass and corn stover. Currently available information on giant reed and napier grass composition shows that their hemicellulose, cellulose, and lignin content are comparable to other crops that qualify under the RFS regulations as feedstocks for the production of cellulosic biofuels. Based on this similar composition as well as conversion yield data provided by industry, we applied the same production processes that were modeled for switchgrass in the March 2010 RFS

final rule (biochemical ethanol, thermochemical ethanol, and Fischer-Tropsch (F-T) diesel)<sup>12</sup> to giant reed and napier grass. We assumed the GHG emissions associated with producing biofuels from giant reed and napier grass are similar to what we estimated for switchgrass and other cellulosic feedstocks. EPA also assumes that the distribution and use of biofuel made from giant reed and napier grass will not differ significantly from similar biofuel produced from other cellulosic sources. As was done for the switchgrass case, this analysis assumes energy grasses grown in the United States for production purposes. If crops were grown internationally, used for biofuel

<sup>11</sup> See Final Regulatory Impact Analysis Chapter 2, February 2010.

<sup>12</sup> The F-T diesel process modeled applies to cellulosic diesel, jet fuel, heating oil, and naphtha.

production, and the fuel was shipped to the U.S., shipping the finished fuel to the U.S. could increase transport emissions. However, based on analysis of the increased transport emissions associated with sugarcane ethanol distribution to the U.S. considered for the 2010 final rule, this would at most add 1–2% to the overall lifecycle GHG impacts of the energy grasses.

### C. Summary

Based on our comparison of switchgrass and the two feedstocks considered here, EPA believes that cellulosic biofuel produced from the cellulose, hemicellulose and lignin portions of giant reed and napier grass has similar or better lifecycle GHG impacts than biofuel produced from the cellulosic biomass from switchgrass. Our analysis suggests that the two feedstocks considered have GHG impacts associated with growing and harvesting the feedstock that are similar to switchgrass. Emissions from growing and harvesting giant reed are approximately 2 kg CO<sub>2</sub>eq/mmBtu lower than switchgrass, and emissions from growing and harvesting napier grass are approximately 6 kg CO<sub>2</sub>eq/mmBtu higher than switchgrass. These are small changes in the overall lifecycle, representing at most a 6% change in the energy grass lifecycle impacts in comparison to the petroleum fuel baseline. Furthermore, the two feedstocks considered are expected to have similar or lower GHG emissions than switchgrass associated with other components of the biofuel lifecycle.

Under a hypothetical worst case, if the calculated increases in growing and harvesting the new feedstocks are incorporated into the lifecycle GHG emissions calculated for switchgrass, and other lifecycle components are projected as having similar GHG impacts to switchgrass (including land use change associated with switchgrass production), the overall lifecycle GHG reductions for biofuel produced from giant reed and napier grass still meet the 60% reduction threshold for cellulosic biofuel, the lowest being a 64% reduction (for napier grass diesel produced through gasification and upgrading) compared to the petroleum baseline. We believe these are conservative estimates, as use of giant reed or napier grass as a feedstock is expected to have smaller land-use GHG impacts than switchgrass, due to their higher yields. The docket for this rule provides additional detail on the analysis of giant reed and napier grass as biofuel feedstocks.

Although this analysis assumes giant reed and napier grass biofuels produced

for sale and use in the United States will most likely come from domestically produced feedstock, we also intend for the approved pathways to cover renewable fuels from giant reed and napier grass grown in other countries. We do not expect incidental amounts of biofuels from feedstocks produced in other nations to impact our assessment that the average GHG emissions reductions will meet the threshold for qualifying as a cellulosic biofuel pathway. Moreover, those countries most likely to be exporting giant reed, or napier grass or biofuels produced from these feedstocks are likely to be major producers which typically use similar cultivars and farming techniques.<sup>13</sup> Therefore, GHG emissions from producing biofuels with giant reed or napier grass grown in other countries should be similar to the GHG emissions we estimated for U.S. giant reed or napier grass, though they could be slightly higher or lower. For example, the renewable biomass provisions under the Energy Independence and Security Act would prohibit direct conversion of previously unfarmed land in other countries into cropland for energy grass-based renewable fuel production. Furthermore, any energy grass production on existing cropland internationally would not be expected to have land use impacts beyond what was considered for switchgrass production. Even if there were unexpected larger differences, EPA believes the small amounts of feedstock or fuel potentially coming from other countries will not impact our threshold analysis.

Based on our assessment of switchgrass in the March 2010 RFS final rule and this comparison of GHG emissions from switchgrass and giant reed and napier grass, we do not expect variations to be large enough to bring the overall GHG impact of fuel made from giant reed or napier grass to come close to the 60% threshold for cellulosic biofuel. Therefore, EPA is including cellulosic biofuel produced from the cellulose, hemicelluloses and lignin portions of giant reed and napier grass under the same pathways for which cellulosic biomass from switchgrass qualifies under the RFS program.

<sup>13</sup> See Williams et al. (Docket Number EPA–HQ–OAR–2011–0542–0631); Letter from Petro Losa to Lisa Jackson and Boris Bershteyn, dated October 10, 2012 (Docket Number EPA–HQ–OAR–2011–0542–0625); Virtue et al. at [www.caws.org.au/awc/2010/awc201011761.pdf](http://www.caws.org.au/awc/2010/awc201011761.pdf) (Docket Number EPA–HQ–OAR–2011–0542–0611); Information on *Arundo donax* (Docket Number EPA–HQ–OAR–2011–0542–0619).

### III. Additional Provisions Addressing Invasiveness Concerns for Giant Reed and Napier Grass

As described the previous section, the lifecycle GHG assessment of the pathways using giant reed and napier grass assumed that these crops would not expand beyond their intended planting area and therefore did not assume any significant GHG emissions resulting from actions to remediate or remove this unintended spread. In response to the January 5, 2012 proposal, EPA received comments raising concerns about the potential for the spread of these species beyond their intended growing area. After considering these comments, EPA has decided to adopt various changes to the RFS regulations to address the potential for giant reed or napier grass to behave as invasive species beyond their intended planting area. The supplemental requirements included in this final rule support the lifecycle assessment discussed in section II above and the determination that biofuels produced with these feedstocks will meet the criteria of advanced and cellulosic biofuels under the RFS regulations.

#### A. Discussion of Comments on Invasive Species

In response to the January 2012 proposed rule, EPA received comments highlighting the concern that by approving certain new feedstock types under the RFS program, EPA would be encouraging their introduction or expanded planting without considering their potential impact as invasive species.<sup>14</sup> Commenters stated that *Arundo donax* (giant reed) and *Pennisetum purpureum* (napier grass) have been identified as invasive species in certain parts of the country. These commenters asserted that giant reed and napier grass “are invasive species within the definition of the Executive Order.”<sup>15</sup> Commenters stated that EPA should not approve the proposed feedstocks until EPA has conducted an invasive species analysis, as required under Executive Order (E.O.) 13112.

EPA also received comments stating that giant reed is not “invasive” as defined by E.O. 13112, since giant reed “only presents problems of invasiveness

<sup>14</sup> Comment submitted by Jonathan Lewis, Senior Counsel, Climate Policy, Clean Air Task Force et al., dated February 6, 2012. Document ID# EPA–HQ–OAR–2011–0542–0118. “Executive Order” refers to Executive Order 13112, Invasive Species, signed February 3, 1999.

<sup>15</sup> Comments submitted by Robert L. Bendick, Director, U.S. Government Affairs, The Nature Conservancy et al., dated February 6, 2012. Document ID# EPA–HQ–OAR–2011–0542–0119.

in riparian areas prone to torrential flooding . . . giant reed has been grown responsibly in numerous places . . . without problems of invasiveness.”<sup>16</sup>

E.O. 13112, signed in February 1999, calls for each federal agency “to the extent practicable and permitted by law . . . not authorize, fund, or carry out actions that it believes are likely to cause or promote the introduction or spread of invasive species in the United States or elsewhere unless, pursuant to guidelines that it has prescribed, the agency has determined and made public its determination that the benefits of such actions clearly outweigh the potential harm caused by invasive species; and that all feasible and prudent measures to minimize risk of harm will be taken in conjunction with the actions.”<sup>17</sup> The Executive Order defines “invasive species” as “an alien species whose introduction does or is likely to cause economic or environmental harm or harm to human health.”

Giant reed is listed as a noxious or invasive species by Texas,<sup>18</sup> Nevada,<sup>19</sup> and California,<sup>20</sup> and these states have programs in place to address invasive species concerns. Several other states also consider giant reed a problem or threat<sup>21</sup> and napier grass is currently not recommended in Florida because of invasive potential.<sup>22</sup> While not prohibiting its planting, Oregon has promulgated strict regulations for the cultivation of giant reed anywhere in the state.<sup>23</sup> Other states, such as North Carolina, have specifically determined that giant reed does not warrant listing as a noxious weed in their state.<sup>24</sup>

In the January 5, 2012 proposal, EPA included the proposed lifecycle analysis of giant reed and napier grass. As discussed below, EPA’s lifecycle analysis of the renewable fuel produced from these feedstocks assumes there are

no significant indirect greenhouse gas emissions associated with the spread and subsequent remediation of these feedstocks when grown for biofuel production for the RFS program. Based on this assumption, the lifecycle analysis does not include any expenditures of energy or other sources of GHGs to remediate the spread of these species, such as mechanical removal or chemical control activities, outside of the locations where it is grown as a renewable fuel feedstock for the RFS program.

EPA is not in a position to estimate the magnitude of GHG emissions that might be associated with any such remediation if the plants are not controlled in this manner at these locations. Given this uncertainty, EPA is not ready at this time to determine the percent reduction in lifecycle GHG emissions and whether it satisfies the threshold reduction in GHGs required under the Act, absent such an assumption. Therefore EPA believes it is prudent to require renewable fuel producers to commit to the necessary long-term mechanisms to demonstrate that their production of renewable fuel from giant reed or napier grass is consistent with this assumption, as a condition of approval as a RIN-generating producer of renewable fuel under the RFS program. By requiring the fuel producer to demonstrate no significant likelihood of spread beyond the planting area EPA believes that the approval of pathways to produce renewable fuel from giant reed or napier grass is not likely to cause or promote the introduction or spread of invasive species in the United States or elsewhere.

#### *B. Registration, Reporting, and Record Keeping Requirements To Address Potential Invasiveness*

EPA is requiring that registration for producers of renewable fuel made from giant reed or napier grass would include submission by the renewable fuel producer of a Risk Mitigation Plan (RMP) that demonstrates measures are being taken to prevent the spread of these species such that the production of giant reed or napier grass will not pose a significant likelihood of spread beyond the planting area designated in the plan for the feedstock used for production of the renewable fuel. Alternatively, the fuel producer could demonstrate that an RMP is not needed because under the circumstances giant reed or napier grass does not pose a significant likelihood of spread beyond the planting area. For example, an RMP may not be needed where the growing area is an area or region outside the

United States where giant reed or napier grass is a native plant and growing it as a feedstock will not lead to any additional spread of the plant. Registration of the producer would therefore require either EPA approval of an RMP or an EPA determination that no plan is needed based on the demonstration noted above. RINs could not be generated for renewable fuel produced using the giant reed or napier grass pathway absent such approval or determination. EPA is also adopting related recordkeeping and reporting requirements. The registration, reporting, and recordkeeping (RRR) requirements are described in more detail below.

The CAA defines renewable fuel as fuel produced from renewable biomass,<sup>25</sup> and the definitions of categories of renewable fuel, i.e., advanced biofuel, biomass-based diesel, and cellulosic biofuel, specify the fuels’ lifecycle GHG emissions compared to baseline gasoline or diesel fuel GHG emissions.<sup>26</sup> The definition of renewable biomass also specifies certain conditions that biomass must meet to be considered renewable biomass.<sup>27</sup> The definitions of renewable biomass and renewable fuels do not specifically address the potential environmental impacts associated with the use of potentially invasive species as feedstocks.<sup>28</sup> Given the text and structure of section 211(o), EPA does not consider environmental factors other than the lifecycle analysis of GHG emissions and the definition of renewable biomass in determining whether a fuel produced from biomass is a renewable fuel for purposes of the RFS program.

The requirements for producers summarized above and discussed in more detail below are a reasonable way to implement this authority when considering the full lifecycle GHG emissions for renewable fuel produced from giant reed and napier grass. EPA has included additional registration, recordkeeping, and reporting requirements in this rule, to address EPA’s lifecycle analysis and concerns related to the spread of invasive species.

<sup>16</sup> Comment submitted by R. Timothy Columbus and Christopher G. Falcone, Steptoe & Johnson LLP on behalf of The Chemtex Group, dated February 13, 2012. Document ID# EPA-HQ-OAR-2011-0542-0124.

<sup>17</sup> <http://www.gpo.gov/fdsys/pkg/FR-1999-02-08/pdf/99-3184.pdf>.

<sup>18</sup> See <http://info.sos.state.tx.us/fids/200701978-1.html>. Accessed on March 30, 2012.

<sup>19</sup> See [http://agri.nv.gov/nwac/PLANT\\_NoXWeedList.htm](http://agri.nv.gov/nwac/PLANT_NoXWeedList.htm). Accessed on May 23, 2012.

<sup>20</sup> See <http://pi.cdfa.ca.gov/pqm/manual/pdf/107.pdf>. Accessed on March 30, 2012.

<sup>21</sup> See <http://www.gaepcc.org/list.cfm>. Accessed on May 23, 2012.

<sup>22</sup> See <http://www.fleppc.org/list/2011PlantList.pdf>. Accessed on May 21, 2013.

<sup>23</sup> See [http://www.oregon.gov/oisc/docs/pdf/arundo603\\_052\\_1206.pdf](http://www.oregon.gov/oisc/docs/pdf/arundo603_052_1206.pdf). Accessed May 20, 2013.

<sup>24</sup> Letter from Stephen W. Troxler to Bob Perciasepe, dated March 26, 2013. See Docket Number EPA-HQ-OAR-2011-0542-0665.

<sup>25</sup> CAA § 211(o)(1)(I).

<sup>26</sup> CAA §§ 211(o)(1)(B), (D), (E).

<sup>27</sup> CAA § 211(o)(1)(I).

<sup>28</sup> Separately, the CAA directs EPA to consider additional factors, including environmental impacts of the production and use of renewable fuels, in the context of determining the required volumes of renewable fuel for years where Congress does not specify volumes, at CAA § 211(o)(2)(B)(ii). In addition, Congress mandated that EPA conduct certain studies and provide reports to Congress on air quality impacts and other issues besides greenhouse gas impacts associated with the RFS program. See CAA § 211(q), (v) and EISA § 204.

EPA developed these additional requirements by building upon a number of state, federal, and local mechanisms that are already in place to reduce the potential invasive impacts of species such as giant reed and napier grass. For example, if producers were to apply for the Biomass Crop Assistance Program (BCAP), USDA would require an environmental assessment that analyzes the risk of invasiveness. In addition, USDA's Conservation Reserve Program (CRP) can also impose restrictions on farmers interested in growing giant reed on CRP land.

Furthermore, invasive species are controlled and regulated under various existing federal and state guidelines. The Animal and Plant Health Inspection Service (APHIS) of the USDA regulates noxious weeds under the authority of the Plant Protection Act (PPA). APHIS names the regulated weeds in the noxious weed regulations (7 CFR part 360) that may not be imported into the United States, or moved interstate, without a special permit. The requirements included in this rule are not intended to negate or supersede any local, state, or federal authority to restrict or ban these feedstocks due to invasiveness or other concerns.

The potential for spread posed by potentially invasive feedstocks may be greatly reduced through the use of best practices.<sup>29</sup> Commenters referenced the voluntary best practices document developed jointly by the North Carolina Department of Agriculture and Consumer Services, the NC State University Cooperative Extension, and the Biofuels Center of North Carolina. Many of the recommendations developed in this document are similar to the best practices USDA describes for the management of similar energy crops such as switchgrass and miscanthus.<sup>30</sup> For example, both USDA and the North Carolina voluntary standards recommend developing management plans that avoid planting at sites without buffer areas and avoid feedstock production in floodplains.

The spread of potentially invasive feedstocks is also controlled by some states. For example, in Florida, biomass plantings are governed by FL Rule 5B-57.011. According to the rule, a permit for biomass plantings is required for two contiguous acres within one parcel of land for any plant used for biomass production. The purpose of the permitting process is to control the

introduction into, or movement within, Florida of plant species intended for biomass plantings. One provision of the process is that no biomass permit shall be issued for any planting of plants on the state noxious weed list or the federal noxious weed list. In 2009, a company, White Technologies LLC, applied for and received a permit to grow 80 acres of giant reed under the Florida program.

Under Oregon State Statutes, Chapter 570, § 570.405, the Oregon Department of Agriculture may establish control areas if after careful investigation it determines that such areas are necessary for the general protection of the horticultural, agricultural or forest industries of the state from diseases, insects, animals or noxious weeds. In March of 2011, the State created a control area for giant reed in Morrow and Umatilla Counties. The regulation, with restrictions, allowed for up to 400 acres of giant reed to be grown in Morrow and Umatilla Counties for providing biomass for a test burn at the Portland General Electric Boardman Power Plant.

Given the potential for greenhouse gas emissions associated with remediation of the spread of giant reed and napier grass, EPA believes it is prudent to allow RINs to be generated for fuel produced from these feedstocks only if they are grown, transported, and used to produce fuel in a manner that is consistent with our lifecycle analysis. EPA is requiring that producers of renewable fuel derived from giant reed and napier grass must submit a Risk Mitigation Plan to ensure that the production of giant reed or napier grass will not pose a significant likelihood of spread beyond the planting area of the feedstock used for production of the renewable fuel. EPA would consult with the appropriate responsible governmental agencies, including USDA, about the RMP, and would approve it if it meets the regulatory criteria described in § 80.1450(b)(1)(ix)(A). The producer or importer may only generate RINs for fuel produced from these feedstocks if the feedstocks were grown and transported in compliance with an EPA approved RMP and if the producer follows the approved RMP. If the RMP for a particular feedstock is not performed, any RINs generated for fuel produced from that feedstock are invalid under § 80.1431, and the generation of invalid RINs is a prohibited act under § 80.1460(b)(2), subject to civil penalties.

Alternately, the producer could submit information and data showing that no RMP is needed because under the circumstances giant reed or napier

grass do not pose a significant likelihood of spread beyond the planting area. For example, EPA would consider not requiring an RMP in cases where the growing area is an area or region outside the United States where giant reed or napier grass is a native plant and growing it as a feedstock will not lead to any additional spread of the plant. While ongoing monitoring will not be required when it is determined that an RMP is not needed, the recordkeeping requirements nonetheless require the producer or importer to notify EPA within five (5) days of any reported growth of the feedstock outside the intended planting area. This will allow EPA to keep track of the growth and possible invasive nature of the feedstock. Also, as per § 80.1450(b)(2), the producer or importer must submit an independent engineering report every three years verifying all the information submitted at registration. This will include the producer or importer's demonstration that the feedstock presents no substantial likelihood of spread beyond the intended planting area.

In either case, EPA would require the producer to submit a letter from the appropriate USDA office with its registration materials, stating USDA's opinions regarding the likelihood of the feedstock spreading beyond the planting area, and the sufficiency of the RMP (if applicable) in addressing and mitigating such likelihood.

EPA, again after consultation with USDA and any other relevant governmental agencies, would make its determination regarding whether the producer's plan demonstrates that there is not a significant likelihood of the feedstock spreading beyond the intended planting area prior to registering the renewable fuel producer and allowing RINs to be generated for fuel produced from that feedstock.

Risk Mitigation Plans would be required to incorporate approaches that are already recognized as highly effective. One highly effective approach to risk mitigation is Hazard Analysis Critical Control Point (HACCP).<sup>31</sup> HACCP examines each phase of an invasive species pathway to identify control and evaluation measures to reduce the likelihood of spread. Applied within a coordinated HACCP strategy or plan, these control and evaluation measures reinforce each other. To the extent appropriate, HACCP should be incorporated into a Risk Mitigation Plan. Also as part of the RMP, the producer would demonstrate how the

<sup>29</sup> Comment submitted by the Biofuels Center of North Carolina and the Institute for Sustainable and Renewable Resources, dated February 13, 2012. Document ID# EPA-HQ-OAR-2011-0542-0123.

<sup>30</sup> See [http://www.nrcs.usda.gov/Internet/FSE\\_DOCUMENTS/stelprdb1044768.pdf](http://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb1044768.pdf).

<sup>31</sup> See <http://www.habitat.noaa.gov/pdf/HACCP%20Training%20Manual.pdf>.

use of best management practices (BMPs), such as those developed by the Invasive Species Advisory Committee<sup>32</sup> for any species, by USDA for miscanthus,<sup>33</sup> and by the State of Oregon for *Arundo donax*,<sup>34</sup> will be used by the feedstock grower and how such practices will minimize the potential spread of the renewable fuel feedstock. BMPs include the development and implementation of mitigation strategies and plans to minimize escape and other impacts (e.g., minimize soil disturbance), incorporate desirable traits (e.g., sterility or reduced seed production), develop and put in place dispersal mitigation protocols prior to cultivation of biofuel plants in each region or ecosystem, develop multiple year eradication protocols for rapid removal of biofuel crops if they disperse beyond desired crop rotation period, and develop plans for early detection and rapid response (EDRR).<sup>35</sup> EDRR efforts should also be incorporated into an RMP; such efforts should demonstrate that the likelihood that invasions could be halted while still localized and identify and employ cooperative networks, communication forums and consultation processes through which federal, state, and local agencies can work with other stakeholders to reduce the risk of biological invasion. There are significant geographic gaps in baseline distribution and abundance data for invasive species including giant reed and napier grass. It may be difficult to determine what plants gave rise to a newly found population and populations may go undetected for long periods. For this reason, early detection rapid response efforts should be conducted cooperatively with a priority on halting the spread of the species. The RMP should include provisions for the closure of the site once it is no longer used for production of feedstock for biofuel use under the RFS program or upon abandonment by the feedstock grower, including the destruction and removal of all remaining feedstock. Site decommissioning planning is also required for sites that have demonstrated that they do not need an RMP to prevent escapes after active crop

production and management operations have stopped.

Furthermore, the RMP should include an on-going monitoring and reporting component. The monitoring would cover the presence or absence of the giant reed or napier grass, and the planting locations prior to and during feedstock cultivation. Monitoring should be done during the growing season, as well as extend for a sufficient period after the field is no longer used for feedstock production to ensure no remnants of giant reed or napier grass survive or spread. The details of a monitoring and reporting plan, including the party responsible for collecting and overseeing monitoring data, will be specific to the project and planting site, and should account for and respond to any applicable local, state or federal regulations. The area that needs to be monitored would also be approved by EPA, in consultation with the appropriate responsible officials. The area to be monitored should be sufficient to detect any potential spread of the feedstock, both surrounding the field of production and feedstock storage sites, along the transportation route, and around the biofuel production facility.

EPA is requiring the use of a third party auditor, independent of the feedstock grower and renewable fuel producer to audit the monitoring activities and reporting done by the renewable fuel producer under the RMP on an annual basis as part of the producer or importer's fourth quarterly report as set out in § 80.1451(h)(5), subject to approval of a different frequency by EPA. For growers who are new to growing or harvesting invasive feedstocks, more frequent monitoring or reporting may be required for the first growing cycle. It will be the responsibility of the renewable fuel producer to identify this competent independent third party as part of its registration application. Any future changes to the use of a different independent third party, or changes to any EPA approved management or monitoring mechanisms or practices must be documented in a revised RMP, reviewed, and approved by EPA in advance of the change. RINs generated for renewable fuel produced from giant reed or napier grass without EPA's approval for the RMP (where such a plan is required) would be invalid.

The recordkeeping and reporting provisions would require producers to obtain documentation about giant reed or napier grass feedstocks from their feedstock supplier(s) and take the measures necessary to ensure that they know the source of their feedstocks and

can demonstrate to EPA that they were produced in compliance with an RMP or from land that EPA has determined will not create a significant likelihood of spread beyond the planting area of the feedstock used for production of the renewable fuel.

Specifically, the reporting requirements for producers who generate RINs from these feedstocks include a certification on renewable fuel production reports that the feedstock was grown, harvested, transported, and stored in compliance with an RMP or from land that EPA has determined will not create a significant likelihood of spread beyond the planting area. Additionally, producers will be required to include with their quarterly reports a summary of the types and quantities of these feedstocks used throughout the quarter, as well as maps of the land from which the feedstocks used in the quarter were harvested. EPA's recordkeeping provisions require renewable fuel producers to maintain sufficient records to support their claims that their feedstocks were grown and transported in compliance with an RMP or from land that EPA has determined will not create a significant likelihood of spread beyond the planting area.

If submitting an RMP, the renewable fuel producer would also submit a number of documents such as a letter documenting the feedstock grower's compliance with all of the relevant federal, state, regional, and local requirements related to invasive species, a copy of all state and local growing permits held by the feedstock grower, and a communication plan for notifying federal, state, and local authorities if the feedstock is detected outside the intended planting areas. Finally, the fuel producer would submit a copy of the agreement between itself, the feedstock grower, and any intermediaries responsible for the harvesting, transport and storage of the feedstock, establishing the parties' rights and duties related to the RMP and any other activities and liability associated with the prevention of the spread of the feedstock. It is essential that the feedstock grower, fuel producer, and any intermediaries responsible for the harvesting, transport, and storage of the feedstock are clearly on notice of their relative rights and duties in this situation because the regulations will require the fuel producer to exercise a level of responsibility for and oversight of the feedstock production, harvest, transport and storage that may not normally exist in a buy-sell contract for agricultural products. Finally, pursuant to existing regulations, EPA may require additional information as needed at the

<sup>32</sup> See [http://www.invasivespecies.gov/home\\_documents/BiofuelWhitePaper.pdf](http://www.invasivespecies.gov/home_documents/BiofuelWhitePaper.pdf).

<sup>33</sup> See [http://www.nrcs.usda.gov/Internet/FSE\\_DOCUMENTS/stelprdb1044768.pdf](http://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb1044768.pdf).

<sup>34</sup> See [http://www.oregon.gov/oisc/docs/pdf/arundo603\\_052\\_1206.pdf](http://www.oregon.gov/oisc/docs/pdf/arundo603_052_1206.pdf).

<sup>35</sup> [http://www.invasivespecies.gov/global/EDRR/EDRR\\_documents/Guidelines%20for%20Early%20Detection%20&%20Rapid%20Response.pdf](http://www.invasivespecies.gov/global/EDRR/EDRR_documents/Guidelines%20for%20Early%20Detection%20&%20Rapid%20Response.pdf).

time of registration, which may be especially appropriate when the agency considers the approval of a feedstock with risk of invasiveness.

As part of the registration process, EPA will require information on the financial resources or other financial mechanism available to finance reasonable remediation activities and may require, where appropriate, the fuel producer to include in an RMP a demonstration that there is an adequate mechanism (such as a state-administered fund, bond, or certificate of deposit) to ensure the availability of financial resources sufficient to cover reasonable potential remediation costs associated with the spread of giant reed or napier grass beyond the intended planting areas. EPA would consult with USDA and, as appropriate, other federal agencies on the need for and, where appropriate, the extent of financial resources required for adequate assurances of containment and remediation in the event of a spread. USDA's letter on the suitability of an RMP (noted above) should include these recommendations considering site specific characteristics. The primary purpose of such a mechanism would be to ensure that the fuel producer has the necessary finances to ensure that giant reed or napier grass does not spread beyond the intended borders. In this way, we believe such a mechanism would be consistent with the lifecycle analyses for these pathways, which assume no significant indirect GHG emissions from remediation activities. Since the expected result would be additional assurance that preventive measures are taken, it would further decrease the likelihood of spread and associated remediation activities occurring, which is consistent with the assumption of the lifecycle analysis. EPA believes that a robust RMP as discussed above, combined with the additional measures to prevent spread of the feedstock resulting from a financial assurance mechanism, would be consistent with EPA's assumption of no significant indirect greenhouse gas emissions associated with the spread and subsequent remediation of these feedstocks grown for biofuel production for the RFS program.

To further reduce the likelihood of growth beyond the planting area for these feedstocks, EPA is also including additional consequences for producers whose feedstock grows beyond the intended planting area. The reporting requirements include a requirement that the producer notify EPA and USDA and relevant agencies identified in the communications plan as soon as practicable after detection of

unintended growth outside the planted area. We are also including provisions wherein growth outside the planting area could result in a suspension of the producer's registration and ability to generate RINs via that pathway until remediation activities were completed and the potential for further spread was addressed. Prohibiting the generation of RINs in this situation would provide an incentive for the producer to conduct better oversight of the feedstock supplier and prevent unintended growth beyond the planting area, and would also ensure that the generation of RINs via these pathways is consistent with the underlying lifecycle analysis. Also, as noted above, if the RMP is not performed as intended, any RINs generated for fuel produced from that feedstock are invalid under § 80.1431, and the generation of such invalid RINs is a prohibited act subject to civil penalties. Those penalties would be assessed according to CAA § 211(d)(1), amounting to up to \$37,500 per violation per day plus any economic benefit or savings resulting from the violations.

#### **IV. Statutory and Executive Order Reviews**

##### *A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a "significant regulatory action." Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to OMB recommendations have been documented in the docket for this action.

##### *B. Paperwork Reduction Act*

The modifications to the RFS regulations contained in this rule are within the scope of the information collection requirements previously submitted to the Office of Management and Budget (OMB) for the RFS regulations.

OMB has approved the information collection requirements contained in the existing regulations at 40 CFR part 80, subpart M under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control numbers 2060-0637 and 2060-0640. 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 today's 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 action on small entities, I certify that this rule will not have a significant economic impact on a substantial number of small entities. This rule will not impose any new requirements on small entities. The relatively small changes this rule makes to the RFS regulations do not impact small entities.

##### *D. Unfunded Mandates Reform Act*

This rule does not contain a federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. We have determined that this action will not result in expenditures of \$100 million or more for the above parties and thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA.

This 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. It only applies to gasoline, diesel, and renewable fuel producers, importers, distributors and marketers and makes relatively minor corrections and modifications to the RFS regulations.

##### *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 applies to gasoline, diesel, and renewable fuel producers, importers, distributors and marketers and makes relatively minor corrections and modifications to the RFS regulations. Thus, Executive Order 13132 does not apply to this action.

*F. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)*

This rule does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It applies to gasoline, diesel, and renewable fuel producers, importers, distributors and marketers. This action makes relatively minor corrections and modifications to the RFS regulations, and does not impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this action.

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

EPA interprets E.O. 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 E.O. has the potential to influence the regulation. This action is not subject to E.O. 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

*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. This rulemaking does not change any programmatic structural component of the RFS regulatory requirements. This rulemaking does not add any new requirements for obligated parties under the program or mandate the use of any of the new pathways contained in the rule. This rulemaking only makes a determination to qualify new fuel pathways under the RFS regulations, creating further opportunity and flexibility for compliance with the Energy Independence and Security Act of 2007 (EISA) mandates.

*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 action does not involve technical standards. Therefore, EPA did not consider 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 (E.O.) 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 rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. These amendments would not relax the control measures on sources regulated by the RFS regulations and therefore would not cause emissions increases from these sources.

*K. Executive Order 13112: Invasive Species*

Executive Order (E.O.) 13112 (64 FR 6183 (Feb. 3, 1999)) calls for each Federal agency to not take actions that it believes are likely to cause or promote the introduction or spread of invasive species unless the agency has determined its determination that the benefits of such actions clearly outweigh the potential harm caused by

invasive species. EPA has determined that this rule is not likely to cause or promote the introduction or spread of invasive species, since this rulemaking requires the demonstration by the renewable fuel producer that the growth of *Arundo donax* or *Pennisetum purpureum* will not pose a significant likelihood of spread beyond the planting area of the feedstock used for production of the renewable fuel.

*L. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

*V. Statutory Provisions and Legal Authority*

Statutory authority for the rule finalized today can be found in section 211(o) of the Clean Air Act, 42 U.S.C. 7545(o). Additional support for today’s rule comes from Section 301(a) of the Clean Air Act, 42 U.S.C. 7414, 7542, and 7601(a).

**List of Subjects in 40 CFR Part 80**

Environmental protection, Administrative practice and procedure, Agriculture, Air pollution control, Confidential business information, Diesel Fuel, Energy, Forest and Forest Products, Fuel additives, Gasoline, Imports, Penalties, Petroleum, Reporting and recordkeeping requirements.

Dated: June 28, 2013.

**Bob Perciasepe,**  
Acting Administrator.

For the reasons set forth in the preamble, 40 CFR part 80 is amended as follows:

**PART 80—REGULATION OF FUELS AND FUEL ADDITIVES**

■ 1. The authority citation for part 80 continues to read as follows:

**Authority:** 42 U.S.C. 7414, 7521(1), 7545 and 7601(a).

■ 2. Section 80.1426 is amended by revising Rows K, L, and N of Table 1 in paragraph (f)(1), and by adding paragraph (f)(14) to read as follows:

**§ 80.1426 How are RINs generated and assigned to batches of renewable fuel by renewable fuel producers or importers?**

(1) \* \* \*

\* \* \* \* \*

(f) \* \* \*

TABLE 1 TO § 80.1426—APPLICABLE D CODES FOR EACH FUEL PATHWAY FOR USE IN GENERATING RINS

Fuel type	Feedstock	Production process requirements	D-Code
K Ethanol	Cellulosic Biomass from crop residue, slash, pre-commercial thinnings and tree residue, annual covercrops, switchgrass, miscanthus, Energy cane, <i>Arundo donax</i> , and <i>Pennisetum purpureum</i> ; cellulosic components of separated yard waste; cellulosic components of separated food waste; and cellulosic components of separated MSW.	Any	3
L Cellulosic diesel, jet fuel and heating oil.	Cellulosic Biomass from crop residue, slash, pre-commercial thinnings and tree residue, annual covercrops, switchgrass, miscanthus, energy cane, <i>Arundo donax</i> , and <i>Pennisetum purpureum</i> ; cellulosic components of separated yard waste; cellulosic components of separated food waste; and cellulosic components of separated MSW.	Any	7
N Naphtha	Cellulosic biomass from switchgrass, miscanthus, energy cane, <i>Arundo donax</i> , and <i>Pennisetum purpureum</i> .	Gasification and up-grading.	3

(14) A producer or importer of renewable fuel using giant reed (*Arundo donax*) or napier grass (*Pennisetum purpureum*) as a feedstock may generate RINs for that renewable fuel if:

- (i) The feedstock is produced, managed, transported, collected, monitored, and processed according to a Risk Mitigation Plan approved by EPA under the registration procedures specified in § 80.1450(b)(1)(x)(A); or,
- (ii) EPA has determined that there is not a significant likelihood of spread beyond the planting area of the feedstock used for production of the renewable fuel. Any determination that *Arundo donax* or *Pennisetum purpureum* does not present a significant likelihood of spread beyond the planting area must be based upon clear and compelling evidence, including information and supporting data submitted by the producer. Such a determination must be made by EPA as specified in § 80.1450(b)(1)(x)(B).

■ 3. Section 80.1450 is amended by adding paragraph (b)(1)(x) to read as follows:

**§ 80.1450 What are the registration requirements under the RFS program?**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(x)(A) For a producer of renewable fuel made from *Arundo donax* or *Pennisetum purpureum* per § 80.1426(f)(14)(i):

(1) A Risk Mitigation Plan (Plan) that demonstrates the growth of *Arundo donax* or *Pennisetum purpureum* will not pose a significant likelihood of spread beyond the planting area of the feedstock used for production of the renewable fuel. The Plan must identify and incorporate best management practices (BMPs) into the production, management, transport, collection, monitoring, and processing of the feedstock. To the extent practicable, the Risk Mitigation Plan should utilize a Hazard Analysis Critical Control Point (HACCP) approach to examine each phase of the pathway to identify spread reduction steps. BMPs should include the development of mitigation strategies and plans to minimize escape and other impacts (e.g., minimize soil disturbance), incorporate desirable traits (e.g., sterility or reduced seed production), develop and implement dispersal mitigation protocols prior to cultivation, develop multiple year eradication controls. Eradication controls should follow an approach of early detection and rapid response (EDRR) to unintended spread. ED RR efforts should demonstrate the likelihood that invasions will be halted while still localized and identify and employ cooperative networks, communication forums, and consultation processes with federal, state, and local agencies. The Risk Mitigation Plan must provide for the following:

(i) Monitoring and reporting data for a period prior to planting that is sufficient to establish a baseline, through crop production, and extending beyond crop production for a sufficient period after the field is no longer used for feedstock production to ensure no remnants of giant reed or napier grass survive or spread.

(ii) Monitoring must include the area encompassing the feedstock growing areas, the transportation corridor between the growing areas and the renewable fuel production facility, and the renewable fuel production facility, extending to the distance of potential propagation of the feedstock species, or further if necessary.

(iii) Monitoring must reflect the likelihood of spread specific to the feedstock.

(iv) A closure plan providing for the destruction and removal of feedstock from the growing area upon abandonment by the feedstock grower or end of production.

(v) A plan providing for an independent third party who will audit the monitoring and reporting conducted in accordance with the Plan on an annual basis, subject to approval of a different frequency by EPA.

(2) A letter from the United States Department of Agriculture (“USDA”) to the renewable fuel producer stating USDA’s conclusions and the bases therefore regarding whether the *Arundo donax* or *Pennisetum purpureum* does or does not present a significant likelihood of spread beyond the

planting area of the feedstock used for production of the renewable fuel as proposed by the producer. This letter shall also include USDA's recommendation of whether it is appropriate to require the use of a financial mechanism to ensure the availability of financial resources sufficient to cover reasonable potential remediation costs associated with the invasive spread of giant reed or napier grass beyond the intended planting areas. In coordination with USDA, EPA shall identify for the producer the appropriate USDA office from which the letter should originate.

(3) Identification of all federal, state, regional, and local requirements related to invasive species that are applicable for the feedstock at the growing site and at all points between the growing site and the fuel production site.

(4) A copy of all state and local growing permits held by the feedstock grower.

(5) A communication plan for notifying EPA's Office of Transportation and Air Quality, USDA, adjacent federal land management agencies, and any relevant state, tribal, regional, and local authorities as soon as possible after identification of the issue if the feedstock is detected outside planted area.

(6) A copy of the agreement between the feedstock grower and fuel producer establishing all rights and duties of the parties related to the Risk Mitigation Plan and any other activities and liability associated with the prevention of the spread of *Arundo donax* and/or *Pennisetum purpureum* outside of the intended planting area.

(7) A copy of the agreement between the fuel producer and an independent third party describing how the third party will audit the monitoring and reporting conducted in accordance with the Risk Mitigation Plan on an annual basis, subject to approval of a different timeframe by EPA.

(8) Information on the financial resources or other financial mechanism (such as a state-administered fund, bond, or certificate of deposit) that would be available to finance reasonable remediation activities associated with the potential spread of giant reed or napier grass beyond the intended planting areas, and information on whether it is necessary to have any further such resources or mechanism. EPA may require a demonstration that there is an adequate financial mechanism (such as a state-administered fund, bond, or certificate of deposit) to ensure the availability of financial resources sufficient to cover reasonable potential remediation costs

associated with the spread of giant reed or napier grass beyond the intended planting areas.

(9) EPA may require additional information as appropriate.

(B) For a producer of renewable fuel made from *Arundo donax* or *Pennisetum purpureum* per § 80.1426(f)(14)(ii):

(1) Clear and compelling evidence, including information and supporting data, demonstrating that *Arundo donax* or *Pennisetum purpureum* does not present a significant likelihood of spread beyond the planting area of the feedstock used for production of the renewable fuel. Evidence must include data collected from similar environments (soils, temperatures, precipitation, USDA Hardiness Zones) as the proposed feedstock production project site and accepted by the scientific community. Such a demonstration should include consideration of the elements of a Risk Mitigation Plan set forth in paragraph (b)(1)(x)(A) of this section, fully disclose the potential invasiveness of the feedstock, provide a closure plan for the destruction and removal of feedstock from the growing area upon abandonment by the feedstock grower or end of production, and explain why a Risk Mitigation Plan is not needed to make the required determination.

(2) A letter from the United States Department of Agriculture ("USDA") to the renewable fuel producer stating USDA's conclusions and the bases therefore regarding whether the *Arundo donax* or *Pennisetum purpureum* does or does not present a significant likelihood of spread beyond the planting area of the feedstock used for production of the renewable fuel as proposed by the producer or importer. In coordination with USDA, EPA shall identify for the producer the appropriate USDA office from which the letter should originate.

(C) EPA may suspend a producer's registration for purposes of generating RINs for renewable fuel using *Arundo donax* or *Pennisetum purpureum* as a feedstock if such feedstock has spread beyond the intended planting area.

\* \* \* \* \*

■ 4. Section 80.1451 is amended by adding paragraph (h) to read as follows:

**§ 80.1451 What are the reporting requirements under the RFS program?**

\* \* \* \* \*

(h) Producers or importers of renewable fuel made from *Arundo donax* or *Pennisetum purpureum* per § 80.1426(f)(14) must report all the following:

(1) Any detected growth of *Arundo donax* or *Pennisetum purpureum* outside the intended planting area, within 5 business days after detection and in accordance with the Risk Mitigation Plan, if applicable.

(2) As available, any updated information related to the Risk Mitigation Plan, as applicable. An updated Risk Mitigation Plan must be approved by the Administrator in consultation with USDA prior to its implementation.

(3) On an annual basis, a description of and maps or electronic data showing the average and total size and prior use of lands planted with *Arundo donax* or *Pennisetum purpureum*, the average and total size and prior use of lands set aside to control the invasive spread of these crops, and a description and explanation of any change in land use from the previous year. (4) On an annual basis, the report from an independent third party auditor evaluating monitoring and reporting activities conducted in accordance with the Risk Mitigation Plan, as applicable subject to approval of a different frequency by EPA.

(5) Information submitted pursuant to paragraphs (h)(3) and (h)(4) of this section must be submitted as part of the producer or importer's fourth quarterly report, which covers the reporting period October–December, according to the schedule in paragraph (f)(2) of this section.

■ 5. Section 80.1454 is amended by adding paragraph (b)(7) to read as follows:

**§ 80.1454 What are the recordkeeping requirements under the RFS program?**

\* \* \* \* \*

(b) \* \* \*

(7) For any producer of renewable fuel made from *Arundo donax* or *Pennisetum purpureum* per § 80.1426(f)(14), all the following:

(i) Records related to all requirements and duties set forth in the registration documents described in § 80.1450(b)(1)(x)(A), including but not limited to the Risk Mitigation Plan, monitoring records and reports, and adherence to state, local and federal invasive species requirements and permits.

(ii) Records associated with feedstock purchases and transfers that identify where the feedstocks were produced and are sufficient to verify that feedstocks used were produced and transported in accordance with an EPA approved Risk Mitigation Plan or were produced on land that the EPA determined does not present a significant likelihood of invasive spread

beyond the planting area of the feedstock used for production of the renewable fuel, including all the following:

(A) Maps or electronic data identifying the boundaries of the land where each type of feedstock was produced.

(B) Bills of lading, product transfer documents, or other commercial documents showing the quantity of feedstock purchased from each area identified above, and showing each transfer of custody of the feedstock from the location where it was produced to the renewable fuel production facility.

\* \* \* \* \*

[FR Doc. 2013-16488 Filed 7-10-13; 8:45 am]

BILLING CODE 6560-50-P

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

#### 49 CFR Part 395

[FMCSA-2013-0283]

#### Hours of Service; Limited 90-Day Waiver From the 30-Minute Rest Break Requirement for the Transportation of Livestock

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice; grant of waiver.

**SUMMARY:** FMCSA grants a limited 90-day waiver from the 30-minute rest break provision of the Federal hours-of-service (HOS) regulations for the transportation of livestock. Several associations representing various segments of the livestock industry raised concerns about the risks to the health of animals from rising temperatures inside livestock trucks during drivers' mandatory 30-minute break, especially in light of long-range weather forecasts for above-normal temperatures for July, August and September 2013. The industry requested relief, and the Agency has determined that it is appropriate to grant a limited 90-day waiver for this period to ensure the well-being of the Nation's livestock during interstate transportation. The Agency has determined that the waiver, based on the terms and conditions imposed, would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such waiver. This waiver preempts inconsistent State and local requirements.

**DATES:** The waiver is effective July 11, 2013. The waiver expires on October 9, 2013.

#### FOR FURTHER INFORMATION CONTACT:

Thomas L. Yager, Chief, Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave. SE., Washington, DC 20590. Email: [MCPSD@dot.gov](mailto:MCPSD@dot.gov). Phone (202) 366-4325.

#### SUPPLEMENTARY INFORMATION:

##### Legal Basis

The Transportation Equity Act for the 21st Century (TEA-21) (Public Law 105-178, 112 Stat. 107, June 9, 1998) provides the Secretary of Transportation (the Secretary) the authority to grant waivers from any of the Federal Motor Carrier Safety Regulations (FMCSRs) issued under section 31136 or chapter 313 of title 49, United States Code, to a person(s) seeking regulatory relief. (49 U.S.C. 31136, 31315(a)) The Secretary must make a determination that the waiver is in the public interest, and that it is likely to achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained in the absence of the waiver. Individual waivers may only be granted to a person for a specific unique, non-emergency event, for a period up to three months. TEA-21 authorizes the Secretary to grant waivers without requesting public comment, and without providing public notice.

The Administrator of FMCSA has been delegated authority under 49 CFR 1.87(f) to carry out the functions vested in the Secretary by 49 U.S.C. chapter 311, subchapters I and III, relating to commercial motor vehicle programs and safety regulation.

##### Background

On December 27, 2011 (76 FR 81133), FMCSA published a final rule amending its hours-of-service regulations for drivers of property-carrying commercial motor vehicles (CMVs). The final rule included several changes to the HOS regulations including a new provision requiring drivers to take a rest break during the work day under certain circumstances. Drivers may drive only if 8 hours or less have passed since the end of the driver's last off-duty period of at least 30 minutes. FMCSA did not specify when drivers must take the 30-minute break, but the rule requires that they wait no longer than 8 hours after the last off-duty period of that length or longer to take that break. Drivers that already take shorter breaks during the work day could comply with the rule by taking one of the shorter breaks and extending it to 30 minutes. The new requirement took effect on July 1, 2013.

#### National Pork Producers Council Waiver Request

On June 19, 2013, FMCSA received a request for a 90-day waiver and application for an exemption from the National Pork Producers Council (the Council) on behalf of the following organizations:

- Agricultural and Food Transporters Conference of the American Trucking Associations;
- American Farm Bureau Federation;
- American Feed Industry Association;
- American Meat Institute;
- Livestock Marketing Association;
- National Cattlemen's Beef Association;
- National Chicken Council;
- National Milk Producers Federation;
- National Pork Producers Council;
- National Turkey Federation;
- North American Meat Association;
- Professional Rodeo Cowboys Association; and,
- U.S. Poultry and Egg Association.

The Council stated that complying with the 30-minute rest break rule will cause livestock producers and their drivers irreparable harm, place the health and welfare of the livestock at risk, and provide no apparent benefit to public safety, while forcing the livestock industry and their drivers to choose between the humane handling of animals or compliance with the rule.

The Council explained that the process of transporting livestock, whether to slaughter, transfer of ownership, or for purposes of breeding or simply finding forage for feed, is a significant concern to the agricultural industry. The animals face a variety of stresses including temperature, humidity, and weather conditions.

During the summer months, exposure to heat is one of the greatest concerns in maintaining the animals' well-being. This is especially challenging for the transportation of pigs because these animals do not sweat and are subject to heat stress. When heat stress occurs, a pig's body temperature rises to a level that it cannot control through its normal panting mechanisms. Under the industry's guidelines, drivers are directed to avoid stopping in temperatures greater than 80 degrees. Drivers are advised to stop only when animals will be immediately unloaded or when safety becomes an issue. If the vehicle must be stopped, drivers are required to stay with the animals and provide them with water to help keep them cool.

When temperature and humidity result in a heat index greater than or

equal to 100 degrees Fahrenheit, cattle are also placed at significant health risk. When cattle are stressed under extreme heat conditions, they are more likely to become non-ambulatory, sick, and even die. Non-ambulatory cattle are banned from entering the food system. Current industry guidelines recommend that drivers avoid stopping as internal trailer temperatures will then increase rapidly because of the loss of airflow through the trailer and heat production from the animals. A copy of the Council's waiver request is included in the docket referenced at the beginning of this notice.

**Long-Range Weather Forecasts**

The FMCSA reviewed information from the National Oceanic and Atmospheric Administration's National Weather Service (NOAA). The NOAA posts long-range weather forecasts at its Web site, <http://www.nws.noaa.gov>. NOAA forecasts for the Western half of the United States for July, August and September predict above normal temperatures. Above normal temperatures are also forecast for the northeastern part of the Nation as well as the southern half of Florida. FMCSA believes the weather forecasts increase the need to protect livestock during transportation this summer.

**Population of Drivers and Carriers Engaged in Livestock Transportation**

Although the Council did not provide information on the number of carriers and drivers to be included in the waiver it requested, FMCSA reviewed its Motor Carrier Management Information System (MCMIS) to determine this information. MCMIS includes the information reported to the Agency by carriers submitting the Motor Carrier Identification Report (FMCSA Form MCS-150), required by 49 CFR 390.19. As of July 3, 2013, MCMIS lists 64,892 motor carriers that identified livestock as a type (though not necessarily the only type) of cargo they transported. These carriers operate 187,606 vehicles

and employ 242,676 drivers. And 126,471 of these drivers operate within a 100 air-mile radius of their work-reporting location—a fact that is important because existing statutory exemptions provide relief from the HOS requirements for these drivers. A final rule published on March 14, 2013, extended the 100 air-mile radius previously in effect to 150 air miles (*see* 49 CFR 395.1(k), 78 FR 16189). Therefore, the waiver would not be applicable to them, leaving fewer than 116,205 drivers likely to utilize this relief from the 30-minute rest break provision.

Section 345 of the National Highway System Designation Act of 1995 (the NHS Act) (Pub. L. 104-69, 109 Stat. 613), enacted on November 28, 1995, implemented by 49 CFR 395.1(k), provided relief from the HOS requirements for drivers transporting agricultural commodities or farm supplies for agricultural purposes in a State if "the transportation is limited to an area within a 100 air-mile radius from the source of the commodities or the distribution point for the farm supplies and is during the planting and harvesting seasons within such State, as determined by the State."

Section 32101(d) of "Moving Ahead for Progress in the 21st Century Act" (MAP-21) (Pub. L. 112-141, 126 Stat. 405), enacted on July 6, 2012, expanded that 100 air-mile radius provided by the NHS Act to 150 air miles; FMCSA implemented the provision with a final rule published on March 14, 2013 (78 FR 16189).

In addition, section 32934 of MAP-21 provides statutory exemptions from most of the FMCSRs, including those pertaining to HOS, the commercial driver's license and driver qualification requirements, for drivers of "covered farm vehicles" (CFVs), a term defined in detail by MAP-21. Among other things, CFV drivers must be owners or operators of farms or ranches, or their employees or family members; for-hire motor carriers are not eligible for the

exemptions provided by section 32934. These exemptions are explained in the March 14, 2013, final rule mentioned above.

**Analysis of Fatal Crashes Involving Carriers Transporting Livestock**

FMCSA reviewed "Trucks Involved in Fatal Accidents Factbook 2008" (UMTRI-2011-15, March 2011) published by the University of Michigan Transportation Research Institute's Center for National Truck and Bus Statistics to determine the prevalence of crashes involving the transportation of livestock. A copy of this publication is included in the docket referenced at the beginning of this notice.

In 2008, there were 4,352 trucks involved in fatal crashes and 20 of those vehicles were transporting live animals, with 13 of the vehicles reported as having a livestock cargo body. There were 13 other vehicles with an empty livestock cargo body involved in fatal crashes. Overall, trucks transporting live animals represent less than one half of one percent of the trucks involved in fatal crashes.

The Trucks Involved in Fatal Accidents (TIFA) report showed that 26 livestock cargo body vehicles, all of them tractor-semitrailer combinations, were involved in fatal crashes. Of that number, 13 livestock vehicles were transporting live animals at the time of the crash. Seven instances of vehicles transporting live animals being at the time of the fatal crash involved CMVs with a body type reported as something other than livestock, based on the information above.

About one-third of the 2008 crashes involving livestock transporters occurred on trips of 100 miles or less so the driver probably was exempt from the HOS requirements. With the recent expansion of the HOS exemption from 100 air-miles to 150 air-miles, any crashes that occur in the future are even more likely to occur within the exempt radius.

FATAL TRUCK INVOLVEMENTS BY TRIP TYPE AND LIVESTOCK CARGO BODY TYPE

Trip type (distance in miles)	Cargo body: livestock, tractor combination	Statutory exemption from HOS rules (< 150 miles)
Local .....	3	Yes.
51-100 .....	2	Yes.
101-150 .....	3	Yes.
151-200 .....	3	No. Drivers may be able to achieve compliance with the 30-minute break requirement because of limited distance.
201-500 .....	10	No.
>500 miles .....	4	No.
Unknown .....	1	Unknown.
Total .....	26	—

Given this information, FMCSA does not believe a limited 90-day waiver from the 30-minute rest break requirement would decrease the level of safety on the Nation's highways.

#### FMCSA Determination

In consideration of the above, FMCSA has determined that it is in the public interest to provide a limited waiver from the 30-minute break requirement in the Federal HOS regulations for interstate motor carriers transporting livestock. A review of the most recent MCMIS and TIFA data provides a basis for determining that a limited waiver, based on the terms and conditions imposed, would achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.

#### Terms and Conditions of the Waiver

The FMCSA provides a limited 90-day waiver from the 30-minute break provision of the HOS rules for drivers transporting livestock as defined in the Emergency Livestock Feed Assistance Act of 1988, as amended (the 1988 Act) [7 U.S.C. 1471(2)]. The term "livestock" as used in this waiver means "cattle, elk, reindeer, bison, horses, deer, sheep, goats, swine, poultry (including egg-producing poultry), fish used for food, and other animals designated by the Secretary of Agriculture that are part of a foundation herd (including dairy producing cattle) or offspring, or are purchased as part of a normal operation and not to obtain additional benefits under [the 1988 Act]."

The waiver is further limited to motor carriers that have a "satisfactory" safety rating or are "unrated;" motor carriers with "conditional" or "unsatisfactory" safety ratings are prohibited from utilizing this waiver.

#### Safety Rating

Motor carriers that have received compliance reviews are required to have a "satisfactory" rating. The compliance review is an on-site examination of a motor carrier's operations, including records on drivers' hours of service, maintenance and inspection, driver qualification, commercial driver's license requirements, financial responsibility, accidents, hazardous materials, and other safety and transportation records to determine whether a motor carrier meets the safety fitness standard. The assignment of a "satisfactory" rating means the motor carrier has in place adequate safety management controls to comply with the Federal safety regulations, and that the safety management controls are

appropriate for the size and type of operation of the motor carrier.

The FMCSA will also allow "unrated" carriers to take advantage of the waiver. Unrated motor carriers are those that have not received a compliance review. It would be unfair to exclude such carriers simply because they were not selected by for a compliance review, especially since carriers are prioritized for compliance reviews on the basis of known safety deficiencies.

The Agency is not allowing motor carriers with conditional or unsatisfactory ratings to participate because both of those ratings indicate that the carrier has safety management control problems. There is little reason to believe that carriers rated either unsatisfactory or conditional could be relied upon to comply with the terms and conditions of the waiver.

#### Accident Reporting Requirement

Within 10 business days following an accident (as defined in 49 CFR 390.5), irrespective of whether the CMV was being operated under the this waiver, the motor carrier must submit the following information:

- (a) Date of the accident;
- (b) City or town in which the accident occurred, or city or town closest to the scene of the accident;
- (c) Driver's name and license number;
- (d) Vehicle number and State license number;
- (e) Number of injuries;
- (f) Number of fatalities;
- (g) The police-reported cause of the accident;
- (h) Whether the driver was cited for violating any traffic laws, motor carrier safety regulations, or hazardous materials discharge; and
- (i) Whether the driver was operating under the waiver, and if so, an estimate of the total on-duty and driving time between the last break of at least 15 minutes and the accident.

#### Duration of the Waiver

The waiver is effective upon publication in the **Federal Register** and is valid until October 9, 2013, unless revoked earlier by the FMCSA. The exemption preempts inconsistent State or local requirements.

#### Safety Oversight of Carriers Operating Under the Waiver

The FMCSA expects that any motor carrier operating under the terms and conditions of the waiver will maintain its safety record. However, should any deterioration occur, the FMCSA will, consistent with the statutory requirements of 49 U.S.C. 31315, take all steps necessary to protect the public

interest. Use of the waiver is voluntary, and the FMCSA will immediately revoke the waiver for any interstate motor carrier or driver for failure to comply with the terms and conditions of the waiver

Issued on: July 5, 2013.

**Anne S. Ferro,**  
Administrator.

[FR Doc. 2013-16679 Filed 7-8-13; 4:15 pm]

**BILLING CODE 4910-EX-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 121018563-3148-02]

RIN 0648-XC750

#### Fisheries of the Exclusive Economic Zone Off Alaska; Kamchatka Flounder in the Bering Sea and Aleutian Islands Management Area

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for Kamchatka flounder in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2013 Kamchatka flounder initial total allowable catch (ITAC) in the BSAI.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), July 8, 2013, through 2400 hrs, A.l.t., December 31, 2013.

**FOR FURTHER INFORMATION CONTACT:** Steve Whitney, 907-586-7269.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2013 Kamchatka flounder ITAC in the BSAI is 8,500 metric tons (mt) as established by the final 2013 and 2014 harvest specifications for groundfish in the BSAI (78 FR 13813, March 1, 2013). In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has

determined that the 2013 Kamchatka flounder ITAC in the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 6,000 mt, and is setting aside the remaining 2,500 mt as incidental catch. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Kamchatka flounder in the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

#### Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Kamchatka flounder to directed fishing in the BSAI. NMFS was unable to publish a notice providing time for public comment

because the most recent, relevant data only became available as of July 5, 2013.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: July 8, 2013.

**Kelly Denit,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2013-16641 Filed 7-8-13; 4:15 pm]

**BILLING CODE 3510-22-P**

# Proposed Rules

Federal Register

Vol. 78, No. 133

Thursday, July 11, 2013

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.

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 32

[PRM-32-8; NRC-2013-0078]

#### CampCo Petition to Allow Commercial Distribution of Tritium Markers

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Petition for rulemaking; receipt and request for comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is publishing for comment a petition for rulemaking (PRM) filed with the Commission by CampCo (the petitioner) on December 2, 2011, and supplemented on September 18, 2012. The petitioner requests that the NRC amend its regulations to allow the commercial distribution of tritium markers for use under exemption from licensing requirements.

**DATES:** Submit comments by September 24, 2013. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

**ADDRESSES:** You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2013-0078. Address questions about NRC dockets to Carol Gallagher; telephone: 301-492-3668; email: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov). For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *Email comments to:* [Rulemaking.Comments@nrc.gov](mailto:Rulemaking.Comments@nrc.gov). If you do not receive an automatic email reply confirming receipt, then contact us at 301-415-1677.

- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301-415-1101.

- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.

- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301-415-1677.

For additional direction on accessing information and submitting comments, see "Accessing Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Vanessa Cox, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-8342, email: [Vanessa.Cox@nrc.gov](mailto:Vanessa.Cox@nrc.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Accessing Information and Submitting Comments

###### A. Accessing Information

Please refer to Docket ID NRC-2013-0078 when contacting the NRC about the availability of information for this petition for rulemaking. You may access information related to this petition for rulemaking that the NRC possesses and is publicly available, by the following methods:

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2013-0078. The full text of the incoming petition and supplemental information is available in the docket at [www.regulations.gov](http://www.regulations.gov).

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). The incoming petition and supplemental information is available in ADAMS under Accession Nos. ML12132A332 and ML13112B010.

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One

White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

##### B. Submitting Comments

Please include Docket ID NRC-2013-0078 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <http://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

##### II. The Petition

The NRC received a PRM (ADAMS Accession No. ML12132A332) requesting that the NRC amend its regulations concerning exemptions from licensing requirements to include illumination markers containing tritium.

On July 5, 2012 (ADAMS Accession No. ML121580046), the NRC requested supplemental information to further clarify the request. On September 18, 2012 (ADAMS Accession No. ML13112B010), the petitioner responded to our request and submitted supplemental information, which clarified that the request is for the NRC to amend its regulations at §§ 30.15, 30.19(c), and 32.22(b) of Title 10 of the *Code of Federal Regulations* (10 CFR) in order to allow the commercial distribution of tritium markers for use under exemption from licensing requirements. The petitioner also provided a dose assessment for the purpose of showing that the tritium markers would result in acceptably low doses.

### III. The Petitioner

CampCo is an established wholesale stocking master distributor of tritium watches, knives, flashlights, binoculars, law enforcement and outdoor gear, located in Los Angeles, California.

### IV. Background

Section 30.15, "Certain items containing byproduct material," is a list of exemptions from licensing requirements for specific products with specific radionuclide quantity limits and, in some cases, other limits. Section 30.19, "Self-luminous products containing tritium, krypton-85, or promethium-147," is a class exemption for self-luminous products containing certain radionuclides that can be used to create light. A class exemption covers a class of products for which a specific product must be approved through the licensing process, which involves providing safety information about the product and demonstrating that the product meets a number of safety criteria. Paragraph (c) in 10 CFR 30.19 restricts the use of the exemption in paragraph 30.19(a), indicating that the exemption does not apply to tritium, krypton-85, or promethium-147 used in products primarily for frivolous purposes or in toys or adornments. Section 32.22, "Self-luminous products containing tritium, krypton-85 or promethium-147: Requirements for license to manufacture, process, produce, or initially transfer." contains the requirements for an applicant who wishes to obtain a license to distribute a product for use under the exemption in 10 CFR 30.19. Paragraph (b) of that section indicates that the Commission may deny an application for a specific license if the end uses of the product cannot be reasonably foreseen. The petitioner notes that the NRC has previously denied approval of products because end uses of the product could not be reasonably foreseen.

### V. Proposed Actions

The specific actions requested by the petitioner are:

(1) To amend 10 CFR 30.15 to add a specific exemption for tritium markers with maximum activity of 25 millicuries (925 mBq) of tritium;

(2) To amend 10 CFR 30.19(c) to add that tritium markers used to label equipment are not considered to be toys or adornments and shall not be sold as such; and

(3) To amend 10 CFR 32.22(b) to include a statement that an applicant cannot be denied a device registration or license if they have adequately demonstrated that the criteria in the applicable regulations have been met.

The petitioner contends that the statement in 10 CFR 32.22(b), allowing denial of an application if the end use of the product cannot be reasonably foreseen, is a subjective statement without specific criteria and that it is unfair to deny applications based upon subjective statements where the criteria are not codified in the regulations. The petitioner also states that the term "frivolous use" is not clearly defined in the NRC's policy statement on consumer products (March 16, 1965, 30 FR 3462; proposed revision October 14, 2011, 76 FR 63957) or in NRC's guidance and that there are no detailed criteria used to make determinations.

### VI. Request for Comment

The NRC has determined that the petition meets the threshold sufficiency requirements for a petition for rulemaking under § 2.802, "Petition for rulemaking," and the petition has been docketed as PRM-32-8. The NRC is requesting public comments on the petition for rulemaking.

Dated at Rockville, Maryland, this 5th day of July 2013.

For the Nuclear Regulatory Commission.

**Rochelle C. Bavol,**

*Acting Secretary of the Commission.*

[FR Doc. 2013-16652 Filed 7-10-13; 8:45 am]

**BILLING CODE 7590-01-P**

## POSTAL SERVICE

### 39 CFR Part 111

#### New Standards to Enhance Package Visibility

**AGENCY:** Postal Service™.

**ACTION:** Proposed rule.

**SUMMARY:** The Postal Service is proposing to revise *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM®) to require the use of Intelligent Mail® package barcodes (IMpb) on all commercial parcels, and to require the transmission of supporting electronic documentation including piece-level address or ZIP+4® Code information effective January 2014. In January 2015 the complete destination delivery address or an 11-digit delivery point validated ZIP Code will be required in the electronic documentation.

**DATES:** Submit comments on or before August 1, 2013.

**ADDRESSES:** Mail or deliver written comments to the manager, Product Classification, U.S. Postal Service, 475 L'Enfant Plaza SW., Room 4446, Washington, DC 20260-5015. You may inspect and photocopy all written

comments at USPS® Headquarters Library, 475 L'Enfant Plaza SW., 11th Floor North, Washington, DC, by appointment only, between 9 a.m. and 4 p.m., Monday through Friday by calling 1-202-268-2906 in advance. Email comments, containing the name and address of the commenter, may be sent to: [MailingStandards@usps.gov](mailto:MailingStandards@usps.gov), with a subject line of "Package Visibility." Faxed comments are not accepted.

#### FOR FURTHER INFORMATION CONTACT:

Juliaann Hess at 202-268-7663 or Kevin Gunther at 202-268-7208.

**SUPPLEMENTARY INFORMATION:** The Postal Service continues to enhance its operational capability to scan Intelligent Mail package barcodes (IMpb) and other extra services barcodes via automated processing equipment and Intelligent Mail scanning devices. Full implementation of the Postal Service's package strategy relies on the availability of piece-level information provided through the widespread use of IMpb.

IMpb can offer a number of benefits to mailers by providing piece-level visibility throughout USPS processing and delivery operations. Benefits of IMpb use include:

- A routing code to facilitate the processing of packages on automated sorting equipment.
- A channel-specific Application Identifier (AI) that associates the barcode to the payment method, supporting revenue assurance.
- A 3-digit service type code, which will identify the exact mail class and service combination, eliminating the need for multiple barcodes on a package.
- An option to use a 6-digit or 9-digit numeric Mailer ID (MID), to accommodate all mailers.
- The ability to nest packages to containers and sacks, increasing visibility for aggregate units as well as packages moving through the network.
- Access to tracking information at no additional charge for most products.
- Access to new products, services and enhanced features.

Mailing standards recently added to the DMM now require an IMpb on all commercial parcels, except Standard Mail® parcels, claiming presort or destination-entry prices and all parcels of any class including tracking, and all mailpieces of any shape requesting extra services. The Postal Service will now advance its package strategy by proposing new standards requiring an IMpb on all remaining commercial parcels, and requiring the transmission of supporting electronic documentation,

including piece-level address information, to the USPS.

### Advanced Notice

The mailing industry was first provided notice of the intent of the Postal Service to require the mandatory use of IMpb on all domestic parcels via an advanced notice of proposed rulemaking, **Federal Register** notice (75 FR 56922–56923) on September 17, 2010. In response to input from the mailing community, this broad requirement was narrowed to apply only to commercial parcels mailed at presort or destination-entry prices and to parcels bearing PC Postage®. On January 27, 2013, the Postal Service implemented this initial phase of its package strategy by requiring IMpb use, including use of version 1.6 of the electronic shipping services manifest, for all commercial parcels (except Standard Mail parcels) claiming presort or destination-entry pricing and all mailpieces including a trackable extra service.

On February 26, 2013, the Postal Service published a **Federal Register** notice (78 FR 13006–13007) in which it announced its intention to require an IMpb on all remaining commercial parcels. This notice also invited comments from the mailing industry and other interested individuals. The Postal Service received several comments in response to its advanced notice of proposed rulemaking, which are summarized later in this notice.

### General IMpb Requirements

Technical and general specifications for IMpb use are provided in Publication 199, *Intelligent Mail Package Barcode (IMpb) Implementation Guide for: Confirmation Services and Electronic Verification System (eVS) Mailers*, and DMM 708.5.1. Mailing standards require mailings of mailpieces bearing an IMpb to:

1. Use a unique tracking barcode, prepared in accordance with DMM 708.5.1, on each mailpiece,
2. Be accompanied by a version 1.6 of the electronic Shipping Services File (or subsequent versions) including required data elements, and to
3. Include the correct destination delivery address or ZIP+4 code for each record in the Shipping Services File.

The Postal Service now proposes to require an IMpb on all commercial parcels. For the purposes of this notice, commercial parcels are defined as any item meeting the physical description of a parcel in DMM 401, or an Express Mail® or Priority Mail® piece of any shape, size, or price category entered

through any commercial channel. This includes pieces with postage paid by permit imprint, postage meter, PC Postage or precanceled stamps, and would include pieces paying postage through the Official Mail Accounting System (OMAS) and franked mail. All parcels mailed at Commercial Base® or Commercial Plus® prices will also be required to bear an IMpb. However, parcels paid at the retail price and inducted through a retail transaction, Periodicals parcels, and Standard Mail Marketing parcels sent as product samples that bear a simplified address or those that use a detached address label (DAL) would not be required to bear an IMpb.

The Postal Service proposes to allow, with USPS approval, domestic Priority Mail flats that are prepared in a high-speed environment to use an Intelligent Mail barcode (IMb™) in lieu of an IMpb provided each of these pieces bear a unique IMb, that cannot be reused for 180 days, and are supported by Mail.dat or Mail.XML electronic documentation. Mailers should note that mailpieces entered under this authorization must not include any extra service, including USPS Tracking™/Delivery Confirmation. In addition, effective July 28, 2013, the Postal Service plans to include, at no additional charge, automatic insurance coverage on domestic Priority Mail pieces bearing an IMpb. Mailers should also note that Priority Mail pieces entered under this exception will not be eligible for automatic insurance coverage. The authorization to use an IMb instead of an IMpb would not be applicable for Priority Mail International™ pieces or domestic Express Mail or Express Mail International® pieces.

At a future date, the Postal Service expects to implement an exception process for Bound Printed Matter (BPM) parcels and Priority Mail that would allow mailers to use Mail.dat instead of Shipping Services File version 1.6 or higher. This exception process will be tied to the scheduled upgrades to USPS systems that will allow for this functionality. These upgrades are expected to be completed by October 2013 for Bound Printed Matter and in January 2014 for Priority Mail. Once implemented, parcel mailers using Mail.dat may use this file format to submit electronic documentation to the Postal Service to fulfill their IMpb documentation requirements. The use of Mail.dat will not be authorized when mailers ship products and services that exclusively require use of Shipping Services file version 1.6 or higher.

Although it is expected that the anticipated delay in implementation

until January 26, 2014 should eliminate the need for most exceptions, the Postal Service expects to provide limited exceptions to the basic IMpb requirements. Requests for exceptions will be evaluated on a case-by-case basis. Mailers requesting an exception must provide a plan to assure compliance with standards within a defined timeframe. Beginning on January 26, 2014, any such requests must be directed to the Vice President of Sales for consideration.

### Destination Delivery Addresses

The Postal Service now recognizes the need for all parcels to be accompanied by a complete destination delivery address. This information will be a critical element in future plans to implement dynamic routing strategies with USPS delivery operations. As a result, the Postal Service proposes to require mailers, effective January 25, 2015 to include the complete destination delivery address (as described in DMM 601.1.4) or an 11-digit ZIP Code (validated by the USPS delivery point validation (DPV®) system, or an approved equivalent) in their Shipping Services file, or other approved electronic documentation.

### Returns

The Postal Service proposes to require a unique IMpb on all parcels using a Merchandise Return Service (MRS) label. The USPS currently provides a cloud-based application that would allow less sophisticated permit holders to generate unique IMpb-compliant MRS labels with a minimal level of technological capability and software support. This tool is expected to adequately assist MRS permit-holders and their customers in the generation of IMpb-compliant labels. Except for permit holders using MRS as part of a PC Postage-based returns solution, MRS permit holders will not generally be required to submit shipping manifests to support these mailpieces. Under these proposed standards, MRS labels would be required to use a concatenated IMpb construct that includes the ZIP+4 routing code.

The Postal Service also proposes to eliminate the option for any mailpiece meeting physical characteristics of a parcel in DMM 401 to include postage paid by Business Reply Mail® (BRM). Over time, BRM service has evolved into a product that is operationally aligned to accommodate cards, letters and flats. As a result, BRM is no longer an ideal product for use with parcel-shaped mailpieces. If these standards are adopted, BRM permit holders who routinely receive parcel-shaped BRM

returns would be required to discontinue this practice and to transition to MRS or a USPS Returns product for their parcel returns.

### Express Mail

The Postal Service proposes to generally require all Express Mail pieces entered through any commercial channel to be IMpb-compliant. This requirement would exclude Express Mail pieces entered as part of a retail transaction, those with postage paid through a postage meter imprint and using a Label 11-B, and those entered under an Express Mail Manifest (EMM) system with postage paid by an Express Mail Corporate Account (EMCA). However, Express Mail pieces with postage paid through a postage meter imprint and using a Label 11-B will not be eligible for Commercial Base or Commercial Plus pricing. At a future date, the Postal Service expects to transition EMM mailers to the Electronic Verification System (eVS®), including an IMpb-compliance requirement. The Postal Service is now signaling its intention to require eVS for EMM systems and anticipates publishing the applicable standards in the 2015 calendar year.

### Standard Mail Parcels

If these proposed standards are adopted, the Postal Service will require all Standard Mail Marketing parcels (including those paid at nonprofit prices) and all Nonprofit Standard Mail parcels to bear an IMpb, or a unique IMb. Regular and Nonprofit Standard Mail parcels mailed as product samples under DMM 443.6.0 would also be required to bear an IMpb or a unique IMb, with the exception of those using detached address labels (DAL) and those bearing simplified addresses. The Postal Service is also offering the option to use an IMb in lieu of an IMpb for all Standard Mail parcels which are presorted and containerized in 5-digit sacks or other approved containers prepared to the 5-digit level. When the IMb option is selected, the package must bear a unique IMb that cannot be reused for 180 days. In situations where the IMb is used in lieu of the IMpb, a Mail.dat or Mail.XML file will be accepted in lieu of a Shipping Service File.

Mailers requesting USPS Tracking/Delivery Confirmation service with Standard Mail parcels would continue to be assessed the electronic fee. Mailers would also have the option of affixing an IMpb-compliant mail class only tracking barcode to their Standard Mail parcels at no charge. Under either of these IMpb options, mailers must use

version 1.6 or higher of the Shipping Services File, including required data elements, and must include the destination delivery address or ZIP+4 code in the file.

### Package Services

If these proposed standards are adopted, the Postal Service will require all commercial BPM, Media Mail® and Library Mail parcels to bear an IMpb. When Media Mail and Library Mail parcels are entered at retail, pay the retail price and are entered through a retail transaction the Postal Service will apply an IMpb-compliant barcode, if one is not already affixed. Mailers requesting USPS Tracking/Delivery Confirmation service for their Package Services parcels would continue to be assessed the electronic fee. Mailers would also have the option of affixing an IMpb-compliant mail class only tracking barcode to their Package Services mailpieces at no charge.

### Postage Meters

If these proposed standards are adopted, the Postal Service will require all parcels bearing metered postage to bear a unique IMpb, meet the Shipping Services File requirements, and to include the correct destination delivery address or ZIP+4 code for each record in the file. To support the less sophisticated meter mailers, the Postal Service plans to continue to provide pre-printed IMpb-compliant labels to mailers who are unable to print their own labels. A special version of the IMpb label will be made available to customers who ship parcels but do not use a postage meter capable of transmitting electronic manifest and address information. Use of these preprinted USPS labels or other IMpb-compliant barcodes will be a requirement for eligibility to ship USPS parcel products.

### Use of Non-IMpb Barcodes

If these proposed standards are adopted, the Postal Service plans to implement a process to allow mailers to temporarily use unique tracking barcodes, prepared in a legacy format, on parcels and mailpieces that include extra services. Any such authorization would be granted via an exception process. Mailers requesting an exception must be able to demonstrate their ability to transmit piece-level documentation to the Postal Service through a Shipping Services File and to include a destination delivery address or ZIP+4 code for each record in the file. These exceptions are intended to provide additional time, when needed, to transition to the use of IMpb. If these

proposed standards are adopted, all mailers must be fully IMpb-compliant, including use version 1.6 or higher of the Shipping Services File, by January 25, 2015.

In addition, effective July 28, 2013, the Postal Service plans to include, at no additional charge, automatic insurance coverage on domestic Priority Mail pieces bearing an IMpb. Mailers should also note that Priority Mail pieces bearing barcodes prepared in the legacy format will not be eligible for automatic insurance coverage.

### Electronic Documentation

If these proposed standards are adopted, mailers will be required to include information in their electronic documentation that identifies the mailing agent and mail owner (*i.e.* by/for mailing relationship). When mailing agents make mailings on behalf of one or more clients (mail owners) a request must be made for a unique mailer ID (MID) for each client to designate package ownership. Both eVS and non-eVS mailing agents must assign a unique MID for each client. This MID will be used exclusively for that client, for mailings with that particular mailing agent. Fields are provided in Shipping Services File version 1.6 or higher, Mail.dat and Mail.XML for this purpose. The Postal Service defines these entities as follows:

- **Mail Owner:** The mail owner is the business entity, organization, or individual who makes business decisions regarding the parcel or mailpiece content, directly benefits from the mailing, and ultimately pays for postage on the mailpiece directly or by way of a mailing agent.
- **Mailing Agent:** The mailing agent is a business entity, consolidator, organization, or individual acting on behalf of one or more mail owners by providing mailing services for which the mail owners compensate the mailing agent. A business entity, organization, or individual whose services define it as a mailing agent may also be considered a mail owner, but only for its own mail or the mail of its subsidiaries. Mailing agents include, but are not limited to parcel consolidators, printers, address list providers/managers mail preparers, postage payment providers, mailing logistics providers, mailing tracking providers, ad agencies, and mailing information managers.

### Conforming Mailer Identification Numbers

If these proposed standards are adopted, all mailers using an IMpb will be required to use a conforming mailer MID. Mailers who are not currently

compliant with this requirement must obtain and use a conforming MID as soon as possible and must use a conforming MID by January 26, 2014.

A MID is considered to be compliant when the following requirements are met:

- A conforming six-digit MID must begin with 0 through 8.
- A conforming nine-digit MID must begin with 9.

Questions about converting to conforming MIDs may be directed to the National Customer Support Center (NCSC) by calling 877-264-9693, and selecting option 3.

**Shipping Services File**

Electronic documentation requirements in support of IMpb include the use of Shipping Services file version 1.6 or higher, identifying serialization of each parcel or trackable Extra Services mailpiece supported by the file and destination delivery address information or accurate ZIP+4 code for each record in the file. Shipping Services Files must be transmitted to the Postal Service prior to the physical presentation of the mailing for acceptance. Mailers will be required to correctly populate Shipping Services electronic manifest files with the piece level detail information that describes the parcels and mailpieces being shipped. The Postal Service expects to simplify the requirements to populate data fields. All mailers will be required to use the same rules as those for eVS mailers for determining which data fields must be populated. In addition to accurate piece level information, the proper definition of the mailing by/for relationship and the use of a conforming MID, Shipping Services files include the following fields:

- *Transaction ID (TID)*. This is a unique 12-digit number assigned to associate Shipping Services File

manifests to file transmissions. The TID must also be included on the Postage Statement and must match the Shipping Services manifest file for the corresponding mailing. The TID field must follow the format of YYYYMMDD####, where YYYY is the year, MM is the month, DD is the date, and '####' is the numeric sequence number.

- *Payment Account number*. This is the USPS account number from which the mailing will be paid.
- *Method of payment*. This is the approved payment method (permit imprint, postage meter, PC Postage, OMAS, franked mail and stamps) for the mail being entered.
- *Post Office of Account*. This is the 5-digit ZIP Code of the Post Office issuing the permit number, meter license, or precanceled stamp, and should agree with the information on the postage statement.

**Electronic Nesting Data**

If these proposed standards are adopted, the Postal Service will strongly encourage, but not require, mailers to provide an electronic association between IMpb piece-level record and Intelligent Mail tray labels and/or Intelligent Mail container placards. However, the Postal Service may require these electronic associations for certain products or price categories at a future date. Technical requirements for the electronic association of parcels to containers will be provided in Publication 199.

**Noncompliant Mailpieces**

In response to recommendations made by a group of mailing industry and Postal Service representatives, the Postal Service is proposing to implement a process to apply a schedule of gradually increasing compliance thresholds for mailings including mailpieces without IMpb-

compliant barcodes, without a compliant destination delivery address or ZIP+4 code in the electronic documentation for each mailpiece or not supported by an approved Shipping Services file (or a Shipping Services file with missing or erroneous data elements), or authorized alternative documentation. The Postal Service proposes to apply these compliance thresholds at the manifest level for PC Postage and postage meter mailings, and at the postage statement level for permit imprint or precanceled stamp mailings. A new sampling procedure for barcode evaluation is expected to be added to the current acceptance process for the purpose of evaluating compliance with these new barcode thresholds. Barcode and file compliance will be measured against the specifications defined in Publication 199. Shipping Services files will be subject to census data evaluation for file version and required elements within the file. Assessments for non-eVS packages are expected to be due at the time of mailing. eVS mailers will be assessed monthly for non-compliant mailpieces in excess of the established thresholds. For any mailing, compliance can be calculated separately for each of the three compliance categories. MRS and other returns mailpieces will be sampled for compliance under these new proposed compliance thresholds at the facility where the pieces are rated and/or prepared for shipment to the permit holder. When a mailing fails more than one compliance category, the per piece adjustment will be assessed against category yielding the highest number of noncompliant pieces. Noncompliant pieces will be assessed the fee adjustment only once, even when failing more than one compliance category. The Postal Service proposes enforcement of compliance thresholds as follows:

Compliance category	January 2014 (percent)	July 2014 (percent)	January 2015 (percent)
Unique Trackable Barcode .....	98	99	100
ZIP+4 Code or Destination Delivery Address in the File .....	93	96	100
Shipping Services File 1.6 or Higher, Including Required Data Elements .....	95	98	100

The Postal Service also proposes to implement a per piece price adjustments for noncompliant pieces, instead of driving noncompliant pieces to retail pricing. The amount of any such piece-level price adjustment(s) or assessment(s), and the methodology of their application have not yet been determined. In accordance with the Postal Accountability and Enhancement

Act, the Postal Service will file a Notice with the Postal Regulatory Commission (PRC) if it chooses to adopt this per piece price proposal. Regulatory review will take up to 45 days from the date of that filing; and the Postal Service will proceed based on the results of that review.

If these proposed standards are adopted, the Postal Service currently

plans to replace its rules that disqualify IMpb-noncompliant pieces for presort or destination entry prices with a process that assesses per piece price adjustments for IMpb-noncompliant pieces. Mailer compliance with the requirement to define the by/for relationships will be deferred to a future date in calendar year 2014.

If these compliance thresholds and price adjustments are adopted, enforcement of such thresholds and price adjustments will be expected to begin on January 26, 2014.

#### Implementation Date

If these proposed standards are adopted, the Postal Service expects to implement the requirements described in this notice on or about January 26, 2014. In response to the comments offered in response to the February 26, 2013 **Federal Register** notice, the Postal Service has delayed implementation in order to provide more time for mailers to prepare for the transition. Many mailers and mail service providers have already made the changes necessary to support IMpb use for other mail classes and price categories, and for these mailers much of the significant preparation has already been completed. Therefore, the Postal Service believes that it has provided sufficient notification to the mailing industry, from the date of publication of the February 26, 2013 **Federal Register** notice to the proposed January 26, 2014 implementation date, to allow mailers to prepare their systems.

#### Hazardous, Perishable and Restricted Materials

If these proposed standards are adopted, mailers inducting parcels containing mailable hazardous material or mailable live animals will be required to include an indicator in the appropriate field of the Shipping Services File, or other authorized electronic documentation, identifying each applicable mailpiece as containing either hazardous material or live animals. MRS and other returns mailpieces containing hazardous materials will be required to bear a unique IMpb barcode, including a specific 3-digit service type code specifying the class of mail and identifying the mailpiece as containing hazardous material. The Postal Service is also developing similar identifying indicators to provide enhanced visibility of shipments containing cremated remains. The Postal Service expects to have these indicators available in the 2014 calendar year.

#### Certified Mail and Registered Mail Service

If these proposed standards are adopted the Postal Service plans to provide new Certified Mail® and Registered Mail™ “banner only” labels to help identify these specific products when used in an IMpb-compliant format. The Postal Service also plans to limit Certified Mail service to use with

First-Class Mail® only. The Postal Service expects this limitation to simplify the Extra Service options available to mailers and also reduce the number of service type codes associated with these products. The Postal Service also expects to provide a new option for mailers to combine restricted delivery service with Signature Confirmation™ service. This new option is expected to be effective on January 26, 2014, and will be introduced as part of a separate **Federal Register** notice. The combination of restricted delivery service with Signature Confirmation service will provide an option for mailers to restrict delivery of Priority Mail, First-Class Package Service™, Package Services, Standard Post™ and Parcel Select® pieces without also having to purchase insurance for more than \$200 to obtain this service.

#### Comments and USPS Responses

The Postal Service received a total of thirteen comments in response to the February 26, 2013 **Federal Register** notice, with some comments addressing more than a single issue. In general, commenters relate their recognition of the value that the enhanced visibility and tracking data provided by IMpb provides to mailers and the Postal Service. These comments are summarized as follows:

##### General Comments

*Comment:* One commenter asks if the use of Coding Accuracy Support System (CASS™) address matching software will be required with IMpb use.

*USPS Response:* If these proposed standards are adopted, the use of CASS software is not expected to be required as a condition of IMpb use, however it will be strongly encouraged. When a mailer chooses to provide a ZIP+4 code instead of an address in the shipping manifest, the mailer must ensure the ZIP+4 code is valid for each address. The Postal Service intends to implement processes to validate the accuracy of ZIP+4 code information provided in shipping manifests. CASS products are integral to many customers' business processes and the shipments they tender to USPS. Including a CASS process for mailings that use IMpb will improve deliverability, reduce waste and provide benefits similar to those associated with letter and flat mailings. When mailers use addresses instead of ZIP+4 codes, the Postal Service will validate these addresses relative to the Address Management System (AMS) database and will provide feedback to customers via Shipping Services Confirmation Error/Warning files.

*Comment:* A commenter asks if the IMpb requirements will extend to Media Mail and Library Mail with metered postage.

*USPS Response:* Yes, if these standards are adopted customers mailing Media Mail and Library Mail pieces paid with metered postage will be required to comply with the IMpb requirements. However, the Postal Service recognizes that some small businesses using postage meters will be unable to comply with all IMpb requirements, which include the use of Shipping Services File version 1.6 or higher and the inclusion of a destination delivery address or a ZIP+4 code in the file. As a result, the Postal Service plans to make preprinted IMpb-compliant barcodes available for such small volume meter customers.

*Comment:* A commenter asks why machinable presorted BPM parcels that receive no tracking are required to meet the same IMpb requirements as that for other parcels that receive tracking at no charge. This commenter states that presorted BPM is not a shipping service, and asks if the Postal Service is trying to standardize the requirements for all parcels.

*USPS Response:* The Postal Service has not contemplated the standardization of parcel mail classes with regard to content eligibility, preparation requirements, and similar characteristics. However, the benefits of IMpb, to both mailers and the Postal Service, are generally applicable to every parcel class and product. The general use of unique IMpb barcodes will allow the Postal Service to manage service and delivery performance to improve the customer experience and business outcome for all shippers, including catalog mailers. As a function of these operational improvements, the Postal Service expects the expanded use of IMpb to contribute to greater pricing stability for all parcel mailers. Specifically, the widespread use IMpb including the associated files and related address information is expected to automate and simplify USPS distribution processes, and aid in the management and predictability of workloads for all postal products. In addition, IMpb usage will allow the Postal Service to automate its data collection processes for each product and payment channel, providing for more accurate costing and pricing data.

*Comment:* A commenter requests that the Postal Service provide more support to help mailers understand the new IMpb requirements.

*USPS Response:* If these proposed standards are adopted, the Postal Service plans to host monthly webinars

and provide technical assistance to assist mailers with their transition to IMpb. The Postal Service will also compile a listing of qualified vendors who can assist customers in complying with IMpb requirements.

*Comment:* A commenter relates that their local Post Office currently has trouble with the tracking, mailing and delivery of the commenter's parcels, and opines that the new IMpb would be more expensive to mailers without enough of an improvement in quality.

*USPS Response:* The features of IMpb, especially the inclusion of addressing information in the file, greatly improve the ability of the Postal Service to provide excellent service while driving down costs. It is recommended that this commenter address their operational issues with their local postmaster and their district manager, Business Mail Entry. Contact information for the manager, Business Mail Entry can be obtained from the *locator/lookup* tool on the Rapid Information Bulletin Board (RIBBS®) at <https://ribbs.usps.gov/>.

*Comment:* Several commenters request that the Postal Service specifically define what it means by the use of the term "commercial parcel," especially in regards to Priority Mail, Standard Mail and MRS pieces.

*USPS Response:* For the purposes of this notice, commercial parcels are defined as any item meeting the physical description of a parcel in DMM 401, or an Express Mail or Priority Mail piece of any shape or size, entered through any commercial channel. This includes pieces with postage paid by permit imprint, postage meter, PC Postage or precanceled stamps, and would include pieces paying postage through the Official Mail Accounting System (OMAS) and franked mail.

*Comment:* A commenter states that mailers using self-service shipping options require a solution to implement these new standards that do not introduce new steps or require the entry of additional information into the shipping process.

*USPS Response:* The Postal Service offers options, such as Click-N-Ship for Business®, that allow mailers preparing their own parcels to meet IMpb requirements. Mailers using premium shipping products such as Express Mail and Priority Mail also have access to Click-N-Ship. In addition, PC Postage and other vendors offer IMpb-compliant options for customers.

*Comment:* As a result of the operational process changes and significant capital investment required, a mailer's association urges the Postal Service to not require compliance with an enhanced package visibility mandate,

and to make these standards optional and incented through pricing and service enhancements.

*USPS Response:* The Postal Service recognizes the investments required and timelines needed for mailers to prepare their systems for the barcoding, electronic documentation, and addressing information required to support IMpb. However, these investments are expected to lead to improved efficiency and consistency in postal operations, translating to better service, stable prices and an improved customer experience. Some products currently include full end-to-end tracking, including confirmation of delivery, at no charge. The Postal Service is investigating the feasibility of providing mailer access to IMpb tracking and delivery data for additional products at no charge, and offering address correction service (ACS) at a reduced price. To qualify for ACS service at a reduced price, Shipping Services file 1.7 or 2.0, including unique piece-level destination delivery address information or delivery point validated 11-digit ZIP Codes, would be required.

*Comment:* One commenter suggests that the Postal Service should develop its optical scanning technology to read the delivery address instead of requiring barcodes. This commenter opines that the delivery address would have greater value to the Postal Service than the ZIP+4 code.

*USPS Response:* The Postal Service has added scanning technology to the majority of its parcel sorters that enable this equipment to read address information and to perform sortation based on that address. However, the barcode remains critical to the maintenance of the address to package association that will uniquely identify each package throughout the processing network and delivery chain. Barcoded packages supported by electronic information are industry standards and a best practice to enable superior service while managing costs.

#### *Retail Parcels*

*Comment:* One commenter asks if retail-priced parcels will fall under the IMpb requirements, be required to bear a simple routing barcode, or have some other requirement placed on them. Another commenter asks if retail parcels that request extra services, such as Certified Mail® or Signature Confirmation™, will be subject to the IMpb requirements.

*USPS Response:* Parcels presented as part of a retail transaction currently have an IMpb-compliant barcode affixed by the retail associate. The Postal Service is also enhancing its systems to

electronically capture delivery address or delivery point 11-digit ZIP Code information for pieces where the IMpb is affixed at retail. In the future, Point of Service (POS) One terminals will print IMpb-compliant extra services barcodes dynamically or use preprinted IMpb-compliant labels. Commercial mailpieces paid at retail prices, but not entered as part of a retail transaction as described above, will be required to be IMpb-compliant.

#### *Standard Mail Parcels*

*Comment:* Several commenters request clarification on the intention of the Postal Service with regard to Standard Mail parcels. These commenters request clarification on the categories of Standard Mail parcels that would be permitted to use an Intelligent Mail barcode (IMb) in lieu of an IMpb. Two commenters encourage the Postal Service to adopt a policy of allowing the use of IMb with a Mail.dat or Mail.XML solution for Standard Mail parcels.

*USPS Response:* If these standards are adopted, the Postal Service will require all Standard Mail Marketing parcels (including those paying nonprofit prices) and all Nonprofit Standard Mail parcels to bear an IMpb. Regular and Nonprofit Standard Mail Marketing parcels mailed as product samples under DMM 443.6.0 are currently required to use detached address labels (DAL) or simplified addresses, and therefore would not be required to meet IMpb standards. When mailers apply, and are granted the appropriate exception, the Postal Service would allow the use of an IMb in lieu of an IMpb on Standard Mail parcels which are presorted and containerized in 5-digit sacks or other approved containers prepared to the 5-digit level.

#### *Electronic Verification System (eVS)*

*Comment:* One commenter requests assurances that the standards being proposed would not affect eVS mailers, and that eVS mailers would not be required to use one barcode or the other, or to report data in one format or the other.

*USPS Response:* These standards are proposed to apply to all mailers shipping parcels through the Postal Service, including those who pay via eVS. If these standards are adopted, all eVS mailers will be required to apply an IMpb to each parcel, use Shipping Services File version 1.6 or higher, and include the destination delivery address or ZIP+4 code in the manifest file. The Postal Service is also proposing to require the destination delivery address or delivery point validated (DPV) 11-

digit ZIP Code to be included in the file effective January 25, 2015.

#### *Merchandise Return Service (MRS)*

*Comment:* Two commenters request clarification regarding the proposed requirements relating to MRS. One commenter asks if MRS pieces would be subject to the proposed IMpb standards, and specifically requests MRS pieces to be excluded from these new requirements. This commenter states that the production of MRS labels, each bearing a unique IMpb, would be more costly and time consuming to mailers.

*USPS Response:* If these proposed standards are adopted, all parcels using a MRS label will also be required to bear a unique IMpb. The Postal Service currently provides a cloud-based application to assist MRS permit-holders and their customers in the generation of unique IMpb-compliant labels.

#### *Implementation Schedule*

*Comment:* Several comments responded to the Postal Service's proposal to implement these new standards on or about July 28, 2013. Two commenters state that a July 2013 implementation is both unreasonable and unrealistic in that it provides an insufficient timeframe for mailers to prepare for the new requirements. Another commenter requests the opportunity to provide input into the implementation timeline. One commenter compares the proposed implementation schedule of approximately five months to the nearly two-year lead time provided to the presort and destination-entry mailers in the previous IMpb implementation. One commenter suggests that the Postal Service establish a mailer technical advisory council (MTAC) workgroup to allow for the airing of mailers concerns prior to finalizing its requirements and implementation timeline.

*USPS Response:* To provide customers more time to prepare for the transition, if these standards are adopted the Postal Service will delay the implementation date to January 26, 2014. Because many mailers and mail service providers have already made the changes necessary to support IMpb use for other mail classes and price categories, it is expected that for many mailers much of the preparation has already been completed.

#### *Electronic Nesting*

*Comment:* Several commenters responded to the Postal Service's reference to the feasibility of electronically associating individual parcel tracking numbers with specific

sacks, trays, pallets or similar containers. Three commenters relate that such a requirement could pose a significant challenge to some mailers. Two commenters state that the process should be optional, and not required for mailers who lack the resources or capability to provide such data. Another mailer's association suggests that the Postal Service consider providing options to mailers based on their operational capacity. This commenter describes these options as full nesting functionality for larger mailers, a logical/virtual nesting option where individual mailpieces could be associated to a group of possible containers, or a no-nesting option for the less sophisticated mailers. These commenters requested an opportunity to supply input into any future decision by the Postal Service to require the electronic transmission of nesting data.

*USPS Response:* The Postal Service does not expect to require mailers to provide nesting information as a condition of these proposed standards. In most cases, it is expected that electronic transmission of nesting data to the Postal Service relating to IMpb use will be optional. However, some products, price categories or extra services features may require the transmission of nesting data as a condition of qualification for that price or service.

#### *Exception Process*

*Comment:* One mailer's association commends the Postal Service for its past policy of providing exceptions to specific elements of its IMpb requirements, as needed, on a case-by-case basis. This commenter and others express their desire for this policy to continue going forward with the implementation of these proposed standards. Another commenter requests that the Postal Service provide a transition period of at least 12 months from the mandatory implementation of these proposed standards to afford mailers the opportunity to effect the changes needed to comply with the new requirements.

*USPS Response:* If these proposed standards are adopted, the Postal Service will continue to offer limited exceptions on a case-by-case basis when mailers have provided a plan that assures compliance with standards within a defined timeframe. It is expected that the proposed January 26, 2014 implementation date should also eliminate the need for most exceptions. After January 26, 2014, any such requests for an exception must be directed to the Vice President of Sales for consideration.

#### *Enforcement of Standards*

*Comment:* A mailer's association suggests that the Postal Service establish a separate rulemaking to establish compliance thresholds, penalties and other enforcement issues relating to IMpb. This commenter asks the Postal Service to remain cognizant of the impact of these proposed standards relative to the enforcement requirements for IMb full-service. A commenter asks that the Postal Service explicitly confirm that the existing waivers and extensions already approved for those IMpb standards currently in place will remain in effect. Another commenter asks what the penalty will be for mailers inducting commercial packages not complying with the proposed requirements. A commenter asks that since the Postal Service proposes that all commercial parcels must bear an IMpb, will a surcharge for noncompliant pieces still be an option.

*USPS Response:* If these proposed standards are adopted, the Postal Service plans to provide gradually increasing compliance thresholds for mail owners and mailing agents, applied across timeframes specified by the Postal Service. The Postal Service is also proposing to apply per piece price adjustments for noncompliant pieces, instead of the current practice of disqualifying noncompliant pieces for all but retail prices. If the use of compliance thresholds and price adjustments are agreed upon at the corporate level, enforcement of these standards relative to compliance thresholds and price adjustments are planned to begin on January 26, 2014.

#### *Postage Meter Mailers*

*Comment:* Two postage meter vendors state that they are in the development stage of a lower cost alternative to the shipping systems currently available to meter mailers. One provider states that this new alternative solution will not be ready by July 2013, and requests an extension for compliance of the proposed standards for meter mailers until January 2014. Another postage meter vendor requests information about the Postal Service's communication plans, and urges the Postal Service to work collaboratively with vendors in this regard.

*USPS Response:* The proposed January 26, 2014 implementation date provides additional time for mailers to prepare their mailing systems, as requested by this commenter. The Postal Service plans to communicate these proposed IMpb standards through the usual mailer communications channels and welcomes the opportunity to work

with vendors. In the past, some vendors have been reluctant to share their customer lists. This is understandable and the Postal Service will provide standard language that vendors can use to communicate the changes and compliance dates to their customers.

Label 400/Extra Service Labels

Comment: Two commenters request clarification of the Postal Service's intent with regards to meter mailers and the use of Label 400, and other extra service labels. These commenters ask if Label 400 can be uploaded by electronic means, associated to a particular mailpiece, and if this would then allow mailers to qualify for commercial parcel prices. This commenter continues by asking if an uploaded label process would still require transmission of a destination delivery address or ZIP+4 code and a mailer ID (MID) to the Postal Service, and whether commercial prices would be available when other extra service labels are applied (e.g. Label 200, Registered Mail). This commenter asks if meter mailers may similarly apply USPS-provided Labels 11-B or 11-F to their mailpieces, upload the barcode data to the Postal Service via USPS-approved shipping manifests, and have these mailpieces qualify for commercial prices. This commenter also asks if privately printed Certified Mail labels must include the green coloration used on USPS-provided PS Forms 3800. Another commenter asks if the Postal Service intends to provide preprinted, IMpb-compliant extra service labels, such as Certified Mail labels.

USPS Response: If these proposed standards are adopted, each applicable requirement must be met to be IMpb-compliant. These requirements include the use of the IMpb barcode format, the use of Shipping Services File version 1.6 or higher, and the inclusion of the destination delivery address or ZIP+4 code in the file. In addition, the Postal Service plans to continue to provide pre-printed IMpb-compliant labels to mailers who are unable to print their own labels. A special version of the IMpb label will be made available to customers who ship parcels but do not use a postage meter capable of transmitting electronic manifest and address information.

For Certified Mail and Registered Mail, the green or red coloring will continue to be required. However, the Postal Service plans to provide new Certified Mail and Registered Mail "banner only" labels to help identify these specific products when used in an IMpb-compliant format. Also, if these standards are adopted, Certified Mail will become eligible for First-Class Mail

only, which will simplify this option and reduce the number of service type codes associated with this product.

Comment Period

Note that the Postal Service has established a 21-day comment period for this proposed rule in order to assure there is sufficient time to for mailers to prepare their systems for a January 26, 2014 implementation if these proposed standards are adopted.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553 (b), (c)) regarding proposed rulemaking by 39 U.S.C. 410 (a), the Postal Service invites public comments on the following proposed revisions to Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR part 111 is proposed to be amended as follows:

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301-307; 18 U.S.C. 1692-1737; 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001-3011, 3201-3219, 3403-3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the following sections of Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM), as follows:

Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)

\* \* \* \* \*

200 Commercial Letters and Cards

\* \* \* \* \*

210 Express Mail

213 Prices and Eligibility

\* \* \* \* \*

3.0 Basic Standards for Express Mail

\* \* \* \* \*

3.2 IMpb Standards

[Revise 3.2 as follows:]

All Express Mail pieces, unless inducted through a retail transaction or a USPS self-service kiosk, must bear an Intelligent Mail package barcode (IMpb) prepared under 708.5.0.

\* \* \* \* \*

220 Priority Mail

223 Prices and Eligibility

\* \* \* \* \*

3.0 Basic Standards for Priority Mail

\* \* \* \* \*

3.3 IMpb Standards

[Revise 3.3 as follows:]

All Priority Mail pieces (except Critical Mail pieces without an extra service) must bear an Intelligent Mail package barcode prepared under 708.5.0.

\* \* \* \* \*

300 Commercial Flats

\* \* \* \* \*

310 Express Mail

313 Prices and Eligibility

\* \* \* \* \*

3.0 Basic Standards for Express Mail

\* \* \* \* \*

3.2 IMpb Standards

[Revise 3.2 as follows:]

All Express Mail pieces, unless inducted through a retail transaction or a USPS self-service kiosk, must bear an Intelligent Mail package barcode (IMpb) prepared under 708.5.0.

\* \* \* \* \*

320 Priority Mail

323 Prices and Eligibility

\* \* \* \* \*

3.0 Basic Standards for Priority Mail

\* \* \* \* \*

3.3 IMpb Standards

[Revise 3.3 as follows:]

All Priority Mail pieces (except Critical Mail pieces without an extra service) must bear an Intelligent Mail package barcode prepared under 708.5.0.

\* \* \* \* \*

400 Commercial Parcels

\* \* \* \* \*

401 Physical Standards

1.0 Physical Standards for Parcels

\* \* \* \* \*

1.5 Machinable Parcels

\* \* \* \* \*

1.5.2 Criteria for Lightweight Machinable Parcels

A parcel that weighs less than 6 ounces (but not less than 3.5 ounces) is machinable if it meets all of the following conditions:

\* \* \* \* \*

*[Delete 1.5.2b and resequence the current 1.5.2c and 2d as the new 2b and 2c.]*

\* \* \* \* \*

## 2.0 Additional Standards by Class of Mail

\* \* \* \* \*

### 2.5 Parcel Select

#### 2.5.1 General Standards

These standards apply to Parcel Select:

\* \* \* \* \*

*[Delete 2.5.1c in its entirety.]*

\* \* \* \* \*

#### 410 Express Mail

#### 413 Prices and Eligibility

\* \* \* \* \*

### 3.0 Basic Standards for Express Mail

\* \* \* \* \*

#### 3.2 IMpb Standards

*[Revise 3.2 as follows:]*

All Express Mail pieces, unless inducted through a retail transaction or a USPS self-service kiosk, must bear an Intelligent Mail package barcode (IMpb) prepared under 708.5.0.

\* \* \* \* \*

#### 420 Priority Mail

#### 423 Prices and Eligibility

\* \* \* \* \*

### 3.0 Basic Standards for Priority Mail

\* \* \* \* \*

#### 3.2 IMpb Standards

*[Revise 3.2 as follows:]*

All Priority Mail pieces, unless inducted through a retail transaction or a USPS self-service kiosk, must bear an Intelligent Mail package barcode (IMpb) prepared under 708.5.0.

\* \* \* \* \*

#### 430 First-Class Package Service

#### 433 Price and Eligibility

### 1.0 Prices and Fees for First-Class Package Service

\* \* \* \* \*

#### 1.4 Commercial Plus Prices

First-Class Package Service machinable parcels less than 16 ounces and Merchandise Return Service parcels are eligible for Commercial Plus prices for customers that:

\* \* \* \* \*

*[Delete 1.4f in its entirety.]*

#### 1.5 Surcharge

*[Revise and restructure 1.5 as follows:]*

Unless prepared in 5-digit/scheme containers, a surcharge applies to presorted parcels that are irregularly shaped, such as rolls, tubes, and triangles.

\* \* \* \* \*

### 3.0 Basic Standards for First-Class Package Service Parcels

\* \* \* \* \*

#### 3.3 Additional Basic Standards

All presorted First-Class Package Service parcels must:

\* \* \* \* \*

*[Delete 3.3c in its entirety.]*

#### 3.4 IMpb Standards

*[Revise 3.4 as follows:]*

All First-Class Package Service parcels must bear an Intelligent Mail package barcode (IMpb) prepared under 708.5.0.

\* \* \* \* \*

#### 440 Standard Mail

#### 443 Prices and Eligibility

\* \* \* \* \*

### 3.0 Basic Standards for Standard Mail Parcels

\* \* \* \* \*

#### 3.3 Additional Basic Standards for Standard Mail

Each Standard Mail mailing is subject to these general standards:

\* \* \* \* \*

*[Revise 3.3g as follows:]*

g. The IMpb applied to each Standard Mail parcel must be correct for the delivery address and must meet the standards in 708.5.0.

\* \* \* \* \*

*[Renumber the current 3.4 through 3.9 as the new 3.5 through 3.10, and add a new 3.4 as follows:]*

#### 3.4 IMpb Standards

*[Revise 3.4 as follows:]*

All Standard Mail parcels, except Standard Mail Marketing parcels mailed as product samples, must bear an Intelligent Mail package barcode (IMpb) prepared under 708.5.0.

\* \* \* \* \*

#### 4.0 Price Eligibility for Standard Mail

\* \* \* \* \*

*[Delete 4.4 in its entirety and renumber the current 4.5 as the new 4.4.]*

\* \* \* \* \*

#### 450 Parcel Select

\* \* \* \* \*

#### 453 Prices and Eligibility

\* \* \* \* \*

*[Renumber the current section 453.3 as the new 453.4, and add a new section 453.3 as follows:]*

### 3.0 Basic Standards for Parcel Select Parcels

#### 3.1 Service Objectives

The USPS does not guarantee the delivery of Parcel Select mailpieces within a specified time. Parcel Select mailpieces might receive deferred service. The local Post Office can provide more information concerning delivery times within its area.

#### 3.2 Delivery and Return Addresses

All Parcel Select mailpieces must bear a delivery address. The delivery address on each piece must include the correct ZIP Code or ZIP+4 code. Alternative addressing formats under 602.3.0 may be used. Each piece must bear the sender's return address.

#### 3.3 IMpb Standards

All Parcel Select mailpieces must bear an Intelligent Mail package barcode (IMpb) prepared under 708.5.0.

\* \* \* \* \*

### 4.0 Price Eligibility for Parcel Select and Parcel Select Lightweight

#### 4.1 Destination Entry Price Eligibility

\* \* \* \* \*

##### 4.1.2 Basic Standards

For Parcel Select destination entry, pieces must meet the applicable standards in 455.4.0 and the following criteria:

\* \* \* \* \*

*[Delete renumbered 4.1.2f in its entirety.]*

\* \* \* \* \*

#### 4.2 Parcel Select NDC and ONDC Presort Price Eligibility

*[Delete the last two sentences of renumbered 4.2 in their entirety.]*

#### 4.3 Parcel Select Barcoded Nonpresort Price Eligibility

*[Delete the first sentence of the introductory paragraph of renumbered 4.3.]*

\* \* \* \* \*

#### 4.4 Parcel Select Lightweight

\* \* \* \* \*

##### 4.4.1 General Eligibility

Parcel Select Lightweight parcels are presorted machinable or irregular parcels. The following also applies:

\* \* \* \* \*

[Delete renumbered 4.41e in its entirety, and renumber the renumbered 4.4.1f as the new renumbered 4.4.1e.]  
\* \* \* \* \*

**460 Bound Printed Matter**

**463 Prices and Eligibility**  
\* \* \* \* \*

**2.0 Basic Eligibility Standards for Bound Printed Matter**

\* \* \* \* \*

[Add a new 2.4 as follows:]

**2.4 IMpb Standards**

All BPM parcels must bear an Intelligent Mail package barcode (IMpb) prepared under 708.5.0.  
\* \* \* \* \*

**4.0 Price Eligibility for Bound Printed Matter Parcels**

**4.1 Price Eligibility**

\* \* \* Price categories are as follows:  
\* \* \* \* \*

[Revise 4.1b and 4.1c as follows:]

b. Presorted Price. The Presorted price applies to BPM prepared in a mailing of at least 300 BPM pieces, prepared and presorted as specified in 465.5.0, 705.8.0, or 705.22.0.

c. Carrier Route Price. The Carrier Route price applies to BPM prepared in a mailing of at least 300 pieces presorted to carrier routes, prepared and presorted as specified in 465.6.0, or 705.8.0.  
\* \* \* \* \*

**470 Media Mail and Library Mail**

**473 Prices and Eligibility**  
\* \* \* \* \*

[Revise the title of 2.0 as follows:]

**2.0 Basic Standards for Media Mail and Library Mail Parcels**

\* \* \* \* \*

[Add a new 2.5 as follows:]

**2.4 IMpb Standards**

All Media Mail and Library Mail parcels, unless inducted through a retail transaction or a USPS self-service kiosk, must bear an Intelligent Mail package barcode (IMpb) prepared under 708.5.0.  
\* \* \* \* \*

**6.0 Price Eligibility for Media Mail and Library Mail Parcels**

\* \* \* \* \*

**6.2 Price Eligibility Standards**

[Delete the second and third sentences of 6.2 in their entirety.]  
\* \* \* \* \*

**6.3 Price Categories for Media Mail and Library Mail Parcels**

Media Mail and Library Mail prices are based on the weight of the piece without regard to zone. The price categories and discounts are as follows:  
\* \* \* \* \*

[Delete 6.3c in its entirety.]

**500 Additional Mailing Services**

**503 Extra Services**

\* \* \* \* \*

**3.0 Certified Mail**

\* \* \* \* \*

**3.2 Basic Information**

\* \* \* \* \*

**3.2.2 Eligible Matter**

[Revise 3.2.2 as follows:]

Only mailable matter prepaid with postage at the First-Class Mail prices may be sent as Certified Mail.  
\* \* \* \* \*

**6.0 Return Receipt**

\* \* \* \* \*

**6.2 Basic Information**

**6.2.2 Eligible Matter**

Return receipt service is available for:  
\* \* \* \* \*

[Resequence the current 2c and 2d as the new 2d and 2e, and revise 2b and add a new 2c as follows:]

b. First-Class Mail when purchased with Certified Mail, COD, insured mail (for more than \$200.00) or Registered Mail service.

c. First-Class Package Service, and Priority Mail (excluding Critical Mail) when purchased at the time of mailing with COD, insured mail (for more than \$200.00), or Registered Mail service.  
\* \* \* \* \*

**8.0 Restricted Delivery**

\* \* \* \* \*

**8.2 Basic Information**

\* \* \* \* \*

**8.2.2 Eligible Matter**

Restricted Delivery service is available for:

[Resequence the current 2b and 2c as the new 2c and 2d, and revise 2a and add a new 2b as follows:]

a. First-Class Mail when purchased with Certified Mail, COD, insured mail (for more than \$200.00) or Registered Mail service.

b. First-Class Package Service, and Priority Mail (excluding Critical Mail) when purchased at the time of mailing

with COD, insured mail (for more than \$200.00), or Registered Mail service.  
\* \* \* \* \*

**505 Return Services**

**1.0 Business Reply Mail (BRM)**

\* \* \* \* \*

**1.4 General Information**

**1.4.1 Description**

[Revise the first sentence of, and add a new second sentence to, 1.4.1 as follows:]

Business Reply Mail (BRM) service enables a permit holder to receive First-Class Mail and Priority Mail back from customers and pay postage and a per piece fee for only the pieces returned. BRM cards, envelopes, self-mailers, and labels may be distributed by a BRM permit holder in any quantity for return to any Post Office in the United States and its territories and possessions, including military Post Offices overseas. Only card-, letter- and flat-sized pieces are eligible for BRM service. \* \* \*

**3.0 Merchandise Return Service**

\* \* \* \* \*

**3.2 Basic Standards**

\* \* \* \* \*

[Renumber the current 3.2.5 through 3.2.13 as the new 3.2.6 through 3.2.14, and add a new 3.2.5 as follows:]

**3.2.5 IMpb Standards**

All MRS labels must bear a unique Intelligent Mail package barcode (IMpb) prepared under 708.5.0.  
\* \* \* \* \*

**3.3 Additional Standards for Permit Holder**

\* \* \* \* \*

**3.3.3 USPS Tracking/Delivery Confirmation**

[Revise 3.3.3 as follows:]  
USPS Tracking/Delivery Confirmation service is optional, but provided without charge for mailpieces bearing authorized MRS labels. MRS labels requesting USPS Tracking/Delivery Confirmation must meet the standards in 503.11.0. USPS Tracking/Delivery Confirmation may be combined with insurance and special handling, or both.  
\* \* \* \* \*

**3.5.13 Format Elements**

Format standards required for the merchandise return label are shown in Exhibit 3.5.13a through Exhibit 3.5.13d, and described as follows:  
\* \* \* \* \*

Exhibit 3.5.13a Merchandise Return Label With No Extra Services or With

Insurance, Special Handling, or Pickup on Demand Service (\*see 3.5.13d)  
*[Placeholder for revised Exhibit 3.5.13a]*  
 \* \* \* \* \*

Exhibit 3.5.13b Merchandise Return Label With Registered Mail Service  
*[Placeholder for revised Exhibit 3.5.13b]*  
 \* \* \* \* \*

Exhibit 3.5.13c Merchandise Return Label With Mailing Acknowledgment (\*see 3.5.13d)  
*[Placeholder for revised Exhibit 3.5.13c]*  
 \* \* \* \* \*

Exhibit 3.5.13d Merchandise Return Label With USPS Tracking/Delivery Confirmation Service  
*[Placeholder for revised Exhibit 3.5.13d]*  
 \* \* \* \* \*

## 700 Special Standards

\* \* \* \* \*

## 705 Advanced Preparation and Special Postage Payment Systems

\* \* \* \* \*

## 7.0 Combining Package Services and Parcel Select Parcels for Destination Entry

### 7.1 Combining Parcels—DSCF and DDU Entry

#### 7.1.1 Qualification

*[Delete the last three sentences of 7.1.1 in their entirety.]*

\* \* \* \* \*

## 708 Technical Specifications

\* \* \* \* \*

## 5.0 Standards for Package and Extra Service Barcodes

### 5.1 Intelligent Mail Package Barcode

\* \* \* \* \*

#### 5.1.7 Electronic File

\* \* \* Electronic files must include the following elements:

\* \* \* \* \*

*[Revise 5.1.7d as follows:]*  
 d. Version 1.6 (or subsequent versions) of the electronic shipping services manifest files including each destination delivery address or ZIP + 4 Code. Effective January 25, 2015, shipping services manifests, or other approved electronic documentation, must include the destination delivery address or delivery point validated (DPV) 11-digit ZIP Code for each record in the file.

*[Delete the current 5.1.7e in its entirety and add a new 7e as follows:]*

e. Electronic shipping manifest files, or approved alternative electronic

documentation, must include data identifying the mailing agent and mail owner, as applicable.

\* \* \* \* \*

## 5.2 Other Package Barcodes

### 5.2.1 Basic Standards for Postal Routing Barcodes

*[Revise the first sentence of 5.2.1 as follows:]*

A separate postal routing barcode may be used on parcels to provide routing information, when used in conjunction with an IMpb.

\* \* \* \* \*

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes if our proposal is adopted.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2013-16524 Filed 7-10-13; 8:45 am]

BILLING CODE 7710-12-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 49

[EPA-R09-OAR-2013-0489; FRL-9830-5]

### Source Specific Federal Implementation Plan for Implementing Best Available Retrofit Technology for Four Corners Power Plant; Navajo Nation; Extension of Notification Deadline

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

**SUMMARY:** On August 24, 2012, EPA took final action to promulgate a Federal Implementation Plan (FIP) to implement the Best Available Retrofit Technology (BART) requirement of the Regional Haze Rule for the Four Corners Power Plant (FCPP), located on the Navajo Nation. EPA's final action required the owners of FCPP to choose between two strategies for compliance: compliance with the emission limits in EPA's final BART determination; or compliance with an alternative to BART, originally put forth by the owners of FCPP, that included closure of Units 1, 2, and 3 at FCPP and installation of new air pollution controls to meet BART limits on Units 4 and 5. EPA's final action required the owners of FCPP to provide notification to EPA by July 1, 2013, of its selection of which BART compliance strategy it would implement at FCPP. On June 19, 2013, Arizona Public Service (APS), the operator and a co-owner of FCPP, requested that EPA

extend the notification date from July 1 to December 31, 2013, due to new uncertainties that complicate its decision related to BART compliance. These uncertainties result from a recent decision by the Arizona Corporation Commission to explore retail competition of the electricity market in Arizona. Because the basis provided by APS for an extended notification date is reasonable and justified given the uncertainties in the electrical market in Arizona, EPA is proposing to extend the date by which APS must notify EPA of its BART compliance strategy, from July 1, 2013 to December 31, 2013. EPA is not proposing to amend any other requirements in the FIP for FCPP.

**DATES:** Comments must be postmarked no later than August 12, 2013.

**ADDRESSES:** Submit comments, identified by docket number EPA-R09-OAR-2013-0489, by one of the following methods:

(1) *Federal eRulemaking Portal:* [www.regulations.gov](http://www.regulations.gov). Follow the on-line instructions.

(2) *Email:* [r9\\_airplanning@epa.gov](mailto:r9_airplanning@epa.gov).

(3) *Mail or deliver:* Anita Lee (Air-2), U.S. Environmental Protection Agency Region 9, 75 Hawthorne Street, San Francisco, CA 94105-3901.

*Instructions:* All comments will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through [www.regulations.gov](http://www.regulations.gov) or email.

[www.regulations.gov](http://www.regulations.gov) is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

*Docket:* The index to the docket for this action is available electronically at [www.regulations.gov](http://www.regulations.gov) and in hard copy at EPA Region 9, 75 Hawthorne Street, San Francisco, California. While documents in the docket are listed in the index, some information may be publicly available only at EPA Region 9 (e.g., maps, voluminous reports, copyrighted material), and some may not be publicly available in either

location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact person listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:**

Anita Lee, EPA Region 9, (415) 972-3958, [r9\\_airplanning@epa.gov](mailto:r9_airplanning@epa.gov).

**SUPPLEMENTARY INFORMATION:**

Throughout this document, “we”, “us”, and “our” refer to EPA.

**Table of Contents**

- I. Background
- II. Today's Action
- III. Administrative Requirements

**I. Background**

FCPP is a privately owned and operated coal-fired power plant located on the Navajo Nation Indian Reservation near Farmington, New Mexico. Based on lease agreements signed in 1960, FCPP was constructed and has been operating on real property held in trust by the Federal government for the Navajo Nation. The facility consists of five coal-fired electric utility steam generating units with a total capacity of 2060 megawatts (MW). Units 1, 2, and 3 at FCPP are owned entirely by Arizona Public Service (APS) which serves as the facility operator, and are rated to 170 MW (Units 1 and 2) and 220 MW (Unit 3). Units 4 and 5 are each rated to a capacity of 750 MW, and are co-owned by six entities: Southern California Edison (48 percent), APS (15 percent), Public Service Company of New Mexico (13 percent), Salt River Project (10 percent), El Paso Electric Company (7 percent), and Tucson Electric Power (7 percent).

On August 24, 2012, EPA promulgated a final rule that established limits for oxides of nitrogen (NO<sub>x</sub>) emissions from FCPP under the BART provision of the Regional Haze Rule (77 FR 51620). The final rule required the owners of FCPP to choose between two strategies for BART compliance: (1) compliance with a plant-wide BART emission limit of 0.11 pounds of NO<sub>x</sub> per million British Thermal Units of heat input (lb/MMBtu) by October 23, 2017, or (2) retirement of Units 1, 2, and 3 by January 1, 2014 and compliance with a BART emission limit of 0.098 lb/MMBtu on Units 4 and 5 by July 31, 2018. The second BART compliance strategy, involving retirement of Units 1, 2, and 3, was based on a plan originally put forth by APS. This compliance strategy was proposed and finalized as an alternative emission control strategy that achieved greater reasonable progress than BART. For additional

information regarding EPA's analyses regarding BART and the alternative emission control strategy, see EPA's BART proposal (75 FR 64221, October 29, 2010), supplemental proposal (76 FR 10530, February 25, 2011) and final rule (77 FR 51620, August 24, 2012).

As discussed in our supplemental proposal published on February 25, 2011, the choice to retire Units 1, 2, and 3, and comply with BART emission limits on Units 4 and 5 is contingent upon the resolution of several issues, including a renewed site lease with the Navajo Nation, a renewed coal contract, and regulatory approvals from the Arizona Corporation Commission (ACC), California Public Utilities Commission (CPUC), and Federal Energy Regulatory Commission (FERC). The ACC, CPUC, and FERC regulatory approvals were necessary because APS would purchase the 48 percent interest of Units 4 and 5 currently owned by Southern California Edison (SCE). Because the regulatory approvals, renewed site lease, and renewed coal contract were expected to require significant time and effort by APS, other owners, and the Navajo Nation, EPA's final rule included requirements for the owner or operator of FCPP to (1) update EPA by January 1, 2013, on the status of lease negotiations and regulatory approvals, and (2) notify EPA, by July 1, 2013, of the BART strategy it elects to implement, including a plan and schedule for compliance with its chosen strategy.<sup>1</sup>

On December 31, 2012, APS provided an update to EPA regarding the status of the approvals required for implementing the alternative emission control strategy.<sup>2</sup> APS stated that on March 7, 2011, APS and the Navajo Nation executed an agreement to extend the lease for FCPP to July 6, 2041. The lease renewal must be reviewed and approved by the U.S. Bureau of Indian Affairs, which triggers review under the National Environmental Policy Act (NEPA), and other related reviews, including under Section 7 of the Endangered Species Act. NEPA review is underway and expected to conclude in time to allow for a Record of Decision by January 2015. EPA is a cooperating agency in the NEPA process. In its December 31, 2012 update letter, APS also stated that it is in on-going negotiation for a new coal supply agreement with its coal supplier. Finally, APS confirmed that it had

obtained regulatory approvals to purchase SCE's 48 percent interest of Units 4 and 5.<sup>3</sup>

However, in a letter dated June 19, 2013, APS requested that EPA extend the date by which APS must provide notification of its BART implementation strategy for FCPP.<sup>4</sup> APS explained that it had previously expected to meet the July 1, 2013 notification date because it had completed the processes to obtain regulatory approvals to purchase SCE's shares of Units 4 and 5, and renewal of the lease and coal contract were underway. Then, unexpectedly, in May 2013, the ACC voted to re-examine deregulation of the retail electric market in Arizona.<sup>5</sup> In its June 19, 2013 letter, APS explains that, depending on its structure and reach, a deregulated retail electric market could significantly change the BART compliance strategy for FCPP. Thus, APS is no longer able to make an informed decision by July 1, 2013. APS states that its decision requires more certainty regarding the likelihood of deregulation in Arizona. APS also filed a Form 8-K with the United States Securities and Exchange Commission disclosing the uncertainty caused by the ACC decision to examine deregulation.<sup>6</sup>

APS has requested that EPA extend the notification date for its selection of the BART compliance strategy to December 31, 2013. APS noted that the potential for deregulation of the retail electric market in Arizona was not foreseen at the time of our final rulemaking in 2012. APS also noted that extending the notification date by six months will not affect public health or the environment because the BART compliance dates, in 2017 or 2018, depending on the compliance strategy selected, are not linked to the notification date and remain unchanged.

**II. EPA's Proposed Action**

EPA is proposing to extend the date by which the owner or operator of FCPP must notify EPA of its selected BART compliance strategy from July 1, 2013 to

<sup>3</sup> APS received approval from the ACC on April 24, 2012; from FERC on November 27, 2012; and from the Department of Justice/Federal Trade Commission on July 2, 2012. As discussed in our final rulemaking dated August 24, 2012, EPA already understood that the CPUC approved the sale of SCE's shares of Units 4 and 5 at FCPP to APS on March 22, 2012.

<sup>4</sup> See letter from Ann Becker, Vice President, Environmental and Chief Sustainability Officer, Arizona Public Service, to Jared Blumenfeld, Regional Administrator, EPA Region 9, dated June 19, 2013.

<sup>5</sup> <http://www.azcc.gov/Divisions/Administration/About/Letters/5-23-13%20Retail%20Competition%202013-0135.pdf>.

<sup>6</sup> Form 8-K was appended to the June 19, 2013 letter from Ann Becker to Jared Blumenfeld.

<sup>1</sup> See 40 CFR 49.5512(i)(4).

<sup>2</sup> See Letter from Susan Kidd, Director Environmental Policies and Programs, Arizona Public Service, to Jared Blumenfeld, Regional Administrator, EPA Region 9, dated December 31, 2012.

December 31, 2013. This action proposes to revise one provision in the existing source-specific federal implementation plan for FCPP, codified at 40 CFR 49.5512(i).

#### A. Justification for Proposing to Extend Notification Date

EPA's final rule required the owner or operator of FCPP to notify EPA by July 1, 2013, regarding whether it would elect to comply with BART or the alternative emission control strategy. Specifically, 40 CFR 49.5512(i)(4) requires the owner and operator of FCPP to provide EPA with updates and additional information regarding the status of various approvals and processes that must be resolved in order for the owner and operator to determine which BART strategy it will implement to comply with the FIP. The notification date is not a substantive requirement of our BART determination, nor is it a requirement related to the emission limit constituting BART or the timeframe for BART compliance, as defined in the CAA or the Regional Haze Rule. EPA notes that the FIP continues to require FCPP to meet the emission limits required under BART or the alternative emission control strategy by the compliance dates specified in our final rulemaking, codified at 40 CFR 49.5512(i)(2) and (3), regardless of the extension of the notification date in (i)(4).

EPA recognizes that the potential re-examination of a competitive retail electric market in Arizona represents new uncertainties for APS and the other owners of FCPP regarding decisions related to the closure of Units 1, 2, and 3, and capital investments to install new air pollution controls to meet BART limits for Units 4 and 5. EPA understands that the ACC has opened a docket to accept comments on deregulation until August 16, 2013, and plans to convene an Open Meeting, after it has reviewed written comments, to discuss issues and information filed to the docket. EPA recognizes that uncertainty may still exist after the Open Meeting, depending on the direction the ACC takes regarding further examination of deregulation. Therefore, EPA is proposing to find that a December 31, 2013 notification date is necessary to provide APS with the needed flexibility in determining whether to implement BART or the alternative emission control strategy to reduce FCPP's NO<sub>x</sub> emissions by 80–87 percent.

#### B. Notification Date Extension Does Not Interfere with Attainment or Reasonable Further Progress

The CAA requires that any revision to an implementation plan shall not be approved by the Administrator "if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress . . . or any other applicable requirement of [the CAA]." <sup>7</sup>

EPA has promulgated health-based standards, known as the national ambient air quality standards (NAAQS), for seven pollutants, including NO<sub>2</sub>, a component of NO<sub>x</sub>, and pollutants such as ozone and particulate matter with a diameter less than or equal to 2.5 micrometers (PM<sub>2.5</sub>), that are formed in the atmosphere from reactions between NO<sub>x</sub> and other pollutants.<sup>8</sup> Using a process that considers air quality data and other factors, EPA designates areas as "nonattainment" if those areas cause or contribute to violations of a NAAQS. Reasonable further progress, as defined in section 171 of the CAA, is related to attainment and means "such annual incremental reductions in emissions of the relevant air pollutant . . . for the purpose of ensuring attainment of the applicable [NAAQS]."

FCPP is located on the Navajo Nation, in the northeastern corner of New Mexico. This area is not designated nonattainment with any NAAQS. Regardless of the decision to implement BART or the alternative emission control strategy, emissions of NO<sub>x</sub> from FCPP will be reduced as a result of EPA's FIP implementing the BART provisions of the Regional Haze Rule. EPA's proposed extension of the notification date does not affect the compliance dates associated with BART or the alternative emission control strategy. Therefore, a six-month extension of the notification date will not interfere with attainment or reasonable further progress for any air quality standard.

#### C. Notification Date Extension Does Not Interfere With Any Other Applicable Requirement of the CAA

The other requirement of the CAA that is applicable to FCPP is the BART provision under the visibility protection requirements for class I Federal areas under section 169A(b)(2)(A). In our final rulemaking in August 24, 2012, EPA promulgated a finding, under the Tribal Authority Rule (TAR), that it was necessary or appropriate to promulgate a source-specific FIP for FCPP to

achieve emission reductions required by the BART provision of the CAA.<sup>9</sup> As stated previously, the notification requirements included in our final FIP do not affect or change the compliance dates for BART or the alternative emission control strategy. Therefore, the six-month extension of the notification date that we are proposing will not interfere with the BART requirement of the CAA.

### III. Administrative Requirements

#### A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review 13563

This action proposes to extend the date for a single source to notify EPA regarding its decision to implement BART or an alternative emission control strategy. This type of action for a single source is exempt from review under Executive Orders (EO) 12866 (58 FR 51735, October 4, 1993) and EO 13563 (76 FR 3821, January 21, 2011).

#### 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). Because the proposed action merely extends a compliance date, it does not impose an information collection burden and the Paperwork Reduction Act does not apply.

#### 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 today's proposed 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

<sup>7</sup> See section 110(l) of the CAA.

<sup>8</sup> The other pollutants are sulfur dioxide, carbon monoxide, lead, and PM<sub>10</sub>.

<sup>9</sup> See CAA section 169A(b)(2)(A) and our final rulemaking dated August 24, 2012 (77 FR 51620) for additional information related to the TAR. In our FCPP rulemaking, EPA did not propose or finalize a finding that it was necessary or appropriate under the TAR to promulgate a FIP to implement a long-term strategy for making reasonable progress toward the national visibility goal under section 169A(b)(2)(B) of the CAA.

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 action on small entities, I certify that this proposed action will not have a significant economic impact on a substantial number of small entities. The owners of FCPP are not a small entities. See *Mid-Tex Electric Cooperative, Inc. v. FERC*, 773 F.2d 327 (D.C. Cir. 1985). Additionally, the extended notification date being proposed today was requested by the operator and co-owner of FCPP. 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 (UMRA)*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, requires Federal agencies, unless otherwise prohibited by law, to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Federal agencies must also develop a plan to provide notice to small governments that might be significantly or uniquely affected by any regulatory requirements. The plan must enable officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates and must inform, educate, and advise small governments on compliance with the regulatory requirements.

This proposed rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. This rule merely proposes a six-month extension of a notification date in an existing federal implementation plan for FCPP. Thus, this rule is not subject to the requirements of sections 202 or 205 of 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. This proposed rule does not impose regulatory requirements on any government entity.

#### *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 in the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action proposes a six-month extension of a notification date. Thus, Executive Order 13132 does not apply to this action.

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 action from State and local officials.

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

Under Executive Order 13175 (65 FR 67249, November 9, 2000), EPA may not issue a regulation that has tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, or EPA consults with tribal officials early in the process of developing the proposed regulation and develops a tribal summary impact statement.

EPA has concluded that this proposed rule may have tribal implications because the Four Corners Power Plant is located on reservation lands of the Navajo Nation. However, it will neither impose substantial direct compliance costs on tribal governments, nor preempt tribal law.

EPA consulted with tribal officials early in the process of developing BART regulations for the Four Corners Power Plant to permit them to have meaningful and timely input into its development. During the comment period for prior EPA actions related to the EPA's BART FIP for FCPP, the Navajo Nation raised concerns to EPA about the potential economic impacts of our BART determination on the Navajo Nation. EPA consulted the Navajo Nation regarding these concerns. Additional details of our consultation with the Navajo Nation are provided in sections III.H and IV.F of our final rulemaking published on August 24, 2012 (77 FR 51620). For this proposed action to extend the notification date by six months, we will consult with the Navajo Nation if requested as we proceed with this action. EPA notified the Navajo Nation Environmental Protection

Agency regarding the request from APS to extend the notification date on June 25, 2013.

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

#### *G. Executive Order 13045: Protection of Children From Environmental Health Risks 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 it does not establish an environmental standard intended to mitigate health or safety risks. This proposed action addresses regional haze and visibility protection.

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

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is exempt under Executive Order 12866.

#### *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 (10) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. VCS are technical standards (e.g., materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by the VCS bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when the Agency decides not to use available and applicable VCS.

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

#### *J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 (59 FR 7629, February 16, 1994), establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing,

as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule, if finalized, will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This proposed rule does not change any applicable emission limit for FCPP. This proposed rule merely extends a notification date by six months.

#### List of Subjects in 40 CFR Part 49

Environmental protection, Air pollution control, Indians, Intergovernmental relations, Nitrogen Dioxide.

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

Dated: June 25, 2013.

**Alexis Strauss,**

*Acting Regional Administrator, Region 9.*

For the reasons stated in the preamble, Title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

#### PART 49—[AMENDED]

■ 1. The authority citation for part 49 continues to read as follows:

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

■ 2. In § 49.5512, revise paragraph (i)(4) to read as follows:

#### § 49.5512 Federal Implementation Plan Provisions for Four Corners Power Plant, Navajo Nation.

\* \* \* \* \*

(i) \* \* \*

(4) By January 1, 2013, the owner or operator shall submit a letter to the Regional Administrator updating EPA of the status of lease negotiations and regulatory approvals required to comply with paragraph (i)(3) of this section. By December 31, 2013, the owner or operator shall notify the Regional Administrator by letter whether it will comply with paragraph (i)(2) of this section or whether it will comply with paragraph (i)(3) of this section and shall submit a plan and time table for compliance with either paragraph (i)(2) or (3) of this section. The owner or operator shall amend and submit this amended plan to the Regional Administrator as changes occur.

\* \* \* \* \*

[FR Doc. 2013-16078 Filed 7-10-13; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[EPA-R05-OAR-2011-0698; FRL-9831-8]

#### Approval and Promulgation of Air Quality Implementation Plans; Indiana; Redesignation of the Indiana Portion of the Louisville Area to Attainment of the 1997 Annual Standard for Fine Particulate Matter

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

**ACTION:** Proposed rule.

**SUMMARY:** On June 16, 2011, the Indiana Department of Environmental Management (IDEM) submitted a request for EPA to approve the redesignation of the Indiana portion of the Louisville (KY-IN) (Madison Township, Jefferson County and Clark and Floyd Counties) nonattainment area to attainment of the 1997 annual standard for fine particulate matter (PM<sub>2.5</sub>). EPA is proposing to determine that the entire Louisville area has attained the 1997 annual PM<sub>2.5</sub> standard, based on the most recent three years of certified air quality data. EPA is proposing to approve, as revisions to the Indiana state implementation plan (SIP), the state's plan for maintaining the 1997 annual PM<sub>2.5</sub> National Ambient Air Quality Standard (NAAQS or standard) through 2025 in the area. EPA is proposing to approve the 2008 emissions inventory for the Indiana portion of the Louisville area as meeting the comprehensive emissions inventory requirement of the Clean Air Act (CAA or Act). Indiana's maintenance plan submission includes motor vehicle emission budgets (MVEBs) for the mobile source contribution of PM<sub>2.5</sub> and nitrogen oxides (NO<sub>x</sub>) in the Louisville area for transportation conformity purposes; EPA is proposing to approve the MVEBs for 2015 and 2025 into the Indiana SIP for transportation conformity purposes. In this proposal, EPA is also proposing to approve a supplement to the emission inventories previously submitted by the state. EPA is proposing that the inventories for ammonia and volatile organic compounds (VOC), in conjunction with the inventories for NO<sub>x</sub>, direct PM<sub>2.5</sub>, and sulfur dioxide (SO<sub>2</sub>) that EPA previously proposed to approve, meet the comprehensive emissions inventory requirement of the CAA.

**DATES:** Comments must be received on or before August 12, 2013.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-

OAR-2011-0698, by one of the following methods:

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

2. *Email*: [blakley.pamela@epa.gov](mailto:blakley.pamela@epa.gov).

3. *Fax*: (312) 692-2450.

4. *Mail*: Pamela Blakley, Chief, Control Strategies Section (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. *Hand Delivery*: Pamela Blakley, Chief, Control Strategies Section (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.

**Instructions:** Direct your comments to Docket ID No. EPA-R05-OAR-2011-0698. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *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 email comment directly to EPA without going through *www.regulations.gov*, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to section I of the **SUPPLEMENTARY INFORMATION** section of this document.

**Docket:** All documents in the docket are listed in the [www.regulations.gov](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 [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Carolyn Persoon, Environmental Engineer, at (312) 353-8290 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Carolyn Persoon, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-8290, [persoon.carolyn@epa.gov](mailto:persoon.carolyn@epa.gov).

**SUPPLEMENTARY INFORMATION:** This supplementary information section is arranged as follows:

- I. What should I consider as I prepare my comments for EPA?
- II. What actions is EPA proposing to take?
- III. What is the background for these actions?
- IV. What are the criteria for redesignation to attainment?
- V. What is EPA's analysis of the State's request?
  1. Attainment (Section 107(d)(3)(E)(i))
  2. The Area Has Met All Applicable Requirements under Section 110 and Part D and Has a Fully Approved SIP Under Section 110(k) (Sections 107(d)(3)(E)(v) and 107(d)(3)(E)(ii))
  3. The Improvement in Air Quality Is Due to Permanent and Enforceable Reductions in Emissions Resulting from Implementation of the SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions (Section 107(d)(3)(E)(iii))
  4. Indiana Has a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA (Section 107(d)(3)(E)(iv))
  5. Adequacy of Indiana's MVEB
  6. 2008 Comprehensive Emissions Inventory
  7. Summary of Proposed Actions
- VI. What are the effects of EPA's proposed actions?
- VII. Statutory and Executive order reviews.

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

When submitting comments, remember to:

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

### **II. What actions is EPA proposing to take?**

EPA is proposing to take several actions related to redesignation of the Indiana portion of the Louisville area to attainment of the 1997 annual PM<sub>2.5</sub> NAAQS. In addition to EPA's March 9, 2011, determination that the area attained the 1997 annual NAAQS for PM<sub>2.5</sub> by the applicable attainment date based on quality-assured, certified 2007–2009 ambient air monitoring data (76 FR 12860), we are proposing to determine that the area continues to attain the NAAQS for PM<sub>2.5</sub>, based on monitoring data for 2009–2011 and 2010–2012 shows that the area continues to attain. EPA is proposing to find that Indiana meets the requirements for redesignation of the Louisville area to attainment of the 1997 PM<sub>2.5</sub> NAAQS under section 107(d)(3)(E) of the CAA.

Second, EPA is proposing to approve Indiana's annual PM<sub>2.5</sub> maintenance plan for the Louisville area as a revision to the Indiana SIP, including the MVEBs for PM<sub>2.5</sub> and NO<sub>x</sub> emissions for the mobile source contribution of the Louisville area.

Finally, EPA is proposing to approve 2008 primary PM<sub>2.5</sub>, NO<sub>x</sub>, SO<sub>2</sub>, VOC, and ammonia emissions inventories as satisfying the requirement in section 172(c)(3) of the CAA for a current, accurate and comprehensive emission inventory. In a supplemental submission to EPA on March 18, 2013, IDEM submitted ammonia and VOC emissions inventories to supplement the

emissions inventories that had previously been submitted.

In this proposed redesignation, EPA takes into account two decisions of the D.C. Circuit Court (referred to as “the D.C. Circuit” or “the Court”). In the first of the two court decisions, the D.C. Circuit, on August 21, 2012, issued *EME Homer City Generation, L.P. v. EPA*, 696 F.3d 7 (D.C. Cir. 2012, no. 11–1302 and consolidated cases) (referred to as “*EME Homer City*,”) which vacated and remanded the Cross-State Air Pollution Rule (CSAPR) and ordered EPA to continue administering the Clean Air Interstate Rule (CAIR) “pending . . . development of a valid replacement.” *EME Homer City* at 38. The D.C. Circuit denied all petitions for rehearing on January 24, 2013. In the second decision, on January 4, 2013, in *Natural Resources Defense Council v. EPA*, the D.C. Circuit remanded to EPA the “Final Clean Air Fine Particle Implementation Rule” (72 FR 20586, April 25, 2007) and the “Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers (PM<sub>2.5</sub>)” final rule (73 FR 28321, May 16, 2008). 706 F.3d 428 (D.C. Cir. 2013).

EPA is proposing to approve the request from the state of Indiana to change the designation of Marion Township, Jefferson County and Clark and Floyd Counties (the Indiana portion of the Louisville area) from nonattainment to attainment of the 1997 annual PM<sub>2.5</sub> NAAQS. This action would not change the legal designation of the Kentucky portion of the area, which would be addressed in a separate rulemaking.

### **III. What is the background for these actions?**

Fine particulate pollution can be emitted directly from a source (primary PM<sub>2.5</sub>) or formed secondarily through chemical reactions in the atmosphere involving precursor pollutants emitted from a variety of sources. Sulfates are a type of secondary particulate formed from SO<sub>2</sub> emissions from power plants and industrial facilities. Nitrates, another common type of secondary particulate, are formed from combustion emissions of NO<sub>x</sub> from power plants, mobile sources and other combustion sources.

The first air quality standards for PM<sub>2.5</sub> were promulgated on July 18, 1997, at 62 FR 38652. EPA promulgated an annual standard at a level of 15 micrograms per cubic meter (µg/m<sup>3</sup>) of ambient air, based on a three-year average of the annual mean PM<sub>2.5</sub> concentrations at each monitoring site. In the same rulemaking, EPA promulgated a 24-hour PM<sub>2.5</sub> standard at

65 µg/m<sup>3</sup>, based on a three-year average of the 98th percentile of 24-hour PM<sub>2.5</sub> concentrations at each monitoring site.

On January 5, 2005, at 70 FR 944, EPA published air quality area designations for the 1997 annual PM<sub>2.5</sub> standard based on air quality data for calendar years 2001–2003. In that rulemaking, EPA designated the Louisville area as nonattainment for the 1997 annual PM<sub>2.5</sub> standard.

On October 17, 2006, at 71 FR 61144, EPA retained the annual PM<sub>2.5</sub> standard at 15 µg/m<sup>3</sup> (2006 annual PM<sub>2.5</sub> standard), but revised the 24-hour standard to 35 µg/m<sup>3</sup>, based again on the three-year average of the annual 98th percentile of the 24-hour PM<sub>2.5</sub> concentrations. In response to legal challenges of the 2006 annual PM<sub>2.5</sub> standard, the D.C. Circuit remanded this standard to EPA for further consideration. See *American Farm Bureau Federation and National Pork Producers Council, et al. v. EPA*, 559 F.3d 512 (D.C. Cir. 2009). On December 14, 2012, EPA finalized a rule revising the PM<sub>2.5</sub> annual standard to 12 µg/m<sup>3</sup> based on current scientific evidence regarding the protection of public health. Since the Louisville area is designated as nonattainment for the 1997 annual PM<sub>2.5</sub> standard, today's proposed action addresses redesignation to attainment only for this standard.

On March 9, 2011, EPA issued a final determination that the entire Louisville area attained the 1997 PM<sub>2.5</sub> standard by the applicable attainment date (76 FR 12860). Indiana's original submittal contained complete, quality-assured and certified air monitoring data for years 2008–2010. Based upon our review of complete, quality-assured and certified ambient air monitoring data from 2009–2011, we are proposing to determine that the area continues to attain the 1997 annual PM<sub>2.5</sub> NAAQS. Further, recently state certified data for 2012 indicate that the area continues to attain the 1997 annual PM<sub>2.5</sub> NAAQS.

**IV. What are the criteria for redesignation to attainment?**

The CAA sets forth the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) of the CAA allows for redesignation provided that: (1) The Administrator determines that the area has attained the applicable NAAQS based on current air quality data; (2) the Administrator has fully approved an applicable SIP for the area under section 110(k) of the CAA; (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable emission reductions resulting from implementation of the applicable SIP, Federal air pollution control regulations and other permanent and enforceable emission reductions; (4) the Administrator has fully approved a maintenance plan for the area meeting the requirements of section 175A of the CAA; and (5) the state containing the area has met all requirements applicable to the area for purposes of redesignation under section 110 and part D of the CAA.

**V. What is EPA's analysis of the State's request?**

EPA is proposing to grant the redesignation of the Indiana portion of the Louisville area to attainment of the 1997 annual PM<sub>2.5</sub> NAAQS and is proposing to approve Indiana's maintenance plan for the area and other related SIP revisions. The bases for these actions follow.

*1. Attainment (Section 107(d)(3)(E)(i))*

As noted above, in a rulemaking published on March 9, 2011, EPA determined that the Louisville area attained the 1997 annual PM<sub>2.5</sub> NAAQS by the applicable attainment date. The basis and effect of this determination were discussed in the proposed (75 FR 55725) and final (76 FR 12860) actions. The determination was based on certified quality-assured air quality

monitoring data for 2007–2009 showing the area had met the standard by the attainment date. In this action, we are proposing to determine that the Louisville area has attained the 1997 annual PM<sub>2.5</sub> NAAQS based upon the most recent three years of complete, certified and quality-assured data, as required by section 107(d)(3)(E) of the CAA. Under EPA's regulations at 40 CFR 50.7, the annual primary and secondary PM<sub>2.5</sub> standards are met when the annual arithmetic mean concentration, as determined in accordance with 40 CFR part 50, appendix N, is less than or equal to 15.0 µg/m<sup>3</sup> at all relevant monitoring sites in the area.

EPA has reviewed the ambient air quality monitoring data in the Louisville area, consistent with the requirements contained at 40 CFR part 50. EPA's review focused on data recorded in the EPA Air Quality System (AQS) database for the Louisville PM<sub>2.5</sub> nonattainment area from 2009–2011, and 2010–2012. EPA also considered preliminary data for 2012, for which EPA has not yet calculated design values.

The Louisville area has seven monitors that are located in Clark and Floyd counties, Indiana, and Jefferson County, Kentucky. Recently certified state monitored data has been used to calculate design value from 2010–2012 for PM<sub>2.5</sub> that ranged 11.0–13.2 µg/m<sup>3</sup> for the 1997 annual standard. The monitors in the Louisville area recorded complete data in accordance with criteria set forth by EPA in 40 CFR part 50, appendix N, where a complete year of air quality data comprises four calendar quarters, with each quarter containing data with at least 75% capture of the scheduled sampling days. Available data are considered to be sufficient for comparison to the NAAQS if three consecutive complete years of data exist.

TABLE 1—THE 1997 ANNUAL PM<sub>2.5</sub> DESIGN VALUES FOR THE LOUISVILLE MONITOR WITH COMPLETE DATA FOR THE 2009–2011 AND 2010–2012 DESIGN VALUES <sup>1</sup> IN µG/M<sup>3</sup>

County	Site	Annual stand-ard design value 2009–2011 (µg/m <sup>3</sup> )	Annual stand-ard design value 2010–2012 (µg/m <sup>3</sup> )
Clark County, IN .....	180190006	13.5	13.2
Clark County, IN .....	180190008	11.4	11.0
Floyd County, IN .....	180431004	12.3	11.8
Jefferson County, KY .....	211110043	12.6	11.8
Jefferson County, KY .....	211110044	12.8	12.1
Jefferson County, KY .....	211110051	12.7	12.3
Jefferson County, KY .....	211110067	12.1	11.5

<sup>1</sup> As defined in 40 CFR part 50, appendix N(1)(c).

EPA's review of monitoring data from the 2009–2011 and 2010–2012 monitoring periods supports EPA's determination that the Louisville area has monitored attainment. EPA proposes to determine that the Louisville area has attained the 1997 annual PM<sub>2.5</sub> standard.

*2. The Area Has Met All Applicable Requirements Under Section 110 and Part D and Has a Fully Approved SIP Under Section 110(k) (Sections 107(d)(3)(E)(v) and 107(d)(3)(E)(ii))*

We have determined that Indiana's SIP meets all applicable SIP requirements for purposes of redesignation for the Louisville area under section 110 of the CAA for purposes of redesignation in accordance with section 107(d)(3)(E)(v). In addition, with the exception of the emissions inventory under section 172(c)(3), we have previously approved all applicable requirements of the Indiana SIP for purposes of redesignation, in accordance with section 107(d)(3)(E)(ii). As discussed below, in this action EPA is approving Indiana's 2008 emissions inventory as meeting the section 172(c)(3) comprehensive emissions inventory requirement.

In making these determinations, we have ascertained which SIP requirements are applicable to the area for purposes of redesignation, and have determined that they are fully approved under section 110(k) of the CAA.

*a. The Louisville Area Has Met All Applicable Requirements for Purposes of Redesignation Under Section 110 and Part D of the CAA*

*i. Section 110 General SIP Requirements*

Section 110(a) of title I of the CAA contains the general requirements for a SIP. Section 110(a)(2) provides that the implementation plan submitted by a state must have been adopted by the state after reasonable public notice and hearing, and, among other things, must: Include enforceable emission limitations and other control measures, means or techniques necessary to meet the requirements of the CAA; provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to monitor ambient air quality; provide for implementation of a source permit program to regulate the modification and construction of any stationary source within the areas covered by the plan; include provisions for the implementation of part C, Prevention of Significant Deterioration (PSD) and part D, NSR permit programs; include criteria for stationary source emission

control measures, monitoring, and reporting; include provisions for air quality modeling; and provide for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) of the CAA requires that SIPs contain measures to prevent sources in a state from significantly contributing to air quality problems in another state. EPA believes that the requirements linked with a particular nonattainment area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state. Thus, we believe that these requirements should not be construed to be applicable requirements for purposes of redesignation.

Further, we believe that the other section 110 elements described above that are not connected with nonattainment plan submissions and not linked with an area's attainment status are also not applicable requirements for purposes of redesignation. A state remains subject to these requirements after an area is redesignated to attainment. We conclude that only the section 110 and part D requirements that are linked with a particular area's designation and classification are the relevant measures which we may consider in evaluating a redesignation request. This approach is consistent with EPA's existing policy on applicability of conformity and oxygenated fuels requirements for redesignation purposes, as well as with section 184 ozone transport requirements. See Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176 (October 10, 1996)) and (62 FR 24826 (May 7, 1997)); Cleveland-Akron-Lorain, Ohio, final rulemaking (61 FR 20458 (May 7, 1996)); and Tampa, Florida, final rulemaking (60 FR 62748 (December 7, 1995)). See also the discussion on this issue in the Cincinnati, Ohio 1-hour ozone redesignation (65 FR 37890 (June 19, 2000)), and in the Pittsburgh, Pennsylvania 1-hour ozone redesignation (66 FR 50399 (October 19, 2001)).

We have reviewed Indiana's SIP and have concluded that it meets the general SIP requirements under section 110 of the CAA to the extent they are applicable for purposes of redesignation. EPA has previously approved provisions into the Indiana SIP addressing section 110 elements

under particulate standards (40 CFR 52.770). On December 7, 2007, September 9, 2008, March 23, 2011, and April 7, 2011, Indiana made submittals addressing "infrastructure SIP" elements required by section 110(a)(2) of the CAA. EPA approved elements of Indiana's submittals on July 13, 2011, at 76 FR 41075. The requirements of section 110(a)(2), however, are statewide requirements that are not linked to the PM<sub>2.5</sub> nonattainment status of the Louisville area. Therefore, EPA believes that these SIP elements are not applicable requirements for purposes of review of the state's PM<sub>2.5</sub> redesignation request.

*ii. Part D Requirements*

EPA has determined that, upon approval of the base year emissions inventories discussed in section IV.C. of this rulemaking, the Indiana SIP will meet the applicable SIP requirements for the Louisville area applicable for purposes of redesignation under part D of the CAA. Subpart 1 of part D, found in sections 172–176 of the CAA, sets forth the basic nonattainment requirements applicable to all nonattainment areas.

*1. Subpart 1*

*(a) Section 172 Requirements.*

For purposes of evaluating this redesignation request, the applicable section 172 SIP requirements for the Louisville area are contained in sections 172(c)(1)–(9). A thorough discussion of the requirements contained in section 172 can be found in the General Preamble for Implementation of Title I (57 FR 13498, April 16, 1992).

Section 172(c)(1) requires the plans for all nonattainment areas to provide for the implementation of all reasonably available control measures (RACM) as expeditiously as practicable and to provide for attainment of the primary NAAQS. EPA interprets this requirement to impose a duty on all nonattainment areas to consider all available control measures and to adopt and implement such measures that are reasonably available for implementation in each area as components of the area's attainment demonstration. Because the Louisville area has reached attainment, Indiana does not need to address additional measures to provide for attainment, and section 172(c)(1) requirements are no longer considered to be applicable as long as the area continues to attain the standard until redesignation. These requirements were suspended with the previous action (76 FR 12860) that determined attainment of the standard, as discussed above.

The reasonable further progress (RFP) requirement under section 172(c)(2) is defined as progress that must be made toward attainment. This requirement is not relevant for purposes of redesignation because the Louisville area has monitored attainment of the 1997 annual PM<sub>2.5</sub> NAAQS. (“General Preamble for the Interpretation of Title I of the CAA Amendments of 1990”; (57 FR 13498, 13564, April 16, 1992)). See also 40 CFR 51.918. The requirement to submit the section 172(c)(9) contingency measures is similarly not applicable for purposes of redesignation. *Id.*

Section 172(c)(3) requires submission and approval of a comprehensive, accurate and current inventory of actual emissions. Indiana submitted a 2008 base year emissions inventory along with the redesignation request. As discussed below in section IV.C., EPA is approving the 2008 inventory as meeting the section 172(c)(3) emissions inventory requirement for the Louisville area.

Section 172(c)(4) requires the identification and quantification of allowable emissions for major new and modified stationary sources in an area, and section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. EPA approved Indiana’s current part D (nonattainment) NSR program on October 7, 1994 (59 FR 51108). Nonetheless, since PSD requirements will apply after redesignation, the area need not have a fully-approved part D NSR program for purposes of redesignation, provided that the area demonstrates maintenance of the NAAQS without part D NSR. A detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, “Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment.” Indiana has demonstrated that the Louisville area will be able to maintain the standard without part D NSR in effect; therefore, the state need not have a fully approved part D NSR program prior to approval of the redesignation request. The state’s PSD program will become effective in the Louisville area upon redesignation to attainment. See rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469–20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996).

Section 172(c)(6) requires the SIP to contain control measures necessary to provide for attainment of the standard. Because attainment has been reached, no additional measures are needed to provide for attainment.

Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2). As noted above, we believe the Indiana SIP meets the section 110(a)(2) requirements applicable for purposes of redesignation.

#### (b) Section 176 Conformity Requirements.

Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that Federally-supported or funded activities, including highway projects, conform to the air quality planning goals in the applicable SIPs. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under title 23 of the U.S. Code and the Federal Transit Act (“transportation conformity”) as well as to all other Federally-supported or funded projects (“general conformity”). State transportation conformity regulations must be consistent with Federal conformity regulations relating to consultation, enforcement, and enforceability, which EPA promulgated pursuant to CAA requirements.

EPA approved Indiana’s general and transportation conformity SIPs on January 14, 1998 (63 FR 2146), and August 17, 2010 (75 FR 50730), respectively. Section 176(c) of the CAA was amended by provisions contained in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), which was signed into law on August 10, 2005 (Pub. L. 109–59). In adopting this revision to the CAA, Congress streamlined the requirements for state conformity SIPs. Indiana is in the process of updating its transportation conformity SIP to meet these new requirements.

Indiana has submitted on-road MVEBs for the Louisville area of 580.69 tons per year (tpy) and 324.04 tpy of primary PM<sub>2.5</sub> and 17,700.95 tpy and 9,311.76 tpy of NO<sub>x</sub> for the years 2015 and 2025, respectively. The area must use the MVEBs from the maintenance plan in any conformity determination that is made on or after the effective date of the adequacy finding and maintenance plan approval.

## 2. Effect of the January 4, 2013, D.C. Circuit Decision Regarding PM<sub>2.5</sub> Implementation Under Subpart 4

### a. Background

As discussed above, on January 4, 2013, in *Natural Resources Defense Council v. EPA*, the DC Circuit remanded to EPA the “Final Clean Air Fine Particle Implementation Rule” (72 FR 20586, April 25, 2007) and the “Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers (PM<sub>2.5</sub>)” final rule (73 FR 28321, May 16, 2008) (collectively, “1997 PM<sub>2.5</sub> Implementation Rule”). 706 F.3d 428 (DC Cir. 2013). The Court found that EPA erred in implementing the 1997 PM<sub>2.5</sub> NAAQS pursuant to the general implementation provisions of subpart 1 of part D of title I of the CAA, rather than the particulate-matter-specific provisions of subpart 4 of part D of title I.

### b. Proposal on This Issue

As explained below, EPA is proposing to determine that the Court’s January 4, 2013, decision does not prevent EPA from redesignating the Louisville area to attainment. Even in light of the Court’s decision, redesignation for this area is appropriate under the CAA and EPA’s longstanding interpretations of the CAA’s provisions regarding redesignation. EPA’s longstanding interpretation that requirements that are imposed, or that become due, after a complete redesignation request is submitted for an area that is attaining the standard, are not applicable for purposes of evaluating a redesignation request. Second, even if EPA applies the subpart 4 requirements to the Louisville redesignation request and disregards the provisions of its 1997 PM<sub>2.5</sub> implementation rule recently remanded by the Court, the state’s request for redesignation of this area still qualifies for approval.

#### i. Applicable Requirements for Purposes of Evaluating the Redesignation Request

With respect to the 1997 PM<sub>2.5</sub> implementation rule, the Court’s January 4, 2013, ruling rejected EPA’s reasons for implementing the PM<sub>2.5</sub> NAAQS solely in accordance with the provisions of subpart 1, and remanded that matter to EPA, so that it could address implementation of the 1997 PM<sub>2.5</sub> NAAQS under subpart 4 of part D of the CAA, in addition to subpart 1. For the purposes of evaluating Indiana’s redesignation request for the area, to the extent that implementation under subpart 4 would impose additional requirements for areas designated

nonattainment, EPA believes that those requirements are not “applicable” for the purposes of CAA section 107(d)(3)(E), and thus EPA is not required to consider subpart 4 requirements with respect to the Louisville redesignation. Under its longstanding interpretation of the CAA, EPA has interpreted section 107(d)(3)(E) to mean, as a threshold matter, that the part D provisions which are “applicable” and which must be approved in order for EPA to redesignate an area include only those which came due prior to a state’s submittal of a complete redesignation request. See “Procedures for Processing Requests to Redesignate Areas to Attainment,” Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (Calcagni memorandum). See also “State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) NAAQS on or after November 15, 1992,” Memorandum from Michael Shapiro, Acting Assistant Administrator, Air and Radiation, September 17, 1993 (Shapiro memorandum); Final Redesignation of Detroit-Ann Arbor, (60 FR 12459, 12465–66, March 7, 1995); Final Redesignation of St. Louis, Missouri, (68 FR 25418, 25424–27, May 12, 2003); *Sierra Club v. EPA*, 375 F.3d 537, 541 (7th Cir. 2004) (upholding EPA’s redesignation rulemaking applying this interpretation and expressly rejecting Sierra Club’s view that the meaning of “applicable” under the statute is “whatever should have been in the plan at the time of attainment rather than whatever actually was in the plan and already implemented or due at the time of attainment”).<sup>2</sup> In this case, at the time that Indiana submitted its redesignation request, requirements under subpart 4 were not due, [and indeed, were not yet known to apply.]

EPA’s view that, for purposes of evaluating the Louisville redesignation, the subpart 4 requirements were not due at the time the state submitted the redesignation request is in keeping with the EPA’s interpretation of subpart 2 requirements for subpart 1 ozone areas redesignated subsequent to the D.C. Circuit’s decision in *South Coast Air Quality Mgmt. Dist. v. EPA*, 472 F.3d 882 (D.C. Cir. 2006). In *South Coast*, the Court found that EPA was not permitted

to implement the 1997 8-hour ozone standard solely under subpart 1, and held that EPA was required under the statute to implement the standard under the ozone-specific requirements of subpart 2 as well. Subsequent to the *South Coast* decision, in evaluating and acting upon redesignation requests for the 1997 8-hour ozone standard that were submitted to EPA for areas under subpart 1, EPA applied its longstanding interpretation of the CAA that “applicable requirements”, for purposes of evaluating a redesignation, are those that had been due at the time the redesignation request was submitted. See, e.g., Proposed Redesignation of Manitowoc County and Door County Nonattainment Areas (75 FR 22047, 22050, April 27, 2010). In those actions, EPA therefore did not consider subpart 2 requirements to be “applicable” for the purposes of evaluating whether the area should be redesignated under section 107(d)(3)(E).

EPA’s interpretation derives from the provisions of CAA Section 107(d)(3). Section 107(d)(3)(E)(v) states that, for an area to be redesignated, a state must meet “all requirements ‘applicable’ to the area under section 110 and part D”. Section 107(d)(3)(E)(ii) provides that the EPA must have fully approved the “applicable” SIP for the area seeking redesignation. These two sections read together support EPA’s interpretation of “applicable” as only those requirements that came due prior to submission of a complete redesignation request. First, holding states to an ongoing obligation to adopt new CAA requirements that arose after the state submitted its redesignation request, in order to be redesignated, would make it problematic or impossible for EPA to act on redesignation requests in accordance with the 18-month deadline Congress set for EPA action in section 107(d)(3)(D). If “applicable requirements” were interpreted to be a continuing flow of requirements with no reasonable limitation, states, after submitting a redesignation request, would be forced continuously to make additional SIP submissions that in turn would require EPA to undertake further notice-and-comment rulemaking actions to act on those submissions. This would create a regime of unceasing rulemaking that would delay action on the redesignation request beyond the 18-month timeframe provided by the CAA for this purpose.

Second, a fundamental premise for redesignating a nonattainment area to attainment is that the area has attained the relevant NAAQS due to emission reductions from existing controls. Thus, an area for which a redesignation

request has been submitted would have already attained the NAAQS as a result of satisfying statutory requirements that came due prior to the submission of the request. Absent a showing that unadopted and unimplemented requirements are necessary for future maintenance, it is reasonable to view the requirements applicable for purposes of evaluating the redesignation request as including only those SIP requirements that have already come due. These are the requirements that led to attainment of the NAAQS. To require, for redesignation approval, that a state also satisfy additional SIP requirements coming due after the state submits its complete redesignation request, and while EPA is reviewing it, would compel the state to do more than is necessary to attain the NAAQS, without a showing that the additional requirements are necessary for maintenance.

In the context of this redesignation, the timing and nature of the Court’s January 4, 2013, decision in *NRDC v. EPA* compound the consequences of imposing requirements that come due after the redesignation request is submitted. The state submitted its redesignation request on June 16, 2011, but the Court did not issue its decision remanding EPA’s 1997 PM<sub>2.5</sub> implementation rule concerning the applicability of the provisions of subpart 4 until January 2013.

To require the state’s fully-completed and pending redesignation request to comply now with requirements of subpart 4 that the Court announced only in January, 2013, would be to give retroactive effect to such requirements when the state had no notice that it was required to meet them. The D.C. Circuit recognized the inequity of this type of retroactive impact in *Sierra Club v. Whitman*, 285 F.3d 63 (D.C. Cir. 2002),<sup>3</sup> where it upheld the District Court’s ruling refusing to make retroactive EPA’s determination that the St. Louis area did not meet its attainment deadline. In that case, petitioners urged the Court to make EPA’s nonattainment determination effective as of the date that the statute required, rather than the later date on which EPA actually made the determination. The Court rejected this view, stating that applying it “would likely impose large costs on

<sup>2</sup> Applicable requirements of the CAA that come due subsequent to the area’s submittal of a complete redesignation request remain applicable until a redesignation is approved, but are not required as a prerequisite to redesignation. Section 175A(c) of the CAA.

<sup>3</sup> *Sierra Club v. Whitman* was discussed and distinguished in a recent D.C. Circuit decision that addressed retroactivity in a quite different context, where, unlike the situation here, EPA sought to give its regulations retroactive effect. *National Petrochemical and Refiners Ass’n v. EPA*, 630 F.3d 145, 163 (D.C. Cir. 2010), rehearing denied, 643 F.3d 958 (D.C. Cir. 2011), cert denied, 132 S. Ct. 571 (2011).

states, which would face fines and suits for not implementing air pollution prevention plans . . . even though they were not on notice at the time.” *Id.* at 68. Similarly, it would be unreasonable to penalize Indiana by rejecting its redesignation request for an area that is already attaining the 1997 PM<sub>2.5</sub> standard and that met all applicable requirements known to be in effect at the time of the request. For EPA now to reject the redesignation request solely because the state did not expressly address subpart 4 requirements of which it had no notice, would inflict the same unfairness condemned by the Court in *Sierra Club v. Whitman*.

#### ii. Subpart 4 Requirements and Indiana Redesignation Request

Even if EPA were to take the view that the Court’s January 4, 2013, decision requires that, in the context of pending redesignations, subpart 4 requirements were due and in effect at the time the state submitted its redesignation request, EPA proposes to determine that the Louisville area still qualifies for redesignation to attainment. As explained below, EPA believes that the redesignation request for the Louisville area, though not expressed in terms of subpart 4 requirements, substantively meets the requirements of that subpart for purposes of redesignating the area to attainment.

With respect to evaluating the relevant substantive requirements of subpart 4 for purposes of redesignating the Louisville area, EPA notes that subpart 4 incorporates components of subpart 1 of part D, which contains general air quality planning requirements for areas designated as nonattainment. *See* Section 172(c). Subpart 4 itself contains specific planning and scheduling requirements for PM<sub>10</sub><sup>4</sup> nonattainment areas, and under the Court’s January 4, 2013, decision in *NRDC v. EPA*, these same statutory requirements also apply for PM<sub>2.5</sub> nonattainment areas. EPA has longstanding general guidance that interprets the 1990 amendments to the CAA, making recommendations to states for meeting the statutory requirements for SIPs for nonattainment areas. *See*, “State Implementation Plans; General Preamble for the Implementation of Title I of the Clear Air Act Amendments of 1990,” 57 FR 13498 (April 16, 1992) (the “General Preamble”). In the General Preamble, EPA discussed the relationship of subpart 1 and subpart 4 SIP requirements, and pointed out that subpart 1 requirements were to an

extent “subsumed by, or integrally related to, the more specific PM<sub>10</sub> requirements.” 57 FR 13538 (April 16, 1992). The subpart 1 requirements include, among other things, provisions for attainment demonstrations, RACM, RFP, emissions inventories, and contingency measures.

For the purposes of this redesignation, in order to identify any additional requirements which would apply under subpart 4, we are considering the Louisville area to be a “moderate” PM<sub>2.5</sub> nonattainment area. Under section 188 of the CAA, all areas designated nonattainment areas under subpart 4 would initially be classified by operation of law as “moderate” nonattainment areas, and would remain moderate nonattainment areas unless and until EPA reclassifies the area as a “serious” nonattainment area. Accordingly, EPA believes that it is appropriate to limit the evaluation of the potential impact of subpart 4 requirements to those that would be applicable to moderate nonattainment areas. Sections 189(a) and (c) of subpart 4 apply to moderate nonattainment areas and include the following: (1) An approved permit program for construction of new and modified major stationary sources (section 189(a)(1)(A)); (2) an attainment demonstration (section 189(a)(1)(B)); (3) provisions for RACM (section 189(a)(1)(C)); and (4) quantitative milestones demonstrating RFP toward attainment by the applicable attainment date (section 189(c)).

The permit requirements of subpart 4, as contained in section 189(a)(1)(A), refer to and apply the subpart 1 permit provisions requirements of sections 172 and 173 to PM<sub>10</sub>, without adding to them. Consequently, EPA believes that section 189(a)(1)(A) does not itself impose for redesignation purposes any additional requirements for moderate areas beyond those contained in subpart 1.<sup>5</sup> In any event, in the context of redesignation, EPA has long relied on the interpretation that a fully approved nonattainment new source review program is not considered an applicable requirement for redesignation, provided the area can maintain the standard with a PSD program after redesignation. A detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, “Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment.” *See also*

rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469–20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996).

With respect to the specific attainment planning requirements under subpart 4,<sup>6</sup> when EPA evaluates a redesignation request under either subpart 1 and/or 4, any area that is attaining the PM<sub>2.5</sub> standard is viewed as having satisfied the attainment planning requirements for these subparts. For redesignations, EPA has for many years interpreted attainment-linked requirements as not applicable for areas attaining the standard. In the General Preamble, EPA stated that:

The requirements for RFP will not apply in evaluating a request for redesignation to attainment since, at a minimum, the air quality data for the area must show that the area has already attained. Showing that the State will make RFP towards attainment will, therefore, have no meaning at that point.

“General Preamble for the Interpretation of Title I of the CAA Amendments of 1990”; (57 FR 13498, 13564, April 16, 1992).

The General Preamble also explained that

[t]he section 172(c)(9) requirements are directed at ensuring RFP and attainment by the applicable date. These requirements no longer apply when an area has attained the standard and is eligible for redesignation. Furthermore, section 175A for maintenance plans . . . provides specific requirements for contingency measures that effectively supersede the requirements of section 172(c)(9) for these areas. *Id.*

EPA similarly stated in its 1992 Calcagni memorandum that, “The requirements for reasonable further progress and other measures needed for attainment will not apply for redesignations because they only have meaning for areas not attaining the standard.”

It is evident that even if we were to consider the Court’s January 4, 2013, decision in *NRDC v. EPA* to mean that attainment-related requirements specific to subpart 4 should be imposed retroactively<sup>7</sup> and thus are now past due, those requirements do not apply to an area that is attaining the 1997 PM<sub>2.5</sub> standard, for the purpose of evaluating

<sup>6</sup> These are attainment demonstration, RFP, RACM, milestone requirements, contingency measures.

<sup>7</sup> As EPA has explained above, we do not believe that the Court’s January 4, 2013, decision should be interpreted so as to impose these requirements on the states retroactively. *Sierra Club v. Whitman, supra.*

<sup>4</sup> PM<sub>10</sub> refers to particulates nominally 10 micrometers in diameter or smaller.

<sup>5</sup> The potential effect of section 189(e) on section 189(a)(1)(A) for purposes of evaluating this redesignation is discussed below.

a pending request to redesignate the area to attainment. EPA has consistently enunciated this interpretation of applicable requirements under section 107(d)(3)(E) since the General Preamble was published more than twenty years ago. Courts have recognized the scope of EPA's authority to interpret "applicable requirements" in the redesignation context. See *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004).

Moreover, even outside the context of redesignations, EPA has viewed the obligations to submit attainment-related SIP planning requirements of subpart 4 as inapplicable for areas that EPA determines are attaining the standard. EPA's prior "Clean Data Policy" rulemakings for the PM<sub>10</sub> NAAQS, also governed by the requirements of subpart 4, explain EPA's reasoning. They describe the effects of a determination of attainment on the attainment-related SIP planning requirements of subpart 4. See "Determination of Attainment for Coso Junction Nonattainment Area," (75 FR 27944, May 19, 2010). See also Coso Junction proposed PM<sub>10</sub> redesignation, (75 FR 36023, 36027, June 24, 2010); Proposed and Final Determinations of Attainment for San Joaquin Nonattainment Area (71 FR 40952, 40954–55, July 19, 2006; and 71 FR 63641, 63643–47 October 30, 2006). In short, EPA in this context has also long concluded that to require states to meet superfluous SIP planning requirements is not necessary and not required by the CAA, so long as those areas continue to attain the relevant NAAQS.

Elsewhere in this notice, EPA proposes to determine that the area has attained the 1997 PM<sub>2.5</sub> standard. Under its longstanding interpretation, EPA is proposing to determine here that the area meets the attainment-related plan requirements of subparts 1 and 4.

Thus, EPA is proposing to conclude that the requirements to submit an attainment demonstration under 189(a)(1)(B), a RACM determination under section 172(c)d section 189(a)(1)(c), a RFP demonstration under 189(c)(1), and contingency measure requirements under section 172(c)(9) are satisfied for purposes of evaluating the redesignation request.

### iii. Subpart 4 and Control of PM<sub>2.5</sub> Precursors

The D.C. Circuit in *NRDC v. EPA* remanded to EPA the two rules at issue in the case with instructions to EPA to re-promulgate them consistent with the requirements of subpart 4. EPA in this section addresses the Court's opinion with respect to PM<sub>2.5</sub> precursors. While past implementation of subpart 4 for PM<sub>10</sub> has allowed for control of PM<sub>10</sub>

precursors such as NO<sub>x</sub> from major stationary, mobile, and area sources in order to attain the standard as expeditiously as practicable, CAA section 189(e) specifically provides that control requirements for major stationary sources of direct PM<sub>10</sub> shall also apply to PM<sub>10</sub> precursors from those sources, except where EPA determines that major stationary sources of such precursors "do not contribute significantly to PM<sub>10</sub> levels which exceed the standard in the area."

EPA's 1997 PM<sub>2.5</sub> implementation rule, remanded by the D.C. Circuit, contained rebuttable presumptions concerning certain PM<sub>2.5</sub> precursors applicable to attainment plans and control measures related to those plans. Specifically, in 40 CFR 51.1002, EPA provided, among other things, that a state was "not required to address VOC [and ammonia] as . . . PM<sub>2.5</sub> attainment plan precursor[s] and to evaluate sources of VOC [and ammonia] emissions in the State for control measures." EPA intended these to be rebuttable presumptions. EPA established these presumptions at the time because of uncertainties regarding the emission inventories for these pollutants and the effectiveness of specific control measures in various regions of the country in reducing PM<sub>2.5</sub> concentrations. EPA also left open the possibility for such regulation of VOC and ammonia in specific areas where that was necessary.

The Court in its January 4, 2013, decision made reference to both section 189(e) and 40 CFR 51.1002, and stated that, "In light of our disposition, we need not address the petitioners' challenge to the presumptions in [40 CFR 51.1002] that volatile organic compounds and ammonia are not PM<sub>2.5</sub> precursors, as subpart 4 expressly governs precursor presumptions." *NRDC v. EPA*, at 27, n.10.

Elsewhere in the Court's opinion, however, the Court observed:

Ammonia is a precursor to fine particulate matter, making it a precursor to both PM<sub>2.5</sub> and PM<sub>10</sub>. For a PM<sub>10</sub> nonattainment area governed by subpart 4, a precursor is presumptively regulated. See 42 U.S.C. § 7513a(e) [section 189(e)].

*Id.* at 21, n.7.

For a number of reasons, EPA believes that its proposed redesignation of [the area] is consistent with the Court's decision on this aspect of subpart 4. First, while the Court, citing section 189(e), stated that "for a PM<sub>10</sub> area governed by subpart 4, a precursor is 'presumptively regulated,'" the Court expressly declined to decide the specific challenge to EPA's 1997 PM<sub>2.5</sub> implementation rule provisions

regarding ammonia and VOC as precursors. The Court had no occasion to reach whether and how it was substantively necessary to regulate any specific precursor in a particular PM<sub>2.5</sub> nonattainment area, and did not address what might be necessary for purposes of acting upon a redesignation request.

However, even if EPA takes the view that the requirements of subpart 4 were deemed applicable at the time the state submitted the redesignation request, and disregards the implementation rule's rebuttable presumptions regarding ammonia and VOC as PM<sub>2.5</sub> precursors, the regulatory consequence would be to consider the need for regulation of all precursors from any sources in the area to demonstrate attainment and to apply the section 189(e) provisions to major stationary sources of precursors. In the case of Louisville, EPA believes that doing so is consistent with proposing redesignation of the area for the 1997 PM<sub>2.5</sub> standard. The Louisville area has attained the standard without any specific additional controls of VOC and ammonia emissions from any sources in the area.

Precursors in subpart 4 are specifically regulated under the provisions of section 189(e), which requires, with important exceptions, control requirements for major stationary sources of PM<sub>2.5</sub> precursors.<sup>8</sup> Under subpart 1 and EPA's prior implementation rule, all major stationary sources of PM<sub>2.5</sub> precursors were subject to regulation, with the exception of ammonia and VOC. Thus we must address here whether additional controls of ammonia and VOC from major stationary sources are required under section 189(e) of subpart 4 in order to redesignate the area for the 1997 PM<sub>2.5</sub> standard. As explained below, we do not believe that any additional controls of ammonia and VOC are required in the context of this redesignation.

In the General Preamble, EPA discusses its approach to implementing section 189(e). See 57 FR 13538–13542. With regard to precursor regulation under section 189(e), the General Preamble explicitly stated that control of VOCs under other Act requirements may suffice to relieve a state from the need to adopt precursor controls under section 189(e). 57 FR 13542. EPA in this proposal proposes to determine that the SIP has met the provisions of section

<sup>8</sup> Under either subpart 1 or subpart 4, for purposes of demonstrating attainment as expeditiously as practicable, a state is required to evaluate all economically and technologically feasible control measures for direct PM emissions and precursor emissions, and adopt those measures that are deemed reasonably available.

189(e) with respect to ammonia and VOCs as precursors. This proposed supplemental determination is based on our findings that: (1) The Louisville area contains no major stationary sources of ammonia, and (2) existing major stationary sources of VOC are adequately controlled under other provisions of the CAA regulating the ozone NAAQS.<sup>9</sup> In the alternative, EPA proposes to determine that, under the express exception provisions of section 189(e), and in the context of the redesignation of the area, which is attaining the 1997 annual PM<sub>2.5</sub> standard, at present ammonia and VOC precursors from major stationary sources do not contribute significantly to levels exceeding the 1997 PM<sub>2.5</sub> standard in the Louisville area. See 57 FR 13539–42.

EPA notes that its 1997 PM<sub>2.5</sub> implementation rule provisions in 40 CFR 51.1002 were not directed at evaluation of PM<sub>2.5</sub> precursors in the context of redesignation, but at SIP plans and control measures required to bring a nonattainment area into attainment of the 1997 PM<sub>2.5</sub> NAAQS. By contrast, redesignation to attainment primarily requires the area to have already attained due to permanent and enforceable emission reductions, and to demonstrate that controls in place can continue to maintain the standard. Thus, even if we regard the Court's January 4, 2013, decision as calling for "presumptive regulation" of ammonia and VOC for PM<sub>2.5</sub> under the attainment planning provisions of subpart 4, those provisions in and of themselves do not require additional controls of these precursors for an area that already qualifies for redesignation. Nor does EPA believe that requiring Indiana to address precursors differently than they have already would result in a substantively different outcome.

Although, as EPA has emphasized, its consideration here of precursor requirements under subpart 4 is in the context of a redesignation to attainment, EPA's existing interpretation of subpart 4 requirements with respect to precursors in attainment plans for PM<sub>10</sub> contemplates that states may develop attainment plans that regulate only those precursors that are necessary for purposes of attainment in the area in question, i.e., states may determine that only certain precursors need be regulated for attainment and control purposes.<sup>10</sup> Courts have upheld this

<sup>9</sup>The Louisville area has reduced VOC emissions through the implementation of various SIP-approved VOC control programs and various on-road and nonroad motor vehicle control programs.

<sup>10</sup> See, e.g., "Approval and Promulgation of Implementation Plans for California—San Joaquin

approach to the requirements of subpart 4 for PM<sub>10</sub>.<sup>11</sup> EPA believes that application of this approach to PM<sub>2.5</sub> precursors under subpart 4 is reasonable. Because the Louisville area has already attained the 1997 PM<sub>2.5</sub> NAAQS with its current approach to regulation of PM<sub>2.5</sub> precursors, EPA believes that it is reasonable to conclude in the context of this redesignation that there is no need to revisit the attainment control strategy with respect to the treatment of precursors. Even if the Court's decision is construed to impose an obligation in evaluating this redesignation request to consider additional precursors under subpart 4, it would not affect EPA's approval here of Indiana's request for redesignation of the Louisville area. In the context of a redesignation, the area has shown that it has attained the standard. Moreover, the state has shown and EPA has proposed to determine that attainment in this area is due to permanent and enforceable emissions reductions on all precursors necessary to provide for continued attainment. It follows logically that no further control of additional precursors is necessary. Accordingly, EPA does not view the January 4, 2013, decision of the Court as precluding redesignation of the Louisville area to attainment for the 1997 PM<sub>2.5</sub> NAAQS at this time.

In sum, even if Indiana were required to address precursors for the Louisville area under subpart 4 rather than under subpart 1, as interpreted in EPA's remanded PM<sub>2.5</sub> implementation rule, EPA would still conclude that the area had met all applicable requirements for purposes of redesignation in accordance with section 107(d)(3)(E)(ii) and (v).

#### b. The Louisville Area Has a Fully Approved Applicable SIP Under Section 110(k) of the CAA

Upon final approval of Indiana's comprehensive 2008 emissions inventory, EPA will have fully approved the Indiana SIP for the Louisville area under section 110(k) of the CAA for all requirements applicable for purposes of redesignation. EPA may rely on prior SIP approvals in approving a redesignation request (See page 3 of the September 4, 1992, John Calcagni memorandum; *Southwestern Pennsylvania Growth Alliance v.*

Valley PM-10 Nonattainment Area; Serious Area Plan for Nonattainment of the 24-Hour and Annual PM-10 Standards," 69 FR 30006 (May 26, 2004) (approving a PM<sub>10</sub> attainment plan that impose controls on direct PM<sub>10</sub> and NO<sub>x</sub> emissions and did not impose controls on SO<sub>2</sub>, VOC, or ammonia emissions).

<sup>11</sup> See, e.g., *Assoc. of Irrigated Residents v. EPA et al.*, 423 F.3d 989 (9th Cir. 2005).

*Browner*, 144 F.3d 984, 989–990 (6th Cir. 1998); *Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001)) plus any additional measures it may approve in conjunction with a redesignation action. See 68 FR 25413, 25426 (May 12, 2003). Since the passage of the CAA of 1970, Indiana has adopted and submitted, and EPA has fully approved, provisions addressing various required SIP elements under particulate matter standards. In this action, EPA is approving Indiana's 2008 emissions inventory for the Louisville area as meeting the requirement of section 172(c)(3) of the CAA. No Louisville area SIP provisions are currently disapproved, conditionally approved, or partially approved.

#### 3. The Improvement in Air Quality Is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions (Section 107(d)(3)(E)(iii))

EPA believes that Indiana has demonstrated that the observed air quality improvement in the Louisville area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, Federal measures and other state-adopted measures.

In making this demonstration, Indiana has calculated the change in emissions between 2005, one of the years the Louisville area was monitoring nonattainment, and 2008, one of the years the Louisville area monitored attainment. The reduction in emissions and the corresponding improvement in air quality over this time period can be attributed to a number of regulatory control measures that the Louisville area and contributing areas have implemented in recent years.

#### a. Permanent and Enforceable Controls Implemented

The following is a discussion of permanent and enforceable measures that have been implemented in the area:

##### i. Federal Emission Control Measures

Reductions in fine particle precursor emissions have occurred statewide and in upwind areas as a result of Federal emission control measures, with additional emission reductions expected to occur in the future. Federal emission control measures include the following.

*Tier 2 Emission Standards for Vehicles and Gasoline Sulfur Standards.* These emission control requirements result in lower NO<sub>x</sub> and SO<sub>2</sub> emissions from new cars and light duty trucks. The Federal rules were phased in

between 2004 and 2009. The EPA has estimated that, by the end of the phase-in period, new vehicles will emit less NO<sub>x</sub> with the following percentage decreases: Passenger cars (light duty vehicles)—77%; light duty trucks, minivans and sports utility vehicles—86%; and, larger sports utility vehicles, vans and heavier trucks—69% to 95%. EPA expects fleet-wide average emissions to decline by similar percentages as new vehicles replace older vehicles. The Tier 2 standards also reduced the sulfur content of gasoline to 30 parts per million (ppm) beginning in January 2006. Most gasoline sold in Indiana prior to January 2006 had a sulfur content of about 500 ppm.

**Heavy-Duty Diesel Engine Rule.** EPA issued this rule in July 2000. This rule includes standards limiting the sulfur content of diesel fuel, which went into effect in 2004. A second phase took effect in 2007 which reduced fine particle emissions from heavy-duty highway engines and further reduced the highway diesel fuel sulfur content to 15 ppm. The total program is estimated to achieve a 90% reduction in direct PM<sub>2.5</sub> emissions and a 95% reduction in NO<sub>x</sub> emissions for these new engines using low sulfur diesel, compared to existing engines using higher sulfur content diesel. The reduction in fuel sulfur content also yielded an immediate reduction in sulfate particle emissions from all diesel vehicles.

**Nonroad Diesel Rule.** In May 2004, EPA promulgated a new rule for large nonroad diesel engines, such as those used in construction, agriculture and mining equipment, to be phased in between 2008 and 2014. The rule also reduces the sulfur content in nonroad diesel fuel by over 99%. Prior to 2006, nonroad diesel fuel averaged approximately 3,400 ppm sulfur. This rule limited nonroad diesel sulfur content to 500 ppm by 2006, with a further reduction to 15 ppm by 2010. The combined engine and fuel rules will reduce NO<sub>x</sub> and PM<sub>2.5</sub> emissions from large nonroad diesel engines by over 90%, compared to current nonroad engines using higher sulfur content diesel. It is estimated that compliance with this rule will cut NO<sub>x</sub> emissions from nonroad diesel engines by up to 90%. This rule achieved some emission reductions by 2008, and was fully implemented by 2010. The reduction in fuel sulfur content also yielded an immediate reduction in sulfate particle emissions from all diesel vehicles.

**Nonroad Large Spark-Ignition Engine and Recreational Engine Standards.** In November 2002, EPA promulgated emission standards for groups of previously unregulated nonroad

engines. These engines include large spark-ignition engines such as those used in forklifts and airport ground-service equipment; recreational vehicles using spark-ignition engines such as off-highway motorcycles, all-terrain vehicles and snowmobiles; and recreational marine diesel engines. Emission standards from large spark-ignition engines were implemented in two tiers, with Tier 1 starting in 2004 and Tier 2 in 2007. Recreational vehicle emission standards are being phased in from 2006 through 2012. Marine diesel engine standards were phased in from 2006 through 2009. With full implementation of the entire nonroad spark-ignition engine and recreational engine standards, an 80% reduction in NO<sub>x</sub> expected by 2020. Some of these emission reductions occurred by the 2008–2010 period used to demonstrate attainment, and additional emission reductions will occur during the maintenance period.

#### ii. Control Measures in Contributing Areas

**NO<sub>x</sub> SIP Call.** On October 27, 1998 (63 FR 57356), EPA issued a NO<sub>x</sub> SIP Call requiring the District of Columbia and 22 states to reduce emissions of NO<sub>x</sub>. Affected states were required to comply with Phase I of the SIP Call beginning in 2004, and Phase II beginning in 2007. Emission reductions resulting from regulations developed in response to the NO<sub>x</sub> SIP Call are permanent and enforceable.

**CAIR.** On May 12, 2005, EPA published CAIR, which requires significant reductions in emissions of SO<sub>2</sub> and NO<sub>x</sub> from electric generating units to limit the interstate transport of these pollutants and the ozone and fine particulate matter they form in the atmosphere. See 76 FR 70093. The D.C. Circuit initially vacated CAIR, *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008), but ultimately remanded the rule to EPA without vacatur to preserve the environmental benefits provided by CAIR, *North Carolina v. EPA*, 550 F.3d 1176, 1178 (D.C. Cir. 2008). In response to the Court's decision, EPA issued the Transport Rule, also known as CSAPR, to address interstate transport of NO<sub>x</sub> and SO<sub>2</sub> in the eastern United States. See 76 FR 48208 (August 8, 2011).

On December 30, 2011, the D.C. Circuit issued an order addressing the status of CSAPR and CAIR in response to motions filed by numerous parties seeking a stay of CSAPR pending judicial review. In that order, the Court stayed CSAPR pending resolution of the petitions for review of that rule in *EME Homer City Generation*. The Court also indicated that EPA was expected to

continue to administer CAIR in the interim until judicial review of CSAPR was completed.

On August 21, 2012, the D.C. Circuit issued a decision to vacate CSAPR. In that decision, it also ordered EPA to continue administering CAIR “pending the promulgation of a valid replacement.” *EME Homer City*, 696 F.3d at 38. The D.C. Circuit denied all petitions for rehearing on January 24, 2013. EPA and other parties have filed petitions for certiorari to the U.S. Supreme Court, but those petitions have not been acted on to date. Nonetheless, EPA intends to continue to act in accordance with the *EME Homer City* opinion.

In light of these unique circumstances and for the reasons explained below, to the extent that attainment is due to emission reductions associated with CAIR, EPA is here proposing to determine that those reductions are sufficiently permanent and enforceable for purposes of CAA sections 107(d)(3)(E)(iii) and 175A. EPA therefore proposes to approve the redesignation request and the related SIP revision for Indiana portion of the Louisville area, including Indiana's plan for maintaining attainment of the PM<sub>2.5</sub> standard.

As directed by the D.C. Circuit, CAIR remains in place and enforceable until substituted by a valid replacement rule. Indiana's SIP revision lists CAIR as a control measure that became state-effective October 22, 2007 and was fully approved by EPA on November 29, 2010 (75 FR 72956), for the purpose of reducing SO<sub>2</sub> and NO<sub>x</sub> emissions. CAIR was thus in place and getting emission reductions when the Louisville area began monitoring attainment of the 1997 annual PM<sub>2.5</sub> NAAQS. The quality-assured, certified monitoring data used to demonstrate the area's attainment of the 1997 annual PM<sub>2.5</sub> NAAQS by the April 2010 attainment deadline was also impacted by CAIR.

To the extent that Indiana is relying on CAIR in its maintenance plan, the recent directive from the D.C. Circuit in *EME Homer City* ensures that the reductions associated with CAIR will be permanent and enforceable for the necessary time period. EPA has been ordered by the Court to develop a new rule to address interstate transport to replace CSAPR and the opinion makes clear that after promulgating that new rule EPA must provide states an opportunity to draft and submit SIPs to implement that rule. Thus, CAIR will remain in place until EPA has promulgated a final rule through a notice-and-comment rulemaking process, States have had an opportunity

to draft and submit SIPs, EPA has reviewed the SIPs to determine if they can be approved, and EPA has taken action on the SIPs, including promulgating a FIP if appropriate. The Court's clear instruction to EPA that it must continue to administer CAIR until a valid replacement exists provides an additional backstop: By definition, any rule that replaces CAIR and meets the Court's direction would require upwind states to have SIPs that eliminate significant contributions to downwind nonattainment and prevent interference with maintenance in downwind areas.

Further, in vacating CSAPR and requiring EPA to continue administering CAIR, the D.C. Circuit emphasized that the consequences of vacating CAIR "might be more severe now in light of the reliance interests accumulated over the intervening four years." *EME Homer City*, 696 F.3d at 38. The accumulated reliance interests include the interests of states who reasonably assumed they could rely on reductions associated with CAIR which brought certain nonattainment areas into attainment with the NAAQS. If EPA were prevented from relying on reductions associated with CAIR in redesignation actions, states would be forced to impose additional, redundant

reductions on top of those achieved by CAIR. EPA believes this is precisely the type of irrational result the Court sought to avoid by ordering EPA to continue administering CAIR. For these reasons also, EPA believes it is appropriate to allow states to rely on CAIR, and the existing emissions reductions achieved by CAIR, as sufficiently permanent and enforceable for purposes such as redesignation. Following promulgation of the replacement rule, EPA will review SIPs as appropriate to identify whether there are any issues that need to be addressed.

### iii. Consent Decrees

Along with Federal and state rules controlling direct PM and precursors, there have been a number of permanent and enforceable consent decrees that have reduced emissions and will continue to reduce emissions into the future. The EPA and Duke Energy consent decree created caps on both NO<sub>x</sub> and SO<sub>2</sub> similar allocations provided for the Gallagher Generating Station in Floyd County. Duke Energy Indiana permanently shut-down two of its four coal-fired Electric Generating Units (EGUs) (Units 1 and 3) on February 1, 2012. The Tennessee Valley Authority has also recently entered into a consent decree with EPA that

establishes system-wide annual tonnage limits for NO<sub>x</sub> and SO<sub>2</sub> for its eleven coal-fired power plants located in Alabama, Kentucky, and Tennessee. NO<sub>x</sub> will be limited to 100,600 tpy beginning in 2011 and capped at 52,000 tpy in 2018 and each year thereafter. SO<sub>2</sub> will be limited to 285,000 tpy beginning in 2011 and capped at 110,000 tpy in 2019 and each year thereafter.

This will result in significant regional NO<sub>x</sub> and SO<sub>2</sub> reductions, further ensuring that the area will continue to maintain the NAAQS in the future.

### b. Emission Reductions

Indiana developed emissions inventories for NO<sub>x</sub>, direct PM<sub>2.5</sub> and SO<sub>2</sub> for 2005, one of the years the area monitored nonattainment, and 2008, one of the years the Louisville area monitored attainment of the standard.

EGU SO<sub>2</sub> and NO<sub>x</sub> emissions were derived from EPA's Clean Air Market's acid rain database. These emissions reflect Indiana and Kentucky's NO<sub>x</sub> emission budgets resulting from EPA's NO<sub>x</sub> SIP call. The 2008 emissions from EGUs reflect Indiana's emission caps under CAIR. All other point source emissions were obtained from Indiana's source facility emissions reporting.

Area source emissions in the Louisville area for 2005 were taken from periodic emissions inventories.<sup>12</sup> These 2005 area source emission estimates were extrapolated to 2008. Source growth factors were supplied by the Lake Michigan Air Directors Consortium (LADCO).

Nonroad mobile source emissions were extrapolated from nonroad mobile source emissions reported in EPA's 2005 National Emissions Inventory (NEI). Contractors were employed by LADCO to estimate emissions for

commercial marine vessels and railroads.

On-road mobile source emissions were calculated using EPA's mobile source emission factor model, MOVES2010a, in conjunction with transportation model results developed by the local metropolitan planning organization, Kentuckiana Regional Planning and Development Agency (KIPDA), along with the Louisville Metro Air Pollution Control District and IDEM.

All emissions estimates discussed below were documented in the

submittal and appendices of Indiana's redesignation request submittal from June 16, 2011. For these data and additional emissions inventory data, the reader is referred to EPA's digital docket for this rule, <http://www.regulations.gov>, for docket number EPA-R05-OAR-2011-0698, which includes digital copies of Indiana's submittal.

Emissions data in tpy for the entire Louisville area are shown in Tables 2 and 3, below.

TABLE 2—SUMMARY OF 2005 EMISSIONS FOR THE ENTIRE LOUISVILLE AREA BY SOURCE TYPE [tpy]

	SO <sub>2</sub>	NO <sub>x</sub>	PM <sub>2.5</sub>
Point (EGU) .....	174,178.36	48,103.47	3,443.00
Non-EGU .....	5,441.05	3,922.83	1,291.31
On-road .....	144.23	32,744.55	1,055.61
Nonroad .....	1,050.81	14,370.95	780.54
Area .....	418.98	2,123.83	810.13
<b>Total Louisville .....</b>	<b>181,233.43</b>	<b>101,265.63</b>	<b>7,380.59</b>

TABLE 3—COMPARISON OF 2005 EMISSIONS FROM THE NONATTAINMENT YEAR AND 2008 EMISSIONS FOR AN ATTAINMENT YEAR FOR THE ENTIRE LOUISVILLE AREA [tpy]

	2005	2008	Net change (2005–2008)
PM <sub>2.5</sub> .....	7,380.59	6,724.02	– 656.57
NO <sub>x</sub> .....	101,265.63	97,533.93	– 3,731.70
SO <sub>2</sub> .....	181,233.43	151,503.01	– 29,730.42

Table 3 shows that in the entire Louisville area reduced direct PM<sub>2.5</sub> emissions by 656.57 tons, NO<sub>x</sub> emissions by 3,731.70 tons and SO<sub>2</sub>

emissions by 29,730.42 tons between 2005, a nonattainment year, and 2008, an attainment year.

Emissions data in tpy the Indiana portion of the Louisville area are shown in Tables 4, 5, and 6, below.

TABLE 4—SUMMARY OF 2008 BASE YEAR EMISSIONS INVENTORY FOR THE INDIANA PORTION OF THE LOUISVILLE AREA BY SOURCE TYPE [tpy]

	SO <sub>2</sub>	NO <sub>x</sub>	PM <sub>2.5</sub>
Point .....	108,861.34	27,916.08	847.78
On-road .....	38.89	6,245.60	210.91
Nonroad .....	141.97	2,553.23	131.41
Area .....	330.32	811.15	12.37
<b>Total .....</b>	<b>109,372.52</b>	<b>37,526.06</b>	<b>1,202.47</b>

TABLE 5—SUMMARY OF 2007/2008 BASE YEAR EMISSIONS OF VOCs AND AMMONIA FOR THE ENTIRE LOUISVILLE AREA BY SOURCE TYPE [tpy]

	Ammonia	VOC
Point .....	6.304	916.25

<sup>12</sup> Periodic emission inventories are derived by states every three years and reported to the EPA. These periodic emission inventories are required by

the Federal Consolidated Emissions Reporting Rule, codified at 40 CFR Subpart A. EPA revised these and other emission reporting requirements in a final

rule published on December 17, 2008, at 73 FR 76539.

TABLE 5—SUMMARY OF 2007/2008 BASE YEAR EMISSIONS OF VOCs AND AMMONIA FOR THE ENTIRE LOUISVILLE AREA BY SOURCE TYPE—Continued  
[tpy]

	Ammonia	VOC
Area .....	1,193.20	5,618.26
Nonroad .....	2.13	1,246.43
On-road .....	113.13	2,886.02
Total .....	1,314.76	10,666.95

TABLE 6—COMPARISON OF 2005 EMISSIONS FROM THE NONATTAINMENT YEAR AND 2008 EMISSIONS FOR AN ATTAINMENT YEAR FOR THE INDIANA PORTION OF THE LOUISVILLE AREA  
[tpy]

	2005	2008	Net change (2005–2008)
PM <sub>2.5</sub> .....	1,376.37	1,202.47	– 173.90
NO <sub>x</sub> .....	41,750.37	37,526.06	– 4,224.31
SO <sub>2</sub> .....	135,182.59	109,372.52	– 25,810.07

Table 6 shows that in the Indiana portion of the Louisville area reduced direct PM<sub>2.5</sub> emissions by 173.90 tons, NO<sub>x</sub> emissions by 4,224.31 tons and SO<sub>2</sub> emissions by 25,810.07 tons between 2005, a nonattainment year, and 2008, an attainment year.

Based on the information summarized above, Indiana has adequately demonstrated that the improvement in air quality is due to permanent and enforceable emissions reductions.

#### 4. Indiana Has a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA (Section 107(d)(3)(E)(iv))

In conjunction with Indiana's request to redesignate the Indiana portion of the Louisville nonattainment area to attainment status, Indiana has submitted a SIP revision to provide for maintenance of the 1997 annual PM<sub>2.5</sub> NAAQS in the area through 2025.

##### a. What is required in a maintenance plan?

Section 175A of the CAA sets forth the required elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after EPA approves a redesignation to attainment. Eight years after redesignation, the state must submit a revised maintenance plan which demonstrates that attainment will continue to be maintained for ten years following the initial ten year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures with a schedule

for implementation as EPA deems necessary to assure prompt correction of any future annual PM<sub>2.5</sub> violations.

The September 4, 1992, Calcagni memorandum provides additional guidance on the content of a maintenance plan. The memorandum states that a maintenance plan should address the following items: the attainment emissions inventories, a maintenance demonstration showing maintenance for the ten years of the maintenance period, a commitment to maintain the existing monitoring network, factors and procedures to be used for verification of continued attainment of the NAAQS and a contingency plan to prevent or correct future violations of the NAAQS.

##### b. Attainment Inventory

Indiana developed emissions inventories for NO<sub>x</sub>, direct PM<sub>2.5</sub> and SO<sub>2</sub> for 2008, one of the years in the period during which the Louisville area monitored attainment of the 1997 annual PM<sub>2.5</sub> standard, as described previously. The attainment levels of emissions for the entire area, as well as the attainment levels of emissions for the Indiana portion of the area were summarized in Tables 3 and 5, above.

##### c. Demonstration of Maintenance

Along with the redesignation request, Indiana submitted a revision to its PM<sub>2.5</sub> SIP to include a maintenance plan for the Louisville area, as required by section 175A of the CAA. Section 175A requires a state seeking redesignation to attainment to submit a SIP revision to provide for the maintenance of the NAAQS in the area "for at least 10 years after the redesignation." EPA has interpreted this as a showing of

maintenance "for a period of ten years following redesignation." Calcagni Memorandum, p. 9. Where the emissions inventory method of showing maintenance is used, its purpose is to show that emissions during the maintenance period will not increase over the attainment year inventory. Calcagni Memorandum, pp. 9–10. A maintenance demonstration may be based on such an emissions inventory approach. *See Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001), *Sierra Club v. EPA*, 375 F. 3d 537 (7th Cir. 2004). *See also* 66 FR 53094, 53099–53100 (October 19, 2001), 68 FR 25413, 25430–25432 (May 12, 2003).

Indiana's plan demonstrates maintenance of the 1997 annual PM<sub>2.5</sub> standard through 2025 by showing that current and future emissions of NO<sub>x</sub>, directly emitted PM<sub>2.5</sub> and SO<sub>2</sub> for the area remain at or below attainment year emission levels.

Indiana's submission uses emissions inventory projections for the years 2015 and 2025 to demonstrate maintenance for the Indiana portion of the Louisville area. The projected emissions were estimated by Indiana, with assistance from LADCO and KIPDA using the MOVES2010a model. Projection of inventory emissions was done for the 2015 interim year emissions using estimates based on the 2009 and 2018 LADCO modeling inventory, using LADCO's growth factors, for all sectors. The 2025 maintenance year emissions are based on emissions estimates from the 2018 LADCO modeling. Table 7 shows the 2008 attainment base year emission estimates and the 2015 and 2025 emission projections for the entire tri-state Louisville area that Indiana

provided in its June 16, 2011, submission.

TABLE 7—COMPARISON OF 2008, 2015 AND 2025 NO<sub>x</sub>, DIRECT PM<sub>2.5</sub> AND SO<sub>2</sub> EMISSION TOTALS (TPY) FOR THE LOUISVILLE AREA

	SO <sub>2</sub>	NO <sub>x</sub>	PM <sub>2.5</sub>
2008 (baseline) .....	151,503.01 .....	97,533.93 .....	6,724.02
2015 .....	76,958.54 .....	69,936.67 .....	5,540.29
2025 .....	76,082.07 .....	59,455.17 .....	5,055.61
Change 2008–2025 .....	– 75,420.94 .....	– 38,078.76 .....	– 1,668.41
	50% decrease ..	39% decrease ..	25% decrease

Table 7 shows that the Louisville area will reduce NO<sub>x</sub> emissions by 38,078.76 tpy between 2008 and the maintenance projection to 2025, direct PM<sub>2.5</sub> emissions by 1,668.41 tpy, and reduced SO<sub>2</sub> emissions by 75,420.94 tpy between 2008 and 2025.

An air quality modeling analysis conducted by IDEM demonstrates that the Louisville area would be able to attain the PM<sub>2.5</sub> standard even in the absence of either CAIR or CSAPR. See appendices H and I. This modeling is available in the docket for this proposed redesignation action.

Based on the information summarized above, Indiana has adequately demonstrated maintenance of the PM<sub>2.5</sub> standard in this area for a period extending in excess of ten years from expected final action on Indiana’s redesignation request.

i. Maintenance Plan and Evaluation of VOCs and Ammonia

With regard to the redesignation of Louisville, in evaluating the effect of the Court’s remand of EPA’s implementation rule, which included presumptions against consideration of VOC and ammonia as PM<sub>2.5</sub> precursors, EPA in this proposal is also considering the impact of the decision on the maintenance plan required under sections 175A and 107(d)(3)(E)(iv). To begin with, EPA notes that the area has attained the 1997 PM<sub>2.5</sub> standard and that the state has shown that attainment of that standard is due to permanent and enforceable emission reductions.

EPA proposes to determine that the state’s maintenance plan shows continued maintenance of the standard by tracking the levels of the precursors

whose control brought about attainment of the 1997 PM<sub>2.5</sub> standard in the Louisville area. EPA therefore believes that the only additional consideration related to the maintenance plan requirements that results from the Court’s January 4, 2013, decision is that of assessing the potential role of VOC and ammonia in demonstrating continued maintenance in this area. As explained below, based upon documentation provided by the State and supporting information, EPA believes that the maintenance plan for the Louisville area need not include any additional emission reductions of VOC or ammonia in order to provide for continued maintenance of the standard.

First, as noted above in EPA’s discussion of section 189(e), VOC emission levels in this area have historically been well controlled under SIP requirements related to ozone and other pollutants. Second, total ammonia emissions throughout the Louisville area are very low, estimated to be less than 1,500 tpy. See Table 8 below. This amount of ammonia emissions appears especially small in comparison to the total amounts of SO<sub>2</sub>, NO<sub>x</sub>, and even direct PM<sub>2.5</sub> emissions from sources in the area, see Table 7. Third, as described below, available information shows that no precursor, except ammonia, is expected to increase over the maintenance period so as to interfere with or undermine the State’s maintenance demonstration.

Indiana’s maintenance plan shows that emissions of direct PM<sub>2.5</sub>, SO<sub>2</sub>, and NO<sub>x</sub> are projected to decrease by 1,668 tpy, 75,420 tpy, and 38,078 tpy, respectively, over the maintenance

period. See Table 7 above. In addition, emissions inventories used in the regulatory impact analysis (RIA), found in the docket, for the 2012 PM<sub>2.5</sub> NAAQS, shows that VOC emissions are projected to decrease by 14,551 tpy between 2007 and 2020. Although ammonia emissions are predicted to increase slightly between 2007 and 2020, the large decrease of emissions in other precursors in comparison will keep the area well below the standard. See Table 8 below. While the RIA emissions inventories are only projected out to 2020, there is no reason to believe that this downward trend would not continue through 2025. Given that the Louisville area is already attaining the 1997 PM<sub>2.5</sub> NAAQS even with the current level of emissions from sources in the area, the downward trend of emissions inventories would be consistent with continued attainment. Indeed, projected emissions reductions for the precursors that the state is addressing for purposes of the 1997 PM<sub>2.5</sub> NAAQS, indicate that the area should continue to attain the NAAQS following the precursor control strategy that the state has already elected to pursue. Even if VOC and ammonia emissions were to increase unexpectedly between 2020 and 2025, the overall emissions reductions projected in direct PM<sub>2.5</sub>, SO<sub>2</sub>, and NO<sub>x</sub> would be sufficient to offset any increases. For these reasons, EPA believes that local emissions of all of the potential PM<sub>2.5</sub> precursors will not increase to the extent that they will cause monitored PM<sub>2.5</sub> levels to violate the 1997 PM<sub>2.5</sub> standard during the maintenance period.

TABLE 8—COMPARISON OF 2007 AND 2020 VOC AND AMMONIA EMISSION TOTALS BY SOURCE SECTOR (TPY) FOR THE LOUISVILLE AREA <sup>13</sup>

Sector	VOC			Ammonia		
	2007	2020	Net change 2007–2020	2007	2020	Net change 2007–2020
Point .....	1,084	1,099	15	6	97	91
Area .....	5,504	5,460	– 44	1,115	1,191	76

TABLE 8—COMPARISON OF 2007 AND 2020 VOC AND AMMONIA EMISSION TOTALS BY SOURCE SECTOR (TPY) FOR THE LOUISVILLE AREA <sup>13</sup>—Continued

Sector	VOC			Ammonia		
	2007	2020	Net change 2007–2020	2007	2020	Net change 2007–2020
Nonroad .....	1,273	6,39	– 634	2	250	248
On-road .....	2,087	9,35	– 1,152	97	68	– 29
Fires .....	73	73	0	5	5	0
Total .....	10,497	8,819	– 1,678	1,270	1,407	137

In addition, available air quality modeling analyses done by the state show continued maintenance of the standard during the maintenance period. The current air quality design value for the area is 13.5  $\mu\text{g}/\text{m}^3$  (based on 2009–2011 air quality data), which is well below the 1997 annual  $\text{PM}_{2.5}$  NAAQS of 15  $\mu\text{g}/\text{m}^3$ . Moreover, the modeling analysis conducted for the RIA for the 2012  $\text{PM}_{2.5}$  NAAQS indicates that the design value for this area is expected to continue to decline through 2020. In the RIA analysis, the highest 2020 modeled design value for the Louisville area is 9.8  $\mu\text{g}/\text{m}^3$ . Given that precursor emissions are projected to decrease through 2025, it is reasonable to conclude that monitored  $\text{PM}_{2.5}$  levels in this area will also continue to decrease through 2025.

Thus, EPA believes that there is ample justification to conclude that the Louisville area should be redesignated, even taking into consideration the emissions of other precursors potentially relevant to  $\text{PM}_{2.5}$ . After consideration of the D.C. Circuit's January 4, 2013, decision, and for the reasons set forth in this notice, EPA proposes to approve the State's maintenance plan and its request to redesignate the Louisville area to attainment for the 1997  $\text{PM}_{2.5}$  annual standard.

Based on the information summarized above, Indiana has adequately demonstrated maintenance of the  $\text{PM}_{2.5}$  standard in this area for a period extending in excess of ten years from expected final action on Indiana's redesignation request.

#### d. Monitoring Network

Indiana's plan includes a commitment to continue working with Kentucky to operate its EPA-approved monitoring network, as necessary to demonstrate ongoing compliance with the NAAQS. Indiana currently operates three  $\text{PM}_{2.5}$  monitors in Clark and Floyd counties in

order to monitor the Indiana portion of the Louisville area. Kentucky currently operates four monitors in Jefferson County for the Louisville area.

#### e. Verification of Continued Attainment

Indiana remains obligated to continue to quality-assure monitoring data and enter all data into AQS in accordance with Federal guidelines. Indiana will use these data, supplemented with additional information as necessary, to assure that the area continues to attain the standard. Indiana will also continue to develop and submit periodic emission inventories as required by the Federal Consolidated Emissions Reporting Rule (67 FR 39602, June 10, 2002) to track future levels of emissions. Both of these actions will help to verify continued attainment in accordance with 40 CFR part 58.

#### f. Contingency Plan

The contingency plan provisions are designed to promptly correct or prevent a violation of the NAAQS that might occur after redesignation of an area to attainment. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation of the contingency measures, and a time limit for action by the state. The state should also identify specific indicators to be used to determine when the contingency measures need to be adopted and implemented. The maintenance plan must include a requirement that the state will implement all measures with respect to control of the pollutant(s) that were contained in the SIP before redesignation of the area to attainment. See section 175A(d) of the CAA.

As required by section 175A of the CAA, Indiana has adopted a contingency plan for the Louisville area to address possible future annual  $\text{PM}_{2.5}$

air quality problems. Under Indiana's plan, if a violation of the 1997 annual  $\text{PM}_{2.5}$  standard occurs, Indiana will implement an "Action Level Response" to evaluate what measures are warranted to address the violation, committing to implement one or more measures from a list of candidate measures given in the plan. Indiana's candidate contingency measures include the following:

- i. Vehicle inspection and maintenance program;
- ii. Alternative fuel and diesel retrofit programs for fleet vehicle operations;
- iii. Requiring  $\text{NO}_x$  or  $\text{SO}_2$  emissions offsets for new and modified major and minor sources;
- iv. Increasing the ratio of emissions offsets required for new sources;
- v.  $\text{NO}_x$  or  $\text{SO}_2$  controls on new minor sources;
- vi. Wood stove change-out program;
- vii. Emission reduction measures for unpaved roads and parking lots;
- viii. Idle restrictions;
- ix. Broader geographic applicability of existing measures; and
- x. One or more transportation control measures sufficient to achieve at least a 0.5% reduction in actual area wide precursor emissions.

Under Indiana's plan, control measures are to be adopted and implemented within 18 months from the end of the year in which air quality triggering the Action Level Response occurs. Indiana further commits to conduct ongoing review of its data, and if monitored concentrations or emissions are trending upward, Indiana commits to take appropriate steps to avoid a violation if possible. EPA believes that Indiana's contingency plan satisfies the pertinent requirements of section 175A(d).

EPA believes that Indiana's contingency measures, as well as the commitment to continue implementing any SIP requirements, satisfy the pertinent requirements of section 175A(d).

As required by section 175A(b) of the CAA, Indiana commits to submit to the EPA an updated  $\text{PM}_{2.5}$  maintenance

<sup>13</sup> These emissions estimates were taken from the emissions inventories developed for the RIA for the 2012  $\text{PM}_{2.5}$  NAAQS.

plan eight years after redesignation of the Louisville area to cover an additional ten year period beyond the initial ten year maintenance period. As required by section 175A of the CAA, Indiana has also committed to retain the PM<sub>2.5</sub> control measures contained in the SIP prior to redesignation.

For all of the reasons set forth above, EPA is proposing to approve Indiana's 1997 annual PM<sub>2.5</sub> maintenance plan for the Louisville area as meeting the requirements of CAA section 175A.

##### 5. Adequacy of Indiana's MVEB

###### 1. How are MVEBs developed and what are the MVEBs for the Louisville area?

Under the CAA, states are required to submit, at various times, control strategy SIP revisions and maintenance plans for PM<sub>2.5</sub> nonattainment areas and for areas seeking redesignation to attainment of the PM<sub>2.5</sub> standard. These emission control strategy SIP revisions (e.g., RFP and attainment demonstration SIP revisions) and maintenance plans create MVEBs based on on-road mobile source emissions for criteria pollutants and/or their precursors to address pollution from on-road transportation sources. The MVEBs are the portions of the total allowable emissions that are allocated to highway and transit vehicle use that, together with emissions from other sources in the area, will provide for attainment, RFP or maintenance, as applicable.

Under 40 CFR part 93, a MVEB for an area seeking a redesignation to attainment is established for the last year of the maintenance plan and could also be established for an interim year or years. The MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188).

Under section 176(c) of the CAA, new transportation plans and transportation improvement programs (TIPs) must be evaluated to determine if they conform to the purpose of the area's SIP. Conformity to the SIP means that transportation activities will not cause new air quality violations, worsen existing air quality violations, or delay timely attainment of the NAAQS or any required interim milestone. If a transportation plan or TIP does not conform, most new transportation projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP.

When reviewing SIP revisions containing MVEBs, including attainment strategies, rate-of-progress plans, and maintenance plans, EPA must affirmatively find adequate and/or approve the MVEBs for use in determining transportation conformity before the MVEBs can be used. Once EPA affirmatively approves and/or finds the submitted MVEBs to be adequate for transportation conformity purposes, the MVEBs must be used by state and Federal agencies in determining whether proposed transportation plans and TIPs conform to the SIP as required by section 176(c) of the CAA. EPA's substantive criteria for determining the adequacy of MVEBs are set out in 40 CFR 93.118(e)(4). Additionally, to approve a MVEB EPA must complete a thorough review of the SIP, in this case the PM<sub>2.5</sub> maintenance plans, and conclude that the SIP will achieve its overall purpose, in this case providing for maintenance of the 1997 annual PM<sub>2.5</sub> standard in the Indiana portions of the Louisville area.

EPA's process for determining adequacy of a MVEB consists of three basic steps: (1) Providing public notification of a SIP submission; (2) providing the public the opportunity to comment on the MVEB during a public comment period; and, (3) EPA taking action on the MVEB. The process for determining the adequacy of submitted SIP MVEBs is codified at 40 CFR 93.118.

The maintenance plan submitted by Indiana for the Louisville area contains new primary PM<sub>2.5</sub> and NO<sub>x</sub> MVEBs for the area for the years 2015 and 2025. The motor vehicle emissions budgets were calculated using MOVES2010(a). After the adequacy finding and approval of the budgets become effective, the budgets will have to be used in future conformity determinations and regional emissions analyses prepared by the KIPDA, will have to be based on the use of MOVES2010a or the most recent version of MOVES required to be used in transportation conformity determinations.<sup>14</sup> The states have determined the 2015 MVEBs for the combined Indiana and Kentucky portions of the Louisville area to be 580.69 tpy for primary PM<sub>2.5</sub> and 17,700.95 tpy for NO<sub>x</sub>. Indiana has determined the 2025 MVEBs for the entire Louisville area to be 324.04 tpy for primary PM<sub>2.5</sub> and 9,311.76 tpy for NO<sub>x</sub>. These MVEBs exceed the on-road

mobile source primary PM<sub>2.5</sub> and NO<sub>x</sub> emissions projected by the states for 2015 and 2021. Indiana has decided to include "safety margins" as provided for in 40 CFR 93.124(a) (described below) of 75.74 tpy and 42.27 tpy for primary PM<sub>2.5</sub> and 2,308.82 tpy and 1,214.58 tpy for NO<sub>x</sub> in the 2015 and 2025 MVEBs, respectively, to provide for on-road mobile source growth. Indiana did not provide emission budgets for SO<sub>2</sub>, VOCs, and ammonia because it concluded that emissions of these precursors from on-road motor vehicles are not significant contributors to the area's PM<sub>2.5</sub> air quality problem.

In the Indiana portion of the Louisville area, the motor vehicle budgets including the safety margins and motor vehicle emission projections for both NO<sub>x</sub> and PM<sub>2.5</sub> are lower than the levels in the attainment year.

EPA has reviewed the submitted budgets for 2015 and 2025 including the added safety margins using the conformity rule's adequacy criteria found at 40 CFR 93.118(e)(4) and the conformity rule's requirements for safety margins found at 40 CFR 93.124(a). EPA has also completed a thorough review of the maintenance plan for the Indiana portion of the Louisville area. Based on the results of this review of the budgets and the maintenance plans EPA is approving the 2015 and 2025 direct PM<sub>2.5</sub> and NO<sub>x</sub> budgets including the requested safety margins for the Indiana portion of the Louisville area. Additionally, EPA, through this rulemaking, has found the submitted budgets to be adequate for use to determine transportation conformity in the Indiana portion of the area, because EPA has determined that the area can maintain the 1997 annual PM<sub>2.5</sub> NAAQS for the relevant maintenance period with on-road mobile source emissions at the levels of the MVEBs including the requested safety margins. These budgets must be used in conformity determinations made on or after the effective date of this direct final rulemaking (40 CFR 93.118(f)(iii)). Additionally, transportation conformity determinations made after the effective date of this notice must be based on regional emissions analyses using MOVES2010a or a more recent version of MOVES that has been approved for use in conformity determinations.<sup>15</sup>

<sup>14</sup> EPA described the circumstances under which an area would be required to use MOVES in transportation conformity determinations in its March 2, 2010, *Federal Register* notice officially releasing MOVES2010 for use in SIPs and transportation conformity determinations. (75 FR 9413)

<sup>15</sup> EPA described the circumstances under which an area would be required to use MOVES in transportation conformity determinations in its March 2, 2010 *Federal Register* notice officially releasing MOVES2010 for use in SIPs and transportation conformity determinations. (75 FR 9413)

## 2. What is a safety margin?

A “safety margin” is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. As shown in Table 8, the entire Louisville area is projected to have safety margins for NO<sub>x</sub> and direct PM<sub>2.5</sub> of 38,078.76 tpy and 1,668.41 tpy in 2025 (the difference between the attainment year, 2008, emissions and the projected year of 2025 emissions for all sources in the Louisville area). The transportation conformity rule allows areas to allocate all or a portion of a “safety margin” to the area’s motor vehicle emissions budgets (40 CFR 92.124(a)). The MVEBs requested by Indiana contain NO<sub>x</sub> safety margins for mobile sources in 2015 and 2025 and PM<sub>2.5</sub> safety margins for mobile sources in 2015 and 2025 are much smaller than the allowable safety margins reflected in the total emissions for the Louisville area. The state is not requesting allocation to the MVEBs of the entire available safety margins reflected in the demonstration of maintenance. Therefore, even though the state is requesting MVEBs that exceed the projected on-road mobile source emissions for 2015 and 2025 contained in the demonstration of maintenance, the increase in on-road mobile source emissions that can be considered for transportation conformity purposes is well within the safety margins of the overall PM<sub>2.5</sub> maintenance demonstration.

Therefore, EPA believes that the requested budgets, including the requested portion of the safety margins, provide for a quantity of mobile source emissions that would be expected to maintain the PM<sub>2.5</sub> standard. Once allocated to mobile sources, these portions of the safety margins will not be available for use by other sources.

## 3. What action is EPA taking on the submitted motor vehicle emissions budgets?

EPA, through this rulemaking, has found adequate and is approving the MVEBs for use to determine transportation conformity in the Indiana portion of the Louisville area, because EPA has determined that the area can maintain attainment of the 1997 annual PM<sub>2.5</sub> NAAQS for the relevant maintenance period with mobile source emissions at the levels of the MVEBs including the requested safety margins. These budgets must be used in conformity determinations if this rulemaking goes final. (40 CFR 93.118(f)(iii)) Additionally, the determinations must be based on

regional emissions analyses using MOVES2010b or a more recent version of MOVES that has been approved for use in conformity determinations.<sup>16</sup>

## 6. 2008 Comprehensive Emissions Inventory

As discussed above, section 172(c)(3) of the CAA requires areas to submit a comprehensive emissions inventory. Indiana submitted a 2008 base year emissions inventory that meets this requirement. Emissions contained in the submittals cover the general source categories of point sources, area sources, on-road mobile sources, and nonroad mobile sources. Discussion of how these emissions were compiled is found in section V(3)(b) above, as well as in the docket.

The emissions for the 2008 base year emission inventory and supplemental precursor emissions inventory are found in Tables 4 and 5, and documented in Indiana’s redesignation request submittal and supplemental submittal. EPA has reviewed Indiana’s documentation of the emissions inventory techniques and data sources used for the derivation of the 2008 emissions estimates, and has found that Indiana has thoroughly documented the derivation of these emissions inventories. The submittal from the state shows that the 2008 emissions inventory is currently the most complete emissions inventories for PM<sub>2.5</sub> and PM<sub>2.5</sub> precursors in the Louisville area. Based upon EPA’s review, we propose to find that the base year emissions inventory are as complete and accurate as possible given the input data available to Indiana, and we are proposing to approve them under CAA section 172(c)(3).

## 7. Summary of Proposed Actions

EPA has previously determined that the Louisville area has attained the 1997 annual PM<sub>2.5</sub> NAAQS. EPA is proposing to determine that the entire Louisville area continues to attain the 1997 annual PM<sub>2.5</sub> standard using the latest three years of certified, quality-assured data, and that the Indiana portion of the area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. EPA is proposing to grant the request from Indiana to change the legal designation of the Indiana portion of the Louisville area from nonattainment to attainment for the

<sup>16</sup> EPA described the circumstances under which an area would be required to use MOVES in transportation conformity determinations in its March 2, 2010, **Federal Register** notice officially releasing MOVES2010 for use in SIPs and transportation conformity determinations. (75 FR 9413)

1997 annual PM<sub>2.5</sub> NAAQS. EPA is proposing to approve Indiana’s PM<sub>2.5</sub> maintenance plan for the Louisville area as a revision to the Indiana SIP because the plan meets the requirements of section 175A of the CAA. EPA is proposing to approve the 2008 emissions inventory for primary PM<sub>2.5</sub>, NO<sub>x</sub>, SO<sub>2</sub>, VOC and ammonia documented in Indiana’s June 16, 2011, submittal and supplement on March 18, 2013, as satisfying the requirement in section 172(c)(3) of the CAA for a comprehensive, current emission inventory. Finally, EPA finds adequate and is approving 2015 and 2025 primary PM<sub>2.5</sub> and NO<sub>x</sub> MVEBs for the Louisville area. These MVEBs will be used in future transportation conformity analyses for the area.

## VI. What are the effects of EPA’s proposed actions?

If finalized, approval of the redesignation request would change the official designation of the Indiana portion of the Louisville area for the 1997 annual PM<sub>2.5</sub> NAAQS, found at 40 CFR part 81, from nonattainment to attainment. A final approval would also be a revision to the Indiana SIP for the Louisville area, the maintenance plan for the 1997 annual PM<sub>2.5</sub> standard, MVEBs, as well as the 2008 emissions inventory included with the redesignation request.

## VII. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA 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 CAA. 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, these actions:

- Are 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);

- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are 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.*);
- Do 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);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are 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 CAA; and
- Do 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.

#### List of Subjects

##### 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter.

##### 40 CFR Part 81

Air pollution control, Environmental protection, National Parks, Wilderness.

Dated: June 25, 2013.

**Susan Hedman,**

*Regional Administrator, Region 5.*

[FR Doc. 2013-16659 Filed 7-10-13; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[EPA-R05-OAR-2012-0337 and EPA-R05-OAR-2012-0462; FRL-9831-7]

#### Approval and Promulgation of Air Quality Implementation Plans; Ohio; Redesignation of the Ohio Portion of the Steubenville-Weirton Area to Attainment of the 1997 Annual and 2006 24-Hour Standards for Fine Particulate Matter

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

**ACTION:** Proposed rule.

**SUMMARY:** On April 16, 2012, and May 25, 2012, the Ohio Environmental Protection Agency submitted a request under the Clean Air Act (CAA or Act) for EPA to grant the redesignation of the Ohio portion of the Steubenville-Weirton area (Jefferson County), West Virginia-Ohio (Brooke and Hancock counties) (WV-OH), nonattainment area to attainment of the 1997 annual and 2006 24-hour standards for fine particulate matter (PM<sub>2.5</sub>). EPA is proposing to determine that the entire Steubenville-Weirton area attains both the 1997 annual and the 2006 24-hour PM<sub>2.5</sub> standard, based on the most recent three years of certified air quality data. EPA is proposing to approve, as revisions to the Ohio state implementation plan (SIP), the state's plan for maintaining the 1997 annual and 2006 24-hour PM<sub>2.5</sub> National Ambient Air Quality Standards (NAAQS or standard) through 2025 in the Ohio portion of the area. EPA is proposing to approve 2005 and 2008 emission inventories for the Ohio portion of the Steubenville-Weirton area as meeting the comprehensive emissions inventory requirement of the CAA. In this proposal, EPA is also proposing to approve a supplement to the emission inventories previously submitted by the state. EPA is proposing that the inventories for ammonia and volatile organic compounds (VOC), in conjunction with the inventories for nitrogen oxides (NO<sub>x</sub>), direct PM<sub>2.5</sub>, and sulfur dioxide (SO<sub>2</sub>) that EPA previously proposed to approve, meet the comprehensive emissions inventory requirement of the CAA. Ohio's maintenance plan submission includes a motor vehicle emission budget (MVEB) for the mobile source contribution of PM<sub>2.5</sub> and NO<sub>x</sub> to the Steubenville-Weirton area for transportation conformity purposes; EPA is proposing to approve the MVEBs

for 2015 and 2025 into the Ohio SIP for transportation conformity purposes.

**DATES:** Comments must be received on or before August 12, 2013.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2012-0337 or EPA-R05-OAR-2012-0462, by one of the following methods:

1. *www.regulations.gov*: Follow the on-line instructions for submitting comments.
2. *Email*: [blakley.pamela@epa.gov](mailto:blakley.pamela@epa.gov).
3. *Fax*: (312) 692-2450.
4. *Mail*: Pamela Blakley, Chief, Control Strategies Section (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery*: Pamela Blakley, Chief, Control Strategies Section (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.

**Instructions:** Direct your comments to Docket ID No. EPA-R05-OAR-2012-0337 or EPA-R05-OAR-2012-0462. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *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 email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be

able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* All documents in the docket are listed in the [www.regulations.gov](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 [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Carolyn Persoon, Environmental Engineer, at (312) 353-8290 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Carolyn Persoon, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-8290, [persoon.carolyn@epa.gov](mailto:persoon.carolyn@epa.gov).

**SUPPLEMENTARY INFORMATION:** This supplementary information section is arranged as follows:

- I. What should I consider as I prepare my comments for EPA?
- II. What actions is EPA proposing to take?
- III. What is the background for these actions?
- IV. What are the criteria for redesignation to attainment?
- V. What is EPA's analysis of the state's request?
  1. Attainment
  2. The Area Has Met All Applicable Requirements Under Section 110 and Part D and Has a Fully Approved SIP Under Section 110(k) (Sections 107(d)(3)(E)(v) and 107(d)(3)(E)(ii))
  3. The Improvement in Air Quality Is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions (Section 107(d)(3)(E)(iii))
  4. Ohio Has a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA (Section 107(d)(3)(E)(iv))
  5. Insignificance Determination for the Mobile Source Contribution to PM<sub>2.5</sub> and NO<sub>x</sub>
  6. 2005 and 2008 Comprehensive Emissions Inventory

7. Summary of Proposed Actions
- VI. What are the effects of EPA's proposed actions?
- VII. Statutory and Executive Order Reviews

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

When submitting comments, remember to:

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

### II. What actions is EPA proposing to take?

EPA is proposing to take several actions related to redesignation of the Ohio portion of the Steubenville-Weirton area to attainment for the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS. In addition to EPA's September 14, 2011, determination that the area meets the NAAQS for PM<sub>2.5</sub> based on quality-assured, certified 2008–2010 ambient air monitoring data (76 FR 56641), we are proposing to determine that the area continues to attain the NAAQS for PM<sub>2.5</sub>, based on quality-assured and state certified monitoring data for 2010–2012. EPA is proposing to find that Ohio meets the requirements for redesignation of the Steubenville-Weirton area to attainment of the 1997 and 2006 24-hour PM<sub>2.5</sub> NAAQS under section 107(d)(3)(E) of the CAA.

Second, EPA is proposing to approve Ohio's annual PM<sub>2.5</sub> maintenance plan for the Steubenville-Weirton area as a revision to the Ohio SIP, including the MVEB for PM<sub>2.5</sub> and NO<sub>x</sub> emissions for the mobile source contribution of the Steubenville-Weirton area.

Finally, EPA is proposing to approve the 2005 and 2008 primary PM<sub>2.5</sub>, NO<sub>x</sub>

and SO<sub>2</sub> emissions inventories as satisfying the requirement in section 172(c)(3) of the CAA for a current, accurate and comprehensive emission inventory. In a supplemental submission to EPA on April 29, 2013, Ohio submitted ammonia and VOC emissions inventories to supplement the emissions inventories that had previously been submitted.

Therefore, EPA is proposing to grant the request from the State of Ohio to change the designation of Jefferson County (the Ohio portion of the Steubenville-Weirton area) from nonattainment to attainment of the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS. This action would not change the legal designation of the West Virginia portion of the area. The West Virginia portion of the area will be addressed in a separate rulemaking.

### III. What is the background for these actions?

Fine particulate pollution can be emitted directly from a source (primary PM<sub>2.5</sub>) or formed secondarily through chemical reactions in the atmosphere involving precursor pollutants emitted from a variety of sources. Sulfates are a type of secondary particulate formed from SO<sub>2</sub> emissions from power plants and industrial facilities. Nitrates, another common type of secondary particulate, are formed from combustion emissions of NO<sub>x</sub> from power plants, mobile sources and other combustion sources.

The first air quality standards for PM<sub>2.5</sub> were promulgated on July 18, 1997, at 62 FR 38652. EPA promulgated an annual standard at a level of 15 micrograms per cubic meter (µg/m<sup>3</sup>) of ambient air, based on a three-year average of the annual mean PM<sub>2.5</sub> concentrations at each monitoring site. In the same rulemaking, EPA promulgated a 24-hour PM<sub>2.5</sub> standard at 65 µg/m<sup>3</sup>, based on a three-year average of the 98th percentile of 24-hour PM<sub>2.5</sub> concentrations at each monitoring site.

On January 5, 2005, at 70 FR 944, EPA published air quality area designations for the 1997 annual PM<sub>2.5</sub> standard based on air quality data for calendar years 2001–2003. In that rulemaking, EPA designated the Steubenville-Weirton area as nonattainment for the 1997 annual PM<sub>2.5</sub> standard.

On October 17, 2006, at 71 FR 61144, EPA retained the annual PM<sub>2.5</sub> standard at 15 µg/m<sup>3</sup> (2006 annual PM<sub>2.5</sub> standard), but revised the 24-hour standard to 35 µg/m<sup>3</sup>, based again on the three-year average of the annual 98th percentile of the 24-hour PM<sub>2.5</sub> concentrations. In response to legal challenges of the 2006 annual PM<sub>2.5</sub>

standard, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit or Court) remanded this standard to EPA for further consideration. See *American Farm Bureau Federation and National Pork Producers Council, et al. v. EPA*, 559 F.3d 512 (D.C. Cir. 2009). On December 14, 2012, EPA finalized a rule revising the PM<sub>2.5</sub> annual standard to 12 µg/m<sup>3</sup> based on current scientific evidence regarding the protection of public health. Since the Steubenville-Weirton area is designated as nonattainment for the 1997 annual and 2006 24-hour PM<sub>2.5</sub> standards, today's proposed action addresses redesignation to attainment only for these standards.

On September 14, 2011, EPA issued a final determination that the entire Steubenville-Weirton area had attained the 1997 PM<sub>2.5</sub> standard by the applicable attainment date (76 FR 56641) and a final determination for the 2006 24-hour standard on May 14, 2012 (77 FR 28264). Based upon our review of complete, quality-assured and certified ambient air monitoring data from 2009–2011 and state certified data from 2010–2012, we are proposing to determine that the area continues to attain the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS.

In this proposed redesignation, EPA takes into account two decisions of the D.C. Circuit. In the first of the two Court decisions, the D.C. Circuit, on August 21, 2012, issued *EME Homer City Generation, L.P. v. EPA*, 696 F.3d 7 (D.C. Cir. 2012), which vacated and remanded the Cross-State Air Pollution Rule (CSAPR) and ordered EPA to continue administering the Clean Air Interstate Rule (CAIR) “pending . . . development of a valid replacement.” *EME Homer City* at 38. The D.C. Circuit denied all petitions for rehearing on January 24, 2013. In the second decision, on January 4, 2013, in *Natural Resources Defense Council v. EPA*, the D.C. Circuit remanded to EPA the “Final Clean Air Fine Particle Implementation Rule” (72 FR 20586, April 25, 2007) and the “Implementation of the New Source Review (NSR) Program for Particulate

Matter Less than 2.5 Micrometers (PM<sub>2.5</sub>)” final rule (73 FR 28321, May 16, 2008). 706 F.3d 428 (D.C. Cir. 2013).

**IV. What are the criteria for redesignation to attainment?**

The CAA sets forth the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) of the CAA allows for redesignation provided that: (1) The Administrator determines that the area has attained the applicable NAAQS based on current air quality data; (2) the Administrator has fully approved an applicable SIP for the area under section 110(k) of the CAA; (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable emission reductions resulting from implementation of the applicable SIP, Federal air pollution control regulations and other permanent and enforceable emission reductions; (4) the Administrator has fully approved a maintenance plan for the area meeting the requirements of section 175A of the CAA; and (5) the state containing the area has met all requirements applicable to the area for purposes of redesignation under section 110 and part D of the CAA.

**V. What is EPA's analysis of the State's request?**

EPA is proposing to grant the redesignation of the Ohio portion of the Steubenville-Weirton area to attainment of the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS and is proposing to approve Ohio's maintenance plan for the area and other related SIP revisions. The bases for these actions follow.

**1. Attainment**

As noted above, in a rulemaking published on September 14, 2011, EPA determined that the Steubenville-Weirton area had attained the 1997 annual PM<sub>2.5</sub> NAAQS by the applicable attainment date. The basis and effect of the determinations of attainment for both the 1997 and 2006 standards were discussed in the notices of proposed (76 FR 28393; 76 FR 61219 respectively)

and final (76 FR 56641; 77 FR 28264, respectively) rulemaking. The determinations were based on quality-assured air quality monitoring data for 2007–2009 and 2008–2010 showing the area has met the standards.

In this action, we are proposing to determine that the Steubenville-Weirton area continues to attain the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS based upon the most recent three years of complete, certified and quality-assured data. Under EPA's regulations at 40 CFR 50.7, the annual primary and secondary PM<sub>2.5</sub> standards are met when the annual arithmetic mean concentration, as determined in accordance with 40 CFR part 50, appendix N, is less than or equal to 15.0 µg/m<sup>3</sup> at all relevant monitoring sites in the area.

EPA has reviewed the ambient air quality monitoring data in the Steubenville-Weirton area, consistent with the requirements contained at 40 CFR part 50. EPA's review focused on data recorded in the EPA Air Quality System (AQS) database for the Steubenville-Weirton PM<sub>2.5</sub> nonattainment area from 2009–2011 and state certified data from 2010–2012.

The Steubenville-Weirton area has five monitors located in Jefferson County, Ohio, and Brooke and Hancock counties, West Virginia. Based on preliminary calculations using state-certified data for 2010–2012, the most recent three full years of data, the five monitors had design values from 2010–2012 ranging from 12.7 to 11.1 µg/m<sup>3</sup> for the 1997 annual standard, and from 27 to 24 µg/m<sup>3</sup> for the 2006 24-hour standard. The monitors in the Steubenville-Weirton area recorded complete data in accordance with criteria set forth by EPA in 40 CFR part 50, appendix N, where a complete year of air quality data comprises four calendar quarters, with each quarter containing data with at least 75% capture of the scheduled sampling days. Available data are considered to be sufficient for comparison to the NAAQS if three consecutive complete years of data exist.

TABLE 1—THE 1997 ANNUAL AND 2006 24-HOUR PM<sub>2.5</sub> DESIGN VALUES FOR THE STEUBENVILLE-WEIRTON MONITOR WITH COMPLETE DATA FOR THE 2009–2011 AND STATE CERTIFIED 2010–2012 DESIGN VALUES <sup>1</sup> IN µg/m<sup>3</sup>

County	Site	Annual standard 2009–2011	24-hour standard 2009–2011	Annual standard 2010–2012	24-hour standard 2010–2012
Jefferson, OH .....	390810017	12.5	28	12.2	27
Jefferson, OH .....	390811001	11.8	24	11.4	24
Brooke, WV .....	540090005	13.0	27	12.7	27
Brooke, WV .....	540090011	11.6	29	11.1	27
Hancock, WV .....	540291004	11.7	28	11.3	27

<sup>1</sup> As defined in 40 CFR Part 50 Appendix N(1)(c).

EPA's review of these monitoring data supports EPA's determination that the Steubenville-Weirton area has monitored attainment for each time period. Therefore, EPA proposes to determine that the Steubenville-Weirton area continues to attain the 1997 annual and 2006 24-hour PM<sub>2.5</sub> standards.

*2. The Area Has Met All Applicable Requirements Under Section 110 and Part D and Has a Fully Approved SIP Under Section 110(k) (Sections 107(d)(3)(E)(v) and 107(d)(3)(E)(ii))*

We believe that Ohio has met all currently applicable SIP requirements for purposes of redesignation for the Ohio portion of the Steubenville-Weirton area under section 110 of the CAA (general SIP requirements). We are also proposing to find that the Ohio SIP meets all SIP requirements currently applicable for purposes of redesignation under part D of title I of the CAA, in accordance with section 107(d)(3)(E)(v). We are proposing to find that all applicable requirements of the Ohio SIP for purposes of redesignation have been met, in accordance with section 107(d)(3)(E)(ii). As discussed below, in this action EPA is proposing to approve Ohio's 2005 and 2008 emissions inventory as meeting the section 172(c)(3) comprehensive emissions inventory requirement. In making these proposed determinations, we have ascertained which SIP requirements are applicable for purposes of redesignation, and concluded that there are SIP measures meeting those requirements and that they are approved or will be approved by the time of final rulemaking.

*a. Ohio Has Met All Applicable Requirements for Purposes of Redesignation of the Ohio Portion of the Area Under Section 110 and Part D of the CAA*

*i. Section 110 General SIP Requirements*

Section 110(a) of title I of the CAA contains the general requirements for a SIP. Section 110(a)(2) provides that the implementation plan submitted by a state must have been adopted by the state after reasonable public notice and hearing, and, among other things, must: Include enforceable emission limitations and other control measures, means or techniques necessary to meet the requirements of the CAA; provide for establishment and operation of appropriate devices, methods, systems and procedures necessary to monitor ambient air quality; provide for implementation of a source permit program to regulate the modification and construction of any stationary

source within the areas covered by the plan; include provisions for the implementation of part C, Prevention of Significant Deterioration (PSD) and part D, New Source Review (NSR) permit programs; include criteria for stationary source emission control measures, monitoring and reporting; include provisions for air quality modeling; and provide for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) of the CAA requires that SIPs contain measures to prevent sources in a state from significantly contributing to air quality problems in another state. EPA believes that the requirements linked with a particular nonattainment area's designation are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state. Thus, we believe that these requirements should not be construed to be applicable requirements for purposes of redesignation.

Further, we believe that the other section 110 elements described above that are not connected with nonattainment plan submissions and not linked with an area's attainment status are also not applicable requirements for purposes of redesignation. A state remains subject to these requirements after an area is redesignated to attainment. We conclude that only the section 110 and part D requirements that are linked with a particular area's designation are the relevant measures which we may consider in evaluating a redesignation request. This approach is consistent with EPA's existing policy on applicability of conformity and oxygenated fuels requirements for redesignation purposes, as well as with section 184 ozone transport requirements. See Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176, October 10, 1996) and (62 FR 24826, May 7, 1997); Cleveland-Akron-Lorain, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking (60 FR 62748, December 7, 1995). See also the discussion on this issue in the Cincinnati, Ohio 1-hour ozone redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh, Pennsylvania 1-hour ozone redesignation (66 FR 50399, October 19, 2001).

We have reviewed the Ohio SIP and have concluded that it meets the general SIP requirements under section 110 of the CAA to the extent they are

applicable for purposes of redesignation. EPA has previously approved provisions of Ohio's SIP addressing section 110 requirements, including provisions addressing particulate matter, at 40 CFR 52.1870, respectively). On December 5, 2007, and September 4, 2009, Ohio made submittals addressing "infrastructure SIP" elements required under CAA section 110(a)(2). EPA proposed approval of the December 5, 2007, submittal on April 28, 2011, at 76 FR 23757, and published final approval on July 14, 2011, at 76 FR 41075. The requirements of section 110(a)(2), however, are statewide requirements that are not linked to the PM<sub>2.5</sub> nonattainment status of the Steubenville-Weirton area. Therefore, EPA believes that these SIP elements are not applicable requirements for purposes of review of the state's PM<sub>2.5</sub> redesignation request.

*ii. Part D Requirements*

EPA is proposing to determine that, upon approval of the base year emissions inventories discussed in section V(6) of this rulemaking, the Ohio SIP will meet the SIP requirements for the Ohio portion of the Steubenville-Weirton area applicable for purposes of redesignation under part D of the CAA.

Subpart 1 of part D, found in sections 172–176 of the CAA, sets forth the basic nonattainment requirements applicable to all nonattainment areas.

*(1) Subpart 1*

*a. Section 172 Requirements.*

For purposes of evaluating this redesignation request, the applicable section 172 SIP requirements for the Ohio portion of the Steubenville-Weirton area are contained in section 172(c)(1)–(9). A thorough discussion of the requirements contained in section 172 can be found in the General Preamble for Implementation of Title I (57 FR 13498, April 16, 1992).

Section 172(c)(1) requires the plans for all nonattainment areas to provide for the implementation of all Reasonably Achievable Control Measures (RACM) as expeditiously as practicable and to provide for attainment of the primary NAAQS. EPA interprets this requirement to impose a duty on all nonattainment areas to consider all available control measures and to adopt and implement such measures as are reasonably available for implementation in each area as components of the area's attainment demonstration. Because attainment has been reached, no additional measures are needed to provide for attainment, and section 172(c)(1) requirements are

no longer considered to be applicable as long as the area continues to attain the standard until redesignation. (40 CFR 51.1004(c).)

The Reasonable Further Progress (RFP) requirement under section 172(c)(2) is defined as progress that must be made toward attainment. This requirement is not relevant for purposes of redesignation because the Steubenville-Weirton area has monitored attainment of the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS. (General Preamble, 57 FR 13564). See also 40 CFR 51.918. In addition, because the Steubenville-Weirton area has attained the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS and is no longer subject to an RFP requirement, the requirement to submit the section 172(c)(9) contingency measures is not applicable for purposes of redesignation. *Id.*

Section 172(c)(3) requires submission and approval of a comprehensive, accurate and current inventory of actual emissions. Ohio submitted a 2005 (nonattainment year) and 2008 (attainment year) emissions inventories along with their redesignation request. As discussed below in section V(6), EPA is approving both the 2005 and 2008 base year inventory as meeting the section 172(c)(3) emissions inventory requirement for the Ohio portion of the Steubenville-Weirton area.

Section 172(c)(4) requires the identification and quantification of allowable emissions for major new and modified stationary sources in an area, and section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. EPA approved Ohio's current NSR program on January 10, 2003 (68 FR 1366). Nonetheless, since PSD requirements will apply after redesignation, the area need not have a fully-approved NSR program for purposes of redesignation, provided that the area demonstrates maintenance of the NAAQS without part D NSR. A detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, "Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment." Ohio has demonstrated that the Steubenville-Weirton area will be able to maintain the standard without part D NSR in effect; therefore, the state need not have a fully approved part D NSR program prior to approval of the redesignation request. The state's PSD program will become effective in the Steubenville-Weirton area upon redesignation to

attainment. See rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469–20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996).

Section 172(c)(6) requires the SIP to contain control measures necessary to provide for attainment of the standard. Because attainment has been reached, no additional measures are needed to provide for attainment.

Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2). As noted above, we believe the Ohio SIP meets the requirements of section 110(a)(2) applicable for purposes of redesignation.

*(b) Section 176(c)(4)(D) Conformity SIP Requirements.*

The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under title 23 of the U.S. Code and the Federal Transit Act (transportation conformity), as well as to all other Federally-supported or funded projects (general conformity).

Section 176(c) of the CAA was amended by provisions contained in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), which was signed into law on August 10, 2005 (Pub. L. 109–59). Among the changes Congress made to this section of the CAA were streamlined requirements for state transportation conformity SIPs. State transportation conformity regulations must be consistent with Federal conformity regulations and address three specific requirements related to consultation, enforcement and enforceability. EPA believes that it is reasonable to interpret the transportation conformity SIP requirements as not applying for purposes of evaluating the redesignation request under section 107(d) for two reasons.

First, the requirement to submit SIP revisions to comply with the transportation conformity provisions of the CAA continues to apply to areas after redesignation to attainment since such areas would be subject to a section 175A maintenance plan. Second, EPA's Federal conformity rules require the performance of conformity analyses in the absence of Federally-approved state rules. Therefore, because areas are subject to the transportation conformity requirements regardless of whether they are redesignated to attainment and, because they must implement conformity under Federal rules if state

rules are not yet approved, EPA believes it is reasonable to view these requirements as not applying for purposes of evaluating a redesignation request. See *Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001), upholding this interpretation. See also 60 FR 62748, 62749–62750 (Dec. 7, 1995) (Tampa, Florida). Ohio has an approved transportation conformity SIP (72 FR 20945). Ohio is in the process of updating its approved transportation conformity SIP, and EPA will review its provisions when they are submitted.

2. Effect of the January 4, 2013, D.C. Circuit Decision Regarding PM<sub>2.5</sub> Implementation Under Subpart 4

a. Background

As discussed above, on January 4, 2013, in *Natural Resources Defense Council v. EPA*, the D.C. Circuit remanded to EPA the "Final Clean Air Fine Particle Implementation Rule" (72 FR 20586, April 25, 2007) and the "Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers (PM<sub>2.5</sub>)" final rule (73 FR 28321, May 16, 2008) (collectively, "1997 PM<sub>2.5</sub> Implementation Rule"). 706 F.3d 428 (D.C. Cir. 2013). The Court found that EPA erred in implementing the 1997 PM<sub>2.5</sub> NAAQS pursuant to the general implementation provisions of subpart 1 of part D of title I of the CAA, rather than the particulate-matter-specific provisions of subpart 4 of part D of title I. Although the Court's ruling did not directly address the 2006 PM<sub>2.5</sub> standard, EPA is taking into account the Court's position on subpart 4 and the 1997 PM<sub>2.5</sub> standard in evaluating redesignations for the 2006 standard.

b. Proposal on This Issue

EPA is proposing to determine that the Court's January 4, 2013, decision does not prevent EPA from redesignating the Steubenville-Weirton area to attainment. Even in light of the Court's decision, redesignation for this area is appropriate under the CAA and EPA's longstanding interpretations of the CAA's provisions regarding redesignation. EPA's longstanding interpretation that requirements that are imposed, or that become due, after a complete redesignation request is submitted for an area that is attaining the standard, are not applicable for purposes of evaluating a redesignation request. Second, even if EPA applies the subpart 4 requirements to the Steubenville-Weirton redesignation request and disregards the provisions of its 1997 PM<sub>2.5</sub> implementation rule recently remanded by the Court, the

state's request for redesignation of this area still qualifies for approval.

i. Applicable Requirements for Purposes of Evaluating the Redesignation Request

With respect to the 1997 PM<sub>2.5</sub> implementation rule, the Court's January 4, 2013, ruling rejected EPA's reasons for implementing the PM<sub>2.5</sub> NAAQS solely in accordance with the provisions of subpart 1, and remanded that matter to EPA, so that it could address implementation of the 1997 PM<sub>2.5</sub> NAAQS under subpart 4 of part D of the CAA, in addition to subpart 1. For the purposes of evaluating Ohio's redesignation request for the area, to the extent that implementation under subpart 4 would impose additional requirements for areas designated nonattainment, EPA believes that those requirements are not "applicable" for the purposes of CAA section 107(d)(3)(E), and thus EPA is not required to consider subpart 4 requirements with respect to the Steubenville-Weirton redesignation. Under its longstanding interpretation of the CAA, EPA has interpreted section 107(d)(3)(E) to mean, as a threshold matter, that the part D provisions which are "applicable" and which must be approved in order for EPA to redesignate an area include only those which came due prior to a state's submittal of a complete redesignation request. See "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (Calcagni memorandum). See also "State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) NAAQS on or after November 15, 1992," Memorandum from Michael Shapiro, Acting Assistant Administrator, Air and Radiation, September 17, 1993 (Shapiro memorandum); Final Redesignation of Detroit-Ann Arbor, (60 FR 12459, 12465-66, March 7, 1995); Final Redesignation of St. Louis, Missouri, (68 FR 25418, 25424-27, May 12, 2003); *Sierra Club v. EPA*, 375 F.3d 537, 541 (7th Cir. 2004) (upholding EPA's redesignation rulemaking applying this interpretation and expressly rejecting Sierra Club's view that the meaning of "applicable" under the statute is "whatever should have been in the plan at the time of attainment rather than whatever actually was in the plan and already implemented or due at the time

of attainment").<sup>2</sup> In this case, at the time that Ohio submitted its redesignation request, requirements under subpart 4 were not due, [and indeed, were not yet known to apply.]

EPA's view that, for purposes of evaluating the Steubenville-Weirton redesignation, the subpart 4 requirements were not due at the time the state submitted the redesignation request is in keeping with the EPA's interpretation of subpart 2 requirements for subpart 1 ozone areas redesignated subsequent to the D.C. Circuit's decision in *South Coast Air Quality Mgmt. Dist. v. EPA*, 472 F.3d 882 (D.C. Cir. 2006). In *South Coast*, the Court found that EPA was not permitted to implement the 1997 8-hour ozone standard solely under subpart 1, and held that EPA was required under the statute to implement the standard under the ozone-specific requirements of subpart 2 as well. Subsequent to the *South Coast* decision, in evaluating and acting upon redesignation requests for the 1997 8-hour ozone standard that were submitted to EPA for areas under subpart 1, EPA applied its longstanding interpretation of the CAA that "applicable requirements", for purposes of evaluating a redesignation, are those that had been due at the time the redesignation request was submitted. See, e.g., Proposed Redesignation of Manitowoc County and Door County Nonattainment Areas (75 FR 22047, 22050, April 27, 2010). In those actions, EPA therefore did not consider subpart 2 requirements to be "applicable" for the purposes of evaluating whether the area should be redesignated under section 107(d)(3)(E).

EPA's interpretation derives from the provisions of CAA Section 107(d)(3). Section 107(d)(3)(E)(v) states that, for an area to be redesignated, a state must meet "all requirements 'applicable' to the area under section 110 and part D". Section 107(d)(3)(E)(ii) provides that the EPA must have fully approved the "applicable" SIP for the area seeking redesignation. These two sections read together support EPA's interpretation of "applicable" as only those requirements that came due prior to submission of a complete redesignation request. First, holding states to an ongoing obligation to adopt new CAA requirements that arose after the state submitted its redesignation request, in order to be redesignated, would make it problematic or impossible for EPA to act

on redesignation requests in accordance with the 18-month deadline Congress set for EPA action in section 107(d)(3)(D). If "applicable requirements" were interpreted to be a continuing flow of requirements with no reasonable limitation, states, after submitting a redesignation request, would be forced continuously to make additional SIP submissions that in turn would require EPA to undertake further notice-and-comment rulemaking actions to act on those submissions. This would create a regime of unceasing rulemaking that would delay action on the redesignation request beyond the 18-month timeframe provided by the CAA for this purpose.

Second, a fundamental premise for redesignating a nonattainment area to attainment is that the area has attained the relevant NAAQS due to emission reductions from existing controls. Thus, an area for which a redesignation request has been submitted would have already attained the NAAQS as a result of satisfying statutory requirements that came due prior to the submission of the request. Absent a showing that unadopted and unimplemented requirements are necessary for future maintenance, it is reasonable to view the requirements applicable for purposes of evaluating the redesignation request as including only those SIP requirements that have already come due. These are the requirements that led to attainment of the NAAQS. To require, for redesignation approval, that a state also satisfy additional SIP requirements coming due after the state submits its complete redesignation request, and while EPA is reviewing it, would compel the state to do more than is necessary to attain the NAAQS, without a showing that the additional requirements are necessary for maintenance.

In the context of this redesignation, the timing and nature of the Court's January 4, 2013, decision in *NRDC v. EPA* compound the consequences of imposing requirements that come due after the redesignation request is submitted. The state submitted its redesignation request on July 5, 2011, but the Court did not issue its decision remanding EPA's 1997 PM<sub>2.5</sub> implementation rule concerning the applicability of the provisions of subpart 4 until January 2013.

To require the state's fully-completed and pending redesignation request to comply now with requirements of subpart 4 that the Court announced only in January, 2013, would be to give retroactive effect to such requirements when the state had no notice that it was required to meet them. The D.C. Circuit

<sup>2</sup> Applicable requirements of the CAA that come due subsequent to the area's submittal of a complete redesignation request remain applicable until a redesignation is approved, but are not required as a prerequisite to redesignation. Section 175A(c) of the CAA.

recognized the inequity of this type of retroactive impact in *Sierra Club v. Whitman*, 285 F.3d 63 (D.C. Cir. 2002),<sup>3</sup> where it upheld the Court's ruling refusing to make retroactive EPA's determination that the St. Louis area did not meet its attainment deadline. In that case, petitioners urged the Court to make EPA's nonattainment determination effective as of the date that the statute required, rather than the later date on which EPA actually made the determination. The Court rejected this view, stating that applying it "would likely impose large costs on states, which would face fines and suits for not implementing air pollution prevention plans . . . even though they were not on notice at the time." *Id.* at 68. Similarly, it would be unreasonable to penalize the state of Ohio by rejecting its redesignation request for an area that is already attaining the 1997 PM<sub>2.5</sub> standard and that met all applicable requirements known to be in effect at the time of the request. For EPA now to reject the redesignation request solely because the state did not expressly address subpart 4 requirements of which it had no notice, would inflict the same unfairness condemned by the Court in *Sierra Club v. Whitman*.

#### ii. Subpart 4 Requirements and Ohio Redesignation Request

Even if EPA were to take the view that the Court's January 4, 2013, decision requires that, in the context of pending redesignations, subpart 4 requirements were due and in effect at the time the state submitted its redesignation request, EPA proposes to determine that the Steubenville-Weirton area still qualifies for redesignation to attainment. As explained below, EPA believes that the redesignation request for the Steubenville-Weirton area, though not expressed in terms of subpart 4 requirements, substantively meets the requirements of that subpart for purposes of redesignating the area to attainment.

With respect to evaluating the relevant substantive requirements of subpart 4 for purposes of redesignating the Steubenville-Weirton area, EPA notes that subpart 4 incorporates components of subpart 1 of part D, which contains general air quality planning requirements for areas

designated as nonattainment. *See* Section 172(c). Subpart 4 itself contains specific planning and scheduling requirements for PM<sub>10</sub><sup>4</sup> nonattainment areas, and under the Court's January 4, 2013, decision in *NRDC v. EPA*, these same statutory requirements also apply for PM<sub>2.5</sub> nonattainment areas. EPA has longstanding general guidance that interprets the 1990 amendments to the CAA, making recommendations to states for meeting the statutory requirements for SIPs for nonattainment areas. *See*, "State Implementation Plans; General Preamble for the Implementation of Title I of the Clear Air Act Amendments of 1990," 57 FR 13498 (April 16, 1992) (the "General Preamble"). In the General Preamble, EPA discussed the relationship of subpart 1 and subpart 4 SIP requirements, and pointed out that subpart 1 requirements were to an extent "subsumed by, or integrally related to, the more specific PM-10 requirements." 57 FR 13538 (April 16, 1992). The subpart 1 requirements include, among other things, provisions for attainment demonstrations, RACM, RFP, emissions inventories, and contingency measures.

For the purposes of this redesignation, in order to identify any additional requirements which would apply under subpart 4, we are considering the Steubenville-Weirton area to be a "moderate" PM<sub>2.5</sub> nonattainment area. Under section 188 of the CAA, all areas designated nonattainment areas under subpart 4 would initially be classified by operation of law as "moderate" nonattainment areas, and would remain moderate nonattainment areas unless and until EPA reclassifies the area as a "serious" nonattainment area. Accordingly, EPA believes that it is appropriate to limit the evaluation of the potential impact of subpart 4 requirements to those that would be applicable to moderate nonattainment areas. Sections 189(a) and (c) of subpart 4 apply to moderate nonattainment areas and include the following: (1) An approved permit program for construction of new and modified major stationary sources (section 189(a)(1)(A)); (2) an attainment demonstration (section 189(a)(1)(B)); (3) provisions for RACM (section 189(a)(1)(C)); and (4) quantitative milestones demonstrating RFP toward attainment by the applicable attainment date (section 189(c)).

The permit requirements of subpart 4, as contained in section 189(a)(1)(A), refer to and apply the subpart 1 permit provisions requirements of sections 172

and 173 to PM<sub>10</sub>, without adding to them. Consequently, EPA believes that section 189(a)(1)(A) does not itself impose for redesignation purposes any additional requirements for moderate areas beyond those contained in subpart 1.<sup>5</sup> In any event, in the context of redesignation, EPA has long relied on the interpretation that a fully approved nonattainment new source review program is not considered an applicable requirement for redesignation, provided the area can maintain the standard with a PSD program after redesignation. A detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, "Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment." *See also* rulemakings for Detroit, Michigan (60 FR 12467-12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469-20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and Grand Rapids, Michigan (61 FR 31834-31837, June 21, 1996).

With respect to the specific attainment planning requirements under subpart 4,<sup>6</sup> when EPA evaluates a redesignation request under either subpart 1 and/or 4, any area that is attaining the PM<sub>2.5</sub> standard is viewed as having satisfied the attainment planning requirements for these subparts. For redesignations, EPA has for many years interpreted attainment-linked requirements as not applicable for areas attaining the standard. In the General Preamble, EPA stated that:

The requirements for RFP will not apply in evaluating a request for redesignation to attainment since, at a minimum, the air quality data for the area must show that the area has already attained. Showing that the State will make RFP towards attainment will, therefore, have no meaning at that point.

"General Preamble for the Interpretation of Title I of the CAA Amendments of 1990"; (57 FR 13498, 13564, April 16, 1992).

The General Preamble also explained that

[t]he section 172(c)(9) requirements are directed at ensuring RFP and attainment by the applicable date. These requirements no longer apply when an area has attained the standard and is eligible for redesignation. Furthermore, section 175A for maintenance plans . . . provides specific requirements for contingency measures that effectively

<sup>3</sup> *Sierra Club v. Whitman* was discussed and distinguished in a recent D.C. Circuit decision that addressed retroactivity in a quite different context, where, unlike the situation here, EPA sought to give its regulations retroactive effect. *National Petrochemical and Refiners Ass'n v. EPA*, 630 F.3d 145, 163 (D.C. Cir. 2010), rehearing denied 643 F.3d 958 (D.C. Cir. 2011), cert denied 132 S. Ct. 571 (2011).

<sup>4</sup> PM<sub>10</sub> refers to particulates nominally 10 micrometers in diameter or smaller.

<sup>5</sup> The potential effect of section 189(e) on section 189(a)(1)(A) for purposes of evaluating this redesignation is discussed below.

<sup>6</sup> I.e., attainment demonstration, RFP, RACM, milestone requirements, contingency measures.

supersede the requirements of section 172(c)(9) for these areas. *Id.*

EPA similarly stated in its 1992 Calcagni memorandum that, “The requirements for reasonable further progress and other measures needed for attainment will not apply for redesignations because they only have meaning for areas not attaining the standard.”

It is evident that even if we were to consider the Court’s January 4, 2013, decision in *NRDC v. EPA* to mean that attainment-related requirements specific to subpart 4 should be imposed retroactively<sup>7</sup> and thus are now past due, those requirements do not apply to an area that is attaining the 1997 and 2006 PM<sub>2.5</sub> standard, for the purpose of evaluating a pending request to redesignate the area to attainment. EPA has consistently enunciated this interpretation of applicable requirements under section 107(d)(3)(E) since the General Preamble was published more than twenty years ago. Courts have recognized the scope of EPA’s authority to interpret “applicable requirements” in the redesignation context. See *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004).

Moreover, even outside the context of redesignations, EPA has viewed the obligations to submit attainment-related SIP planning requirements of subpart 4 as inapplicable for areas that EPA determines are attaining the standard. EPA’s prior “Clean Data Policy” rulemakings for the PM<sub>10</sub> NAAQS, also governed by the requirements of subpart 4, explain EPA’s reasoning. They describe the effects of a determination of attainment on the attainment-related SIP planning requirements of subpart 4. See “Determination of Attainment for Coso Junction Nonattainment Area,” (75 FR 27944, May 19, 2010). See also Coso Junction proposed PM<sub>10</sub> redesignation, (75 FR 36023, 36027, June 24, 2010); Proposed and Final Determinations of Attainment for San Joaquin Nonattainment Area (71 FR 40952, 40954–55, July 19, 2006; and 71 FR 63641, 63643–47 October 30, 2006). In short, EPA in this context has also long concluded that to require states to meet superfluous SIP planning requirements is not necessary and not required by the CAA, so long as those areas continue to attain the relevant NAAQS.

Elsewhere in this notice, EPA proposes to determine that the area has attained the 1997 and 2006 PM<sub>2.5</sub>

standards. Under its longstanding interpretation, EPA is proposing to determine here that the area meets the attainment-related plan requirements of subparts 1 and 4.

Thus, EPA is proposing to conclude that the requirements to submit an attainment demonstration under 189(a)(1)(B), a RACM determination under section 172(c)1 and section 189(a)(1)(c), a RFP demonstration under 189(c)(1), and contingency measure requirements under section 172(c)(9) are satisfied for purposes of evaluating the redesignation request.

### iii. Subpart 4 and Control of PM<sub>2.5</sub> Precursors

The D.C. Circuit in *NRDC v. EPA* remanded to EPA the two rules at issue in the case with instructions to EPA to re-promulgate them consistent with the requirements of subpart 4. EPA in this section addresses the Court’s opinion with respect to PM<sub>2.5</sub> precursors. While past implementation of subpart 4 for PM<sub>10</sub> has allowed for control of PM<sub>10</sub> precursors such as NO<sub>x</sub> from major stationary, mobile, and area sources in order to attain the standard as expeditiously as practicable, CAA section 189(e) specifically provides that control requirements for major stationary sources of direct PM<sub>10</sub> shall also apply to PM<sub>10</sub> precursors from those sources, except where EPA determines that major stationary sources of such precursors “do not contribute significantly to PM<sub>10</sub> levels which exceed the standard in the area.”

EPA’s 1997 PM<sub>2.5</sub> implementation rule, remanded by the DC Circuit, contained rebuttable presumptions concerning certain PM<sub>2.5</sub> precursors applicable to attainment plans and control measures related to those plans. Specifically, in 40 CFR 51.1002, EPA provided, among other things, that a state was “not required to address VOC [and ammonia] as . . . PM<sub>2.5</sub> attainment plan precursor[s] and to evaluate sources of VOC [and ammonia] emissions in the State for control measures.” EPA intended these to be rebuttable presumptions. EPA established these presumptions at the time because of uncertainties regarding the emission inventories for these pollutants and the effectiveness of specific control measures in various regions of the country in reducing PM<sub>2.5</sub> concentrations. EPA also left open the possibility for such regulation of VOC and ammonia in specific areas where that was necessary.

The Court in its January 4, 2013, decision made reference to both section 189(e) and 40 CFR 51.1002, and stated that, “In light of our disposition, we

need not address the petitioners’ challenge to the presumptions in [40 CFR 51.1002] that volatile organic compounds and ammonia are not PM<sub>2.5</sub> precursors, as subpart 4 expressly governs precursor presumptions.” *NRDC v. EPA*, at 27, n.10.

Elsewhere in the Court’s opinion, however, the Court observed:

Ammonia is a precursor to fine particulate matter, making it a precursor to both PM<sub>2.5</sub> and PM<sub>10</sub>. For a PM<sub>10</sub> nonattainment area governed by subpart 4, a precursor is presumptively regulated. See 42 U.S.C. § 7513a(e) [section 189(e)]. *Id.* at 21, n.7.

For a number of reasons, EPA believes that its proposed redesignation of the Steubenville-Weirton area is consistent with the Court’s decision on this aspect of subpart 4. First, while the Court, citing section 189(e), stated that “for a PM<sub>10</sub> area governed by subpart 4, a precursor is ‘presumptively regulated,’” the Court expressly declined to decide the specific challenge to EPA’s 1997 PM<sub>2.5</sub> implementation rule provisions regarding ammonia and VOC as precursors. The Court had no occasion to reach whether and how it was substantively necessary to regulate any specific precursor in a particular PM<sub>2.5</sub> nonattainment area, and did not address what might be necessary for purposes of acting upon a redesignation request.

However, even if EPA takes the view that the requirements of subpart 4 were deemed applicable at the time the state submitted the redesignation request, and disregards the implementation rule’s rebuttable presumptions regarding ammonia and VOC as PM<sub>2.5</sub> precursors, (and any similar provisions reflected in the guidance for the 2006 PM<sub>2.5</sub> standard) the regulatory consequence would be to consider the need for regulation of all precursors from any sources in the area to demonstrate attainment and to apply the section 189(e) provisions to major stationary sources of precursors. In the case of Steubenville-Weirton, EPA believes that doing so is consistent with proposing redesignation of the area for the 1997 PM<sub>2.5</sub> standard. The Steubenville-Weirton area has attained both standards without any specific additional controls of VOC and ammonia emissions from any sources in the area.

Precursors in subpart 4 are specifically regulated under the provisions of section 189(e), which requires, with important exceptions, control requirements for major stationary sources of PM<sub>10</sub> precursors.<sup>8</sup>

<sup>8</sup> Under either subpart 1 or subpart 4, for purposes of demonstrating attainment as

<sup>7</sup> As EPA has explained above, we do not believe that the Court’s January 4, 2013 decision should be interpreted so as to impose these requirements on the states retroactively. *Sierra Club v. Whitman*, *supra*.

Under subpart 1 and EPA's prior implementation rule, all major stationary sources of PM<sub>2.5</sub> precursors were subject to regulation, with the exception of ammonia and VOC. Thus we must address here whether additional controls of ammonia and VOC from major stationary sources are required under section 189(e) of subpart 4 in order to redesignate the area for the 1997 PM<sub>2.5</sub> standard. As explained below, we do not believe that any additional controls of ammonia and VOC are required in the context of this redesignation.

In the General Preamble, EPA discusses its approach to implementing section 189(e). See 57 FR 13538–13542. With regard to precursor regulation under section 189(e), the General Preamble explicitly stated that control of VOCs under other Act requirements may suffice to relieve a state from the need to adopt precursor controls under section 189(e) (57 FR 13542). EPA in this proposal proposes to determine that the SIP has met the provisions of section 189(e) with respect to ammonia and VOCs as precursors. This proposed determination is based on our findings that (1) the Steubenville-Weirton area contains no major stationary sources of ammonia, and (2) existing major stationary sources of VOC are adequately controlled under other provisions of the CAA regulating the ozone NAAQS.<sup>9</sup> In the alternative, EPA proposes to determine that, under the express exception provisions of section 189(e), and in the context of the redesignation of the area, which is attaining the 1997 annual PM<sub>2.5</sub> standard, at present ammonia and VOC precursors from major stationary sources do not contribute significantly to levels exceeding the 1997 PM<sub>2.5</sub> standard in the Steubenville-Weirton area. See 57 FR 13539–42.

EPA notes that its 1997 PM<sub>2.5</sub> implementation rule provisions in 40 CFR 51.1002 were not directed at evaluation of PM<sub>2.5</sub> precursors in the context of redesignation, but at SIP plans and control measures required to bring a nonattainment area into attainment of the 1997 PM<sub>2.5</sub> NAAQS. By contrast, redesignation to attainment primarily requires the area to have already attained due to permanent and

enforceable emission reductions, and to demonstrate that controls in place can continue to maintain the standard. Thus, even if we regard the Court's January 4, 2013, decision as calling for "presumptive regulation" of ammonia and VOC for PM<sub>2.5</sub> under the attainment planning provisions of subpart 4, those provisions in and of themselves do not require additional controls of these precursors for an area that already qualifies for redesignation. Nor does EPA believe that requiring Ohio to address precursors differently than they have already would result in a substantively different outcome.

Although, as EPA has emphasized, its consideration here of precursor requirements under subpart 4 is in the context of a redesignation to attainment, EPA's existing interpretation of subpart 4 requirements with respect to precursors in attainment plans for PM<sub>10</sub> contemplates that states may develop attainment plans that regulate only those precursors that are necessary for purposes of attainment in the area in question, i.e., states may determine that only certain precursors need be regulated for attainment and control purposes.<sup>10</sup> Courts have upheld this approach to the requirements of subpart 4 for PM<sub>10</sub>.<sup>11</sup> EPA believes that application of this approach to PM<sub>2.5</sub> precursors under subpart 4 is reasonable. Because the Steubenville-Weirton area has already attained the 1997 and 2006 PM<sub>2.5</sub> NAAQS with its current approach to regulation of PM<sub>2.5</sub> precursors, EPA believes that it is reasonable to conclude in the context of this redesignation that there is no need to revisit the attainment control strategy with respect to the treatment of precursors. Even if the Court's decision is construed to impose an obligation, in evaluating this redesignation request, to consider additional precursors under subpart 4, it would not affect EPA's approval here of Ohio's request for redesignation of the Steubenville-Weirton area. In the context of a redesignation, the area has shown that it has attained both standards. Moreover, the state has shown and EPA is proposing to determine that attainment in this area is due to permanent and enforceable emissions reductions on all precursors necessary

to provide for continued attainment. It follows logically that no further control of additional precursors is necessary. Accordingly, EPA does not view the January 4, 2013, decision of the Court as precluding redesignation of the Steubenville-Weirton area to attainment for the 1997 PM<sub>2.5</sub> NAAQS at this time.

In sum, even if Ohio were required to address precursors for the Steubenville-Weirton area under subpart 4 rather than under subpart 1, as interpreted in EPA's remanded PM<sub>2.5</sub> implementation rule, EPA would still conclude that the area had met all applicable requirements for purposes of redesignation in accordance with section 107(d)(3)(E)(ii) and (v).

b. The Ohio Portion of the Steubenville-Weirton Area Has a Fully Approved Applicable SIP Under Section 110(k) of the CAA

Upon final approval of Ohio's comprehensive 2005 and 2008 emissions inventories, EPA will have fully approved the Ohio SIP for the Ohio portion of the Steubenville-Weirton area under section 110(k) of the CAA for all requirements applicable for purposes of redesignation to attainment for the 1997 annual and 2006 24-hour PM<sub>2.5</sub> standard. EPA may rely on prior SIP approvals in approving a redesignation request (See page 3 of the Calcagni Memorandum; *Southwestern Pennsylvania Growth Alliance v. Browner*, 144 F.3d 984, 989–990 (6th Cir. 1998); *Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001)), plus any additional measures it may approve in conjunction with a redesignation action. See 68 FR 25413, 25426 (May 12, 2003). Since the passage of the CAA of 1970, Ohio has adopted and submitted, and EPA has fully approved, provisions addressing various required SIP elements under particulate matter standards. In this action, EPA is proposing to approve Ohio's 2005 and 2008 base year emissions inventories for the Steubenville-Weirton area as meeting the requirement of section 172(c)(3) of the CAA for the 1997 annual and 2006 24-hour PM<sub>2.5</sub> standard.

c. Nonattainment Requirements

Under section 172, states with nonattainment areas must submit plans providing for timely attainment and meeting a variety of other requirements. On July 16, 2008, Ohio submitted a state-wide attainment demonstration for PM<sub>2.5</sub>, including the Steubenville-Weirton area. However, EPA's determination that the area attained the 1997 PM<sub>2.5</sub> annual and 2006 24-hour standards (76 FR 56641; 77 FR 28264, respectively) suspended the

expeditiously as practicable, a state is required to evaluate all economically and technologically feasible control measures for direct PM emissions and precursor emissions, and adopt those measures that are deemed reasonably available.

<sup>9</sup> The Steubenville-Weirton area has reduced VOC emissions through the implementation of various SIP approved VOC control programs and various on-road and nonroad motor vehicle control programs.

<sup>10</sup> See, e.g., "Approval and Promulgation of Implementation Plans for California—San Joaquin Valley PM-10 Nonattainment Area; Serious Area Plan for Nonattainment of the 24-Hour and Annual PM-10 Standards," 69 FR 30006 (May 26, 2004) (approving a PM<sub>10</sub> attainment plan that impose controls on direct PM<sub>10</sub> and NO<sub>x</sub> emissions and did not impose controls on SO<sub>2</sub>, VOC, or ammonia emissions).

<sup>11</sup> See, e.g., *Assoc. of Irrigated Residents v. EPA et al.*, 423 F.3d 989 (9th Cir. 2005).

requirement to submit certain planning SIPs related to attainment, including attainment demonstration requirements, the Reasonably Achievable Control Technology (RACT)-RACM requirement of section 172(c)(1) of the CAA, the RFP and attainment demonstration requirements of sections 172(c)(2) and (6) and 182(b)(1) of the CAA and the requirement for contingency measures of section 172(c)(9) of the CAA.

As a result, the only remaining requirement under section 172 to be considered is the emissions inventory required under section 172(c)(3). As discussed in a later section, EPA is proposing to approve the inventory that Ohio submitted as part of its maintenance plan as satisfying this requirement.

No SIP provisions applicable for redesignation of the Ohio portion of the Steubenville-Weirton area are currently disapproved, conditionally approved or partially approved. If EPA approves Ohio's Steubenville-Weirton area PM<sub>2.5</sub> emissions inventories as proposed, Ohio will have a fully approved SIP for all requirements applicable for purposes of redesignation.

### 3. The Improvement in Air Quality Is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions (Section 107(d)(3)(E)(iii))

EPA believes that Ohio has demonstrated that the observed air quality improvement in the Steubenville-Weirton area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, Federal measures and other state-adopted measures.

In making this demonstration, Ohio has calculated the change in emissions between 2005, one of the years used to designate the Steubenville-Weirton area as nonattainment, and 2008, one of the years the Steubenville-Weirton area monitored attainment. The reduction in emissions and the corresponding improvement in air quality over this time period can be attributed to a number of regulatory control measures that the Steubenville-Weirton area and contributing areas have implemented in recent years.

#### a. Permanent and Enforceable Controls Implemented

The following is a discussion of permanent and enforceable measures that have been implemented in the area:

##### i. Federal Emission Control Measures

Reductions in fine particle precursor emissions have occurred statewide and in upwind areas as a result of Federal emission control measures, with additional emission reductions expected to occur in the future. Federal emission control measures include the following.

*Tier 2 Emission Standards for Vehicles and Gasoline Sulfur Standards.* These emission control requirements result in lower NO<sub>x</sub> and SO<sub>2</sub> emissions from new cars and light duty trucks. The Federal rules were phased in between 2004 and 2009. By the end of the phase-in period, new vehicles were emitting the following percentages less NO<sub>x</sub>: Passenger cars (light duty vehicles)—77%; light duty trucks, minivans, and sports utility vehicles—86%; and, larger sports utility vehicles, vans, and heavier trucks—69% to 95%. EPA expects fleet wide average emissions to come to decline by similar percentages as new vehicles replace older vehicles. The Tier 2 standards also reduced the sulfur content of gasoline to 30 parts per million (ppm) beginning in January 2006. Most gasoline sold in Ohio prior to January 2006 had a sulfur content of about 500 ppm.

*Heavy-Duty Diesel Engine Rule.* EPA issued this rule in July 2000. This rule includes standards limiting the sulfur content of diesel fuel, which went into effect in 2004. A second phase took effect in 2007 which reduced fine particle emissions from heavy-duty highway engines and further reduced the highway diesel fuel sulfur content to 15 ppm. The total program is estimated to achieve a 90% reduction in direct PM<sub>2.5</sub> emissions and a 95% reduction in NO<sub>x</sub> emissions for these new engines using low sulfur diesel, compared to existing engines using higher sulfur content diesel. The reduction in fuel sulfur content also yielded an immediate reduction in sulfate particle emissions from all diesel vehicles.

*Nonroad Diesel Rule.* In May 2004, EPA promulgated a new rule for large nonroad diesel engines, such as those used construction, agriculture and mining equipment, to be phased in between 2008 and 2014. The rule also reduces the sulfur content in nonroad diesel fuel by over 99%. Prior to 2006, nonroad diesel fuel averaged approximately 3,400 ppm sulfur. This rule limited nonroad diesel sulfur content to 500 ppm by 2006, with a further reduction to 15 ppm by 2010. The combined engine and fuel rules will reduce NO<sub>x</sub> and PM emissions from large nonroad diesel engines by over 90%, compared to current nonroad engines using higher sulfur content diesel. It is estimated that compliance with this rule will cut NO<sub>x</sub> emissions

from nonroad diesel engines by up to 90%. This rule achieved some emission reductions by 2008 and was fully implemented by 2010. The reduction in fuel sulfur content also yielded an immediate reduction in sulfate particle emissions from all diesel vehicles.

*Nonroad Large Spark-Ignition Engine and Recreational Engine Standards.* In November 2002 EPA promulgated emission standards for groups of previously unregulated nonroad engines. These engines include large spark-ignition engines such as those used in forklifts and airport ground-service equipment; recreational vehicles using spark-ignition engines such as off-highway motorcycles, all-terrain vehicles and snowmobiles; and recreational marine diesel engines. Emission standards from large spark-ignition engines were implemented in two tiers, with Tier 1 starting in 2004 and Tier 2 in 2007. Recreational vehicle emission standards are being phased in from 2006 through 2012. Marine Diesel engine standards were phased in from 2006 through 2009. With full implementation of the entire nonroad spark-ignition engine and recreational engine standards, an 80% reduction in NO<sub>x</sub> expected by 2020. Some of these emission reductions occurred by the 2008–2010 period used to demonstrate attainment, and additional emission reductions will occur during the maintenance period.

#### i. Control Measures in Contributing Areas

Given the significance of sulfates and nitrates in the Steubenville-Weirton area, the area's air quality is strongly affected by regulation of SO<sub>2</sub> and NO<sub>x</sub> emissions from power plants.

*NO<sub>x</sub> SIP Call.* On October 27, 1998 (63 FR 57356), EPA issued a NO<sub>x</sub> SIP Call requiring the District of Columbia and 22 states to reduce emissions of NO<sub>x</sub>. Affected states were required to comply with Phase I of the SIP Call beginning in 2004, and Phase II beginning in 2007. Emission reductions resulting from regulations developed in response to the NO<sub>x</sub> SIP Call are permanent and enforceable.

*CAIR.* On May 12, 2005, EPA published CAIR, which requires significant reductions in emissions of SO<sub>2</sub> and NO<sub>x</sub> from electric generating units to limit the interstate transport of these pollutants and the ozone and fine particulate matter they form in the atmosphere. See 76 FR 70093. The D.C. Circuit initially issued an opinion for vacating CAIR, *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008), but ultimately remanded the rule to EPA without vacatur to preserve the

environmental benefits provided by CAIR, *North Carolina v. EPA*, 550 F.3d 1176, 1178 (D.C. Cir. 2008).

EPA recently promulgated CSAPR (76 FR 48208, August 8, 2011), to replace CAIR, which has been in place since 2005. See 76 FR 59517.

On December 30, 2011, the D.C. Circuit issued an order addressing the status of CSAPR and CAIR in response to motions filed by numerous parties seeking a stay of CSAPR pending judicial review. In that order, the Court stayed CSAPR pending resolution of the petitions for review of that rule in *EME Homer City Generation, L.P. v. EPA* (No. 11–1302 and consolidated cases). The Court also indicated that EPA was expected to continue to administer CAIR in the interim until judicial review of CSAPR was completed.

On August 21, 2012, the D.C. Circuit issued a decision to vacate CSAPR. In that decision, it also ordered EPA to continue administering CAIR “pending the promulgation of a valid replacement.” *EME Homer City*, 696 F.3d at 38. The D.C. Circuit denied all petitions for rehearing on January 24, 2013. EPA and other parties have filed petitions for certiorari to the U.S. Supreme Court, but those petitions have not been acted on to date. Nonetheless, EPA intends to continue to act in accordance with the *EME Homer City* opinion.

In light of these unique circumstances and for the reasons explained below, EPA proposes to approve the redesignation request and the related SIP revision for the Ohio portion of the Steubenville-Weirton area, including Ohio’s plan for maintaining attainment of the PM<sub>2.5</sub> standard. The air quality modeling analysis conducted for CSAPR demonstrates that the Steubenville-Weirton area would be able to attain the PM<sub>2.5</sub> standard even in the absence of either CAIR or CSAPR. See “Air Quality Modeling Final Rule Technical Support Document,” App. B, B–62 to B–134. This modeling is available in the docket for this proposed redesignation action.

In addition, CAIR remains in place and enforceable until substituted by a valid replacement rule. Ohio’s CAIR SIP was approved on September 25, 2009 (74 FR 48857). As a result of CAIR, EPA projected that Ohio’s 2009 electric generating unit (EGU) emissions of NO<sub>x</sub> would decrease from a baseline of 264,000 tons per year (tpy) to 93,000 tpy while in 2010 emissions of SO<sub>2</sub> would decrease from a baseline of 1,373,000 tpy to 298,000 tpy. And by 2015, we projected emissions of NO<sub>x</sub> would decrease to 83,000 tpy while emissions of SO<sub>2</sub> would decrease to 208,000 tpy within Ohio (<http://www.epa.gov/CAIR/>

*oh.html*). The monitoring data used to demonstrate the area’s attainment of the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS by the April 2010 attainment deadline was impacted by CAIR.

To the extent that Ohio is relying on CAIR in its maintenance plan, the directive from the D.C. Circuit in *EME Homer City* ensures that the reductions associated with CAIR will be permanent and enforceable for the necessary time period. EPA has been ordered by the Court to develop a new rule to address interstate transport to replace CSAPR and the opinion makes clear that after promulgating that new rule EPA must provide states an opportunity to draft and submit SIPs to implement that rule. Thus, CAIR will remain in place until EPA has promulgated a final rule through a notice-and-comment rulemaking process, states have had an opportunity to draft and submit SIPs, EPA has reviewed the SIPs to determine if they can be approved, and EPA has taken action on the SIPs, including promulgating a FIP if appropriate. The Court’s clear instruction to EPA that it must continue to administer CAIR until a valid replacement exists provides an additional backstop: By definition, any rule that replaces CAIR and meets the Court’s direction would require upwind states to have SIPs that eliminate significant contributions to downwind nonattainment and prevent interference with maintenance in downwind areas.

Further, in vacating CSAPR and requiring EPA to continue administering CAIR, the D.C. Circuit emphasized that the consequences of vacating CAIR “might be more severe now in light of the reliance interests accumulated over the intervening four years.” *EME Homer City*, 696 F.3d at 38. The accumulated reliance interests include the interests of states who reasonably assumed they could rely on reductions associated with CAIR which brought certain nonattainment areas into attainment with the NAAQS. If EPA were prevented from relying on reductions associated with CAIR in redesignation actions, states would be forced to impose additional, redundant reductions on top of those achieved by CAIR. EPA believes this is precisely the type of irrational result the Court sought to avoid by ordering EPA to continue administering CAIR. For these reasons also, EPA believes it is appropriate to allow states to rely on CAIR, and the existing emissions reductions achieved by CAIR, as sufficiently permanent and enforceable for purposes such as redesignation. Following promulgation of the replacement rule, EPA will review SIPs as appropriate to identify

whether there are any issues that need to be addressed.

### iii. Consent Decrees

A Federal consent decree with Ohio Edison Company, W.H. Sammis Power Station in 2005, and then a 2009 modification, results in reductions from 2009 levels of SO<sub>2</sub> emissions of 14,000 tpy; for NO<sub>x</sub>, 1,300 tpy; and for PM<sub>2.5</sub> 700 tpy. In 2007, a Federal consent decree was signed for the American Electric Power Service Corp., which required the Cardinal Power Plant in Ohio to install selective catalytic reduction (SCR) controls on three boilers in 2009, and flue-gas desulfurization (FGD) for SO<sub>2</sub> control in 2008 and 2012, and a new PM emissions rate for two boilers in 2009.

### b. Emission Reductions

Ohio developed emissions inventories for NO<sub>x</sub>, direct PM<sub>2.5</sub> and SO<sub>2</sub> for 2005, one of the years used to designate the area as nonattainment, and 2008, one of the years the Steubenville-Weirton area monitored attainment of the standard.

Point source EGU SO<sub>2</sub> and NO<sub>x</sub> emissions were derived from EPA’s Clean Air Market’s acid rain database. These emissions reflect Ohio and West Virginia NO<sub>x</sub> emission budgets resulting from EPA’s NO<sub>x</sub> SIP call. The 2008 emissions from EGUs reflect Ohio’s emission caps under CAIR. All other point source emissions were obtained from Ohio’s source facility emissions reporting.

Area source emissions for the Steubenville-Weirton area for 2005 were taken from periodic emissions inventories.<sup>12</sup> These 2005 area source emission estimates were extrapolated to 2008. Source growth factors were supplied by the Lake Michigan Air Directors Consortium (LADCO).

Nonroad mobile source emissions were extrapolated from nonroad mobile source emissions reported in EPA’s 2005 National Emissions Inventory (NEI). Contractors were employed by LADCO to estimate emissions for commercial marine vessels and railroads.

On-road mobile source emissions were calculated using EPA’s mobile source emission factor model, MOVES2010a, in conjunction with transportation model results developed by the Brooke-Hancock-Jefferson

<sup>12</sup> Periodic emission inventories are derived by states every three years and reported to the EPA. These periodic emission inventories are required by the Federal Consolidated Emissions Reporting Rule, codified at 40 CFR Subpart A. EPA revised these and other emission reporting requirements in a final rule published on December 17, 2008, at 73 FR 76539.

Metropolitan Planning Commission (BHJ).

All emissions estimates discussed below were documented in the submittal and appendices of Ohio's redesignation request submittal from

April 16, 2012, and the April 30, 2013, supplemental submittal. For these data and additional emissions inventory data, the reader is referred to EPA's digital docket for this rule, [http://](http://www.regulations.gov)

[www.regulations.gov](http://www.regulations.gov), which includes digital copies of Ohio's submittal.

Emissions data in tpy for the Ohio portion of the Steubenville-Weirton area are shown in Tables 2 and 3, below.

TABLE 2—SUMMARY OF 2005 EMISSIONS FOR THE OHIO PORTION OF THE STEUBENVILLE-WEIRTON AREA BY SOURCE TYPE  
[tpy]

	SO <sub>2</sub>	NO <sub>x</sub>	PM <sub>2.5</sub>
Point (EGU) .....	225,594.94	41,046.61	1,307.90
Non-EGU .....	849.92	1,991.85	461.57
On-road .....	18.18	2,105.85	73.17
Nonroad .....	17.31	234.30	24.30
Area .....	110.89	251.38	110.12
MAR .....	26.16	317.3	8.07
Total Steubenville-Weirton .....	226,617.40	45,947.29	1,985.13

TABLE 3—SUMMARY OF 2007 BASE YEAR EMISSIONS OF AMMONIA AND VOCs FOR THE OHIO PORTION OF THE STEUBENVILLE-WEIRTON AREA BY SOURCE TYPE  
[tpy]

	Ammonia	VOC
Point .....	11.53	448.96
Area .....	204.47	914.14
Nonroad .....	0.41	480.78
On-road .....	37.73	940.29
Total .....	254.14	2784.17

TABLE 4—COMPARISON OF 2005 EMISSIONS FROM THE NONATTAINMENT YEAR AND 2008 EMISSIONS FOR AN ATTAINMENT YEAR FOR THE ENTIRE STEUBENVILLE-WEIRTON AREA  
[tpy]

	2005	2008	Net change (2005–2008)
PM <sub>2.5</sub> .....	2,946.39	2,813.98	– 132.41
NO <sub>x</sub> .....	52,083.06	43,349.31	– 8,733.75
SO <sub>2</sub> .....	229,703.73	138,266.82	– 91,436.91

Table 4 shows that the entire Steubenville-Weirton area shows a decrease in direct PM<sub>2.5</sub> emissions by 132.41 tons, the area reduced NO<sub>x</sub> emissions by 8,733.75 tons and SO<sub>2</sub> emissions by 91,436.91 tons between 2005, a nonattainment year, and 2008, an attainment year.

Based on the information summarized above, Ohio has adequately demonstrated that the improvement in air quality is due to permanent and enforceable emissions reductions.

4. *Ohio Has a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA (Section 107(d)(3)(E)(iv))*

In conjunction with Ohio's request to redesignate the Ohio portion of the Steubenville-Weirton nonattainment area to attainment status, Ohio has

submitted a SIP revision to provide for maintenance of the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS in the area through 2025.

a. *What is required in a maintenance plan?*

Section 175A of the CAA sets forth the required elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after EPA approves a redesignation to attainment. Eight years after redesignation, the state must submit a revised maintenance plan which demonstrates that attainment will continue to be maintained for ten years following the initial ten year maintenance period. To address the

possibility of future NAAQS violations, the maintenance plan must contain contingency measures with a schedule for implementation as EPA deems necessary to assure prompt correction of any future annual PM<sub>2.5</sub> violations.

The Calcagni Memorandum provides additional guidance on the content of a maintenance plan. The memorandum states that a maintenance plan should address the following items: The attainment emissions inventories, a maintenance demonstration showing maintenance for the ten years of the maintenance period, a commitment to maintain the existing monitoring network, factors and procedures to be used for verification of continued attainment of the NAAQS and a contingency plan to prevent or correct future violations of the NAAQS.

b. Attainment Inventory

Ohio developed emissions inventories for NO<sub>x</sub>, direct PM<sub>2.5</sub> and SO<sub>2</sub> for 2008, one of the years in the period during which the Steubenville-Weirton area monitored attainment of the 1997 annual and 2006 24-hour PM<sub>2.5</sub> standard, as described previously. The attainment levels of emissions for the entire area are summarized in Tables 3, above.

c. Demonstration of Maintenance

Along with the redesignation request, Ohio submitted a revision to its PM<sub>2.5</sub> SIP to include a maintenance plan for the Steubenville-Weirton area, as required by section 175A of the CAA.

Section 175A requires a State seeking redesignation to attainment to submit a SIP revision to provide for the maintenance of the NAAQS in the area “for at least 10 years after the redesignation.” EPA has interpreted this as a showing of maintenance “for a period of ten years following redesignation.” Calcagni Memorandum, p. 9. Where the emissions inventory method of showing maintenance is used, its purpose is to show that emissions during the maintenance period will not increase over the attainment year inventory. Calcagni Memorandum, pp. 9–10.

Ohio’s submission uses emissions inventory projections for the years 2015 and 2025 to demonstrate maintenance

for the entire Steubenville-Weirton area. The projected emissions were estimated by Ohio, with assistance from LADCO and BHI using the MOVES2010a model. Projection modeling of inventory emissions was done for the 2015 interim year emissions using estimates based on the 2009 and 2018 LADCO modeling inventory, using LADCO’s growth factors, for all sectors. The 2025 maintenance year is based on emissions estimates from the 2018 LADCO modeling. Table 4 shows the 2008 attainment base year emission estimates and the 2015 and 2025 emission projections for the entire Steubenville-Weirton area that Ohio provided in its April 16, 2012, submission.

TABLE 4—COMPARISON OF 2008, 2015 AND 2025 NO<sub>x</sub>, DIRECT PM<sub>2.5</sub> AND SO<sub>2</sub> EMISSION TOTALS (TPY) FOR THE ENTIRE STEUBENVILLE-WEIRTON AREA

	SO <sub>2</sub>	NO <sub>x</sub>	PM <sub>2.5</sub>
2008 (baseline) .....	138,266.82 .....	43,349.31 .....	2,813.98.
2015 .....	74,806.60 .....	25,263.36 .....	2,740.52.
2025 .....	47,445.58 .....	17,533.17 .....	2,698.00.
Change 2008–2025 .....	–90,821.24 .....	–25,816.14 .....	–115.98.
	66% decrease ..	60% decrease ..	4% decrease.

Table 4 shows that the entire Steubenville-Weirton area reduced NO<sub>x</sub> emissions by 25,816.14 tpy between 2008 and the maintenance projection to 2025, direct PM<sub>2.5</sub> emissions by 115.98 tpy, and reduced SO<sub>2</sub> emissions by 90,821.24 tpy between 2008 and 2025.

Maintenance Plan Evaluation of Ammonia and VOCs

With regard to the redesignation of the Steubenville-Weirton area, in evaluating the effect of the Court’s remand of EPA’s implementation rule, which included presumptions against consideration of VOC and ammonia as PM<sub>2.5</sub> precursors, EPA in this proposal is also considering the impact of the decision on the maintenance plan required under sections 175A and 107(d)(3)(E)(iv). To begin with, EPA notes that the area has attained the 1997 and 2006 PM<sub>2.5</sub> standard and that the state has shown that attainment of those standards is due to permanent and enforceable emission reductions.

EPA proposes to determine that the state’s maintenance plan shows continued maintenance of the standard by tracking the levels of the precursors whose control brought about attainment of the 1997 and 2006 PM<sub>2.5</sub> standard in the Steubenville-Weirton area. EPA therefore believes that the only additional consideration related to the maintenance plan requirements that results from the Court’s January 4, 2013,

decision is that of assessing the potential role of VOC and ammonia in demonstrating continued maintenance in this area. As explained below, based upon documentation provided by the state and supporting information, EPA believes that the maintenance plan for the Steubenville-Weirton area need not include any additional emission reductions of VOC or ammonia in order to provide for continued maintenance of the standard.

First, as noted above in EPA’s discussion of section 189(e), VOC emission levels in this area have historically been well-controlled under SIP requirements related to ozone and other pollutants. Second, total ammonia emissions throughout the Steubenville-Weirton area are very low, estimated to be less than 500 tpy. See Table 5 below. This amount of ammonia emissions appears especially small in comparison to the total amounts of SO<sub>2</sub>, NO<sub>x</sub>, and even direct PM<sub>2.5</sub> emissions from sources in the area. Third, as described below, available information shows that no precursor, including VOC and ammonia, is expected to increase over the maintenance period so as to interfere with or undermine the state’s maintenance demonstration.

Ohio’s maintenance plan shows that there is a projected reduction of NO<sub>x</sub> emissions by 25,816.14 tpy between 2008 and the maintenance projection to 2025, direct PM<sub>2.5</sub> emissions of 115.98

tpy, and reduced SO<sub>2</sub> emissions of 90,821.24 tpy between 2008 and 2025. See Table 4 above. In addition, emissions inventories used in EPA’s regulatory impact analysis (RIA) for the 2012 PM<sub>2.5</sub> NAAQS show that VOC emissions are projected to decrease by 720 tpy, respectively between 2007 and 2020. Ammonia emissions are projected to increase slightly between 2007 and 2020 by 162 tpy, the overall emissions reductions projected in direct PM<sub>2.5</sub>, SO<sub>2</sub>, and NO<sub>x</sub> would be sufficient to offset any increases. See Table 5 below. While the RIA emissions inventories are only projected out to 2020, there is no reason to believe that this downward trend would not continue through 2025. Given that the Steubenville-Weirton area is already attaining the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS even with the current level of emissions from sources in the area, the downward trend of emissions inventories would be consistent with continued attainment. Indeed, projected emissions reductions for the precursors that the state is addressing for purposes of the 1997 PM<sub>2.5</sub> NAAQS indicate that the area should continue to attain the NAAQS following the precursor control strategy that the state has already elected to pursue. Even if VOC and ammonia emissions were to increase unexpectedly between 2020 and 2025, the overall emissions reductions projected in direct PM<sub>2.5</sub>, SO<sub>2</sub>, and NO<sub>x</sub>

would be sufficient to offset any increases. For these reasons, EPA believes that local emissions of all of the

potential PM<sub>2.5</sub> precursors will not increase to the extent that they will cause monitored PM<sub>2.5</sub> levels to violate

the 1997 or the 2006 PM<sub>2.5</sub> standard during the maintenance period.

TABLE 5—COMPARISON OF 2007 AND 2020 VOC AND AMMONIA EMISSION TOTALS BY SOURCE SECTOR (TPY) FOR THE STEUBENVILLE-WEIRTON AREA <sup>13</sup>

	Ammonia			VOCs		
	2007	2020	Net change 2007–2020	2007	2020	Net change 2007–2020
Point .....	11.64	188.87	177.24	460.57	657.02	196.45
Area .....	195.94	196.65	0.71	858.74	875.13	16.40
Nonroad .....	0.41	0.45	0.04	464.43	237.02	– 227.41
On-road .....	33.85	18.53	– 15.31	1,096.33	389.98	– 706.35
Fires .....	0.97	0.97	0.00	14.00	14.00	0.00
Total .....	242.81	405.48	162.67	2,894.06	2,173.15	– 720.91

In addition, available air quality modeling analyses show continued maintenance of the standard during the maintenance period. The current air quality design value for the area is 12.5 and 29 µg/m<sup>3</sup> (based on 2009–11 air quality data), which are well below the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS of 15 and 35 µg/m<sup>3</sup>. Moreover, the modeling analysis conducted for the RIA for the 2012 PM<sub>2.5</sub> NAAQS indicates that the design value for this area is expected to continue to decline through 2020. In the RIA analysis, the highest 2020 modeled design value for the Steubenville-Weirton area is 9.2 µg/m<sup>3</sup>. Given that precursor emissions are projected to decrease through 2025, it is reasonable to conclude that monitored PM<sub>2.5</sub> levels in this area will also continue to decrease through 2025.

Thus, EPA believes that there is ample justification to conclude that the Steubenville-Weirton area should be redesignated, even taking into consideration the emissions of other precursors potentially relevant to PM<sub>2.5</sub>. After consideration of the D.C. Circuit's January 4, 2013, decision, and for the reasons set forth in this notice, EPA proposes to approve the state's maintenance plan and its request to redesignate the Steubenville-Weirton area to attainment for the PM<sub>2.5</sub> 1997 annual and 2006 24-hour NAAQS.

As described in section V(3)(b) of this action, the result of Federal rules and consent decree actions, demonstrate that the reductions from power plants in the Steubenville-Weirton area have occurred and are mandated to continue to occur in 2025 and beyond. Thus the emissions inventories set forth in Table 4 show that the area will continue to maintain the annual PM<sub>2.5</sub> standard during the maintenance period at least

through 2025. These consent decree actions, along with other consent decrees in the area, are significant controls of NO<sub>x</sub> and SO<sub>2</sub>, along with implementation of Ohio's SIP approved CAIR controls for the area.

Based on the information summarized above, Ohio has adequately demonstrated maintenance of the PM<sub>2.5</sub> standard in this area for a period extending in excess of ten years from expected final action on Ohio's redesignation request.

#### d. Monitoring Network

Ohio's plan includes a commitment to continue working with West Virginia to operate its EPA-approved monitoring network, as necessary to demonstrate ongoing compliance with the NAAQS. Ohio currently operates two PM<sub>2.5</sub> monitors in the Ohio portion of the Steubenville-Weirton area. West Virginia currently operates three monitors in their portion of the Steubenville-Weirton area.

#### e. Verification of Continued Attainment

Ohio remains obligated to continue to quality-assure monitoring data and enter all data into the Air Quality System in accordance with Federal guidelines. Ohio will use these data, supplemented with additional information as necessary, to assure that the area continues to attain the standard. Ohio will also continue to develop and submit periodic emission inventories as required by the Federal Consolidated Emissions Reporting Rule (67 FR 39602, June 10, 2002) to track future levels of emissions. Both of these actions will help to verify continued attainment in accordance with 40 CFR part 58.

#### f. Contingency Plan

The contingency plan provisions are designed to promptly correct or prevent a violation of the NAAQS that might occur after redesignation of an area to attainment. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation of the contingency measures, and a time limit for action by the state. The state should also identify specific indicators to be used to determine when the contingency measures need to be adopted and implemented. The maintenance plan must include a requirement that the state will implement all measures with respect to control of the pollutant(s) that were contained in the SIP before redesignation of the area to attainment. See section 175A(d) of the CAA. Ohio's contingency measures include a Warning Level Response and an Action Level Response. An initial Warning Level Response is triggered when the average weighted annual mean for one year exceeds 15.5 µg/m<sup>3</sup>. A warning level response for the 2006 24-hour standard shall be prompted whenever the 98th percentile 24-hour PM<sub>2.5</sub> concentration of 35.5 µg/m<sup>3</sup> occurs in a single calendar year within the maintenance area. In that case, a study will be conducted to determine if the emissions trends show increases; if action is necessary to reverse emissions increases, Ohio will follow the same procedures for control selection and

<sup>13</sup> These emissions estimates were taken from the emissions inventories developed for the RIA for the

2012 PM<sub>2.5</sub> NAAQS which can be found in the docket.

implementation as for an Action Level Response.

The Action Level Response will be prompted by any one of the following: A Warning Level Response study that shows emissions increases, a weighted annual mean for the 1997 annual standard, or a 98th percentile for the 24-hour standard, over a two-year period that exceeds the standard or a violation of the standard. If an Action Level Response is triggered, Ohio will adopt and implement appropriate control measures within 12 months from the end of the year in which monitored air quality triggering a response occurs.

Ohio's candidate contingency measures include the following:

- i. Diesel emission reduction strategies;
- ii. Alternative fuels;
- iii. Statewide NO<sub>x</sub> RACT rules;
- iv. Impact crushers at recycle scrap yards using wet suppression;
- v. Tighter emission offsets for new and modified major sources;
- vi. ICI Boilers—SO<sub>2</sub> and NO<sub>x</sub> controls;
- vii. Emission controls for:
  - a. Process heaters;
  - b. EGUS;
  - c. Internal combustion engines;
  - d. Combustion turbines;
  - e. Other sources > 100 TPY;
  - f. Fleet vehicles;
  - g. Concrete manufacturers and;
  - h. Aggregate processing plants.

Ohio further commits to conduct ongoing review of its data, and if monitored concentrations or emissions are trending upward, Ohio commits to take appropriate steps to avoid a violation if possible. Ohio commits to continue implementing SIP requirements upon and after redesignation.

EPA believes that Ohio's contingency measures, as well as the commitment to continue implementing any SIP requirements, satisfy the pertinent requirements of section 175A(d).

As required by section 175A(b) of the CAA, Ohio commits to submit to the EPA an updated PM<sub>2.5</sub> maintenance plan eight years after redesignation of the Steubenville-Weirton area to cover an additional ten year period beyond the initial ten year maintenance period. As required by section 175A of the CAA, Ohio has also committed to retain the PM<sub>2.5</sub> control measures contained in the SIP prior to redesignation.

For all of the reasons set forth above, EPA is proposing to approve Ohio's 1997 annual and 2006 24-hour PM<sub>2.5</sub> maintenance plan for the Steubenville-Weirton area as meeting the requirements of CAA section 175A.

#### 5. Insignificance Determination for the Mobile Source Contribution to PM<sub>2.5</sub> and NO<sub>x</sub>

Under section 176(c) of the CAA, transportation plans and transportation improvement programs (TIPs) must conform to applicable SIP goals. This means that such actions will not: (1) Cause or contribute to violations of a NAAQS; (2) worsen the severity of an existing violation; or (3) delay timely attainment of a NAAQS or any interim milestone. Actions involving Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) funding or approval are subject to the Transportation Conformity Rule (40 CFR part 93 subpart A). Under this rule, MPOs in nonattainment and maintenance areas coordinate with state air quality agencies and Federal transportation agencies (EPA, FHWA and FTA) to demonstrate that their metropolitan transportation plans ("plans") and TIPs conform to applicable SIPs. This is typically determined by showing that estimated emissions from existing and planned highway and transit systems are less than or equal to the motor vehicle emissions budgets contained in a SIP.

For budgets to be approvable, they must meet, at a minimum, EPA's adequacy criteria (40 CFR 93.118(e)(4)). However, the Transportation Conformity Rule at 40 CFR 93.109(m) allows areas to forgo establishment of a budget(s) where it is demonstrated that regional motor vehicle emissions for a particular pollutant or precursor pollutant are an insignificant contributor to the air quality problem in the area. The general criteria for insignificance determinations per 40 CFR 93.109(m) are based on a number of factors, including (1) The percentage of motor vehicle emissions in context of the total SIP inventory; (2) the current state of air quality as determined by monitoring data for that NAAQS; (3) the absence of SIP motor vehicle control measures; and (4) historical trends and future projections of the growth of motor vehicle emissions in the area.

The redesignation request that Ohio submitted for its portion of the Steubenville-Weirton area includes a request for EPA to make an insignificance finding for NO<sub>x</sub> and directly emitted PM<sub>2.5</sub> for the Steubenville-Weirton PM<sub>2.5</sub> nonattainment area. Pursuant to sections 93.118(e)(4) and 93.109(k) of the Transportation Conformity Rule, as part of the review of Ohio's redesignation request and maintenance plan submittal, we have reviewed Ohio's justification for the finding of

insignificance for direct PM<sub>2.5</sub> and also for NO<sub>x</sub> as a precursor of PM<sub>2.5</sub> in the Ohio portion of the Steubenville-Weirton area. EPA agrees with Ohio's conclusion that on-road emissions of PM<sub>2.5</sub> and NO<sub>x</sub> in the Steubenville-Weirton area, are insignificant for transportation conformity purposes. We base our finding on several factors:

- The fact that the area has been determined to attain the annual PM<sub>2.5</sub> standard, and continues to attain the standard with the most recent three years of complete, quality-assured monitoring data;
- The absence of local on-road control measures; and
- The continued downward trend, historically and in modeled future projections, of on-road NO<sub>x</sub> and PM<sub>2.5</sub> emissions from 2005–2025.

Consistent with EPA's adequacy review of Ohio's redesignation request and maintenance plan and the Agency's thorough review of the entire SIP submission, EPA is proposing to approve Ohio's insignificance determination for the on-road motor vehicle contribution of NO<sub>x</sub> and PM<sub>2.5</sub> emissions to the overall PM<sub>2.5</sub> emissions in the Steubenville-Weirton PM<sub>2.5</sub> area.

Because EPA finds that Ohio's submitted maintenance plan and redesignation request meets the criteria in the conformity rule for an insignificance finding for motor vehicle emissions of NO<sub>x</sub> and PM<sub>2.5</sub> in the Steubenville-Weirton PM<sub>2.5</sub> area, it is not necessary to establish PM<sub>2.5</sub> and NO<sub>x</sub> budgets for the Steubenville-Weirton PM<sub>2.5</sub> area. That is, EPA finds that the submittal demonstrates that, for NO<sub>x</sub> and PM<sub>2.5</sub>, regional motor vehicle emissions are an insignificant contributor to the annual PM<sub>2.5</sub> air quality problem in the combined Steubenville-Weirton area. Motor vehicle emissions in general, for the maintenance period of 2015 and 2025, are low and declining (See appendix C in Ohio submittal found in the docket) in the Ohio portion of the area, and in the combined Steubenville-Weirton area overall. In 2015 the percentage contribution to emissions for the combined Steubenville-Weirton area from motor vehicles is 4.67% and 1.66% for NO<sub>x</sub> and PM<sub>2.5</sub>, respectively. In 2025, motor vehicles in the combined Steubenville-Weirton area are projected to contribute only 2.49% and 0.92% of emissions for NO<sub>x</sub>, and PM<sub>2.5</sub>, respectively, with the decrease due to Federal regulations on motor vehicle rules such as Heavy-duty Highway Vehicle standards and Tier 2 vehicle and fuel standards. Also, there have been no SIP requirements for motor vehicle control measures for the Ohio

portion of the area and it is unlikely that motor vehicle control measures will be implemented for PM<sub>2.5</sub> in this area in the future.

Finally, as described above, the area has attained the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS and we are proposing to approve the maintenance plan and redesignation request for the Ohio portion of the area, with no requirement for motor vehicle emissions budgets for PM<sub>2.5</sub> and NO<sub>x</sub> for the Steubenville-Weirton area in order to maintain the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS.

With regard to on-road emissions of SO<sub>2</sub>, volatile organic compounds and ammonia, Ohio did not provide emission budgets (or an insignificance demonstration) because it concluded, consistent with EPA's presumptions regarding these PM<sub>2.5</sub> precursors (70 FR 24280), that emissions of these precursors from motor vehicles are not significant contributors to the area's PM<sub>2.5</sub> air quality problem. EPA issued conformity regulations to implement the 1997 PM<sub>2.5</sub> NAAQS in July 2004 and May 2005 (69 FR 40004, July 1, 2004 and 70 FR 24280, May 6, 2005, respectively). Those actions were not part of the final rule recently remanded to EPA by the Court of Appeals for the District of Columbia in *NRDC v. EPA*, No. 08–1250 (Jan. 4, 2013), in which the Court remanded to EPA the implementation rule for the PM<sub>2.5</sub> NAAQS because it concluded that EPA must implement that NAAQS pursuant to the PM-specific implementation provisions of subpart 4 of Part D of Title I of the CAA, rather than solely under the general provisions of subpart 1.

EPA is proposing to approve the inventory and the findings of insignificant contribution by motor vehicles, resulting in no proposed motor vehicle emissions budgets for the Ohio portion of the Steubenville-Weirton area for 2015 and 2025 projected maintenance years.

#### 6. 2005 and 2008 Comprehensive Emissions Inventory

As discussed above, section 172(c)(3) of the CAA requires areas to submit a comprehensive emissions inventory. Ohio submitted a 2005 base year emissions inventories that meets this requirement. Emissions contained in the submittals cover the general source categories of point sources, area sources, on-road mobile sources, and nonroad mobile sources. Discussion on the methodology used to compile the emission inventories can be found in section V(3)(b) as well as the docket.

All emissions discussed in Table 3 were documented in the submittal and

the appendices of Ohio's redesignation request submittal. EPA has reviewed Ohio's documentation of the emissions inventory techniques and data sources used for the derivation of the 2005 and 2008 emissions estimates and has found that Ohio has thoroughly documented the derivation of these emissions inventories. The submittal from the state shows that the 2005 and 2008 emissions inventory are currently the most complete emissions inventories for PM<sub>2.5</sub> and PM<sub>2.5</sub> precursors in the Steubenville-Weirton area. Based upon EPA's review, we propose to find that the 2005 and 2008 emissions inventories are as complete and accurate as possible given the input data available to the Ohio, and we are proposing to approve them under CAA section 172(c)(3).

#### 7. Summary of Proposed Actions

EPA has previously determined that the Steubenville-Weirton area has attained the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS. EPA is proposing to determine that the entire Steubenville-Weirton area continues to attain the 1997 annual and 2006 24-hour PM<sub>2.5</sub> standard using the latest three years of certified, quality-assured data, and that the Ohio portion of the area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. EPA is proposing to approve the request from Ohio to change the legal designation of the Ohio portion of the Steubenville-Weirton area from nonattainment to attainment for the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS. EPA is proposing to approve Ohio's PM<sub>2.5</sub> maintenance plan for the Steubenville-Weirton area as a revision to the Ohio SIP because the plan meets the requirements of section 175A of the CAA. EPA is proposing to approve the 2005 and 2008 emissions inventories for primary PM<sub>2.5</sub>, NO<sub>x</sub>, and SO<sub>2</sub>, documented in Ohio's April 16, 2012, submittal as satisfying the requirement in section 172(c)(3) of the CAA for a comprehensive, current emission inventory. Finally, for transportation conformity purposes EPA is also proposing to approve Ohio's determination that on-road emissions of PM<sub>2.5</sub> and NO<sub>x</sub> are insignificant contributors to PM<sub>2.5</sub> concentrations in the area.

#### VI. What are the effects of EPA's proposed actions?

If finalized, approval of the redesignation request would change the official designation of the Ohio portion of the Steubenville-Weirton area for the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS, found at 40 CFR part 81, from

nonattainment to attainment. If finalized, EPA's proposal would approve as a revision to the Ohio SIP for the Steubenville-Weirton area, the maintenance plan for the 1997 annual and 2006 24-hour PM<sub>2.5</sub> standard as well as the 2005 and 2008 emissions inventories included with the redesignation request.

#### VII. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, 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 CAA. 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, these actions:

- Are 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);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are 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.*);
- Do 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);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are 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 CAA; and
- Do 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.

#### List of Subjects

##### 40 CFR part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter.

##### 40 CFR part 81

Air pollution control, Environmental protection, National Parks, Wilderness.

Dated: June 25, 2013.

**Susan Hedman,**

*Regional Administrator, Region 5.*

[FR Doc. 2013-16658 Filed 7-10-13; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Chapter I

[EPA-HQ-OPPT-2011-0683; FRL-9339-4]

#### Chemical Substances and Mixtures Used in Oil and Gas Exploration or Production; TSCA Section 21 Petition; Reasons for Agency Response

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

**ACTION:** Petition; reasons for Agency response.

**SUMMARY:** On August 4, 2011, Earthjustice and 114 other organizations petitioned EPA under section 21 of the Toxic Substances Control Act (TSCA) to use: TSCA section 8(a) to require manufacturers and processors of oil and gas exploration and production (E&P) chemical substances and mixtures to maintain certain records and submit

reports on those records; TSCA section 8(d) to require manufacturers, processors, and distributors to submit to EPA existing health and safety studies related to E&P chemical substances and mixtures; TSCA section 8(c) to request submission of copies of any information related to significant adverse reactions to human health or the environment alleged to have been caused by E&P chemical substances and mixtures; and TSCA section 4 to require manufacturers and processors of E&P chemical substances and mixtures to conduct toxicity testing of E&P chemical substances and mixtures. In a letter dated November 2, 2011, EPA informed petitioners that it denied the TSCA section 4 request and in a letter dated November 23, 2011, EPA informed petitioners that it granted in part the TSCA section 8(a) and 8(d) requests. This document sets forth EPA's reasons for denying in part the petitioners' requests. In addition, EPA has concluded that TSCA section 21 does not apply to requests for a TSCA section 8(c) data call-in.

**FOR FURTHER INFORMATION CONTACT:** *For technical information contact:* Mark Seltzer, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001; telephone number: (202) 564-2901; fax number: (202) 564-4775; email address: [seltzer.mark@epa.gov](mailto:seltzer.mark@epa.gov).

*For general information contact:* The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554-1404; email address: [TSCA-Hotline@epa.gov](mailto:TSCA-Hotline@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does this action apply to me?

This action is directed to the public in general. This action, however, may be of interest to you if you manufacture (including import), process, or distribute chemical substances or mixtures used in hydraulic fracturing to create fractures in geologic formations, such as shale rock, allowing enhanced natural gas or oil recovery. Since other entities also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

###### B. How can I access information about this petition?

The docket for this TSCA section 21 petition, identified by docket identification (ID) number EPA-HQ-OPPT-2011-0683, is available at <http://www.regulations.gov> or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OPPT Docket is (202) 566-0280. Please review the visitor instructions and additional information about the docket available at <http://www.epa.gov/dockets>.

## II. TSCA Section 21

### A. What is a TSCA section 21 petition?

Under TSCA section 21 (15 U.S.C. 2620), any person can petition EPA to initiate a rulemaking proceeding for the issuance, amendment, or repeal of a rule under TSCA sections 4, 6, or 8 or an order under TSCA sections 5(e) or 6(b)(2). A TSCA section 21 petition must set forth the facts that are claimed to establish the necessity for the action requested. EPA is required to grant or deny the petition within 90 days of its filing. If EPA grants the petition, the Agency must promptly commence an appropriate proceeding. If EPA denies the petition, the Agency must publish its reasons for the denial in the **Federal Register**. A petitioner may commence a civil action in a U.S. district court to compel initiation of the requested rulemaking proceeding within 60 days of the denial, if the denial occurs prior to the expiration of the 90-day period, or within 60 days after the expiration of the 90-day period.

### B. What criteria apply to a decision on a TSCA section 21 petition?

Section 21(b)(1) of TSCA requires that the petition "set forth the facts which it is claimed establish that it is necessary" to issue the rule or order requested. 15 U.S.C. 2620(b)(1). Thus, TSCA section 21 implicitly incorporates the statutory standards that apply to the requested actions. In addition, TSCA section 21 establishes standards a court must use to decide whether to order EPA to initiate rulemaking in the event of a lawsuit filed by the petitioner. 15 U.S.C. 2620(b)(4)(B). Accordingly, EPA has relied on the standards in TSCA section 21 and in the provisions under which

actions have been requested to evaluate this petition. The standards that apply to actions under TSCA sections 4 and 8 (Ref. 1) are available in the docket established for this TSCA section 21 petition.

### III. Summary of the TSCA Section 21 Petition

#### A. What Action Was Requested?

On August 4, 2011, Earthjustice and several other organizations petitioned EPA to:

1. Adopt a rule pursuant to TSCA section 4 to require manufacturers and processors of E&P chemical substances and mixtures to develop test data sufficient to evaluate the toxicity and potential for health and environmental impacts of all E&P chemical substances and mixtures that they manufacture and process. The petitioners request the rule include a requirement for the manufacturer or processor to identify any E&P chemical substance and mixture for which testing is required (Ref. 2).

2. Adopt a rule pursuant to TSCA section 8(a) requiring manufacturers and processors of E&P chemical substances and mixtures to maintain records and submit reports to EPA disclosing the identities, categories, and quantities of E&P chemical substances and mixtures, descriptions of byproducts of E&P chemical substances and mixtures, all existing data on potential or demonstrated environmental and health effects of E&P chemical substances and mixtures, and the number of individuals potentially exposed to E&P chemical substances and mixtures (Ref. 2).

3. Request call-in of all allegations of significant adverse reactions received and maintained by manufacturers, processors, and distributors of E&P chemical substances and mixtures pursuant to TSCA section 8(c) and 40 CFR part 717 (Ref. 2).

4. Adopt a rule pursuant to TSCA section 8(d) to require submittal of all existing, not previously reported health and safety studies related to the health and/or environmental effects of all E&P chemical substances and mixtures (Ref. 2).

#### B. What Support Do the Petitioners Offer?

The petitioners believe that there are potential risks to human health, terrestrial and aquatic life, and the environment from E&P chemical substances and mixtures, and that there is currently insufficient information about these potential risks. The petitioners believe rulemakings under TSCA section 4 and section 8 are

necessary to fill information gaps so that Federal and State regulators can appropriately assess and regulate E&P chemical substances and mixtures and provide information to the public about E&P chemical substances and mixtures. To support their requests, the petitioners discussed the following information sources which focus mostly on hydraulic fracturing chemical substances and mixtures, and assert the limitations of these sources:

- EPA's current study to examine the relationship between hydraulic fracturing and drinking water resources (Ref. 3).

- FracFocus.org (<http://fracfocus.org>), a Web site (operated jointly by the Ground Water Protection Council (GWPC) and the Interstate Oil and Gas Compact Commission (IOGCC)) that serves as a voluntary chemical substance registry for companies to report publically available information on chemicals used in hydraulic fracturing operations.

- Current Federal and State regulations requiring the disclosure of E&P chemical substances and mixtures.

- Two reports published by The Endocrine Disruption Exchange (TEDX) (Ref. 4) and the New York State Department of Environmental Conservation (NYSDEC) (Ref. 5) that analyze the health effects of chemical substances and mixtures for which TEDX and NYSDEC could locate a Chemical Abstracts Service Registry Number (CASRN).

- Reports of potential harm to human and environmental health from exposure to E&P chemical substances and mixtures.

#### IV. Disposition of TSCA Section 21 Petition

For the purpose of making its decision, EPA evaluated the information presented or referenced in the petition and the Agency's authority and requirements under TSCA sections 4, 8, and 21. EPA has also evaluated the comments in response to the petition received from the American Petroleum Institute (Ref. 6), the American Chemistry Council (Ref. 7), and Halliburton Energy Services (Ref. 8). After careful consideration, EPA has granted in part and denied in part the petition. In a letter dated November 2, 2011 (Ref. 9), EPA informed petitioners that it denied the TSCA section 4 request. In a subsequent letter dated November 23, 2011 (Ref. 10), EPA informed petitioners that it granted in part the TSCA section 8(a) and 8(d) requests.

By virtue of partially granting the TSCA section 8(a) and 8(d) requests,

EPA plans to initiate rulemaking under TSCA sections 8(a) and 8(d) to obtain data on chemical substances and mixtures used in hydraulic fracturing. Although EPA has partially granted the TSCA section 8(a) and 8(d) requests, the Agency is not committing to a specific rulemaking outcome. EPA's response to the petition describes a principle that will guide EPA's efforts: "given efforts underway [in states, industry and other federal agencies], our expectation is that the TSCA proposal would focus on providing aggregate pictures of the chemical substances and mixtures used in hydraulic fracturing. This would not duplicate, but instead complement, the well-by-well disclosure programs of states" (Ref. 10).

EPA plans first to develop an Advance Notice of Proposed Rulemaking (ANPRM) and initiate a stakeholder process to provide input on the design and scope of the TSCA reporting requirements that would be included in a proposed rule. EPA anticipates that States, industry, public interest groups, and members of the public will be participants in the process. The stakeholder process will bring stakeholders together to discuss the information needs and help EPA to ensure any reporting burdens and costs are minimized, ensuring information already available is considered in order to avoid duplication of efforts. The dialogue will also assist EPA in determining how information that is claimed Confidential Business Information could be aggregated and disclosed to maximize transparency and public understanding.

Section 9(d) of TSCA provides that the EPA Administrator shall consult and cooperate with other Federal agencies "for the purpose of achieving the maximum enforcement of [TSCA] while imposing the least burdens of duplicative requirements." 15 U.S.C. 2608(d). Consistent with TSCA section 9(d), in the development of these actions, EPA will consult and cooperate with other agencies (e.g., Bureau of Land Management (BLM) and the U.S. Department of Energy (DOE)). Consistent with TSCA section 9(b), EPA will consult and cooperate with multiple offices within the Agency.

Regarding the TSCA section 4 request, EPA has concluded that the petition does not set forth sufficient facts to support the petitioners' assertion that it is necessary to initiate the requested rulemaking under TSCA section 4. The discussion in this unit provides the reasons for EPA's decisions to deny the petition in part.

### *A. Partial Denial of the TSCA Section 8(a) Request*

Although EPA is granting the TSCA section 8(a) request in part, the petitioners' request is overly broad, and they have not demonstrated that the broad rule they requested is necessary. The petitioners request that for all chemical substances and mixtures used throughout all E&P operations, EPA require by rule submission of essentially all of the information identified in TSCA section 8(a) for rules under that section. (The petitioners request all information for the chemical substances and mixtures generally, even beyond their use in the E&P industry.) The E&P industry is a large industry involving a range of varied operations and classes of chemical substances and mixtures (Refs. 11 and 12). EPA, other Federal agencies, and States, have focused attention on hydraulic fracturing due to specific concerns raised about this practice, and most of the incidents and information sources referenced in the petition pertain to hydraulic fracturing. EPA believes information collection under TSCA could significantly advance the Federal Government's understanding of potential risks associated with this practice. EPA notes that it already has broad regulations under TSCA section 8(a) requiring periodic reporting of extensive information with respect to chemical substances (Ref. 1) including chemical substances used in the E&P industry. Before proposing a TSCA section 8(a) rule specific to the E&P industry as a whole, EPA would want a better understanding of the incremental value of individual information elements.

### *B. Partial Denial of TSCA Section 8(d) Request*

EPA is partially granting the TSCA section 8(d) request in this petition. EPA intends first to issue an ANPRM regarding the submission of unpublished health and safety studies and lists of ongoing and initiated studies from companies manufacturing (including importing), processing, and distributing certain chemical substances and mixtures, used in hydraulic fracturing. As part of the stakeholder process discussed in Unit IV., EPA plans to seek input on the range of chemical substances and mixtures that may be subject to the TSCA section 8(d) rulemaking. For the reasons set out in Unit IV.A., EPA does not believe a broader TSCA section 8(d) rule is needed or appropriate at this time.

### *C. Denial of TSCA Section 4 Request*

The petitioners requested a TSCA section 4 test rule covering all chemical substances and mixtures used in oil and gas E&P. Specifically, the petitioners requested that EPA promulgate a rule under TSCA section 4 requiring "manufacturers and processors of E&P [chemical substances and mixtures] to develop test data to evaluate the toxicity and potential for health and environmental impacts of all chemical substances and mixtures they manufacture and process" and that the TSCA section 4 rule require the manufacturers and processors to identify all chemical substances and mixtures tested (Ref. 2). EPA is denying this request as the petitioners have not set forth sufficient facts to support their assertion that it is necessary to issue a TSCA section 4 rule requiring testing of all chemical substances and mixtures used in all oil and gas E&P, as required by TSCA section 21(b)(1). Further, to the extent that the petition could be read to articulate a somewhat narrower request (that only some chemical substances and mixtures should be tested, as necessary to evaluate the potential impacts of those chemical substances and mixtures), this is not a request for an identifiable rule under TSCA section 4, as required by TSCA section 21 (e.g., the petition does not identify specific chemical substances or mixtures for which inadequate data exist, or the data gaps or endpoints for which testing is necessary).

The petitioners have not set forth sufficient facts for EPA to find that information available to the EPA Administrator is insufficient to permit a reasoned evaluation of the health and environmental effects of all E&P chemical substances and mixtures, or that testing is necessary to develop such information. The petitioners identified two reports that discuss health effects from some chemical substances and mixtures used during oil and gas operations with some specific discussion on hydraulic fracturing. The reports are an information source that EPA might review in developing a TSCA section 4 rulemaking to determine whether data are lacking for specific health end points for specific chemical substances. However, EPA believes the analysis conducted for the reports are not comprehensive because not all E&P chemical substances and mixtures were reviewed in either report (Ref. 2). Therefore, the petitioners do not demonstrate that data are insufficient for all E&P chemical substances and mixtures.

The petitioners also failed to show it is necessary to issue a TSCA section 4 rule by failing to support the other findings under TSCA section 4. 15 U.S.C. 2603(a)(1)(A)(i) and (B)(i). The petitioners made a minimal attempt to show that any individual E&P chemical substance is produced in "substantial quantities" and provided no production volume information for any individual chemical substance. While the petitioners do make general statements that E&P chemical substances and mixtures are used in large quantities (Ref. 2), this does not provide a basis for EPA to conclude that all E&P chemical substances and mixtures are produced in substantial quantities. The term "substantial quantities" has been interpreted by EPA to generally be one million pounds or more per year (Ref. 13). Nor have the petitioners shown that any specific chemical substance or mixture enters or may reasonably be anticipated to enter the environment in substantial quantities or that there is or may be significant or substantial human exposure to any specific chemical substance or mixture. Individual chemical substances and mixtures used in E&P operations may well be produced and released in small volumes.

Furthermore, the petitioners have not shown that all E&P chemical substances and mixtures may present an unreasonable risk (Refs. 4 and 5). The oil and gas E&P industry is broad and engages in a wide variety of activities and uses many different chemical substances and mixtures depending on site characteristics. Although petitioners provided examples of spills and releases and cited existing databases collecting health effects data, they did not show that any individual chemical substance or mixture, or the entire class of chemical substances and mixtures used in all phases of the E&P industry, may present an unreasonable risk. While it is possible that such a finding could be made for some chemical substances and mixtures used in some operations, it is also likely that many are benign, and petitioners did not provide sufficient information for the broad finding they request. For these reasons, the petitioners have not demonstrated that it is necessary to issue the requested TSCA section 4 rule.

With respect to E&P mixtures, petitioners have not made any attempt to show that evaluating the effects of mixtures would be reasonable and more efficient than testing chemical substances in the mixtures. 15 U.S.C. 2603(a)(2). EPA is not prepared to make this finding without more complete information regarding the chemical

substances and mixtures currently in use and the existing available information regarding potential health effects. EPA understands that mixtures can change frequently in hydraulic fracturing operations, and in the E&P industry more broadly, and the petition does not provide sufficient information to enable EPA to effectively identify what mixtures, or classes of mixtures, if any, might most efficiently be tested. Any existing mixture tested might not still be in use once testing has been completed, and additional mixtures might be in use at that point. A requirement to test certain representative mixtures might be reasonable and more efficient than testing individual chemical substances, but petitioners did not provide sufficient information to support such a finding.

EPA is in the process of evaluating information in its possession and plans to request additional information as described in this document. While EPA agrees with petitioners that the Office of Research and Development (ORD) study focuses on the potential impacts on drinking water resources and does not require companies to conduct testing or to develop health and safety data, EPA plans to summarize the available data (including data the Agency may already have collected) on the toxicity of chemical substances and mixtures used in hydraulic fracturing, and to identify and prioritize data gaps for further investigation. This information will aid in EPA's understanding of potential effects beyond drinking water impacts. EPA also plans to review the results from the Agency's other activities and those from other Federal agencies (Ref. 3).

## V. References

The following is a list of the documents that are specifically referenced in this document and placed in the docket that was established under docket ID number EPA-HQ-OPPT-2011-0683. For information on accessing the docket, refer to Unit I.B.

1. Legal Standards on TSCA Section 4, 8(a), 8(c), 8(d) and Applicability to a Section 21 Petition. May 24, 2012.

2. Earthjustice and 114 other organizations. Letter from Deborah Goldberg, Earthjustice to Wendy Cleland-Hamnett, Director, Office of Pollution Prevention and Toxics (OPPT), EPA. "Re: Citizen Petition Under Toxic Substances Control Act Regarding the Chemical Substances and Mixtures Used in Oil and Gas Exploration or Production." August 4, 2011.

3. EPA, ORD. EPA's Study of Hydraulic Fracturing and Its Potential Impact on Drinking Water Resources. Available online

at:  
<http://www.epa.gov/hfstudy>.

4. TEDX. Health Effects Spreadsheet and Summary. Summary Statement. January 27, 2011. Available online at: <http://www.endocrinedisruption.com/chemicals.multistate.php>.

5. NYSDEC. Draft Supplemental SGEIS [Generic Environmental Impact Statement] on the Oil, Gas and Solution Mining Regulatory Program. September 30, 2009. Available online at: <http://www.dec.ny.gov/energy/58440.html>.

6. Letter from Erik Milito, Group Director Upstream and Industry Operations, American Petroleum Institute (API) to Wendy Cleland-Hamnett, Director OPPT, EPA: "Comments on August 4, 2011 Citizen Petition under Toxic Substances Control Act Regarding the Chemical Substances and Mixtures Used in Oil and Gas Exploration or Production." October 13, 2011.

7. Letter from Christina Franz, Senior Director, Regulatory & Technical Affairs, American Chemistry Council (ACC) to Wendy Cleland-Hamnett, Director OPPT, EPA: "Comments of the American Chemistry Council on the TSCA Section 21 Petition Concerning Oil and Gas Exploration and Production Chemicals." October 20, 2011.

8. Letter from Mark N. Duvall, Council for Halliburton Energy Services, Inc., to Wendy Cleland-Hamnett, Director OPPT, EPA: "TSCA Section 21 Petition Regarding Oil and Gas Exploration and Production Chemicals; Comments of Halliburton Energy Services, Inc." October 26, 2011.

9. Letter from Stephen A. Owens, Office of Chemical Safety and Pollution Prevention (OCSPP), Assistant Administrator, EPA: "TSCA Section 21 Petition Concerning Chemical Substances and Mixtures Used in Oil and Gas Exploration or Production." November 2, 2011. Available online at: <http://www.epa.gov/oppt/chemtest/pubs/SO.Earthjustice.Response.11.2.pdf>.

10. Letter from Stephen A. Owens, OCSPP Assistant Administrator, EPA: "TSCA Section 21 Petition Concerning Chemical Substances and Mixtures Used in Oil and Gas Exploration or Production." November 23, 2011. Available online at: [http://www.epa.gov/oppt/chemtest/pubs/EPA\\_Letter\\_to\\_Earthjustice\\_on\\_TSCA\\_Petition.pdf](http://www.epa.gov/oppt/chemtest/pubs/EPA_Letter_to_Earthjustice_on_TSCA_Petition.pdf).

11. North American Industry Classification System. 2007 NAICS Definition. August 2011. Available online at: <http://www.census.gov/eos/www/naics/index.html>.

12. API Energy. About Oil and Natural Gas. Industry Sectors. September 14, 2011.

13. EPA. TSCA Section 4(a)(1)(B) Final Statement of Policy; Criteria for Evaluating Substantial Production, Substantial Release, and Substantial or Significant Human Exposure; Final Statement of Policy. **Federal Register** (58 FR 28736, May 14, 1993) (FRL-4059-9).

## List of Subjects in Chapter I

Environmental protection, Exploration and production (E&P), Hydraulic fracturing, Oil and gas, Toxic Substances Control Act (TSCA).

Dated: July 3, 2013.

**James Jones,**

*Acting Assistant Administrator, Office of Chemical Safety and Pollution Prevention.*

[FR Doc. 2013-16485 Filed 7-10-13; 8:45 am]

**BILLING CODE 6560-50-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 90

[WP Docket No. 07-100; Report No. 2984]

### Petition for Reconsideration of Action in Rulemaking Proceeding

**AGENCY:** Federal Communications Commission.

**ACTION:** Petition for reconsideration.

**SUMMARY:** In this document, a Petition for Reconsideration (Petition) has been filed in the Commission's Rulemaking proceeding by William Brownlow on behalf of the Public Safety Communications Council.

**DATES:** Oppositions to the Petition must be filed on or before July 26, 2013. Replies to an opposition must be filed on or before August 5, 2013.

**ADDRESSES:** Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Rodney Conway, Wireless Telecommunications Bureau, (202) 418-2904, TTY (202) 418-7233.

**SUPPLEMENTARY INFORMATION:** This is a summary of Commission's document, Report No. 2984, released June 20, 2013. The full text of document Report No. 2984 is available for viewing and copying in Room CY-B402, 445 12th Street SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1-800-378-3160). The Commission will not send a copy of this *Notice* pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A), because this *Notice* does not have an impact on any rules of particular applicability.

**Subject:** Amendment of Part 90 of the Commission's Rules, document FCC 13-52, published at 78 FR 28749, May 16, 2013, in WP Docket No. 07-100, and published pursuant to 47 CFR 1.429(e). *See also* § 1.4(b)(1) of the Commission's rules.

*Number of Petitions Filed:* 1.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary, Office of the Secretary, Office of Managing Director.*

[FR Doc. 2013-16635 Filed 7-10-13; 8:45 am]

**BILLING CODE 6712-01-P**

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 697**

[Docket No. 130319263-3577-01]

RIN 0648-BD09

**Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Proposed Rule To Allow Northeast Multispecies Sector Vessels Access to Year-Round Closed Areas**

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** This rule proposes to partially reopen several groundfish closed areas in the 2013 fishing year. If implemented as proposed, this action would open portions of Closed Areas I and II to selective fishing gear for a limited time period. Two areas within the Nantucket Lightship Closed Area are also proposed to be opened to selective gear year-round. The Western Gulf of Maine and Cashes Ledge Closed Areas, both located in the Gulf of Maine, would not be opened.

**DATES:** Written comments must be received on or before July 26, 2013.

**ADDRESSES:** A copy of the accompanying environmental assessment is available from the NMFS Northeast Regional Office: John K. Bullard, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. These documents are also accessible via the Federal eRulemaking Portal: <http://www.regulations.gov>.

You may submit comments on this document, identified by NOAA-NMFS-2013-0084, by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal. Go to [www.regulations.gov](http://www.regulations.gov) / `#!doctail;D=NOAA-NMFS-2013-0084`, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- *Fax:* (978) 281-9135, Attn: William Whitmore.

- *Mail:* Paper, disk, or CD-ROM comments should be sent to John K. Bullard, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: "Comments on Closed Area Rule."

*Instructions:* All comments received are part of the public record and will generally be posted to <http://www.regulations.gov> without change. No comments will be posted for public viewing until after the comment period has closed. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Once submitted to NMFS, copies of addenda to fishing year 2013 sector operations plans detailing industry-funded monitoring plans, and the environmental assessment (EA), will be available from the NMFS NE Regional Office at the mailing address above.

**FOR FURTHER INFORMATION CONTACT:** William Whitmore, Fishery Policy Analyst, phone (978) 281-9182, fax (978) 281-9135.

**SUPPLEMENTARY INFORMATION:****Background**

Amendment 16 to the Northeast Multispecies Fisheries Management Plan (groundfish plan) includes several universal regulatory exemptions that apply to all groundfish sectors. Sectors can also request additional regulatory exemptions in their annual sector operations plans. These exemptions are reviewed and approved by the National Marine Fisheries Service (NMFS) on an annual basis. For additional information on sector exemptions, the process for approving sector exemptions, and a description of current sector exemptions, please see the final rule for fishing year 2013 sector operations plans (78 FR 25591, May 2, 2013).

Amendment 16 also prohibited sectors from requesting exemptions from certain regulations, including exemptions from year-round closed areas. Some year-round closed areas were established as effort controls to reduce fishing mortality. Other year-round closed areas were established to protect essential fish habitat. In an attempt to mitigate the impacts of the low catch limits for fishing year 2013, the New England Fishery Management Council (Council) included a measure in Framework Adjustment 48 that would allow sectors to request regulatory exemptions to the year-round closed areas that were established for mortality reductions.

On May 3, 2013, NMFS partially approved Framework 48 (78 FR 26118), including the Framework 48 provision allowing sectors to request access to year-round mortality closure areas. Anticipating that Framework 48 would be approved, sectors included exemption requests from year-round closure areas in their initial 2013 operations plan submissions. Exemption requests are only approved after we determine that the exemption is consistent with the groundfish plan's goals and objectives. For additional information on which areas sectors can request exemptions from, please see the final rule implementing Framework 48 (78 FR 26118, see page 26131).

Anticipating that Framework 48 would be approved, sectors included exemption requests from year-round closure areas in their initial 2013 operations plan submissions. These exemption requests are being developed in a separate action from the final rule for fishing year 2013 sector operations plans to provide sufficient time for the extensive analyses needed for this action. Table 1 indicates which sectors requested access to particular closed areas in their initial fishing year 2013 operations plans.

These closed area exemption requests are being considered as amendments to the sector operations plans in this action. Because the environmental assessment analyzes the potential effort and associated environmental impacts from all sectors fishing in the proposed areas, any sector could request access to any of the areas, if approved.

Table 1 – Sector Exemption Requests from Year-Round Closed Area Restrictions in Fishing Year 2013

Area	FGS	NCCS	NFS 2	NFS 3	NFS 4	NFS 5	NFS 6	NFS 7	NFS 8	NFS 9	NFS 10	NFS 11	NFS 12	NFS 13	MCCS	SHS 1	SHS 3
Cashes Ledge			X	X		X	X	X	X	X	X	X	X	X		X	X
Western GOM			X	X		X	X	X	X	X	X	X	X	X		X	X
Closed Area I			X	X		X	X	X	X	X	X	X	X	X		X	X
Closed Area II			X	X		X	X	X	X	X	X	X	X	X		X	X
Nantucket Lightship			X	X		X	X	X	X	X	X	X	X	X		X	X

Fixed Gear Sector – FGS; Northeast Coastal Communities Sector – NCCS; Northeast Fishery Sector – NFS; Maine Coastal Communities Sector – MCCS; Sustainable Harvest Sector - SHS

The Council’s Closed Area Technical Team (CATT) was asked by the Council

to research and recommend potential changes to the groundfish mortality

closures for the upcoming Omnibus Essential Fish Habitat (EFH)

Amendment. The CATT conducted many analyses on the potential benefits derived from the current year-round groundfish closed areas, as well as how the area closures could be modified to improve protection of groundfish habitat or protection of groundfish during critical life stages. The group began by conducting a comprehensive literature and data review of groundfish closed areas—these data served as the basis for the analysis used in the Framework 48 environmental assessment.

The CATT then attempted to identify areas where groundfish spawn, as well as areas that are critical to juvenile habitat. Currently, the CATT is attempting to take those data and identify groundfish closure areas that would provide the greatest benefit to groundfish stocks in need of rebuilding. Much of the research by the CATT is incorporated into the environmental assessment for this action. We are considering recent scientific analyses, including work by the CATT, in determining whether or not allowing sector vessels some access to these year-round closure areas is consistent with the goals and objectives of the groundfish plan while still protecting essential fish habitat management areas. The analyses developed by the CATT were reviewed and endorsed by the Council's Scientific and Statistical Committee on May 16, 2013.

Using the CATT's analyses and other information, this proposed rule evaluates the impacts of any actual fishing effort in these mortality closure areas, including the concerns raised in public comments during the development of Framework 48. The Council believes, and we agree, that proposing access to the closed areas through a separate sector exemption review and approval process provides a better opportunity to address specific concerns with the potential impact of actual sector proposals. This is primarily because the NMFS Regional Administrator may include stipulations and constraints on specific exemptions to facilitate the monitoring and enforcement of sector operations or as mitigation measures to address specific potential impacts. In fact, the three measures proposed in this rule include additional constraints to mitigate impacts on groundfish stocks and protected resources. We want to ensure that any exemptions that are granted are consistent with the goals and objectives of the groundfish plan.

As previously mentioned, the Council is also in the process of preparing an Essential Fish Habitat (EFH) Omnibus Amendment to several fishery

management plans, including the groundfish plan. The Omnibus Amendment currently includes a review and update of EFH requirements and EFH management area designations, a review and update of Habitat Area of Particular Concern (HAPC) designations, a review of other EFH requirements of fishery management plans, including prey species information and non-fishing impacts, and alternatives to minimize the adverse effects of fisheries on EFH. Because there is considerable spatial overlap between the groundfish mortality closed areas and the current habitat areas that are closed to bottom tending mobile gears, a review of the groundfish mortality closures is also included in the Omnibus Amendment. Currently, it is anticipated that the Omnibus Amendment will be completed by May 2014, and potentially implemented by the end of 2014. While the measures proposed in this rule are only for the 2013 fishing year, it is likely that the current closed areas will be modified sometime during the 2014 fishing year as a result of the Omnibus Amendment. Additional information on the Habitat Omnibus Amendment, including a map and descriptions of the proposed closed area modification can be found on the Council's Web site at <http://nefmc.org/habitat/index.html>.

A variety of concerns about the impacts from opening these areas have been expressed by fishery managers, members of the fishing industry, and the public, including many environmental non-governmental organizations. Most of these comments were provided during the public comment periods for the fishing year 2013 sector operations plans and Framework 48 proposed rules. Many comments were also sent to us during the development of Framework 48. Concerns were raised about potential impacts to protected species, spawning groundfish, and to other commercial species, like lobsters, that may result from opening these areas to new fishing effort. Some commenters also were worried that allowing groundfish vessels into these areas, mainly Closed Area II, could increase gear conflicts between mobile and lobster gear. Other commenters expressed concern that opening the closed areas could undermine current rebuilding efforts for stocks that are overfished or undergoing overfishing. Some commenters stated that this measure could undermine measures under consideration in the Omnibus EFH Amendment, as described above. The Council attempted to mitigate these concerns by excluding existing and

potential habitat closed areas from consideration in Framework 48 to preserve the process under way to evaluate these areas in the Omnibus EFH Amendment. The Council also included seasonal restrictions on sector exemptions to reduce interactions with spawning stocks. We are attempting to further mitigate these concerns by only allowing seasonal access to specific areas with selective fishing gears. Selective fishing gear, such as a haddock separator trawl, allows a vessel to better target a specific species when compared to a standard bottom otter trawl. Selective fishing gear allows a vessel to reduce its catch of non-target species, which in turn reduces bycatch and lowers the sector's discard rate.

This action proposes granting seasonal access into portions of Closed Areas I and II to sector vessels fishing selective gears (see Figure A). This action also proposes granting access to portions of the Nantucket Lightship Closed Area for vessels fishing selective gears for the remainder of the 2013 fishing year. In addition, to prevent harbor porpoise takes, vessels fishing in the western portion of Nantucket Lightship Closed Area would be required to use pingers, as stipulated in the Harbor Porpoise Take Reduction Plan (which can be found online at <http://www.nero.noaa.gov/protected/porptrp/>). Each of the four areas proposed could be approved independently of the others. It is hoped that allowing carefully designed access to these areas will allow vessels to increase their catch of under-harvested groundfish stocks (such as Georges Bank haddock and pollock) and healthy non-groundfish stocks (such as monkfish, dogfish, and skates), while minimizing impacts to recovering groundfish stocks and protected resources.

We believe that this proposed rule is consistent with the goals and objective of Amendment 16 to the groundfish plan (for a complete list of the Amendment 16 goals and objectives, see page 67 of the Amendment 16 environmental impact statement). This proposed rule would provide reasonable and regulated access to regulated groundfish (Goal 5). This rule would allow sector vessels additional opportunities to increase their catch while constrained by an annual catch limit (Objectives 1 and 3). By restricting vessels to specific areas, gears, and seasons, this rule minimizes vessel bycatch. Habitat impacts from fishing would be minimized to the extent practicable because the areas were determined to have low vulnerability (Objectives 9 and 10). The considerations in this rule would allow

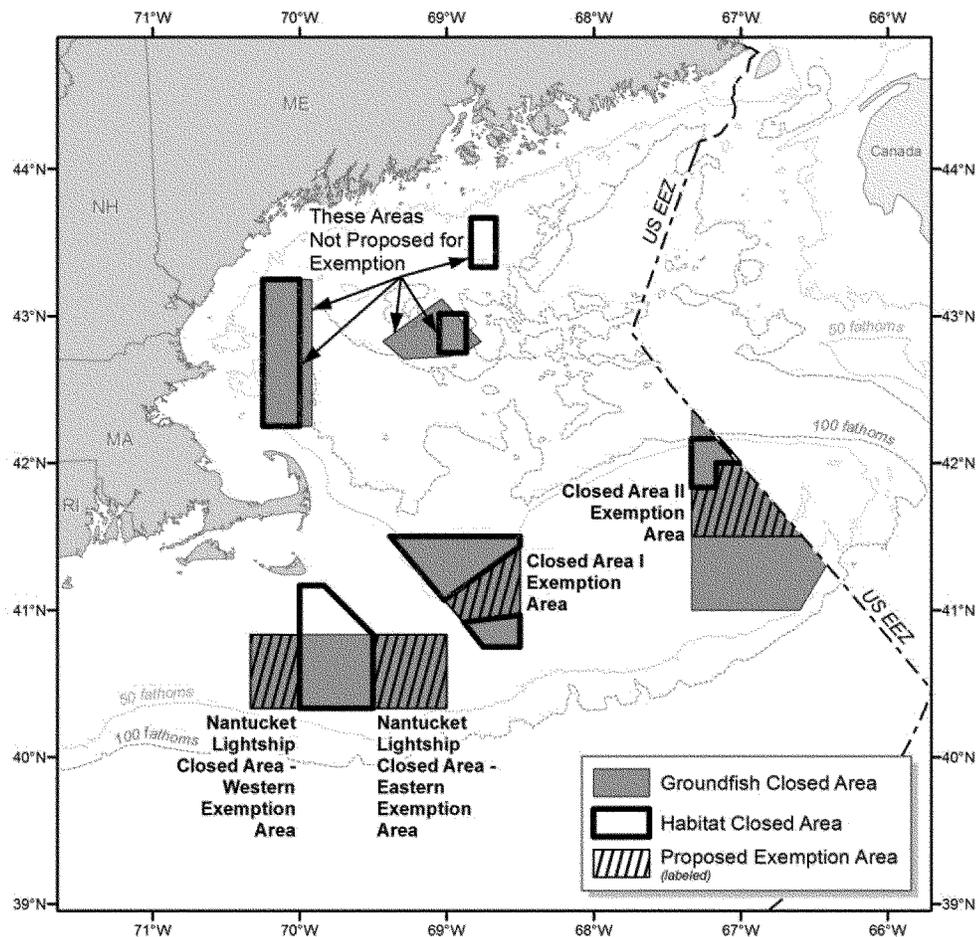
vessels increased opportunity to meet optimum yield while constraining fishing mortality. The increased profits would benefit fishermen and fishing communities while the gear restrictions would continue to allow overfished stocks to rebuild.

This action does not propose to grant sector vessels access to either the

Western Gulf of Maine or Cashes Ledge year-round closed areas. There has been little public or industry support for opening the Gulf of Maine areas, and analyses indicate that access to these areas would not provide greater opportunity to target healthy stocks than areas already open. Moreover,

preliminary analyses indicate that allowing access to Gulf of Maine non-habitat closed areas may have negative impacts on depleted and recovering stocks of groundfish, such as Gulf of Maine cod and haddock, and protected harbor porpoise.

Figure A – Closed Area Proposed for Openings through Sector Exemptions



### 1. Closed Area I Exemption Area

Closed Area I was closed year-round to groundfish fishing in 1994 to protect Georges Bank cod and haddock. If this proposed provision is implemented, the central portion of Closed Area I would be opened seasonally to selective gear only from the date the final rule is published through December. It is anticipated that, if this provision is implemented, the final rule would be published and effective in August. Trawl vessels would be restricted to selective trawl gear, including the

separator trawl, the Ruhle trawl, the mini-Ruhle trawl, rope trawl, and any other gear authorized by the Council in a management action. Hook gear would be permitted in this area as well. Because Georges Bank cod is considered overfished and subject to overfishing and gillnets cannot selectively capture haddock without catching cod, vessels would be prohibited from fishing with gillnets in this area. Flounder nets would be prohibited, as Georges Bank yellowtail flounder are considered overfished and subject to overfishing.

Allowing vessels into the Closed Area I Exemption Area would increase their opportunities to target healthy stocks of Georges Bank haddock. Since the closure, Georges Bank haddock have rebounded and are healthy. In fact, during fishing year 2012, less than 10 percent of the Georges Bank haddock quota was harvested. On the other hand, Georges Bank cod and Georges Bank yellowtail flounder are overfished and subject to overfishing. This proposed action would allow fishing for Georges Bank haddock and other healthy stocks

while selective gear will help minimize catch of Georges Bank cod and yellowtail flounder.

Selective gear is required to reduce bycatch of overfished stocks such as Georges Bank yellowtail flounder and cod. Although the Council specified that vessels could fish in the area until February 15, we are proposing to prohibit vessels from fishing in the Closed Area I Exemption Area after December 31 to avoid impacts to spawning stocks of Georges Bank cod.

Except for a special access program that allows hook vessels to fish in a portion of the area), the portion of Closed Area I proposed to be reopened in this rule has been a part of the Scallop Access Area Rotational Management Program since 2004. As a result, the seabed in this area has been disturbed by scallop dredges and is not a preserved habitat area. Furthermore, analyses for the Habitat Omnibus Amendment did not identify this area as vulnerable to trawl gear. There are minimal concerns regarding impacts to protected species in this area. While there were initial concerns about effort shifts from lobster gear in the area, an analysis of lobster effort in the area indicates that there is very little lobster effort in this area. Because of this, it is not anticipated that lobster gear displaced from this area would result in increased interactions with protected species. More information on lobster effort in the proposed areas is available in the accompanying environmental assessment.

## 2. Closed Area II Exemption Area

Closed Area II was closed year-round to groundfish fishing in 1994 to protect Georges Bank cod and haddock. If approved, the central portion of Closed Area II would be opened seasonally to selective gear only through December 31, 2013. The gear restrictions in Closed Area II are the same as those proposed for Closed Area I—selective trawl and hook gear only. Trawl and hook vessels would be permitted in this area when specified (see below). Vessels would be prohibited from fishing with gillnets in Closed Area II. Flounder nets would be prohibited. As noted above, in the time since the closure, Georges Bank haddock has fully recovered, is rebuilt and is consistently under-harvested. Selective gear is proposed to minimize the catch of Georges Bank cod and yellowtail flounder, both of which are considered overfished and subject to overfishing.

Only the central portion of Closed Area II is proposed to be reopened because the northern portion represents a habitat area of particular concern

(HAPC) and the southern portion is the Closed Area II Yellowtail Flounder/Haddock Special Access Program area. There is no need to grant sector vessels access to the southern portion of Closed Area II through this rule because the fishing year 2013 sector rule already granted sector vessels an exemption to fish in this area through December 31, 2013. We also extended the Eastern United States/Canada Haddock SAP, which occurs in the northern tip of Closed Area II from May 1 through December 31, 2013 (see 78 FR 25599–25600; May 2, 2013).

The offshore lobster industry and sector trawl vessels proposed a rotational gear-use agreement for proposed the Closed Area II Exemption Area (a copy of the agreement is included as an appendix in the EA). The restrictions proposed in the rotational gear use agreement have been adopted by the Atlantic States Marine Fisheries Commission, who modified the Interstate Fisheries Management Plan for American Lobster through Addendum XX to the lobster plan. This rule incorporates most portions of that agreement, a more detailed explanation is below.

We remain concerned that fishing in Closed Area II could have negative impacts on spawning Georges Bank cod and dense concentrations of Georges Bank yellowtail flounder, both of which are considered overfished and subject to overfishing. The proposed seasons and gear requirements incorporate the rotational gear-use agreement and mitigate fishing effort on yellowtail flounder and spawning cod:

- June 16–October 31: Sector trawl vessels would be prohibited, lobster and sector hook gear vessels only.
- November 1–December 31: Only sector trawl vessels could access the area; lobster and hook gear vessels prohibited.
- January 1–April 30: Lobster vessels permitted; sector groundfish vessels would be prohibited in Closed Area II during this time.
- May 1–June 15: Only sector trawl vessels could access the area; lobster and hook gear vessels prohibited.

The gears and seasons listed above match the agreement between the offshore lobster industry and sector trawl vessels, with the exception that groundfish vessels would be prohibited from fishing in Closed Area II after December 31. It should be noted that the sector exemptions proposed in this rule are only for fishing year 2013, which ends April 30, 2014. In contrast, the lobster regulations at § 697.7 are proposed to be modified for fishing years 2013 and 2014, through this rule

to prohibit lobster vessels from accessing the Closed Area II Exemption Area from November 1–December 31, 2013 and May 1–June 15 and November 1–December 31, 2014. The regulatory changes proposed for federally permitted lobster vessels would be effective through the end of fishing year 2014, the time frame established under the gear-use agreement and under Addendum XX. If sector vessels wish to request access to the Closed Area II Exemption Area from May 1–June 15 for fishing year 2014, that exemption request would be included in their 2014 sector operations plans and analyzed in the 2014 sector proposed rule and environmental assessment.

Like Closed Area I, allowing vessels into this area would increase their opportunities to target healthy stocks of Georges Bank haddock. Selective gear is required to reduce bycatch of overfished stocks such as Georges Bank yellowtail flounder and cod to the extent practicable. Although the Council specified in Framework 48 that vessels could fish in Closed Area I until February 15, we are proposing to prohibit vessels into Closed Area I after December 31 due to impacts to Georges Bank cod spawning. While this area has been closed year-round to groundfishing since 1994, the majority of the seabed in this area is sand and is impacted by strong currents. As a result, this area is not considered to be vulnerable to trawl gear. Some areas are shallow enough that the bottom is affected by wave action. As a result, bottom trawling in this area would likely have minimal impact on benthic habitats.

The agreement between the offshore lobster industry and sector vessels reduces concerns of gear conflicts in the area. Analyses for the environmental assessment indicate that only a small portion of the annual lobster catch from this portion of Closed Area II is gathered during November. No trips were reported in the proposed area during December of 2011 or 2012. As a result, the displacement of lobster effort into other areas is expected to be minimal. Because of this, it is not anticipated that lobster gear displaced from this area would result in increased interactions with protected species in other locations.

## 3. Nantucket Lightship Closed Area Exemption

The Nantucket Lightship Closed Area was established as a year-round groundfish closure in 1994 to protect yellowtail flounder. If approved, this measure would allow sector vessels to access the eastern and western portions of the Nantucket Lightship Closed Area.

The central area is essential fish habitat and not proposed to be re-opened. Trawl vessels would be restricted to selective trawl gear, including the separator trawl, the Ruhle trawl, the mini-Ruhle trawl, rope trawl, and any other gear authorized by the Council in a management action. Flounder nets would be prohibited because there is concern that the population of yellowtail flounder in the area represents a source population that is critical to the Southern New England/Mid-atlantic stock. Gillnet vessels would be restricted to fishing 10-inch (25.4-cm) diamond mesh or larger. This would allow gillnet vessels to target monkfish and skates while reducing catch of flatfish. Because the area lies within the Southern New England Management Area of the Harbor Porpoise Take Reduction Plan, gillnet vessels would be required to use pingers when fishing in the Nantucket Lightship Closed Area—Western Exemption Area between December 1 and May 31. These catches could also help mitigate the low fishing year 2013 allocations for several groundfish stocks.

Opening the eastern and western portions of the Nantucket Lightship Closed Area to selective gear is not expected to have any significant adverse habitat impacts. While this area has been closed year-round to groundfishing since 1994, the eastern portion proposed to be reopened in this rule has been a part of the Scallop Access Area Rotational Management Program since 2004—so it has been subject fishing. The western portion is referred to as the “mudhole” with a benthic habitat not vulnerable to bottom trawling. Therefore, bottom impacts from opening this area are anticipated to be minimal.

Requiring selective gear in this area will help minimize flounder bycatch and address concerns that vessels could harvest a large portion of Southern New England/Mid Atlantic yellowtail flounder allocation from this area, which is considered home to an important source population for yellowtail flounder. To reduce potential interactions with harbor porpoises, gillnet gear in the western exemption would need to be equipped with pingers between December 1 and May 31 as described in the Harbor Porpoise Take Reduction Plan.

#### 4. Industry-Funded At-Sea Monitoring

Sectors must have a NMFS-approved industry-funded at-sea monitoring program to receive the proposed exemptions from closed areas, and vessels that fish in these closed areas would be required to have an industry-funded at-sea monitor on board. A high

level of at-sea monitoring coverage is necessary to accurately monitor total catch from these areas. Without a high level of at-sea monitoring coverage, discard rates would be difficult to estimate (as we do with other sector fishing trips) because there is very little catch history or data from these areas. Requiring 100 percent at-sea monitoring coverage would also allow NMFS to monitor whether vessels are interacting with protected species. This level of monitoring would also provide an ancillary benefit of gaining additional fishery dependent data from the catch from these areas.

While NMFS has committed to pay for at-sea monitoring coverage for sector fishing trips during fishing year 2013, the agency does not have enough funding to also pay for additional trips utilizing regulatory exemptions that require 100-percent monitoring (such as trips targeting redfish and trips into closed areas). However, we are currently looking into possible ways to provide funding for these trips.

A sector vessel intending to fish in these closed access areas would be required to declare its intent through its Vessel Monitoring System prior to departing the dock. Catch from these trips would not be used for determining a sector's discard rate because these trips are different than standard groundfish trips.

#### Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Northeast Multispecies Fishery Management Plan, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires agencies to assess the economic impacts of their proposed regulations on small entities. The objective of the RFA is to consider the impacts of a rulemaking on small entities, and the capacity of those affected by regulations to bear the direct and indirect costs of regulation. Size standards have been established for all for-profit economic activities or industries in the North American Industry Classification System. The Small Business Administration (SBA) defines a small business in the commercial fishing and recreational fishing sector, as a firm with receipts

(gross revenues) of up to \$4 million. The Small Business Act defines affiliation as: Affiliation may arise among two or more persons with an identity of interest. Individuals or firms that have identical or substantially identical business or economic interests (such as family members, individuals or firms with common investments, or firms that are economically dependent through contractual or other relationships) may be treated as one party with such interests aggregated (13 CFR 121.103(f)).

An Initial Regulatory Flexibility Analysis (IRFA) has been prepared, as required by section 603 of the RFA. The Final Regulatory Flexibility Analysis (FRFA) will be prepared after the comment period for this proposed rule, and will be published with the final rule. The IRFA describes the economic impact that this proposed rule, if adopted, would have on small entities. The IRFA consists of this section, the SUMMARY section of the preamble of this proposed rule, and the EA prepared for this action. A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble to this proposed rule and in Sections 1.0, 2.0, and 3.0 of the EA prepared for this action, and is not repeated here. A summary of the analysis follows. A copy of this analysis is available from NMFS (see ADDRESSES).

#### Description of the Reasons Why Action by Agency Is Being Considered

The flexibility afforded sectors includes exemptions from certain specified regulations as well as the ability to request additional exemptions. Sector members no longer have groundfish catch limited by days-at-sea (DAS) allocations and are instead limited by their allocations. In this manner, the economic incentive changes from a vessel maximizing its effective catch of all species on a DAS to maximizing the value of its allocation, which places a premium on timing landings to market conditions, as well as changes in the selectivity and composition of species landed on fishing trips. Further description of the purpose and need for the proposed action is contained in Section 2.0 of the EA prepared for this action.

#### The Objectives and Legal Basis for the Proposed Action

The objective of the proposed action is to grant sectors a regulatory exemption allowing sector vessels to fish in portions of several year-round groundfish closed areas. The legal basis for the proposed action is the NE Multispecies FMP and promulgating

regulations at § 648.87. Regulations adding increased restrictions on offshore lobster vessels will be added to § 697.7.

### **Estimate of the Number of Small Entities**

The SBA size standard for commercial fishing entities (North American Industry Classification System code 114111) is \$4 million in annual sales. We have recently worked to identify ownership affiliations, and incorporated those data into this analysis. Although work to more accurately identify ownership affiliations is ongoing, for the purposes of this analysis, ownership entities are defined as an association of fishing permits held by common ownership personnel as listed on permit application documentation. Only permits with identical ownership personnel are categorized as an ownership entity.

The maximum number of entities that could be affected by the proposed exemptions is expected to be approximately 355 ownership entities (352 qualifying as small entities)—this includes 303 entities enrolled in sectors as well as 52 offshore lobster vessels, but many of the offshore lobster vessels do not fish in the areas discussed in this action. A total of 301 groundfish ownership entities and 51 offshore lobster ownership entities would be considered small entities, based on the definition as stated above. The economic impact resulting from this action on these small groundfish entities is positive, since the action, if implemented, would provide additional operational flexibility to vessels participating in NE multispecies sectors for FY 2013. In addition, this action would further mitigate negative impacts from the implementation of Amendment 16, Frameworks 44 and 45, which have placed additional restrictions on the NE multispecies fleet, as well as Frameworks 48 and 50. The economic impact resulting from this action on offshore lobster entities is expected to be negligible, since they historically have very little fishing effort in an area that they would be unable to fish during a specific portion of the year.

### **Reporting, Recordkeeping and Other Compliance Requirements**

This proposed rule contains no collection-of-information requirement subject to the Paperwork Reduction Act. The proposed action provides additional flexibility to sector vessels in fishing year 2013 by allowing them to fish in areas that were previously closed. Sector vessels would be required to declare their intent to fish in these

areas prior to departure. As currently proposed, sectors interested in utilizing this exemption must have a NMFS-approved industry-funded at-sea monitoring program. Exemptions implemented through this action would be documented in a letter of authorization issued to each vessel participating in an approved sector.

### **Duplication, Overlap or Conflict With Other Federal Rules**

The proposed action is authorized by the regulations implementing the NE Multispecies FMP. It does not duplicate, overlap, or conflict with other Federal rules.

### **Alternatives Which Minimize Any Significant Economic Impact of Proposed Action on Small Entities**

NMFS considered two alternatives for the action proposed in this rule, the No Action Alternative and the Preferred Alternative. Under the No Action Alternative, sector vessels would not be able to fish in year-round closed areas unless fishing within an existing, approved Special Access Program. The No Action Alternative is the disapproval of the exemption and addendum to any sector's operations plan. The No Action Alternative would result in sector vessels operating under the operations plans as approved for the start of the 2013 FY on May 1, 2013. Approving the No Action Alternative would result in continued underharvesting of Georges Bank haddock and would eliminate the potential for groundfish to increase their profits.

The Preferred Alternative (the proposed action) would allow sector vessels to fish in portions of the Nantucket Lightship Closed Area, Closed Area I, and Closed Area II. The Preferred Alternative would create a positive economic impact for the participating ownership entities that include sector vessels because it would mitigate the impacts from restrictive management measures implemented under NE Multispecies FMP. Few quantitative data on the precise economic impacts to individual ownership entities are available. The *2011 Final Report on the Performance of the Northeast Multispecies (NE multispecies) Fishery (May 2010–April 2011)* (copies are available from NMFS, see **ADDRESSES**) documents that all measures of gross nominal revenue per trip and per day absent in 2011 were higher for the average sector vessel than in 2010, and lower for the average common pool vessel than in 2010, except for average revenue per day on a groundfish trip for vessels under 30 ft (9.14 m) in length and for vessels 75 ft

(22.86 m) and above. However, the report stipulates that this comparison is not useful for evaluating the relative performance of DAS and sector-based management because of fundamental differences between these groups of vessels, which were not accounted for in the analyses. Accordingly, quantitative analysis of the impacts of sector operations plans is still limited. NMFS anticipates that by switching from effort controls of the common pool regime to operating under a sector ACE, sector members will have a greater opportunity to remain economically viable while adjusting to changing economic and fishing conditions. Thus, the proposed action provides benefits to sector members that they would not have under the No Action Alternative.

### **Economic Impacts on Small Entities Resulting From Proposed Action**

The environmental impact statement for Amendment 16 compares economic impacts of sector vessels with common pool vessels and analyzes costs and benefits of the universal exemptions. The final rules for the approval of sector operations plans and contracts for fishing years 2010–2013 (75 FR 18113, April 9, 2010; 75 FR 80720, December 23, 2010; 76 FR 23076, April 25, 2011; 77 FR 26129, May 2, 2012; 78 FR 25591, May 2, 2013) and their accompanying EAs discussed the economic impacts of the exemptions requested by sectors in those years.

The EA prepared for this rule evaluates the impacts of each closed area alternative individually relative to the no-action alternative (i.e., no sectors are approved), and the alternatives may be approved or disapproved individually or as a group. The impacts associated with the implementation of each of the exemptions proposed in this rule are analyzed as if each exemption would be implemented for all sectors. The EA analyses includes all sectors because all sectors can request the exemption. Sectors can also add approved exemptions to the operations plans at any point during the fishing year. Further, attempting to limit the analyses to a specific number of sectors would be incorrect because any sector(s) could lease in all the remaining allocation and fish for that allocation under the exemption. Therefore, it is important to analyze the impacts as if the entire allocation could be harvested under the exemption. However, each exemption will only be implemented for the sector(s) that requested that exemption.

Approval of this rule, as proposed, would provide greater operational flexibility and increased fishing

opportunities to sector vessels. Increased “operational flexibility” generally has positive impacts on human communities as sectors and their associated exemptions grant fishermen some measure of increased operational flexibility. By removing the limitations on vessel effort (amount of gear used, number of days declared out of fishery, trip limits and area closures), sectors help create a more simplified regulatory environment. This simplified regulatory environment grants fishers greater control over how, when, and where they fish, without working under increasingly complex fishing regulations with higher risk of inadvertently violating one of the many regulations. The increased control granted by the sectors and their associated exemptions may also allow fishermen to maximize the ex-vessel price of landings by timing them based on market prices and conditions. Generally, increased operational flexibility can result in reduced costs and/or increased revenues. All exemptions contained in the proposed fishing year 2013 sector operations plans are expected to generate positive social and economic effects for sector members and ports. In general, profits can be increased by increasing revenues or decreasing costs. Similarly, profits decrease when revenues decline or costs rise. The intent of this action is to allow fishermen to increase their revenues by increasing their catch, which would increase their revenue. Also, fishermen may potentially increase their catch per unit effort, which would also decrease their costs.

It is anticipated that any economic impacts on offshore lobster vessels would be negligible. Analyses in the accompanying EA indicates that very little lobster fishing occurs in the Closed Area II Exemption Area when lobster vessels would be prohibited from entering the area. In addition, the offshore lobster industry voluntarily signed a gear-use agreement with several groundfish sectors agreeing not to fish in the area during certain seasons. It is unlikely that the offshore lobster industry would have voluntarily entered an agreement that resulted in greatly disproportionate impacts. This rule incorporates that agreement in an effort to minimize any economic impacts on lobster vessels.

**List of Subjects in 50 CFR Part 697**

Fisheries, fishing.

Dated: July 8, 2013.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, performing the functions and duties of the Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 697 is proposed to be amended as follows:

**PART 697—ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT**

■ 1. The authority citation for part 697 continues to read as follows:

**Authority:** 16 U.S.C. 5101 *et seq.*

■ 2. In § 697.7, add paragraph (c)(1)(xxxi) to read as follows:

**§ 697.7 Prohibitions.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(xxxi) *Closed Area II Exemption Area seasonal closure.* The Federal waters in a portion of Northeast Multispecies Closed Area II, referred to as the Closed Area II Exemption Area, shall be defined by straight lines connecting the following points in the order stated section here:

**CLOSED AREA II EXEMPTION AREA**

Point	N. lat.	W. long.
A .....	41°50'	67°20'
B .....	41°50'	67°10'
C .....	42°00'	67°10'
D .....	42°00'	<sup>1</sup> (67°00.5')
E <sup>2</sup> .....	41°30'	<sup>1</sup> (66°34.8')
F .....	41°30'	67°20'
A .....	41°50'	67°20'

<sup>1</sup>The U.S.-Canada Maritime Boundary, approximate longitude in parentheses.

<sup>2</sup>Points D and E are connected along the U.S.-Canada maritime boundary.

(A) *Seasonal closure.* Federal lobster permit holders fishing with traps from May 1 through June 15 and from November 1 through December 31 in NE multispecies fishing years 2013 and 2014. During this closure, Federally permitted trap fishers are prohibited from possessing or landing lobster taken from the Closed Area II Exemption Area.

(B) All lobster traps must be removed from Closed Area II Exemption Area waters before the start of the seasonal closure and may not be re-deployed into Closed Area II Exemption Area waters until after the seasonal closure ends.

Federal trap fishers are prohibited from setting, hauling, storing, abandoning or in any way leaving their traps in Closed Area II Exemption Area waters during the seasonal closure of this section. Federal lobster permit holders are prohibited from possessing or carrying lobster traps aboard a vessel in Closed Area II Exemption Area waters during the seasonal closure unless the vessel is transiting through the area pursuant to paragraph (c)(1)(xxxi)(E) of this section.

(C) The seasonal closure relates only to the Closed Area II Exemption Area. The restrictive provisions of §§ 697.3 and 697.4(a)(7)(v) do not apply to this closure. Federal lobster permit holders with an Area 3 designation and another Lobster Management Area designation on their Federal lobster permit would not have to similarly remove their lobster gear from the other designated management areas. This restriction does not apply to Federal non-trap lobster permit holders.

(D) The Regional Administrator may exempt Federal lobster permit holders from these closure provisions if no NE multispecies sector has been granted access into the Closed Area II Exemption Area. If the Regional Administrator decides to exempt Federal lobster permit holders from the seasonal closure, then the Regional Administrator must file notice of the exemption in the **Federal Register** setting forth the dates during which the exemption applies.

(E) *Transiting Closed Area II Exemption Area.* Federal lobster permit holders may possess lobster traps on their vessel in the Closed Area II Exemption Area during the seasonal closure only if:

(1) The trap gear is stowed; and

(2) The vessel is transiting the Closed Area II Exemption Area. For the purposes of this section, transiting shall mean passing through the Closed Area II Exemption Area without stopping to reach a destination outside the Closed Area II Exemption Area.

(F) The Regional Administrator may authorize a permit holder or vessel owner to haul ashore lobster traps from the Closed Area II Exemption Area during the seasonal closure without having to engage in the exempted fishing process in § 697.22 if the permit holder or vessel owner can establish the following:

(1) That the lobster traps were not able to be hauled ashore before the seasonal closure due to incapacity, vessel/mechanical inoperability, and/or poor weather; and

(2) That all lobsters caught in the subject traps will be immediately returned to the sea.

(3) The Regional Administrator may condition this authorization as

appropriate in order to maintain the overall integrity of the closure.

\* \* \* \* \*

[FR Doc. 2013-16644 Filed 7-10-13; 8:45 am]

**BILLING CODE 3510-22-P**

# Notices

Federal Register

Vol. 78, No. 133

Thursday, July 11, 2013

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

July 8, 2013.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), [OIRA\\_Submission@OMB.EOP.GOV](mailto:OIRA_Submission@OMB.EOP.GOV) or fax (202) 395-5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250-7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720-8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to

the collection of information unless it displays a currently valid OMB control number.

### Food and Nutrition Service

*Title:* Direct Certification and Certification of Homeless, Migrant and Runaway Children for Free School Meals.

*OMB Control Number:* 0584—New.  
*Summary of Collection:* The Richard B. Russell National School Lunch Act (NSLA), as amended, authorizes the National School Lunch Program (NSLP). Section 104 of the Child Nutrition and WIC Reauthorization Act of 2004 added section 9(b)(4) to the NSLA (42 U.S.C. 1758(b)(4)) to require local education agencies to directly certify, without further application, any child who is a member of a household receiving Supplemental Nutrition Assistance Program (SNAP) benefits and also the certification of certain children who are homeless, runaway, or migratory.

*Need and Use of the Information:* The purpose of this data collection associated with rulemaking is to comply with the requirements of Section 104 of Public Law 108-265 for State agencies and local educational agencies. The intent is to improve school meal program access for low-income children, reduce paperwork for households and program administrators, and improve the integrity of the free and reduced price meal certification process.

*Description of Respondents:* State, Local, or Tribal Government.

*Number of Respondents:* 20,858.

*Frequency of Responses:* Recordkeeping; Reporting: On occasion.

*Total Burden Hours:* 52,145.

**Ruth Brown,**

Departmental Information Collection Clearance Officer.

[FR Doc. 2013-16649 Filed 7-10-13; 8:45 am]

**BILLING CODE 3410-30-P**

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

July 8, 2013.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments regarding (a) Whether the collection of

information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725—17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to:

*OIRA\_Submission@omb.eop.gov* or fax (202) 395-5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250-7602. Comments regarding these information collections are best assured of having their full effect if received by August 12, 2013. Copies of the submission(s) may be obtained by calling (202) 720-8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

### Rural Business Cooperative Service

*Title:* Rural Cooperative Development Grants—7 CFR 4284-F.

*OMB Control Number:* 0570-0006.  
*Summary of Collection:* The Rural Cooperative Development Grants (RCDG) program is administered through State Rural Development Offices on behalf of the Rural Business Cooperative Service (RBS). The primary objective of the program is to improve the economic condition of rural areas through cooperative development. Grant funds are awarded on a competitive basis using a scoring system that gives preference to applications that

demonstrate a proven track record. The applicants, who are non-profit corporations or institutions of higher education, will provide information using various forms and supporting documentation.

*Need and Use of the Information:* RBS will use the information collected to evaluate the applicant's ability to carry out the purposes of the program. If this information were not collected, RBS would have no basis on which to evaluate the relative merit of each application.

*Description of Respondents:* Not for profit institutions.

*Number of Respondents:* 73.

*Frequency of Responses:* Record keeping; Reporting: On occasion.

*Total Burden Hours:* 7,838.

**Charlene Parker,**

Departmental Information Collection  
Clearance Officer.

[FR Doc. 2013-16651 Filed 7-10-13; 8:45 am]

**BILLING CODE 3410-XY-P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Nez Perce-Clearwater National Forests; Idaho; Notice To Proceed With Forest Plan Revision

**AGENCY:** Forest Service, Northern Region, Nez Perce-Clearwater National Forests, USDA.

**ACTION:** Notice of initiating the development of a proposed forest plan revision for the Nez Perce-Clearwater National Forests.

**SUMMARY:** The Department of Agriculture (USDA), Forest Service, Northern Region, Nez Perce-Clearwater National Forests have initiated revision of their forest plan pursuant to the 2012 Forest Planning Rule. This process will ultimately result in a Forest Land Management Plan which describes the strategic direction for management of forest resources for the next ten to fifteen years on these National Forests (NFs). The first two phases of the process—preparing an assessment and developing a proposed action for plan revision—have begun. The 2012 Planning Rule requires the Forest Service to notify interested parties of development of a proposed plan or plan revision (36 CFR 219.16(a)(1)). This notice meets that requirement. The public may comment on the draft assessment and draft proposed action (draft plan components) through the plan revision Web site at [www.fs.usda.gov/main/](http://www.fs.usda.gov/main/)

[nezperceclearwater/landmanagement/planning](http://www.fs.usda.gov/main/nezperceclearwater/landmanagement/planning).

**DATES:** The refined assessment will be available for public input in October 2013. A proposed action, which will be in the format of a plan (including plan components), is expected to be available for public comment in January 2014. A Notice of Intent will be published in the **Federal Register** pursuant to NEPA at that time. The Draft Environmental Impact Statement (EIS) is anticipated to be available for public review and comment in early 2015 with the Final EIS being available late 2015.

**ADDRESSES:** Information, including the draft assessment and draft forest plan components (proposed action), is available on the Nez Perce-Clearwater NFs' Web site at: <http://www.fs.usda.gov/main/nezperceclearwater/landmanagement/planning>. The Web site has a link to a Collaborative Mapping Web site for site based input. Comments can also be sent via email to [fpr\\_npclw@fs.fed.us](mailto:fpr_npclw@fs.fed.us). Comments are welcome at anytime but comments received prior to August 1, 2013 will be considered in the refined assessment and proposed action.

**FOR FURTHER INFORMATION CONTACT:**

Joyce Thompson, Forest Planning and Public Affairs Staff, (208) 935-4273, email: [fpr\\_npclw@fs.fed.us](mailto:fpr_npclw@fs.fed.us).

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The National Forest Management Act (NFMA) of 1976 requires that every National Forest System unit develop a land management plan. On April 9, 2012, the Forest Service finalized its land management planning rule (2012 Planning Rule) which implements the NFMA. Forest Plans describe the strategic direction for management of forest resources for ten to fifteen years and are adaptive and amendable as conditions change over time.

Under the 2012 Planning Rule, the assessment of ecological, social, and economic trends and conditions is the first phase of the planning process. Only informal public input is required at this stage (36 CFR 219.16(c)(6)).

The second phase is development of a proposed plan which ultimately includes analysis and a Record of Decision in compliance with the National Environmental Policy Act (NEPA).

The Forest Plan Revision process started on the Nez Perce and Clearwater National Forests in April 2012. An

interdisciplinary team was assigned and began working on development of the Forest Plan Assessment.

The Forest worked with University of Idaho staff to develop a strategy on how to engage the public in the Forest Plan Revision process through a collaborative framework and open, transparent process. Five public orientation meetings, cohosted by County Commissioners and facilitated by University of Idaho staff, were held in Grangeville, Orofino, Moscow, and Lewiston, ID and Lolo, MT to:

1. Inform the interested public on our intent to initiate Forest Plan Revision efforts
2. Solicit input on how the Forests could allow for an open, transparent and inclusive public participation process
3. Identify interested members of the public

Interested members of the public participated in a two-day Forest Planning Summit held Oct. 13-14, 2012 in Orofino, ID. The Forest worked with University of Idaho staff to design and facilitate the Summit. The Summit was also cohosted with County Commissioners representing the five counties in which the Nez Perce-Clearwater NFs lay. During the Summit, participants were asked how they wanted to participate in Forest Plan Revision, to what extent they could participate and how they would work together during collaborative participation. A core group of 60-70 interested parties/members of the public identified a process for collaborating with the Nez Perce-Clearwater NFs.

The Summit initiated a process where interested parties/members of the public met monthly in a collaborative learning environment to provide input to the Forest Supervisor and Forest Interdisciplinary Team. The locations of meetings rotated between Grangeville and Orofino, ID with two satellite locations in Missoula, MT and Boise, ID participating via video teleconference. The first meeting occurred in November 2012 in Grangeville, ID with seven subsequent meetings. The Forests will not hold meetings during the summer of 2013 while they review and compile input and perform preliminary analysis. Public collaboration meetings will continue in October 2013.

E-collaboration tools were developed so all interested members of the public could provide input into Forest Plan Revision efforts, not just those individuals who physically participated in collaborative meetings. Public input, whether received through collaborative meetings, e-collaboration or other forms,

will be on-going throughout the Forest Plan Revision process. All public input received during collaborative meetings was recorded and will be considered within the final decision, along with input received via e-collaboration and other forms.

The Interdisciplinary Team's refinement of the Forest Plan Assessment is expected to be available to the public in October 2013; however, public input will be accepted and consequently included into the Assessment until the Record of Decision is signed. A detailed proposed action will be available for public comment in January 2014, at which time a Notice of Intent to Prepare an Environmental Impact Statement will be published in the **Federal Register**.

Dated: June 27, 2013.

**Rick Brazell,**

*Forest Supervisor.*

[FR Doc. 2013-16633 Filed 7-10-13; 8:45 am]

**BILLING CODE 3410-11-P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### **Notice of Proposed New Fee Sites; Federal Lands Recreation Enhancement Act, (Title VIII, Pub. L. 108-447)**

**AGENCY:** Salmon-Challis National Forest, Forest Service, USDA.

**ACTION:** Notice New Fee Sites.

**SUMMARY:** The Salmon-Challis National Forest is proposing to begin charging fees at three recreation sites. All sites have recently been reconstructed or amenities have been added to improve services and experiences. Fees are assessed based on the level of amenities and services provided, cost of operation and maintenance, market assessment, and public comment. Funds from fees would be used for the continued operation and maintenance of these recreation sites.

Two campgrounds on the Challis-Yankee Fork Ranger District, Custer #1 and Flat Rock Extension Campground received extensive rehabilitation in 2007 and are conveniently located near the Historic Custer Townsite and the Yankee Fork of the Salmon River. The funds collected will be used for the continued operation and maintenance of these popular campgrounds. The proposed fee would be \$5.00 per night.

Twin Creek Picnic Area is currently a fee free site, however improvements made in 2008 and 2009 included new toilet facilities and a rehabilitated

drinking water system and addressed sanitation and safety concerns, an overall improvement to the recreation experience. The proposed fee to help maintain this site would be \$20.00 per day to reserve and use the large group picnic site which features the historic CCC-era picnic shelter, parking, drinking water, group fire place and horseshoe pits.

**DATES:** Send any comments about these fee proposals by September 2013 so comments can be compiled, analyzed and shared with a Recreation Resource Advisory Committee. New fees would begin after May 2014.

**ADDRESSES:** Chuck Mark, Forest Supervisor, Salmon-Challis National Forest, 1206 South Challis Street, Salmon, Idaho 83467.

**FOR FURTHER INFORMATION CONTACT:**

Trish Callaghan, Recreation Program Coordinator, (208) 756-5115 or email at [scnf\\_fee\\_comments@fs.fed.us](mailto:scnf_fee_comments@fs.fed.us). Information about proposed fee changes can also be found on the Salmon-Challis National Forest Web site: <http://www.fs.usda.gov/main/scnf/passes-permits/recreation>.

**SUPPLEMENTARY INFORMATION:** The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108-447) directed the Secretary of Agriculture to publish a six month advance notice in the **Federal Register** whenever new recreation fee areas are established. Once public involvement is complete, these new fees will be reviewed by a Recreation Resource Advisory Committee prior to a final decision and implementation.

Dated: June 5, 2013.

**Charles A. Mark,**

*Forest Supervisor.*

[FR Doc. 2013-16598 Filed 7-10-13; 8:45 am]

**BILLING CODE 3410-11-M**

## DEPARTMENT OF COMMERCE

#### **Submission for OMB Review; Comment Request**

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**Agency:** National Oceanic and Atmospheric Administration (NOAA).

**Title:** NOAA Teacher At Sea Program.

**OMB Control Number:** 0648-0283.

**Form Number(s):** NA.

**Type of Request:** Regular submission (extension of a current information collection).

**Number of Respondents:** 375.

**Average Hours per Response:**

Applications, 1 hour; recommendations and NOAA Health Services Questionnaire, 15 minutes each; follow-up reports, 2 hours.

**Burden Hours:** 289.

**Needs and Uses:** This request is for extension of a current information collection.

NOAA provides educators an opportunity to gain first-hand experience with field research activities through the NOAA Teacher at Sea Program. Educators spend up to four weeks at sea on a NOAA research vessel, participating in an on-going research project with NOAA scientists. The application solicits information from interested educators: Basic personal information, teaching experience and ideas for applying program experience in their classrooms, plus two recommendations and a NOAA Health Services Questionnaire required of anyone selected to participate in the program. Once educators are selected and participate on a cruise, they write a report detailing the events of the cruise and ideas for classroom activities based on what they learned while at sea. These materials are then made available to other educators so they may benefit from the experience.

**Affected Public:** Individuals or households.

**Frequency:** One time.

**Respondent's Obligation:** Required to obtain or retain benefits.

**OMB Desk Officer:**

**OIRA\_Submission@omb.eop.gov.**

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482-0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at [JJessup@doc.gov](mailto:JJessup@doc.gov)).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov).

Dated: July 5, 2013.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2013-16609 Filed 7-10-13; 8:45 am]

**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE****Submission for OMB Review;  
Comment Request**

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* National Oceanic and Atmospheric Administration (NOAA).  
*Title:* Alaska Crab Rationalization Program Cooperative Report.

*OMB Control Number:* None.

*Form Number(s):* NA.

*Type of Request:* Regular submission (request for a new information collection).

*Number of Respondents:* 10.

*Average Hours per Response:* 10 hours.

*Burden Hours:* 100.

*Needs and Uses:* This request is for a new information collection.

The North Pacific Fisheries Management Council (Council) passed a motion in February 2013 requesting that each cooperative in the Crab Rationalization Program voluntarily provide an annual report to the Council to report on the measures that the cooperative is taking to:

(1) Increase the transfer of quota share to active participants and crew members; and (2) lower currently high lease rates and to increase currently low crew compensation. The annual report should describe the effectiveness of the measures implemented through the cooperatives and the estimated level of member participation in any voluntary measures, and should include supporting information and data. These reports are to be provided to the Council at its October 2013 meeting and every October meeting thereafter.

*Affected Public:* Business or other for-profit organizations.

*Frequency:* Annually.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:*

*OIRA\_Submission@omb.eop.gov.*

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482-0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *Jjessup@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to

*OIRA\_Submission@omb.eop.gov.*

Dated: July 5, 2013.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2013-16608 Filed 7-10-13; 8:45 am]

**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE****Submission for OMB Review;  
Comment Request**

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* National Oceanic and Atmospheric Administration (NOAA).

*Title:* Southeast Region Logbook

*Family of Forms.*

*OMB Control Number:* 0648-0016.

*Form Number(s):* NA.

*Type of Request:* Regular submission (revision and extension of a current information collection).

*Number of Respondents:* 4,161.

*Average Hours per Response:* Logbook reports, 10 minutes, except for live rock, 15 minutes and Colombian waters, 18 minutes; no-fishing responses, 2 minutes; discard reports, 15 minutes; annual fixed cost survey, 30 minutes.

*Burden Hours:* 15,946.

*Needs and Uses:* This request is for revision and extension of a current information collection.

Participants in most Federally-managed fisheries in the Southeast Region are currently required to keep and submit catch and effort logbooks from their fishing trips. A subset of these vessels also provide information on the species and quantities of fish, shellfish, marine turtles, and marine mammals that are caught and discarded or have interacted with the vessel's fishing gear. A subset of these vessels also provide information about dockside prices, trip operating costs, and annual fixed costs.

The data are used for scientific analyses that support critical conservation and management decisions made by national and international fishery management organizations. Interaction reports are needed for fishery management planning and to help protect endangered species and marine mammals. Price and cost data will be used in analyses of the economic effects of proposed regulations.

*Revision:* Logbooks for charter vessels, a new requirement in 2010, were never implemented.

*Affected Public:* Business or other for-profit organizations.

*Frequency:* Annually and per vessel trip.

*Respondent's Obligation:* Mandatory.

*OMB Desk Officer:*

*OIRA\_Submission@omb.eop.gov.*

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482-0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *Jjessup@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to

*OIRA\_Submission@omb.eop.gov.*

Dated: July 5, 2013.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2013-16610 Filed 7-10-13; 8:45 am]

**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE****International Trade Administration**

**[A-570-928]**

**Uncovered Innerspring Units From the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**Preliminary Determination**

The Department has preliminarily determined that uncovered innerspring units ("innersprings units") completed and assembled in Malaysia by Reztec Industries Sdn Bhd ("Reztec") using components from the People's Republic of China ("PRC"), and exported to the United States, are circumventing the antidumping duty order on innersprings from the PRC, as provided in section 781(b) of the Tariff Act of 1930, as amended ("the Act").<sup>1</sup>

**DATES:** *Effective Date:* July 11, 2013.

**FOR FURTHER INFORMATION CONTACT:** Susan Pulongbarit or Steven Hampton, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202)

<sup>1</sup> See *Uncovered Innerspring Units from the People's Republic of China: Notice of Antidumping Duty Order*, 74 FR 7661 (February 19, 2009) ("Order").

482-4031 or (202) 482-0116, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Scope of the Antidumping Duty Order

The merchandise subject to the order is uncovered innerspring units.<sup>2</sup> The product is currently classified under subheading 9404.29.9010 and has also been classified under subheadings 9404.10.0000, 7326.20.0070, 7320.20.5010, 7320.90.5010, or 7326.20.0071 of the Harmonized Tariff Schedule of the United States (“HTSUS”). The HTSUS subheadings are provided for convenience and customs purposes only; the written product description of the scope of the order is dispositive.<sup>3</sup>

##### Scope of the Anticircumvention Inquiry

The products covered by this inquiry are innerspring units, as described above, that are manufactured in Malaysia by Reztex with PRC-origin components and other direct materials, such as helical wires, and that are subsequently exported from Malaysia to the United States.

##### Methodology

The Department has conducted this preliminary determination of circumvention in accordance with section 781(b) of the Act and 19 CFR 351.225(h). For a full description of the methodology underlying our conclusions, see the Preliminary Decision Memorandum. The Preliminary Decision Memorandum can be accessed directly on the internet at <http://www.trade.gov/ia/> and is on file electronically via Import Administration’s Antidumping and Countervailing Duty Centralized Electronic Service System (“IA ACCESS”). IA ACCESS is available to registered users at <http://iaaccess.trade.gov> and in the Central Records Unit, Room 7046 of the main Department of Commerce building. The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content. The Preliminary Decision Memorandum is hereby adopted by this notice.

<sup>2</sup> See Memorandum to Paul Piquado, Assistant Secretary for Import Administration, from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, entitled “Anticircumvention Inquiry Regarding the Antidumping Duty Order on Uncovered Innerspring Units from the People’s Republic of China: Preliminary Determination Decision Memorandum for Reztex Industries Sdn Bhd” which is dated concurrently with this notice (“Preliminary Decision Memorandum”) for a complete description of the scope of the Order.

<sup>3</sup> See Order, 74 FR at 7661.

##### Preliminary Findings

As detailed in the Preliminary Decision Memorandum, the Department has preliminarily determined, using partial adverse facts available, that innerspring units completed and assembled in Malaysia by Reztex using components from the PRC and exported from Malaysia to the United States are circumventing the Order. Moreover, because Reztex cannot distinguish between those innerspring units it is exporting to the United States which contain PRC-origin components and those that do not, the Department has preliminarily determined that it is appropriate to instruct U.S. Customs and Border Protection (“CBP”) to suspend liquidation of all entries of innerspring units from Malaysia produced by Reztex as subject to the Order.<sup>4</sup>

##### Suspension of Liquidation

In accordance with 19 CFR 351.225(l)(2), the Department will direct CBP to suspend liquidation and to require a cash deposit of estimated duties at the rate applicable to the exporter, on all unliquidated entries of innerspring units produced by Reztex that were entered, or withdrawn from warehouse, for consumption on or after May 23, 2012, the date of initiation of the anticircumvention inquiry.<sup>5</sup>

Should the Department conduct an administrative review in the future, and determine in the context of that review that Reztex did not produce for export innerspring units using PRC-origin innerspring components, the Department will consider initiating a changed circumstances review pursuant to section 751(b) of the Act to determine if the continued suspension of all innerspring units produced by Reztex is warranted.<sup>6</sup>

##### Notification to the International Trade Commission

The Department, consistent with section 781(e) of the Act and 19 CFR 351.225(f)(7)(i)(B), has notified the International Trade Commission (“ITC”) of this preliminary determination to include the merchandise subject to this anticircumvention inquiry within the Order. Pursuant to section 781(e) of the Act, the ITC may request consultations concerning the Department’s proposed inclusion of the subject merchandise. If, after consultations, the ITC believes that

<sup>4</sup> See Preliminary Decision Memorandum, at 15.

<sup>5</sup> *Id.*, at 16.

<sup>6</sup> See, e.g., *Certain Tissue Paper Products From the People’s Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 76 FR 47554 (August 5, 2011).

a significant injury issue is presented by the proposed inclusion, it will have 15 days to provide written advice to the Department.

##### Public Comment

Because the Department may seek additional information, the Department will establish the case and rebuttal brief schedule at a later time and will notify parties of the briefing schedule in accordance with 19 CFR 351.309(b). Case and rebuttal briefs, when submitted, must comport with the requirements contained in 19 CFR 351.309(c)(2) and (d)(2).

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, filed electronically via IA ACCESS. An electronically filed document must be received successfully in its entirety by the Department’s electronic records system, IA ACCESS, by 5 p.m. Eastern Standard Time within 30 days after the date of publication of this notice.<sup>7</sup> Requests should contain: (1) The party’s name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs.

##### Final Determination

The final determination with respect to this anticircumvention inquiry, including the results of the Department’s analysis of any written comments, will be issued no later than August 16, 2013, unless extended.

This preliminary affirmative circumvention determination is published in accordance with section 781(b) of the Act and 19 CFR 351.225.

Dated: July 2, 2013.

**Paul Piquado,**

*Assistant Secretary for Import Administration.*

[FR Doc. 2013-16674 Filed 7-10-13; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF EDUCATION

[Docket No. ED-2013-ICCD-0090]

### Agency Information Collection Activities; Comment Request; Implementation of Title I/II Program Initiatives

**AGENCY:** Institute of Educational Sciences (IES), Department of Education (ED).

<sup>7</sup> See 19 CFR 351.310(c).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is: a new information collection.

**DATES:** Interested persons are invited to submit comments on or before September 9, 2013.

**ADDRESSES:** Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting Docket ID number ED-2013-ICCD-0090 or via postal mail, commercial delivery, or hand delivery. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E105, Washington, DC 20202-4537.

**FOR FURTHER INFORMATION CONTACT:** Electronically mail [ICDocketMgr@ed.gov](mailto:ICDocketMgr@ed.gov). Please do not send comments here.

**SUPPLEMENTARY INFORMATION:** The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

*Title of Collection:* Implementation of Title I/II Program Initiatives.

*OMB Control Number:* 1850-New.

*Type of Review:* A new information collection.

*Respondents/Affected Public:* State, Local or Tribal Governments.

*Total Estimated Number of Annual Responses:* 12,231.

*Total Estimated Number of Annual Burden Hours:* 6,573.

*Abstract:*

The Implementation of Title I/II Program Initiatives study will examine the implementation of policies promoted through the Elementary and Secondary Education Act (ESEA) at the state, district and school levels, in four core areas: state content standards, aligned assessments, accountability and school turnaround, and development of effective teachers and leaders.

The purpose of this new data collection is to provide policy makers with detailed information on the progress being made on the core policies promoted by Title I and Title II, and the recent granting of ESEA Flexibility to states. Although other research studies cover similar topics on recent federal education policy, the breadth of research questions and the depth of responses from all SEAs and three levels of nationally representative samples, sets the Title I/II study apart from other studies.

This study will rely on information collected from existing sources, for which there are no respondents or burden and on a new set of surveys in order to address the study's research questions. Extant data sources include (a) The National Assessment of Educational Progress (NAEP); (b) EDFacts data; (c) information about teacher preparation and certification programs and policies; and (d) state documents.

The new surveys of states and districts will begin in November 2013 and the surveys of schools (principals) and teachers will begin in January 2014. All respondents will have the opportunity to complete an electronic (email or web-based) survey (or paper survey, if preferred).

Dated: July 3, 2013.

**Stephanie Valentine,**

*Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.*

[FR Doc. 2013-16527 Filed 7-10-13; 8:45 am]

**BILLING CODE 4000-01-P**

## DEPARTMENT OF EDUCATION

### Applications for New Awards; Education Facilities Clearinghouse Program

**AGENCY:** Office of Elementary and Secondary Education, Department of Education.

**ACTION:** Notice.

*Overview Information:* Education Facilities Clearinghouse Program.

Notice inviting applications for new awards for fiscal year (FY) 2013.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.215T.

**DATES:**

*Applications Available:* July 11, 2013.

*Deadline for Transmittal of Applications:* August 12, 2013.

### Full Text of Announcement

#### I. Funding Opportunity Description

*Purpose of Program:* The purpose of the Education Facilities Clearinghouse program is to provide technical assistance and training on the planning, design, financing, procurement, construction, improvement, operation, and maintenance of safe, healthy, and high-performing elementary and secondary education facilities.

*Priority:* This competition has one priority. This priority is from the notice of final priority and requirements for this program, published elsewhere in this issue of the **Federal Register**.

*Absolute Priority:* For FY 2013 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is: *Establishment of the Clearinghouse.*

Establish a Clearinghouse to collect and disseminate research and other information on effective practices regarding the planning, design, financing, procurement, construction, improvement, operation, and maintenance of safe, healthy, and high-performing facilities for elementary and secondary schools in order to—

(a) Help education stakeholders increase their use of education facilities to turn around low-performing schools and close academic achievement gaps;

(b) Increase understanding of how education facilities affect community health and safety and student achievement;

(c) Identify potential cost-saving opportunities through procurement, energy efficiency, and preventative maintenance;

(d) Increase the use of education facilities and outdoor spaces such as

instructional tools and community centers (e.g., outdoor classrooms, school gardens, school-based health centers); and

(e) Increase capacity to identify hazards and conduct vulnerability assessments, and, through facility design, increase safety against hazards, natural disasters, and intruders.

**Requirements:** The following requirements, which are from the notice of final priority and requirements, published elsewhere in this issue of the **Federal Register**, apply to this competition:

**Requirement 1—Establish and Maintain a Web site.**

An applicant must include in its application a plan to establish and maintain a dedicated, easily-accessible Web site that will include electronic resources (e.g., links to published articles and research) about the planning, design, financing, procurement, construction, improvement, operation, and maintenance of safe, healthy, and high-performing facilities for elementary and secondary schools. The Web site must be established within 120 days of receipt of the award and must be maintained for the duration of the project.

**Requirement 2—Track and Compile Best Practices and Develop Resource Materials.**

An applicant must include in its application a plan to track and compile best practices at the State, local educational agency (LEA), and school levels and a plan to develop resources that support the planning, design, financing, procurement, construction, improvement, operation, and maintenance of safe, healthy, and high-performing facilities for elementary and secondary schools.

**Requirement 3—Training.**

An applicant must include in its application a plan to develop and conduct at least two training programs per year for individuals in leadership positions (such as business or operations managers) in elementary or secondary schools or LEAs, who are responsible for the construction and or maintenance of elementary and secondary education facilities. Training topics must include information on the planning, design, financing, procurement, construction, improvement, operation, and maintenance of education facilities in order to improve the capacity of elementary and secondary schools or LEAs to make quality decisions regarding safe, healthy, and high-performing elementary and secondary education facilities. Training must be

conducted upon request by the Department, elementary and secondary schools, States, or LEAs, and must be conducted by appropriate Clearinghouse staff or contractors.

**Requirement 4—Technical Assistance.**

An applicant must include in its application a plan to provide technical assistance, including a plan for providing on-site technical assistance to elementary schools, secondary schools, or LEAs, about issues related to the planning, design, financing, procurement, construction, improvement, operation, and maintenance of education facilities. The technical assistance may be provided in the form of electronic or telephone assistance when requested by these schools, LEAs, or the Department. On-site technical assistance visits will be conducted upon request by, or based on input from, the Department, elementary schools, secondary schools, or LEAs and must be completed using appropriate Clearinghouse staff or contractors. The Department must approve in advance all technical assistance visits.

The technical assistance must consist of consultation regarding the planning, design, financing, procurement, construction, improvement, operation, and maintenance of education facilities. Specific technical assistance topics may include information related to: assessing facilities and construction plans for energy efficiency; conducting vulnerability assessments; and developing written plans to retrofit education facilities to address identified hazards and security concerns. Technical assistance may also address low-cost measures that can be taken to enhance the safety and security of schools.

**Program Authority:** 20 U.S.C. 7131; 7243–7243b

**Applicable Regulations:** (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 86, 97, 98, and 99. (b) The Education Department suspension and debarment regulations in 2 CFR part 3485. (c) The regulations in 34 CFR part 299. (d) The notice of final priority and requirements published elsewhere in this issue of the **Federal Register**.

**Note:** The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

**Note:** The regulations in 34 CFR part 86 apply to institutions of higher education only.

## II. Award Information

**Type of Award:** Cooperative Agreement.

**Estimated Available Funds:** \$1,000,000.

**Estimated Number of Awards:** 1.

**Note:** The Department is not bound by any estimates in this notice.

**Project Period:** Up to 36 months.

## III. Eligibility Information

1. **Eligible Applicants:** (a) State or local educational agencies, institutions of higher education (IHEs), or other public or private agencies, organizations or institutions.

For the purposes of this competition, the term “institution of higher education” is defined in section 101(a) of the Higher Education Act of 1965, as amended by the Higher Education Opportunity Act of 2008, Public Law 110–315 as:

An educational institution of higher education in any State that:

(a) Admits as regular students only persons having a certificate of graduation from a school providing secondary education or the recognized equivalent of such a certificate or persons who meet the requirements of section 484(d)(3) of the Higher Education Act of 1965, as amended;

(b) Is legally authorized within such State to provide a program of education beyond secondary education;

(c) Provides an educational program for which the institution awards a bachelor’s degree or provides not less than a two-year program that is acceptable for full credit toward such a degree or awards a degree that is acceptable for admission to a graduate or professional degree program, subject to review and approval by the Secretary;

(d) Is a public or other nonprofit institution; and

(e) Is accredited by a nationally recognized accrediting agency or association or, if not so accredited, is an institution that has been granted preaccreditation status by such an agency or association that has been recognized by the Secretary for the granting of preaccreditation status, and the Secretary has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.

2. **Cost Sharing or Matching:** This competition does not require cost sharing or matching.

## IV. Application and Submission Information

1. **Address to Request Application Package:** Pat Rattler, U.S. Department of

Education, 400 Maryland Avenue SW., Room 3E254, Washington, DC 20202–6450. Telephone: (202) 453–6718. You can also obtain an application package via the Internet. To obtain a copy via internet, use the following address: [www.ed.gov/programs/edfacclearinghouse/applicant.html](http://www.ed.gov/programs/edfacclearinghouse/applicant.html).

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the program contact person listed in this section.

**2. Content and Form of Application Submission:** Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition. Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative to no more than 25 pages, using the following standards:

- A “page” is 8.5” x 11”, on one side only, with 1” margins at the top, bottom, and both sides.

- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of the application narrative section.

Our reviewers will not read any pages of your application that exceed the page limit.

**3. Submission Dates and Times:**  
*Applications Available:* July 11, 2013.  
*Deadline for Transmittal of Applications:* August 12, 2013.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application

electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. **7. Other Submission Requirements** of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual’s application remains subject to all other requirements and limitations in this notice.

**4. Intergovernmental Review:** This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. However, under 34 CFR 79.8(a), we waive intergovernmental review in order to make an award by the end of FY 2013.

**5. Funding Restrictions:** We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

**6. Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award Management:** To do business with the Department of Education, you must—

- a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

- b. Register both your DUNS number and TIN with the System for Award Management (SAM) (formerly the Central Contractor Registry (CCR)), the Government’s primary registrant database;

- c. Provide your DUNS number and TIN on your application; and

- d. Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a cooperative agreement, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The SAM registration process may take seven or more business days to complete. If you are currently registered with the SAM, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days to complete. Information about SAM is available at SAM.gov.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: [www.grants.gov/applicants/get\\_registered.jsp](http://www.grants.gov/applicants/get_registered.jsp).

**7. Other Submission Requirements:**

Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

**a. Electronic Submission of Applications.**

Applications for cooperative agreements under the Education Facilities Clearinghouse Program, CFDA number 84.215T, must be submitted electronically using the Governmentwide Grants.gov Apply site at [www.Grants.gov](http://www.Grants.gov). Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement*.

You may access the electronic grant application for the Education Facilities Clearinghouse Program at [www.Grants.gov](http://www.Grants.gov). You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number’s alpha suffix in your search (i.e., search for 84.215, not 84.215T).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.

- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at [www.G5.gov](http://www.G5.gov).

- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

- You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

- You must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document) read-only, non-

modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password-protected file, we will not review that material.

- Your electronic application must comply with any page-limit requirements described in this notice.

- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

- We may request that you provide us original signatures on forms at a later date.

*Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System:* If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1-800-518-4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a

determination is made on whether your application will be accepted.

**Note:** The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

*Exception to Electronic Submission Requirement:* You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or

- You do not have the capacity to upload large documents to the Grants.gov system; and

- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Pat Rattler, U.S. Department of Education, 400 Maryland Avenue SW., Room 3E254, Washington, DC 20202-6450. FAX: 202-453-6742.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.215T), LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202-4260. You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

**Note:** The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

#### c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.215T), 550 12th Street SW., Room 7041, Potomac Center Plaza, Washington, DC 20202-4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

**Note for Mail or Hand Delivery of Paper Applications:** If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245-6288.

#### V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.210 and are listed in the application package.

2. *Review and Selection Process:* We remind potential applicants that in

reviewing applications in any discretionary competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with award conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on an award if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior award; or is otherwise not responsible.

#### VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you an Award Notification document; or we may send you an email containing a link to access an electronic version of your Award Notification document. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the Award Notification document. The Award Notification document also incorporates your approved application as part of your binding commitments under the award.

3. *Reporting:* (a) If you apply for a cooperative agreement under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part

170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to [www.ed.gov/fund/grant/apply/appforms/appforms.html](http://www.ed.gov/fund/grant/apply/appforms/appforms.html).

4. *Performance Measures:* The Department has established the following Government Performance and Results Act of 1993 (GPRA) performance measure for the Education Facilities Clearinghouse Program: The percentage of recipients of Clearinghouse on-site training or technical assistance that implement one or more changes in improving their education facility based upon Clearinghouse recommendations within six months of the training or technical assistance.

If needed, upon award of the cooperative agreement, the Secretary will work with the grantee to refine or augment this measure.

This measure constitutes the Department's measure of success for this program. Consequently, applicants for a cooperative agreement under this competition are advised to give careful consideration to this measure in conceptualizing the approach and evaluation of their proposed project. If funded, the applicant will be asked to collect and report data in their performance and final reports about progress toward this measure.

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made "substantial progress toward meeting the objectives in its approved application." This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs

or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

## VII. Agency Contact

**FOR FURTHER INFORMATION CONTACT:** Pat Rattler, U.S. Department of Education, 400 Maryland Avenue SW., Room 3E254, Washington, DC 20202-6450. Telephone: 202-453-6718 or by email: [Pat.Rattler@ed.gov](mailto:Pat.Rattler@ed.gov).

If you use a TDD or a TTY, call the FRS, toll free, at 1-800-877-8339.

## VIII. Other Information

**Accessible Format:** Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotope, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

**Electronic Access to This Document:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys). At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: [www.federalregister.gov](http://www.federalregister.gov). Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: July 8, 2013.

**Deborah S. Delisle,**

*Assistant Secretary for Elementary and Secondary Education.*

[FR Doc. 2013-16667 Filed 7-10-13; 8:45 am]

BILLING CODE 4000-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings #2

Take notice that the Commission received the following electric corporate filings:

**Docket Numbers:** EC13-123-000.  
**Applicants:** Midland Cogeneration Venture Limited Partnership.  
**Description:** Application for Authorization Under Section 203 and

Request for Waivers, Confidential Treatment, Expedited Action and Shortened Comment Period of Midland Cogeneration Venture Limited Partnership under EC13-123.

**Filed Date:** 7/2/13.

**Accession Number:** 20130702-5115.

**Comments Due:** 5 p.m. ET 7/23/13.

Take notice that the Commission received the following electric rate filings:

**Docket Numbers:** ER10-1777-005; ER10-2983-004; ER10-2980-004.

**Applicants:** Sundevil Power Holdings, LLC, Castleton Energy Services, LLC, Castleton Power, LLC.

**Description:** Updated Market Power Analysis for the Southwest Region of the Wayzata Entities, et al.

**Filed Date:** 7/1/13.

**Accession Number:** 20130701-5391.

**Comments Due:** 5 p.m. ET 8/30/13.

**Docket Numbers:** ER10-1847-003; ER10-1856-003; ER10-1890-003; ER11-2160-003; ER10-1906-003; ER11-3635-004; ER10-1962-003; ER11-4677-004; ER12-2444-003; ER12-676-004; ER11-2192-005; ER10-1989-003; ER11-4678-004; ER10-1992-003; ER12-631-004; ER10-1971-011.

**Applicants:** Diablo Winds, LLC, FPL Energy Cabazon Wind, LLC, FPL Energy Green Power Wind, LLC, FPL Energy Montezuma Wind, LLC, FPL Energy New Mexico Wind, LLC, Hatch Solar Energy Center I, LLC, High Winds, LLC, NextEra Energy Montezuma II Wind, LLC, North Sky River Energy, LLC, Perrin Ranch Wind, LLC Sky River LLC, Vasco Winds, LLC, Victory Garden Phase IV, LLC Windpower Partners 1993, LLC, NextEra Energy Power Marketing, LLC.

**Description:** Triennial Market Power Update for the Southwest Region of NextEra Companies.

**Filed Date:** 7/1/13.

**Accession Number:** 20130701-5392.

**Comments Due:** 5 p.m. ET 8/30/13.

**Docket Numbers:** ER10-1942-008; ER10-2042-011; ER10-1941-004; ER11-3840-002; ER10-1938-006; ER10-1937-004; ER13-1407-001; ER10-1898-005; ER10-1934-005; ER10-1893-005; ER10-1888-004; ER10-1885-004; ER10-1884-004; ER10-1883-004; ER10-1878-004; ER10-1876-004; ER10-1875-004; ER10-1873-004; ER12-1987-002; ER10-1947-004; ER10-1864-004; ER10-1867-004; ER10-1862-005; ER12-2261-002; ER10-1865-004.

**Applicants:** Calpine Construction Finance Company, LP, Calpine Energy Services, L.P., Calpine Gilroy Cogen, L.P., Calpine Greenleaf, Inc, Calpine Power America—CA, LLC, Calpine Power America—OR, LLC, CCFC Sutter

Energy, LLC, CES Marketing V, L.P., CES Marketing X, LLC, CES Marketing IX, LLC, Creed Energy Center, LLC, Goose Haven Energy Center, LLC, Gilroy Energy Center, LLC, Los Medanos Energy Center, LLC, Metcalf Energy Center, LLC, Geysers Power Company LLC, Otay Mesa Energy Center, LLC, Pastoria Energy Center, LLC, PCF2, LLC, Delta Energy Center, LLC, O.L.S. Energy-Agnews, Inc., South Point Energy Center, LLC, Los Esteros Critical Energy Facility LLC, Power Contract Finance, LLC, Russell City Energy Company, LL.

**Description:** Updated Market Power Analysis for the Southwest Region of the Calpine Corporation subsidiaries.

**Filed Date:** 7/1/13.

**Accession Number:** 20130701-5395.

**Comments Due:** 5 p.m. ET 8/30/13.

**Docket Numbers:** ER10-3145-004; ER10-3147-004; ER13-442-001; ER10-3116-004; ER10-3120-004; ER11-2036-004; ER13-1544-001; ER10-3128-004; ER11-3131-001; ER13-1139-003; ER10-1800-004; ER10-3136-004; ER11-2701-006; ER10-1728-004; ER10-2491-004; ER97-2904-012; ER97-4222-003.

**Applicants:** AES Alamitos, LLC, AES Armenia Mountain Wind, LLC, AES Beaver Valley, LLC, AES Energy Storage, LLC, AES Huntington Beach, L.L.C., AES Laurel Mountain LLC, AES ES Tait, LLC, AES Redondo Beach, L.L.C., Condon Wind Power, LLC, Imperial Valley Solar 1, LLC, Indianapolis Power & Light Company, Mountain View Power Partners, LLC, The Dayton Power and Light Company, DPL Energy, LLC, Lake Benton Power Partners LLC, Storm Lake Power Partners II, LLC, Mountain View Power Partners IV, LLC.

**Description:** Triennial Market Power Update for the Southwest Region and Notice of Change in Status of AES MBR Affiliates.

**Filed Date:** 7/1/13.

**Accession Number:** 20130701-5393.

**Comments Due:** 5 p.m. ET 8/30/13.

**Docket Numbers:** ER13-1883-000.

**Applicants:** MP2 Energy NJ LLC.

**Description:** Compliance Filing to be effective 7/2/2013.

**Filed Date:** 7/2/13.

**Accession Number:** 20130702-5000.

**Comments Due:** 5 p.m. ET 7/23/13.

**Docket Numbers:** ER13-1884-000.

**Applicants:** MP2 Energy NE LLC.

**Description:** Compliance Filing to be effective 7/3/2013.

**Filed Date:** 7/2/13.

**Accession Number:** 20130702-5066.

**Comments Due:** 5 p.m. ET 7/23/13.

**Docket Numbers:** ER13-1885-000.

**Applicants:** Malacha Hydro Limited Partnership.

*Description:* Malacha Hydro Limited Partnership submits tariff filing per 35.12: First Revised Electric Rate Schedule No. 1 to be effective 7/3/2013.  
*Filed Date:* 7/2/13.

*Accession Number:* 20130702-5120.  
*Comments Due:* 5 p.m. ET 7/23/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: July 2, 2013.

**Nathaniel J. Davis, Sr.,**  
*Deputy Secretary.*

[FR Doc. 2013-16626 Filed 7-10-13; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC13-124-000.  
*Applicants:* Cogentrix of Alamosa, LLC.

*Description:* Application for Authorization for Disposition of Jurisdictional Facilities and Request for Expedited Action of Cogentrix of Alamosa, LLC.

*Filed Date:* 7/2/13.

*Accession Number:* 20130702-5225.  
*Comments Due:* 5 p.m. ET 7/23/13.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER13-1438-002.  
*Applicants:* Public Service Company of New Mexico.

*Description:* 2nd Revised SA 317 to be effective 6/1/2013.

*Filed Date:* 7/3/13.

*Accession Number:* 20130703-5054.  
*Comments Due:* 5 p.m. ET 7/24/13.

*Docket Numbers:* ER13-1646-001.

*Applicants:* Electron Hydro, LLC.

*Description:* Amendment to Application for Market-Based Rate Authority to be effective 6/7/2013.

*Filed Date:* 7/2/13.

*Accession Number:* 20130702-5176.

*Comments Due:* 5 p.m. ET 7/23/13.

*Docket Numbers:* ER13-1886-000.

*Applicants:* PJM Interconnection, L.L.C., Old Dominion Electric Cooperative.

*Description:* ODEC & PJM submit a NITSA designated as PJM SA 3594 to be effective 9/1/2013.

*Filed Date:* 7/2/13.

*Accession Number:* 20130702-5205.

*Comments Due:* 5 p.m. ET 7/23/13.

*Docket Numbers:* ER13-1887-000.

*Applicants:* Pennsylvania Electric Company, PJM Interconnection, L.L.C.

*Description:* FirstEnergy and Penelec submit PJM SA No. 3596 among Penelec, CEI and FE Gen to be effective 7/1/2013.

*Filed Date:* 7/2/13.

*Accession Number:* 20130702-5208.

*Comments Due:* 5 p.m. ET 7/23/13.

*Docket Numbers:* ER13-1888-000.

*Applicants:* MP2 Energy IL LLC.

*Description:* Compliance Filing to be effective 7/3/2013.

*Filed Date:* 7/3/13.

*Accession Number:* 20130703-5001.

*Comments Due:* 5 p.m. ET 7/24/13.

*Docket Numbers:* ER13-1889-000.

*Applicants:* Midcontinent

Independent System Operator, Inc.

*Description:* 07-03-2013 SA 2526 METC-Consumers GIA (J226-J231) to be effective 7/4/2013.

*Filed Date:* 7/3/13.

*Accession Number:* 20130703-5015.

*Comments Due:* 5 p.m. ET 7/24/13.

*Docket Numbers:* ER13-1890-000.

*Applicants:* Kentucky Utilities Company.

*Description:* ER07\_457 Big Rivers Elec Corp Interconnection to be effective 9/3/2013.

*Filed Date:* 7/3/13.

*Accession Number:* 20130703-5038.

*Comments Due:* 5 p.m. ET 7/24/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: July 3, 2013.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2013-16640 Filed 7-10-13; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER10-1484-008.  
*Applicants:* Shell Energy North America (US), L.P.

*Description:* Updated Market Power Analysis for the Southwest Region of Shell Energy North America (US), L.P.

*Filed Date:* 7/1/13.

*Accession Number:* 20130701-5384.

*Comments Due:* 5 p.m. ET 8/30/13.

*Docket Numbers:* ER10-1674-003.  
*Applicants:* Deseret Generation & Transmission Co-operative.

*Description:* Updated Market Power Analysis to be effective 7/1/2013.

*Filed Date:* 7/1/13.

*Accession Number:* 20130701-5306.

*Comments Due:* 5 p.m. ET 8/30/13.

*Docket Numbers:* ER10-2474-004;  
ER10-2475-004.

*Applicants:* Sierra Pacific Power Company, Nevada Power Company.

*Description:* Updated Market Power Analysis for the Northwest Region of Sierra Pacific Power Company, et al.

*Filed Date:* 7/1/13.

*Accession Number:* 20130701-5387.

*Comments Due:* 5 p.m. ET 8/30/13.

*Docket Numbers:* ER10-3077-003;  
ER10-3075-003; ER10-3076-003;  
ER10-3074-003; ER10-3071-003;  
ER10-3257-002.

*Applicants:* CalPeak Power LLC, CalPeak Power—Border LLC, CalPeak Power—Enterprise LLC, CalPeak Power—Vaca Dixon LLC, CalPeak Power—Panoche LLC, Starwood Power-Midway, LLC.

*Description:* Updated Market Power Analysis for the Southwest Region of the CalPeak Entities, et al.

*Filed Date:* 7/1/13.

*Accession Number:* 20130701-5389.

*Comments Due:* 5 p.m. ET 8/30/13.

*Docket Numbers:* ER13-1661-001.  
*Applicants:* NEXTEnergy SERVICES LLC.

*Description:* Amended Tariff and Asset Appendix to be effective 8/10/2013.

*Filed Date:* 7/1/13.

*Accession Number:* 20130701-5319.

*Comments Due:* 5 p.m. ET 7/22/13.

*Docket Numbers:* ER13-1878-000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* Original Service Agreement No. 3587—Queue Position Y3-049 to be effective 5/30/2013.

*Filed Date:* 7/1/13.

*Accession Number:* 20130701-5252.

*Comments Due:* 5 p.m. ET 7/22/13.

*Docket Numbers:* ER13-1879-000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* Original Service Agreement No. 3586—Queue Position Y3-048 to be effective 5/30/2013.

*Filed Date:* 7/1/13.

*Accession Number:* 20130701-5262.

*Comments Due:* 5 p.m. ET 7/22/13.

*Docket Numbers:* ER13-1880-000.

*Applicants:* New England Power Pool Participants Committee, ISO New England Inc.

*Description:* Revisions to Forward Capacity Auction Market Clearing Function to be effective 9/2/2013.

*Filed Date:* 7/1/13.

*Accession Number:* 20130701-5264.

*Comments Due:* 5 p.m. ET 7/22/13

*Docket Numbers:* ER13-1881-000.

*Applicants:* Cabazon Wind Partners, LLC.

*Description:* SW Triennial & Tariff Revisions to be effective 7/2/2013.

*Filed Date:* 7/1/13.

*Accession Number:* 20130701-5265.

*Comments Due:* 5 p.m. ET 8/30/13.

*Docket Numbers:* ER13-1882-000.

*Applicants:* Whitewater Hill Wind Partners, LLC.

*Description:* SW Triennial & Tariff Revisions to be effective 7/2/2013.

*Filed Date:* 7/1/13.

*Accession Number:* 20130701-5290.

*Comments Due:* 5 p.m. ET 8/30/13.

Take notice that the Commission received the following electric securities filings:

*Docket Numbers:* ES13-34-000.

*Applicants:* ISO New England Inc.

*Description:* Application of ISO New England Inc. under Section 204 of the Federal Power Act.

*Filed Date:* 7/1/13.

*Accession Number:* 20130701-5381.

*Comments Due:* 5 p.m. ET 7/22/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: July 2, 2013.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2013-16625 Filed 7-10-13; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

#### Filings Instituting Proceedings

*Docket Numbers:* CP13-495-000.

*Applicants:* Texas Eastern Transmission, LP.

*Description:* Application to Abandon Exchange Services Provided Under Rate Schedules X-62 and X-121.

*Filed Date:* 6/12/13.

*Accession Number:* 20130612-5074.

*Comments Due:* 5 p.m. ET 7/11/13.

*Docket Numbers:* RP13-1036-000.

*Applicants:* Gulf South Pipeline Company, LP.

*Description:* Remove Expired and/or Terminated Agmts to be effective 8/1/2013.

*Filed Date:* 7/2/13.

*Accession Number:* 20130702-5042.

*Comments Due:* 5 p.m. ET 7/15/13.

*Docket Numbers:* RP13-1037-000.

*Applicants:* Dominion Transmission, Inc.

*Description:* DTI—2013 Overrun and Penalty Revenue Distribution.

*Filed Date:* 7/2/13.

*Accession Number:* 20130702-5047.

*Comments Due:* 5 p.m. ET 7/15/13.

*Docket Numbers:* RP13-1038-000.

*Applicants:* ANR Pipeline Company.

*Description:* DPL Energy FTS-1 Agmt to be effective 7/1/2013.

*Filed Date:* 7/2/13.

*Accession Number:* 20130702-5077.

*Comments Due:* 5 p.m. ET 7/15/13.

*Docket Numbers:* RP13-1039-000.

*Applicants:* Dauphin Island Gathering Partners.

*Description:* Negotiated Rates 2013-07-02 to be effective 7/3/2013.

*Filed Date:* 7/2/13.

*Accession Number:* 20130702-5078.

*Comments Due:* 5 p.m. ET 7/15/13.

*Docket Numbers:* RP13-1041-000.

*Applicants:* Iroquois Gas Transmission System, L.P.

*Description:* 07/02/13 Reservation Charge Credit to be effective 8/1/2013.

*Filed Date:* 7/2/13.

*Accession Number:* 20130702-5202.

*Comments Due:* 5 p.m. ET 7/15/13.

*Docket Numbers:* RP13-1042-000.

*Applicants:* ProLiance Energy, LLC.

*Description:* Petition of ProLiance Energy, LLC for Temporary Waivers of Capacity Release Regulation and Related Pipeline Tariff.

*Filed Date:* 7/2/13.

*Accession Number:* 20130702-5222.

*Comments Due:* 5 p.m. ET 7/9/13.

*Docket Numbers:* RP13-1043-000.

*Applicants:* Texas Gas Transmission, LLC.

*Description:* Correction to Section 6.9 to be effective 2/17/2013.

*Filed Date:* 7/3/13.

*Accession Number:* 20130703-5018.

*Comments Due:* 5 p.m. ET 7/15/13.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

#### Filings in Existing Proceedings

*Docket Numbers:* RP12-250-002.

*Applicants:* Kern River Gas Transmission Company.

*Description:* 2013 Credit Compliance to be effective 6/18/2013.

*Filed Date:* 7/3/13.

*Accession Number:* 20130703-5000.

*Comments Due:* 5 p.m. ET 7/15/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: July 3, 2013.

**Nathaniel J. Davis, Sr.,**  
Deputy Secretary.

[FR Doc. 2013-16627 Filed 7-10-13; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER13-1855-000]

#### XO Energy SW., LP; Supplemental Notice that Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding, of XO Energy SW., LP's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability is July 23, 2013.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC.

There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov). or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: July 3, 2013.

**Nathaniel J. Davis, Sr.,**  
Deputy Secretary.

[FR Doc. 2013-16628 Filed 7-10-13; 8:45 am]

BILLING CODE 6717-01-P

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-9534-2]

### Agency Information Collection Activities OMB Responses

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

**ACTION:** Notice.

**SUMMARY:** This document announces the Office of Management and Budget (OMB) responses to Agency Clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et. seq.). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

**FOR FURTHER INFORMATION CONTACT:** Rick Westlund (202) 566-1682, or email at [westlund.rick@epa.gov](mailto:westlund.rick@epa.gov) and please refer to the appropriate EPA Information Collection Request (ICR) Number.

#### SUPPLEMENTARY INFORMATION:

### OMB Responses To Agency Clearance Requests

#### OMB Approvals

EPA ICR Number 1981.05; Distribution of Offsite Consequence Analysis Information under Section 112(r); 40 CFR part 1400; was approved on 06/12/2013; OMB Number 2050-0172; expires on 06/30/2016; Approved without change.

EPA ICR Number 1157.10; NSPS for Flexible Vinyl and Urethane Coating and Printing; 40 CFR part 60 subparts A and FFF; was approved on 06/12/2013; OMB Number 2060-0073; expires on 06/30/2016; Approved without change.

EPA ICR Number 1160.12; NSPS/ NESHAP for Wool Fiberglass Insulation Manufacturing Plants; 40 CFR part 60 subparts A, NNN and PPP; was

approved on 06/25/2013; OMB Number 2060-0114; expires on 06/30/2016; Approved without change.

#### Short Term Extensions

EPA ICR Number 0794.12; Notification of Substantial Risk of Injury to Health and the Environment under TSCA Sec. 8(e); OMB Number 2070-0046; OMB granted a short term extension of the expiration date to 09/30/2013 on 06/20/2013.

**John Moses,**

Director, Collections Strategies Division.

[FR Doc. 2013-16637 Filed 7-10-13; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OECA-2012-0686; FRL-9534-1]

### Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Organic Liquids Distribution (Non- Gasoline) Facilities (Renewal)

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

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency has submitted an information collection request (ICR), "NESHAP for Organic Liquids Distribution (Non-Gasoline) Facilities (40 CFR Part 63, Subpart EEEE) (Renewal)" (EPA ICR No. 1963.05, OMB Control No. 2060-0539) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). This is a proposed extension of the ICR, which is currently approved through September 30, 2013. Public comments were previously requested via the **Federal Register** (77 FR 63813) on October 17, 2012, during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

**DATES:** Additional comments may be submitted on or before August 12, 2013.

**ADDRESSES:** Submit your comments, referencing Docket ID Number EPA-HQ-OECA-2012-0686, to: (1) EPA online, using [www.regulations.gov](http://www.regulations.gov) (our preferred method), by email to: [docket.oeca@epa.gov](mailto:docket.oeca@epa.gov), or by mail to: EPA Docket Center, Environmental

Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460; and (2) OMB via email to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov). Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

**FOR FURTHER INFORMATION CONTACT:**

Learia Williams, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564-4113; fax number: (202) 564-0050; email address: [williams.learia@epa.gov](mailto:williams.learia@epa.gov).

**SUPPLEMENTARY INFORMATION:**

Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at [www.regulations.gov](http://www.regulations.gov) or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The telephone number for the Docket Center is 202-566-1744. For additional information about EPA's public docket, visit <http://www.epa.gov/dockets>.

**Abstract:** The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the Provisions specified at 40 CFR part 63, subpart EEEE.

Owners or operators of the affected facilities must submit an initial notification report, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports are required semiannually at a minimum.

**Form Numbers:** None.

**Respondents/affected entities:** Organic liquids distribution facilities.

**Respondent's obligation to respond:** Mandatory (40 CFR part 63, subpart EEEE)

**Estimated number of respondents:** 381 (total).

**Frequency of response:** Initially, occasionally, semiannually, and annually.

**Total estimated burden:** 114,667 hours (per year). "Burden" is defined at 5 CFR 1320.3(b).

**Total estimated cost:** \$19,770,006 (per year), includes \$8,559,164 annualized capital or operation & maintenance costs.

**Changes in the Estimates:** There is an adjustment increase in the respondent labor hours in this ICR compared to the previous ICR. This is due to an increase in the estimated number of hours to prepare semiannual reports. The previous ICR estimated 40 technical hours per occurrence for this burden item. Based on consultation comments received during development of this ICR, we revised the estimate to 80 hours per semiannual report to more accurately reflect industry burden. In addition, there is an increase in respondent labor costs from the most recently approved ICR due to adjustments in labor rates. This ICR uses updated labor rates to calculate all burden costs.

**John Moses,**

*Director, Collection Strategies Division.*

[FR Doc. 2013-16636 Filed 7-10-13; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

[FRL-9832-6; EPA-HQ-OA-2013-0123]

**Farm, Ranch, and Rural Communities Committee Teleconference**

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

**ACTION:** Notice of Public Advisory Committee Teleconference.

**SUMMARY:** Under the Federal Advisory Committee Act, Public Law 92-463, EPA gives notice of a teleconference meeting of the Farm, Ranch, and Rural Communities Committee (FRRCC). The FRRCC is a policy-oriented committee that provides policy advice, information, and recommendations to the EPA Administrator on a range of environmental issues and policies that are of importance to agriculture and rural communities.

**Purpose of Meeting:** The purpose of this teleconference is to discuss specific topics of relevance for consideration by the Committee in order to provide advice and insights to the Agency on environmental policies and programs that affect and engage agriculture and rural communities.

**DATES:** The Farm, Ranch, and Rural Communities Committee will hold a public teleconference on August 8, 2013

from 1:00 p.m. until 3:00 p.m. Eastern Standard Time.

**ADDRESSES:** The meeting will be held at the U.S. EPA East Building, 1201 Constitution Avenue NW., Room 1132, Washington, DC 20004.

**FOR FURTHER INFORMATION CONTACT:**

Wayne Gieselman, Acting Designated Federal Officer, [gieselman.wayne@epa.gov](mailto:gieselman.wayne@epa.gov), 202-564-6614, US EPA, Office of the Administrator (1101A), 1200 Pennsylvania Avenue NW., Washington, DC 20460.

**SUPPLEMENTARY INFORMATION:** Members of the public wishing to gain access to the teleconference, make brief oral comments, or provide a written statement to the FRRCC must contact Wayne Gieselman, Acting Designated Federal Officer, at [gieselman.wayne@epa.gov](mailto:gieselman.wayne@epa.gov), or 202-564-6614 by August 1, 2013.

**General Information:** The agenda and meeting materials will be available at <http://www.regulations.gov> under Docket ID: EPA-HQ-OA-2013-0123. General information about FRRCC can be found on its Web site at [www.epa.gov/ofacmo/frcc](http://www.epa.gov/ofacmo/frcc).

**Meeting Access:** For information on access or services for individuals with disabilities or to request accommodations please contact Stephanie McCoy at [mccoy.stephanie@epa.gov](mailto:mccoy.stephanie@epa.gov) or 202-564-7297, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: July 2, 2013.

**Wayne Gieselman,**

*Acting Designated Federal Officer.*

[FR Doc. 2013-16660 Filed 7-10-13; 8:45 am]

**BILLING CODE 6560-50-P**

**FEDERAL COMMUNICATIONS COMMISSION**

**Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested**

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice; request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-3520), the Federal Communications Commission (FCC) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning:

whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and further ways to reduce the information burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB Control Number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid Control Number.

**DATES:** Written Paperwork Reduction Act (PRA) comments should be submitted on or before September 9, 2013. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

**ADDRESSES:** Submit your PRA comments to Leslie F. Smith, Federal Communications Commission (FCC), via the Internet at [Leslie.Smith@fcc.gov](mailto:Leslie.Smith@fcc.gov). To submit your PRA comments by email, send them to [PRA@fcc.gov](mailto:PRA@fcc.gov).

**FOR FURTHER INFORMATION CONTACT:** For additional information, contact Leslie F. Smith at (202) 418-0217, or via the Internet at [PRA@fcc.gov](mailto:PRA@fcc.gov).

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060-0917.

*Title:* CORES Registration Form.

*Form Number:* FCC Form 160.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Businesses or other for-profit entities; individuals or households; not-for-profit institutions; and State, Local, or Tribal Governments.

*Number of Respondent and Responses:* 93,000 respondents; 93,000 responses.

*Estimated Time per Response:* 10 minutes (0.167 hours).

*Frequency of Response:* One time reporting requirement.

*Obligation to Respond:* Required to obtain or retain benefits. Statutory authority for this information collection is contained in the *Debt Collection Act of 1996* (DCCA), Public Law 104-134, Chapter 10, Section 31001.

*Total Annual Burden:* 15,531 hours.

*Total Annual Cost:* None.

*Privacy Impact Assessment:* A Privacy Impact Assessment (PIA) covering the information system for this information collection, which is posted at: [http://transition.fcc.gov/omd/privacyact/Privacy\\_Impact\\_Assessment.html](http://transition.fcc.gov/omd/privacyact/Privacy_Impact_Assessment.html).

*Nature and Extent of Confidentiality:* The FCC is not requesting that respondents submit confidential information to the Commission. If the FCC requests that respondents submit information which respondents believe is confidential, respondents may request confidential treatment of such information pursuant to Section 0.459 of the FCC's rules, 47 CFR 0.459. The FCC has a system of records, FCC/OMD-9, "Commission Registration System (CORES)," to cover the collection, purpose(s), storage, safeguards, and disposal of the personally identifiable information (PII) that individual respondents may submit on FCC Form 160, which is posted at: <http://transition.fcc.gov/omd/privacyact/records-systems.html>.

The FCC will also redact PII submitted on this form before it makes FCC Form 160 available for public inspection. FCC Form 160 includes a "privacy statement" to inform applicants (respondents) of the FCC's need to obtain the information and the protections that the FCC has in place to protect PII.

*Needs and Uses:* Respondents use FCC Form 160 to register in the FCC's Commission Registration System (CORES). When registering, the respondent receives a unique FCC Registration Number (FRN), which is required for anyone doing business with the Commission. Respondents may also register in CORES on-line at [www.fcc.gov/frnreg](http://www.fcc.gov/frnreg). FCC Form 160 is used to collect information that pertains to the entity's name, address, contact representative, telephone number, email address(es), and fax number. The Commission uses this information to collect or report on any delinquent debt arising from the respondent's business dealings with the FCC, including both "feeable" and "nonfeeable" services; and to ensure that registrants (respondents) receive any refunds due. Use of the CORES System is also a means of ensuring that the Commission operates in compliance with the *Debt Collection Improvement Act of 1996* (DCCA), Public Law 104-134, Chapter 10, Section 31001.

On November 19, 2010, the FCC adopted a *Notice of Proposed Rulemaking* (NPRM), MD Docket No. 10-234, FCC 10-192, Amendment of Part 1 of the Commission's Rules

Concerning Practice and Procedure, Amendment of CORES Registration System. The NPRM proposes to eliminate some of the FCC's exceptions to the requirement that entities and individuals provide their Taxpayer Identification Number ("TIN") at the time of registration; require FRN holders to provide their email address(es); give FRN holders the option to identify multiple points of contact; and require FRN holders to indicate their tax-exempt status and notify the Commission of pending bankruptcy proceedings. All remaining existing information collection requirements would stay as they are.

*OMB Control Number:* 3060-0918.

*Title:* CORES Update/Change Form.

*Form Number:* FCC Form 161.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Businesses or other for-profit entities; individuals or households; not-for-profit institutions; and State, Local, or Tribal Governments.

*Number of Respondents and Responses:* 80,000 respondents; 80,000 responses.

*Estimated Time per Response:* 10 minutes (0.167 hours).

*Frequency of Response:* On occasion reporting requirement.

*Obligation to Respond:* Required to obtain or retain benefits. Statutory authority for this information collection is contained in the *Debt Collection Act of 1996* (DCCA), Public Law 104-134, Chapter 10, Section 31001.

*Total Annual Burden:* 13,360 hours.

*Total Annual Costs:* None.

*Privacy Impact Assessment:* A Privacy Impact Assessment (PIA) covering the information system for this information collection is posted at: [http://transition.fcc.gov/omd/privacyact/Privacy\\_Impact\\_Assessment.html](http://transition.fcc.gov/omd/privacyact/Privacy_Impact_Assessment.html).

*Nature and Extent of Confidentiality:* The FCC is not requesting that respondents submit confidential information to the Commission. If the FCC requests that respondents submit information which respondents believe is confidential, respondents may request confidential treatment of such information pursuant to Section 0.459 of the FCC's rules, 47 CFR 0.459. The FCC has a system of records, FCC/OMD-9, "Commission Registration System (CORES)," to cover the collection, purpose(s), storage, safeguards, and disposal of the personally identifiable information (PII) that individual respondents may submit on FCC Form 161, which is posted at: <http://transition.fcc.gov/omd/privacyact/records-systems.html>.

The FCC will also redact PII submitted on this form before it makes

FCC Form 161 available for public inspection. FCC Form 161 includes a “privacy statement” to inform applicants (respondents) of the FCC’s need to obtain the information and the protections that the FCC has in place to protect PII.

*Needs and Uses:* After respondents have registered in the FCC’s Commission Registration System (CORES) and have been issued a FCC Registration Number (FRN), they may use FCC Form 161 to update and/or change their contact information, including name, address, telephone number, email address(es), fax number, contact representative, contact representative’s address, telephone number, email address, and/or fax number. Respondents may also update their registration information in CORES on-line at [www.fcc.gov/frnreg](http://www.fcc.gov/frnreg). The Commission uses this information to collect or report on any delinquent debt arising from the respondent’s business dealings with the FCC, including both “feeable” and “nonfeeable” services; and to ensure that registrants (respondents) receive any refunds due. Use of the CORES System is also a means of ensuring that the Commission operates in compliance with the *Debt Collection Improvement Act of 1996*.

On November 19, 2010, the FCC adopted a *Notice of Proposed Rulemaking* (NPRM), MD Docket No. 10–234, FCC 10–192, Amendment of Part 1 of the Commission’s Rules Concerning Practice and Procedure, Amendment of CORES Registration System. The NPRM proposes to eliminate some of the FCC’s exceptions to the requirement that entities and individuals provide their Taxpayer Identification Number (“TIN”) at the time of registration; require FRN holders to provide their email address(es); give FRN holders the option to identify multiple points of contact; and require FRN holders to indicate their tax-exempt status and notify the Commission of pending bankruptcy proceedings. All remaining existing information collection requirements would stay as they are.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary, Office of the Secretary, Office of Managing Director.*

[FR Doc. 2013–16634 Filed 7–10–13; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Advisory Committee on Community Banking; Notice of Meeting

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Notice of Open Meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, notice is hereby given of a meeting of the FDIC Advisory Committee on Community Banking, which will be held in Washington, DC. The Advisory Committee will provide advice and recommendations on a broad range of policy issues that have particular impact on small community banks throughout the United States and the local communities they serve, with a focus on rural areas.

**DATES:** Thursday, July 25, 2013, from 8:30 a.m. to 3:30 p.m.

**ADDRESSES:** The meeting will be held in the FDIC Board Room on the sixth floor of the FDIC Building located at 550 17th Street NW., Washington, DC

**FOR FURTHER INFORMATION CONTACT:** Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Committee Management Officer of the FDIC, at (202) 898–7043.

**SUPPLEMENTARY INFORMATION:** *Agenda:* The agenda will include a discussion of current issues affecting community banking. The agenda is subject to change. Any changes to the agenda will be announced at the beginning of the meeting.

*Type of Meeting:* The meeting will be open to the public, limited only by the space available on a first-come, first-served basis. For security reasons, members of the public will be subject to security screening procedures and must present a valid photo identification to enter the building. The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (703) 562–6067 (Voice or TTY) at least two days before the meeting to make necessary arrangements. Written statements may be filed with the committee before or after the meeting. This Community Banking Advisory Committee meeting will be Webcast live via the Internet at <http://www.vodium.com/goto/fdic/communitybanking.asp>. This service is

free and available to anyone with the following systems requirements: <http://www.vodium.com/home/sysreq.html>. Adobe Flash Player is required to view these presentations. The latest version of Adobe Flash Player can be downloaded at [http://www.adobe.com/shockwave/download/download.cgi?P1\\_Prod\\_Version=ShockwaveFlash](http://www.adobe.com/shockwave/download/download.cgi?P1_Prod_Version=ShockwaveFlash). Installation questions or troubleshooting help can be found at the same link. For optimal viewing, a high speed internet connection is recommended. The Community Banking meeting videos are made available on-demand approximately two weeks after the event.

Dated: July 8, 2013.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Committee Management Officer.*

[FR Doc. 2013–16616 Filed 7–10–13; 8:45 am]

**BILLING CODE 6714–01–P**

## FEDERAL TRADE COMMISSION

### Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination—on the dates indicated—of the waiting period provided by law and the premerger notification rules. The listing for each transaction includes the transaction number and the parties to the transaction. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

## EARLY TERMINATIONS GRANTED

[June 1, 2013 thru June 30, 2013]

06/03/2013		
20130870 .....	G	America Movil, S.A.B. de C.V.; Andrade A. Andrade; America Movil, S.A.B. de C.V.
20130880 .....	G	General Atlantic Partners 93, L.P.; National Christian Charitable Foundation, Inc.; General Atlantic Partners 93, L.P.
20130883 .....	G	America Movil, S.A.B. de C.V.; Ghazi Yassine; America Movil, S.A.B. de C.V.
20130886 .....	G	OCM European Principal Opportunities Fund II, L.P.; Veolia Environnement S.A.; OCM European Principal Opportunities Fund II, L.P.
20130890 .....	G	TowerBrook Investors III, L.P.; True Religion Apparel, Inc.; TowerBrook Investors III, L.P.
20130892 .....	G	TC PipeLines, LP; TransCanada Corporation; TC PipeLines, LP
20130898 .....	G	Tagada Holdings, Inc.; Allflex Holdings III, Inc.; Tagada Holdings, Inc.
20130902 .....	G	Vista Equity Partners Fund IV, L.P.; Websense, Inc.; Vista Equity Partners Fund IV, L.P.
20130906 .....	G	The Goldman Sachs Group, Inc.; APT Software Holdings, Inc.; The Goldman Sachs Group, Inc.
20130908 .....	G	MABEG/Verein zur Fordurung und Beratung der MAHLE Gruppe e.V.; Behr GmbH & Co. KG; MABEG/Verein zur Fordurung und Beratung der MAHLE Gruppe e.V.
20130913 .....	G	Greeneden Topco S.C.A.; SoundBite Communications, Inc.; Greeneden Topco S.C.A.
06/04/2013		
20130900 .....	G	Mitsui & Co., Ltd.; Francisco Riberas Mera; Mitsui & Co., Ltd.
20130905 .....	G	Mellanox Technologies, Ltd.; Kotura, Inc.; Mellanox Technologies, Ltd.
20130907 .....	G	Mitsui & Co., Ltd.; Juan Maria Ribera Mera; Mitsui & Co., Ltd.
20130916 .....	G	Furukawa Electric Co., LTD; Tri-Arrows Aluminum Holding, Inc.; Furukawa Electric Co., LTD.
06/05/2013		
20130842 .....	G	ValueAct Capital Master Fund, L.P.; Microsoft Corporation; ValueAct Capital Master Fund, L.P.
20130899 .....	G	O. Bruton Smith; Murray Motor Imports Co.; O. Bruton Smith
20130904 .....	G	GS Apple Investors 2011, LLC; New Tacala of Delaware, Inc.; GS Apple Investors 2011, LLC.
06/06/2013		
20130878 .....	G	Taconic Opportunity Offshore Fund Ltd.; WPX Energy, Inc.; Taconic Opportunity Offshore Fund Ltd.
20130879 .....	G	Taconic Opportunity Fund L.P.; WPX Energy, Inc.; Taconic Opportunity Fund L.P.
20130897 .....	G	Yahoo! Inc.; Tumblr, Inc.; Yahoo! Inc.
20130915 .....	G	Greenbriar Equity Fund II L.P.; CI (Transplace) Co-Investment Partners, L.P.; Greenbriar Equity Fund II L.P.
06/07/2013		
20130893 .....	G	Accenture plc; Acquity Group Limited; Accenture plc.
20130903 .....	G	Brown & Brown Inc.; Beecher Carlson Holdings, Inc.; Brown & Brown Inc.
20130909 .....	G	Campbell Soup Company; Plum Inc.; Campbell Soup Company.
20130914 .....	G	Clearlake Capital Partners III, LP; Archer Limited; Clearlake Capital Partners III, LP.
06/10/2013		
20130912 .....	G	Teays River Investments, LLC; Remington Hybrid Seed Company, Inc.; Teays River Investments, LLC.
20130919 .....	G	Pik Holdings, Inc.; EGWP, LLC; Pik Holdings, Inc.
06/12/2013		
20130765 .....	G	Stiftelsen Det Norske Veritas; Mayfair Vermogensverwaltungs SE; Stiftelsen Det Norske Veritas.
20130872 .....	G	Glenview Offshore Opportunity Fund, Ltd.; Health Management Associates, Inc.; Glenview Offshore Opportunity Fund, Ltd.
20130873 .....	G	Glenview Institutional Partners, L.P.; Health Management Associates, Inc.; Glenview Institutional Partners, L.P.
20130874 .....	G	Glenview Capital Opportunity Fund, L.P.; Health Management Associates, Inc.; Glenview Capital Opportunity Fund, L.P.
20130876 .....	G	Glenview Capital Partners (Cayman), Ltd.; Health Management Associates, Inc.; Glenview Capital Partners (Cayman), Ltd.
20130926 .....	G	Domtar Corporation; Brandon Wang; Domtar Corporation.
06/13/2013		
20130866 .....	G	Ares Partners Management Company LLC; MT SPV LLC; Ares Partners Management Company LLC.
20130895 .....	G	Exchange Control Partnership, L.P.; Ebix, Inc.; Exchange Control Partnership, L.P.
06/14/2013		
20130864 .....	G	Alliant Techsystems Inc.; Wells Fargo & Company; Alliant Techsystems Inc.
20130922 .....	G	Astronics Corporation; PECO, Inc.; Astronics Corporation.
20130927 .....	G	Andrea Pignataro; Welsh, Carson, Anderson & Stowe XI, L.P.; Andrea Pignataro.
20130934 .....	G	SpinCo; Bain Capital Fund VII, L.P.; SpinCo.
20130935 .....	G	Bain Capital Fund VII, L.P.; SpinCo; Bain Capital Fund VII, L.P.
20130941 .....	G	Nippon Steel Trading Co. Ltd.; Sumikin Bussan Corporation; Nippon Steel Trading Co. Ltd.
20130942 .....	G	Lindsay Goldberg III L.P.; Computer Sciences Corporation; Lindsay Goldberg III L.P.
20130943 .....	G	Greenbriar Equity Fund II, L.P.; Jeffrey H. Thomasson; Greenbriar Equity Fund II, L.P.
20130951 .....	G	Goodman Networks Inc.; Multiband Corporation; Goodman Networks Inc.
06/17/2013		
20130436 .....	G	Tesoro Corporation; Chevron Corporation; Tesoro Corporation.
20130952 .....	G	Consolidated Edison, Inc.; Sempra Energy; Consolidated Edison, Inc.
20130953 .....	G	Arsenal Capital Partners III, LP; Fiber Holding Company; Arsenal Capital Partners III, LP.
20130954 .....	G	Consolidated Edison, Inc.; Sempra Energy; Consolidated Edison, Inc.
06/18/2013		
20130945 .....	G	Lee Equity Partners Fund, L.P.; Marc A. Utay; Lee Equity Partners Fund, L.P.
20130949 .....	G	Umpqua Holdings Corporation; Financial Pacific Holdings, LLC; Umpqua Holdings Corporation.
06/19/2013		
20130933 .....	G	HCA Holdings, Inc.; Secom Co., Ltd.; HCA Holdings, Inc.

## EARLY TERMINATIONS GRANTED—Continued

[June 1, 2013 thru June 30, 2013]

06/20/2013		
20130512 .....	G	Delta Airlines, Inc.; Virgin Group Holdings Limited; Delta Airlines, Inc.
20130889 .....	G	Centre Capital Investors V, L.P.; Overhill Farms, Inc.; Centre Capital Investors V, L.P.
20130896 .....	G	Blue Acquisition Group, Inc.; Natural Balance Pet Foods, Inc.; Blue Acquisition Group, Inc.
06/21/2013		
20130930 .....	G	Prem Reddy; Catholic Health Initiatives; Prem Reddy.
20130939 .....	G	TransDigm Group Incorporated; General Electric Company; TransDigm Group Incorporated.
20130963 .....	G	salesforce.com, Inc.; ExactTarget, Inc.; salesforce.com, Inc.
20130965 .....	G	Frederic N. Eshelman; Furiex Pharmaceuticals, Inc.; Frederic N. Eshelman.
20130966 .....	G	Apax VIII—A L.P.; rue21, inc.; Apax VIII—A L.P.
20130971 .....	G	B&G Foods, Inc.; Robert's American Gourmet Foods, LLC; B&G Foods, Inc.
06/24/2013		
20130958 .....	G	AstraZeneca PLC; Vatera Investment Partners LLC; AstraZeneca PLC.
20130975 .....	G	Roark Capital Partners III LP; SKM Equity Fund III, L.P.; Roark Capital Partners III LP.
20130978 .....	G	ACP Materials LP; Aurora Equity Partners II L.P.; ACP Materials LP.
06/26/2013		
20130924 .....	G	AstraZeneca PLC; Omthera Pharmaceuticals, Inc.; AstraZeneca PLC.
20130948 .....	G	Canadian Imperial Bank of Commerce; Invesco Ltd.; Canadian Imperial Bank of Commerce.
20130957 .....	G	Fairfax Financial Holdings Limited; American Safety Insurance Holdings, Ltd.; Fairfax Financial Holdings Limited.
20130967 .....	G	Opko Health, Inc.; Prolor Biotech, Inc.; Opko Health, Inc.
20130972 .....	G	International Business Machines Corporation; SoftLayer Holdings, Inc.; International Business Machines Corporation.
20130979 .....	G	KapStone Paper and Packaging Corporation; Partners Limited; KapStone Paper and Packaging Corporation.
06/27/2013		
20130823 .....	G	Tyman plc; Melrose Industries PLC; Tyman plc.
20130964 .....	G	Carl Zeiss Stiftung; Xradia, Inc.; Carl Zeiss Stiftung.
20131011 .....	G	Davisville Music Publishing Inc.; Sony Corporation; Davisville Music Publishing Inc.
06/28/2013		
20130955 .....	G	Corvex Master Fund LP; Health Management Associates, Inc.; Corvex Master Fund LP.
20130984 .....	G	Mindray Medical International Ltd.; ZONARE Medical Systems, Inc.; Mindray Medical International Ltd.
20130991 .....	G	Lundin Mining Corporation; Rio Tinto plc; Lundin Mining Corporation.

**FOR FURTHER INFORMATION CONTACT:**

Renee Chapman, Contact Representative or Theresa Kingsberry, Legal Assistant, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H-303, Washington, DC 20580, (202) 326-3100.

By Direction of the Commission.

**Donald S. Clark,**  
Secretary.

[FR Doc. 2013-16540 Filed 7-10-13; 8:45 am]

**BILLING CODE 6750-01-M**

---

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**
**Agency for Healthcare Research and Quality**
**Meeting of the National Advisory Council for Healthcare Research and Quality**

**AGENCY:** Agency for Healthcare Research and Quality (AHRQ), HHS.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, this notice announces a meeting of the National

Advisory Council for Healthcare Research and Quality.

**DATES:** The meeting will be held on Friday, July 26, 2013, from 8:30 a.m. to 3:30 p.m.

**ADDRESSES:** The meeting will be held at the Eisenberg Conference Center, Agency for Healthcare Research and Quality, 540 Gaither Road, Rockville, Maryland 20850.

**FOR FURTHER INFORMATION CONTACT:**

Jaime Zimmerman, Designated Management Official, at the Agency for Healthcare Research and Quality, 540 Gaither Road, Rockville, Maryland, 20850, (301) 427-1456. For press-related information, please contact Alison Hunt at (301) 427-1244.

If sign language interpretation or other reasonable accommodation for a disability is needed, please contact the Food and Drug Administration (FDA) Office of Equal Employment Opportunity and Diversity Management on (301) 827-4840, no later than Friday, July 12, 2013. The agenda, roster, and minutes are available from Ms. Bonnie Campbell, Committee Management Officer, Agency for Healthcare Research and Quality, 540 Gaither Road, Rockville, Maryland, 20850. Ms. Campbell's phone number is (301) 427-1554.

**SUPPLEMENTARY INFORMATION:****I. Purpose**

The National Advisory Council for Healthcare Research and Quality is authorized by Section 941 of the Public Health Service Act, 42 U.S.C. 299c. In accordance with its statutory mandate, the Council is to advise the Secretary of the Department of Health and Human Services and the Director, Agency for Healthcare Research and Quality (AHRQ), on matters related to AHRQ's conduct of its mission including providing guidance on (A) Priorities for health care research, (B) the field of health care research including training needs and information dissemination on health care quality and (C) the role of the Agency in light of private sector activity and opportunities for public private partnerships.

The Council is composed of members of the public, appointed by the Secretary, and Federal ex-officio members specified in the authorizing legislation.

**II. Agenda**

On Friday, July 26, 2013, there will be a subcommittee meeting for the National Healthcare Quality and Disparities Report scheduled to begin at 7:30 a.m.

The subcommittee meeting is open to the public. The Council meeting will convene at 8:30 a.m., with the call to order by the Council Chair and approval of previous Council summary notes. The meeting is open to the public. The meeting will begin with the AHRQ Director presenting an update on current research, programs, and initiatives. Following the Director's Update, the agenda includes presentations on AHRQ's Centers for Education and Research in Therapeutics (CERTS), the National Quality Strategy and Patient and Family Engagement. The final agenda will be available on the AHRQ Web site at [www.AHRQ.gov](http://www.AHRQ.gov) no later than Friday, July 19, 2013.

Dated: June 28, 2013.

**Carolyn M. Clancy,**  
Director.

[FR Doc. 2013-16574 Filed 7-10-13; 8:45 am]

**BILLING CODE 4160-90-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

#### Announcement of Requirements and Registration for "I VetoViolence Because . . .": Teen Dating Violence Prevention Public Service Announcement Contest

**Authority:** 15 U.S.C. 3719

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

*Award Approving Official:* Thomas R. Frieden, MD, MPH, Director, Centers for Disease Control and Prevention, and Administrator, Agency for Toxic Substances and Disease Registry.

**ACTION:** Notice.

**SUMMARY:** The Centers for Disease Control and Prevention (CDC) located within the Department of Health and Human Services (HHS) launches the "I VetoViolence Because . . .": Teen Dating Violence Prevention Public Service Announcement Contest. The purpose of the contest is to encourage the development of video public service announcements (PSA) that increase the understanding (1) that teen dating violence is a public health problem and (2) that prevention efforts can stop it before it starts. VetoViolence, under HHS/CDC's National Center for Injury Prevention and Control (Injury Center), asks violence prevention professionals, allied organizations, students, VetoViolence Facebook page fans, and the general public to develop PSAs

about teen dating violence and the importance of prevention. The intended effect of the PSAs is to inspire viewers to take steps to stop teen dating violence before it starts by promoting healthy relationships among friends and loved ones and within schools and communities. The PSA finalists and winners will be showcased in three categories on the VetoViolence Facebook page, allowing participants to reach more people with effective and creative messages about preventing teen dating violence.

**DATES:** Contest begins on July 15, 2013 and ends on August 15, 2013. Judging will take place August 16-30, 2013, and winners will be notified on September 6, 2013, with prizes being awarded before September 30, 2013.

**FOR FURTHER INFORMATION CONTACT:**

Alan Williams, Media Specialist, Division of Violence Prevention, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, 4770 Buford Highway NE., MS F64, Atlanta, GA 30341, Telephone: (770) 488-3893, email: [wzj4@cdc.gov](mailto:wzj4@cdc.gov).

**SUPPLEMENTARY INFORMATION:**

**Subject of Challenge Competition**

Contestants entering the "I VetoViolence Because . . .": Teen Dating Violence Prevention Public Service Announcement Contest will be asked to submit short (60 seconds or less), self-made PSAs about teen dating violence and the importance of prevention efforts.

**Eligibility Rules for Participating in the Competition**

The challenge is open to any contestant—defined as an individual or team of U.S. citizens or permanent residents of the United States. Contestants may submit more than one video to the challenge.

Contestants will be asked to self-identify as a student, violence prevention professional, or member of the general public when selecting an entry category (Student View, Violence Prevention Professional View, or General Public View). A student is defined as anyone enrolled in middle school, high school, or college and under age 25. Contestants must be at least 13 years of age to enter.

To be eligible to win a prize under this challenge, an individual or entity—

(1) Shall have registered to participate in the competition under the rules published by the Centers for Disease Control and Prevention's National Center for Injury Prevention and Control at [vetoviolence.challenge.gov](http://vetoviolence.challenge.gov);

(2) Shall have complied with all the requirements under this section;

(3) In the case of a private entity, shall be incorporated in and maintain a primary place of business in the United States, and in the case of an individual, whether participating singly or in a group, shall be a citizen or permanent resident of the United States; and

(4) May not be a Federal entity or Federal employee acting within the scope of their employment;

(5) Shall not be an HHS employee working on their applications or submissions during assigned duty hours;

(6) May not be employees of the HHS/CDC Injury Center, judges of the challenge, or any other party involved with the design, production, execution, or distribution of the challenge or their immediate family (spouse, parents or step-parents, siblings and step-siblings, and children and step-children).

(7) Federal grantees may not use Federal funds to develop *COMPETES Act* ([www.nsf.gov/statistics/about/BILLS-111hr5116enr.pdf](http://www.nsf.gov/statistics/about/BILLS-111hr5116enr.pdf)) challenge applications unless consistent with the purpose of their grant award.

(8) Federal contractors may not use Federal funds from a contract to develop *COMPETES Act* challenge applications or to fund efforts in support of a *COMPETES Act* challenge submission.

An individual or entity shall not be deemed ineligible because the individual or entity used Federal facilities or consulted with Federal employees during a competition if the facilities and employees are made available to all individuals and entities participating in the competition on an equitable basis.

By participating in this challenge, contestants agree to assume any and all risks and waive claims against the Federal Government and its related entities, except in the case of willful misconduct, for any injury, death, damage, or loss of property, revenue, or profits, whether direct, indirect, or consequential, arising from participation in this prize contest, whether the injury, death, damage, or loss arises through negligence or otherwise. By participating in this challenge, contestants agree to indemnify the Federal Government against third party claims for damages arising from or related to challenge activities.

*Registration Process for Participants:* Contestants must register for the "I VetoViolence Because . . .": Teen Dating Violence Prevention Public Service Announcement Contest Challenge through [www.challenge.gov](http://www.challenge.gov). Interested persons should read the

official rules posted on the challenge site, [vetoviolence.challenge.gov](http://vetoviolence.challenge.gov). Prior to entering a submission to the challenge, contestants must follow the challenge rules before the end of the submission period.

**Amount of the Prize:** One prize winner for each category, including General Public View, Student View, and Violence Prevention Professional View, will receive an award in the amount of \$500 after the notification of the winners. A total of \$1,500 will be distributed as awards by the contractor.

**Payment of the Prize:** Prizes under this competition will be paid by electronic funds transfer by Westat Health Communications as part of their VetoViolence Facebook contract with the HHS/CDC Injury Center's Division of Violence Prevention.

**Basis Upon Which Winners Will be Selected:** Submissions to the challenge will be assessed by a panel of judges composed of HHS/CDC Injury Center teen dating violence subject matter experts and communications staff and external injury and violence professionals in compliance with the requirements of the America COMPETES Act. Judges will be named after the commencement of the challenge on July 15, 2013. The judging panel will make decisions based on the following criteria:

(1) Creativity: Each entry will be judged on creativity demonstrated in the delivery of teen dating violence prevention messages.

(2) Communication of teen dating violence prevention messages: Each entry will be judged on the expression of positive prevention of teen dating violence messages. The submissions should not contain real or simulated acts of violence, profane language, inappropriate content, or personal or professional attacks.

(3) Length of Video: Each entry should be 60 seconds or less.

(4) Video and Audio Quality: Each entry should be visually focused and have audible sound quality.

Submissions should not be difficult to watch because of an unclear image or to hear because of a poor audio recording.

(5) Fulfilling contest purpose: Each entry will be judged on its overall success in meeting the contest goal: Development of video public service announcements (PSA) that increase the understanding (1) that teen dating violence is a public health problem and (2) that prevention efforts can stop it before it starts.

One prize winner for each category—General Public View, Student View, and Violence Prevention Professional View—will receive an award in the amount of \$500 after the notification of the winners. A total of \$1,500 will be distributed among the three winners.

**Additional Information:** Finalists and the contest winners must comply with all terms and conditions of the official rules posted on the challenge site, [vetoviolence.challenge.gov](http://vetoviolence.challenge.gov), and winning is contingent upon fulfilling all requirements herein. The finalists will be notified by email, telephone, or mail after the date of the judging.

Contestant information provided during registration will be used to respond to contestants in matters regarding their submission, announcements of entrants, finalists, and winners of the contest. Information is not collected for commercial marketing. Winners are permitted to cite that they won this contest.

HHS/CDC reserves the right to cancel, suspend, and/or modify the contest, or any part of it, for any reason, at HHS/CDC's sole discretion.

More information on teen dating violence may be found at [http://www.cdc.gov/violenceprevention/intimatepartnerviolence/teen\\_dating\\_violence.html](http://www.cdc.gov/violenceprevention/intimatepartnerviolence/teen_dating_violence.html). More information on VetoViolence may be found at <http://vetoviolence.cdc.gov/>

and <http://www.facebook.com/vetoviolence>.

Dated: July 5, 2013.

**Tanja Popovic,**

*Deputy Associate Director for Science, Centers for Disease Control and Prevention.*

[FR Doc. 2013-16619 Filed 7-10-13; 8:45 am]

**BILLING CODE 4163-18-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Administration for Children and Families**

**Proposed Information Collection Activity; Comment Request**

**Proposed Projects**

**Title:** Evaluation of the Transitional Living Program (TLP)

**OMB No.:** 0970-0383

**Description:** The Runaway and Homeless Youth Act (RHYA), as amended by Public Law 106-71 (42 U.S.C. 5701 et seq.), provides for the Transitional Living Program (TLP), a residential program lasting up to 18 months designed to prepare older homeless youth ages 16-21 for a healthy and self-sufficient adulthood. Section 119 of RHYA requires a study on the long-term housing outcomes of youth after exiting the program. In addition to collecting information on housing outcomes, the study will also consider the living, employment, education, and family situation of the youth before and after their time in the TLP. This information will be used to better understand the most effective practices in improving long-term outcomes of youth in an effort to guide program improvements.

**Respondents:** (1) Youth ages 16-21 participating in Transitional Living Programs and (2) the Executive Director and Program Manager representing TLP grantees.

**ANNUAL BURDEN ESTIMATES**

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Grantee Survey .....	15	1	1	15
Youth Baseline Survey .....	1250	1	0.75	937.50
Youth 6-Month Follow Up .....	1250	1	0.33	412.50
Youth 12-Month Follow Up .....	1250	1	0.33	412.50
Youth 18-Month Follow Up .....	1250	1	0.75	937.50

**Estimated Total Annual Burden Hours:** 2,715.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the

Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above.

Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and

Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov*. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

**Robert Sargis,**  
*Reports Clearance Officer.*  
 [FR Doc. 2013-16643 Filed 7-10-13; 8:45 am]  
**BILLING CODE 4184-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. FDA-2013-N-0115]

**Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Manufactured Food Regulatory Program Standards**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Fax written comments on the collection of information by August 12, 2013.

**ADDRESSES:** To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202-395-7285, or emailed to *oira\_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910-0601. Also include the FDA docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Ila S. Mizrahi, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50-400B, Rockville, MD 20850, 301-796-7726, *Ila.Mizrahi@fda.hhs.gov*.

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

**Manufactured Food Regulatory Program Standards—(OMB Control Number 0910-0601)—Extension**

In the *Federal Register* of July 20, 2006 (71 FR 41221), FDA announced the availability of a draft document entitled "Manufactured Food Regulatory Program Standards (MFRPS)." These draft program standards are the

framework that States should use to design and manage its manufactured food program. The implementation of the standards will be negotiated as an option for payment under the State food contract. States that are awarded this option will receive up to \$25,000 over a period of 5 years to fully implement the program standards. Additionally, 26 States may receive up to \$300,000 each year for a period of 5 years to be in compliance with the 10 standards.

In the first year of implementing the program standards, the State program conducts a baseline self-assessment to determine if they meet the elements of each standard. The State program should use the worksheets and forms contained herein; however, it can use alternate forms that are equivalent. The State program maintains the documents and verifying records required for each standard. The information contained in the documents must be current and fit-for-use. If the State program fails to meet all program elements and documentation requirements of a standard, it develops a strategic plan which includes the following: (1) The individual element of documentation requirement of the standard that was not met; (2) improvements needed to meet the program element or documentation requirement of the standard; and (3) projected completion dates for each task.

In the *Federal Register* of February 19, 2013 (78 FR 11651), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN<sup>1</sup>

Respondent	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
State Departments of Agriculture or Health .....	44	1	44	303	13,332

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection of information.

The burden has been calculated to 303 hours per respondent. This burden was determined by capturing the average amount of time for each respondent to assess the current state of the program and work toward

implementation of each of the 10 standards contained in MFRPS. The hours per respondent will remain the same as implementation to account for continuing improvement and self-sufficiency in the program.

Dated: July 5, 2013.  
**Leslie Kux,**  
*Assistant Commissioner for Policy.*  
 [FR Doc. 2013-16620 Filed 7-10-13; 8:45 am]  
**BILLING CODE 4160-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Food and Drug Administration**

[Docket No. FDA-2013-N-0001]

**Orthopaedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee; Cancellation****AGENCY:** Food and Drug Administration, HHS.**ACTION:** Notice.

**SUMMARY:** The meeting of the Orthopaedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee scheduled for July 24 and 25, 2013, is cancelled. This meeting was announced in the *Federal Register* of April 25, 2013 (78 FR 24426).

**FOR FURTHER INFORMATION CONTACT:** Sara J. Anderson, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 1611, Silver Spring, MD 20993, 301-796-7047, [Sara.Anderson@fda.hhs.gov](mailto:Sara.Anderson@fda.hhs.gov), or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area), and follow the prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting.

Dated: July 5, 2013.

**Leslie Kux,***Assistant Commissioner for Policy.*

[FR Doc. 2013-16621 Filed 7-10-13; 8:45 am]

**BILLING CODE 4160-01-P****DEPARTMENT OF HEALTH AND HUMAN SERVICES****Food and Drug Administration**

[Docket No. FDA-2013-N-0757]

**Establishment of a Public Docket for Comment on the Report Prepared Under the Food and Drug Administration Safety and Innovation Act Section 1138****AGENCY:** Food and Drug Administration, HHS.**ACTION:** Establishment of docket; request for comments.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the establishment of a public docket for comments pertaining to the report

mandated under the Food and Drug Administration Safety and Innovation Act (FDASIA) Section 1138, enacted July 9, 2012, and posted on the FDA Web site on July 9, 2013. This docket is intended to solicit input on this report from all relevant stakeholders.

**DATES:** Submit electronic or written comments by September 9, 2013.

**ADDRESSES:** Submit electronic comments to <http://www.regulations.gov>. Submit written comments to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:**

Jonca Bull, Office of Minority Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 4274, Silver Spring, MD 20993-0002, 301-796-8000, email: [jonca.bull@fda.hhs.gov](mailto:jonca.bull@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:****I. Background**

On July 9, 2012, President Obama signed FDASIA (Pub. L. 112-144) into law. Section 1138 of FDASIA requires that FDA review and modify, as necessary, the FDA communication plan to inform and educate health care providers and patients on the benefits and risks of medical products, with particular focus on underrepresented subpopulations, including racial subgroups.

Section 1138 of FDASIA requires that FDA shall publicly post the communication plan on the Internet Web site of the Office of Minority Health of FDA, and provide links to any other appropriate Internet Web site, and seek public comment on the communication plan.

FDA is opening a docket for 60 days to solicit input from all relevant stakeholders regarding the communication plan and Internet links. This docket is intended to ensure that stakeholders have an opportunity to provide comments for further improvements to the plan.

**II. Comments**

Interested persons may submit either electronic comments regarding this document to <http://www.regulations.gov> or written comments to the Division of

Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments will be posted to the docket at <http://www.regulations.gov> and may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 5, 2013.

**Leslie Kux,***Assistant Commissioner for Policy.*

[FR Doc. 2013-16617 Filed 7-10-13; 8:45 am]

**BILLING CODE 4160-01-P****DEPARTMENT OF JUSTICE****Notice of Lodging of Proposed Amendment to Consent Decree Under the Clean Water Act**

On July 5, 2013, the Department of Justice lodged a proposed amendment to a consent decree with the United States District Court for the Eastern District of Missouri in the lawsuit entitled in *United States, et al. v. Metropolitan St. Louis Sewer District*, Civil Action No. 4:07-CV-01120.

Under the original 2012 consent decree, the Metropolitan St. Louis Sewer District ("MSD") agreed to undertake numerous measures to come into compliance with the Clean Water Act, including constructing and implementing specific combined sewer overflow control measures. MSD still is in the process of complying with the 2012 decree. However, the proposed amendment would replace two CSO control measures (a treatment facility and a local storage facility) as required by the 2012 decree with one single CSO storage facility.

The publication of this notice opens a period of public comment on the proposed amendment. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States, et al. v. Metropolitan St. Louis Sewer District*, D.J. Ref. No. 90-5-1-1-08111. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

<i>To submit comments:</i>	<i>Send them to:</i>
By email ...	<i>pubcomment-ees.enrd@usdoj.gov</i>
By mail .....	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, D.C. 20044-7611.

During the public comment period, the proposed amendment may be examined and downloaded at this Department of Justice Web site: [http://www.usdoj.gov/enrd/Consent\\_Decrees.html](http://www.usdoj.gov/enrd/Consent_Decrees.html). We will provide a paper copy of the proposed amendment upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044-7611.

Please enclose a check in the amount of \$ 2.75 (25 cents per page reproduction cost) payable to the United States Treasury.

**Robert E. Maher, Jr.**,  
*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 2013-16638 Filed 7-10-13; 8:45 am]

**BILLING CODE 4410-15-P**

## **NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

[Notice: (13-077)]

### **NASA Advisory Council; Meeting.**

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of Meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council (NAC).

**DATES:** Wednesday, July 31, 2013, 1:00 p.m.–5:00 p.m., Local Time; and Thursday, August 1, 2013, 9:00 a.m.–5:00 p.m., Local Time

**ADDRESSES:** NASA Headquarters, Room 9H40, Program Review Center, 300 E Street SW., Washington, DC 20456

**FOR FURTHER INFORMATION CONTACT:** Ms. Marla King, NAC Administrative Officer, NASA Headquarters, Washington, DC 20546, (202) 358-1148.

**SUPPLEMENTARY INFORMATION:** The agenda for the meeting will include the following:

- Aeronautics Committee Report
- Audit, Finance and Analysis Committee Report
- Commercial Space Committee Report

- Education and Public Outreach Committee Report
- Human Exploration and Operations Committee Report
- Information Technology Infrastructure Committee Report
- Science Committee Report
- Technology and Innovation Committee Report

The meeting will be open to the public up to the seating capacity of the room. This meeting is also available telephonically and by WebEx. You must use a touch tone phone to participate in this meeting. Any interested person may dial the toll free access number 866-753-1451 or toll access number 1-203-875-1553, and then the numeric participant passcode: 6957984 followed by the # sign. To join via WebEx, the link is <https://nasa.webex.com/>, meeting number 998 124 221, and password: JulyNAC@2013. (Password is case sensitive.) **Note:** If dialing in, please “mute” your telephone.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID to Security before access to NASA Headquarters. Foreign nationals attending this meeting will be required to provide a copy of their passport and visa in addition to providing the following information no less than 10 working days prior to the meeting: Full name; gender; date/place of birth; citizenship; visa information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/ position of attendee; and home address to Marla King via email at [marla.k.king@nasa.gov](mailto:marla.k.king@nasa.gov) or by fax at (202) 358-3030. U.S. citizens and Permanent Residents (green card holders) are requested to submit their name and affiliation 3 working days prior to the meeting to Marla King at (202) 358-1148.

**Patricia D. Rausch**,  
*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 2013-16657 Filed 7-10-13; 8:45 am]

**BILLING CODE 7510-13-P**

## **NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

[Notice: (13-076)]

### **NASA Advisory Council; Audit, Finance and Analysis Committee; Meeting.**

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of Meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a meeting of the Audit, Finance and Analysis Committee of the NASA Advisory Council (NAC). This Committee reports to the NAC.

**DATES:** Monday, July 29, 2013, 9:00 a.m.–4:30 p.m., Local Time; and Tuesday, July 30, 2013, 10:00 a.m.–11:15 a.m., Local Time.

**ADDRESSES:** NASA Headquarters, Room 8E40, 300 E Street SW., Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Ms. Angela Herring, Executive Secretary, Office of the Chief Financial Officer, NASA Headquarters, Washington, DC 20546. Phone: (202) 358-1698.

**SUPPLEMENTARY INFORMATION:** The agenda for the meeting includes briefings on the following topics:

- Finance Update
- Strategy, Performance, Budget Update
- Conference Cost Reporting Update
- FY 2013 Financial Statement Audit—Unfunded Environmental Liability Estimation
- Federal Accounting Standards Advisory Board—Exposure Draft (Reporting Entity)
- Office of Management and Budget Initiatives
- Financial Statement Audit Update
- Office of the Inspector General Audit Update

The meeting will be open to the public up to the seating capacity of the room. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID to Security before access to NASA Headquarters. Foreign nationals attending this meeting will be required to provide a copy of their passport and visa in addition to providing the following information no less than 10 working days prior to the meeting: Full name; gender; date/place of birth; citizenship; visa information (number, type, expiration date); passport

information (number, country, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee; and home address to Angela Herring at fax (202) 358-4336. U.S. citizens and Permanent Residents (green card holders) are requested to submit their name and affiliation 3 working days prior to the meeting to Angela Herring at (202) 358-1698 or fax (202) 358-4336.

**Patricia D. Rausch,**

*Advisory Committee Management Officer,  
National Aeronautics and Space  
Administration.*

[FR Doc. 2013-16656 Filed 7-10-13; 8:45 am]

**BILLING CODE 7510-13-P**

---

## NATIONAL SCIENCE FOUNDATION

### Agency Information Collection Activities: Comment Request

**AGENCY:** National Science Foundation.

**ACTION:** Submission for OMB review; comment request.

**SUMMARY:** The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. This is the second notice for public comment; the first was published in the **Federal Register** at 78 FR 27260, and no comments were received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. The full submission may be found at: <http://www.reginfo.gov/public/do/PRAMain>. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be

addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725-17th Street NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send email to [splimpto@nsf.gov](mailto:splimpto@nsf.gov).

Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703-292-7556.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. Under OMB regulations, NSF may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

**SUPPLEMENTARY INFORMATION:**

*Title:* Antarctic Conservation Act Application and Permit Form.

*OMB Control Number:* 3145-0034.

*Proposed Project:* The current Antarctic Conservation Act Application Permit Form (NSF 1078) has been in use for several years. The form requests general information, such as name, affiliation, location, etc., and more specific information as to the type of object to be taken (plant, native mammal, or native bird).

*Use of the Information:* The purpose of the regulations (45 CFR part 670) is to conserve and protect the native mammals, birds, plants, and invertebrates of Antarctica and the ecosystem upon which they depend and to implement the Antarctic Conservation Act of 1978, Public Law 95-541, as amended by the Antarctic Science, Tourism, and Conservation Act of 1996, Public Law 104-227.

*Burden on the Public:* The Foundation estimates about 25 responses annually at ½ hour per response; this computes to approximately 12.5 hours annually.

Dated: July 8, 2013.

**Suzanne H. Plimpton,**

*Reports Clearance Officer, National Science  
Foundation.*

[FR Doc. 2013-16639 Filed 7-10-13; 8:45 am]

**BILLING CODE 7555-01-P**

## NUCLEAR REGULATORY COMMISSION

[EA-13-112; Docket No. 72-1043 (NRC-2013-0154)]

### In the Matter of FirstEnergy Nuclear Operating Company; Beaver Valley Power Station; Independent Spent Fuel Storage Installation; Order Modifying License (Effective Immediately)

**AGENCY:** Nuclear Regulatory  
Commission.

**ACTION:** Issuance of order for implementation of additional security measures and fingerprinting for unescorted access to FirstEnergy Nuclear Operating Company.

**FOR FURTHER INFORMATION CONTACT:** L. Raynard Wharton, Senior Project Manager, Licensing and Inspection Directorate, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards (NMSS), U.S. Nuclear Regulatory Commission (NRC), Rockville, MD 20852. Telephone: (301) 287-9196; fax number: (301) 287-9341; email: [Raynard.Wharton@nrc.gov](mailto:Raynard.Wharton@nrc.gov).

**SUPPLEMENTARY INFORMATION:**

#### I. Introduction

Pursuant to 10 CFR 2.106, the NRC is providing notice in the matter of FirstEnergy Nuclear Operating Company, Beaver Valley Power Station Independent Spent Fuel Storage Installation (ISFSI) Order Modifying License (Effective Immediately).

#### II. Further Information

*I*

NRC has issued a general license to FirstEnergy Nuclear Operating Company, (FENOC), authorizing the operation of an ISFSI, in accordance with the Atomic Energy Act of 1954, as amended, part 72 of Title 10 of the *Code of Federal Regulations* (10 CFR). This Order is being issued to FENOC because it has identified near-term plans to store spent fuel in an ISFSI under the general license provisions of 10 CFR part 72. The Commission's regulations at 10 CFR 72.212(b)(5), 10 CFR 50.54(p)(1), and 10 CFR 73.55(c)(5) require licensees to maintain safeguards contingency plan procedures to respond to threats of radiological sabotage and to protect the

spent fuel against the threat of radiological sabotage, in accordance with 10 CFR Part 73, Appendix C. Specific physical security requirements are contained in 10 CFR 73.51 or 73.55, as applicable.

Inasmuch as an insider has an opportunity equal to, or greater than, any other person, to commit radiological sabotage, the Commission has determined these measures to be prudent. Comparable Orders have been issued to all licensees that currently store spent fuel or have identified near-term plans to store spent fuel in an ISFSI.

## II

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, using large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. On October 16, 2002, the Commission issued Orders to the licensees of operating ISFSIs, to place the actions taken in response to the Advisories into the established regulatory framework and to implement additional security enhancements that emerged from NRC's ongoing comprehensive review. The Commission has also communicated with other Federal, State, and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of security measures at licensed facilities. In addition, the Commission has conducted a comprehensive review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and security requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain additional security measures (ASMs) are required to address the current threat environment, in a consistent manner throughout the nuclear ISFSI community. Therefore, the Commission is imposing requirements, as set forth in Attachments 1 and 2 of this Order, on all licensees of these facilities. These requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the public health and safety, the environment, and common defense and security continue to be adequately protected in the current

threat environment. These requirements will remain in effect until the Commission determines otherwise.

The Commission recognizes that licensees may have already initiated many of the measures set forth in Attachments 1 and 2 to this Order, in response to previously issued Advisories, or on their own. It also recognizes that some measures may not be possible or necessary at some sites, or may need to be tailored to accommodate the specific circumstances existing at FENOC's facility, to achieve the intended objectives and avoid any unforeseen effect on the safe storage of spent fuel.

Although the ASMs implemented by licensees in response to the Safeguards and Threat Advisories have been sufficient to provide reasonable assurance of adequate protection of public health and safety, in light of the continuing threat environment, the Commission concludes that these actions must be embodied in an Order, consistent with the established regulatory framework.

To provide assurance that licensees are implementing prudent measures to achieve a consistent level of protection to address the current threat environment, licenses issued pursuant to 10 CFR 72.210 shall be modified to include the requirements identified in Attachments 1 and 2 to this Order. In addition, pursuant to 10 CFR 2.202, I find that, in light of the common defense and security circumstances described above, the public health, safety, and interest require that this Order be effective immediately.

## III

Accordingly, pursuant to Sections 53, 103, 104, 147, 149, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Parts 50, 72, and 73, *it is hereby ordered, effective immediately, that your general license is modified as follows:*

A. FENOC shall comply with the requirements described in Attachments 1 and 2 to this Order, except to the extent that a more stringent requirement is set forth in the Beaver Valley Power Station's physical security plan. FENOC shall demonstrate its ability to comply with the requirements in Attachments 1 and 2 to the Order no later than 365 days from the date of this Order or 90 days before the first day that spent fuel is initially placed in the ISFSI, whichever is earlier. FENOC must implement these requirements before initially placing spent fuel in the ISFSI. Additionally, FENOC must receive

written verification from the NRC that it has adequately demonstrated compliance with these requirements before initially placing spent fuel in the ISFSI.

B.1. FENOC shall, within twenty (20) days of the date of this Order, notify the Commission: (1) If it is unable to comply with any of the requirements described in Attachments 1 and 2; (2) if compliance with any of the requirements is unnecessary, in its specific circumstances; or (3) if implementation of any of the requirements would cause FENOC to be in violation of the provisions of any Commission regulation or the facility license. The notification shall provide FENOC's justification for seeking relief from, or variation of, any specific requirement.

2. If FENOC considers that implementation of any of the requirements described in Attachments 1 and 2 to this Order would adversely impact the safe storage of spent fuel, FENOC must notify the Commission, within twenty (20) days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in Attachments 1 and 2 requirements in question, or a schedule for modifying the facility, to address the adverse safety condition. If neither approach is appropriate, FENOC must supplement its response, to Condition B.1 of this Order, to identify the condition as a requirement with which it cannot comply, with attendant justifications, as required under Condition B.1.

C.1. FENOC shall, within twenty (20) days of this Order, submit to the Commission, a schedule for achieving compliance with each requirement described in Attachments 1 and 2.

2. FENOC shall report to the Commission when it has achieved full compliance with the requirements described in Attachments 1 and 2.

D. All measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise.

FENOC's response to Conditions B.1, B.2, C.1, and C.2, above, shall be submitted in accordance with 10 CFR 72.4. In addition, submittals and documents produced by FENOC as a result of this Order, that contain Safeguards Information as defined by 10 CFR 73.22, shall be properly marked and handled, in accordance with 10 CFR 73.21 and 73.22.

The Director, Office of Nuclear Material Safety and Safeguards, may, in

writing, relax or rescind any of the above conditions, for good cause.

#### IV

In accordance with 10 CFR 2.202, FENOC must, and any other person adversely affected by this Order may, submit an answer to this Order within 20 days of its publication in the **Federal Register**. In addition, FENOC and any other person adversely affected by this Order may request a hearing on this Order within 20 days of its publication in the **Federal Register**. Where good cause is shown, consideration will be given to extending the time to answer or request a hearing. A request for extension of time must be made, in writing, to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and include a statement of good cause for the extension.

The answer may consent to this Order. If the answer includes a request for a hearing, it shall, under oath or affirmation, specifically set forth the matters of fact and law on which FENOC relies and the reasons as to why the Order should not have been issued. If a person other than FENOC requests a hearing, that person shall set forth with particularity the manner in which his/her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d).

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at [hearing.docket@nrc.gov](mailto:hearing.docket@nrc.gov), or by telephone at 301-415-1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal

server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>. System requirements for accessing the E-Submittal server are detailed in the NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email

notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>, by email to [MSHD.Resource@nrc.gov](mailto:MSHD.Resource@nrc.gov), or by a toll-free call at 866-672-7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at <http://www.nrc.gov>

*ehd1.nrc.gov/ehd/*, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, a request to intervene will require including information on local residence in order to demonstrate a proximity assertion of interest in the proceeding. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

If a hearing is requested by FENOC or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), FENOC may, in addition to requesting a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the grounds that the Order, including the need for immediate effectiveness, is not based on adequate evidence, but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions as specified in Section III shall be final twenty (20) days from the date this Order is published in the **Federal Register**, without further Order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions as specified in Section III, shall be final when the extension expires, if a hearing request has not been received. *An answer or a request for hearing shall not stay the immediate effectiveness of this order.*

Dated at Rockville, Maryland, this 26th day of June, 2013.

For the Nuclear Regulatory Commission.  
**Scott W. Moore**,  
*Acting Director, Office of Nuclear Material Safety and Safeguards.*

**Attachment 1—Additional Security Measures (ASMs) for Physical Protection of Dry Independent Spent Fuel Storage Installations (ISFSIs) contains Safeguards Information and is not included in the Federal Register Notice**

**Attachment 2—Additional Security Measures for Access Authorization and Fingerprinting at Independent Spent Fuel Storage Installations, dated June 14, 2013**

*A. General Basis Criteria*

1. These additional security measures (ASMs) are established to delineate an independent spent fuel storage installation (ISFSI) licensee's responsibility to enhance security measures related to authorization for unescorted access to the protected area of an ISFSI in response to the current threat environment.

2. Licensees whose ISFSI is collocated with a power reactor may choose to comply with the U.S. Nuclear Regulatory Commission (NRC)-approved reactor access authorization program for the associated reactor as an alternative means to satisfy the provisions of Sections B through G below. Otherwise, licensees shall comply with the access authorization and fingerprinting requirements of Section B through G of these ASMs.

3. Licensees shall clearly distinguish in their 20-day response which method they intend to use in order to comply with these ASMs.

*B. Additional Security Measures for Access Authorization Program*

1. The licensee shall develop, implement and maintain a program, or enhance its existing program, designed to ensure that persons granted unescorted access to the protected area of an ISFSI are trustworthy and reliable and do not constitute an unreasonable risk to the public health and safety for the common defense and security, including a potential to commit radiological sabotage.

a. To establish trustworthiness and reliability, the licensee shall develop, implement, and maintain procedures for conducting and completing background investigations, prior to granting access. The scope of background investigations must address at least the past three years and, as a minimum, must include:

i. Fingerprinting and a Federal Bureau of Investigation (FBI) identification and criminal history records check (CHRC).

Where an applicant for unescorted access has been previously fingerprinted with a favorably completed CHRC, (such as a CHRC pursuant to compliance with orders for access to safeguards information) the licensee may accept the results of that CHRC, and need not submit another set of fingerprints, provided the CHRC was completed not more than three years from the date of the application for unescorted access.

ii. Verification of employment with each previous employer for the most recent year from the date of application.

iii. Verification of employment with an employer of the longest duration during any calendar month for the remaining next most recent two years.

iv. A full credit history review.

v. An interview with not less than two character references, developed by the investigator.

vi. A review of official identification (e.g., driver's license; passport; government identification; state-, province-, or country-of-birth issued certificate of birth) to allow comparison of personal information data provided by the applicant. The licensee shall maintain a photocopy of the identifying document(s) on file, in accordance with "Protection of Information," in Section G of these ASMs.

vii. Licensees shall confirm eligibility for employment through the regulations of the U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, and shall verify and ensure, to the extent possible, the accuracy of the provided social security number and alien registration number, as applicable.

b. The procedures developed or enhanced shall include measures for confirming the term, duration, and character of military service for the past three years, and/or academic enrollment and attendance in lieu of employment, for the past five years.

c. Licensees need not conduct an independent investigation for individuals employed at a facility who possess active "Q" or "L" clearances or possess another active U.S. Government-granted security clearance (i.e., Top Secret, Secret, or Confidential).

d. A review of the applicant's criminal history, obtained from local criminal justice resources, may be included in addition to the FBI CHRC, and is encouraged if the results of the FBI CHRC, employment check, or credit check disclose derogatory information. The scope of the applicant's local criminal history check shall cover all residences of record for the past three years from the date of the application for unescorted access.

2. The licensee shall use any information obtained as part of a CHRC solely for the purpose of determining an individual's suitability for unescorted access to the protected area of an ISFSI.

3. The licensee shall document the basis for its determination for granting or denying access to the protected area of an ISFSI.

4. The licensee shall develop, implement, and maintain procedures for updating background investigations for persons who are applying for reinstatement of unescorted access. Licensees need not conduct an independent reinvestigation for individuals who possess active "Q" or "L" clearances or possess another active U.S. Government granted security clearance, i.e., Top Secret, Secret or Confidential.

5. The licensee shall develop, implement, and maintain procedures for reinvestigations of persons granted unescorted access, at intervals not to exceed five years. Licensees need not conduct an independent reinvestigation for individuals employed at a facility who possess active "Q" or "L" clearances or possess another active U.S. Government granted security clearance, i.e., Top Secret, Secret or Confidential.

6. The licensee shall develop, implement, and maintain procedures designed to ensure that persons who have been denied unescorted access authorization to the facility are not allowed access to the facility, even under escort.

7. The licensee shall develop, implement, and maintain an audit program for licensee and contractor/vendor access authorization programs that evaluate all program elements and include a person knowledgeable and practiced in access authorization program performance objectives to assist in the overall assessment of the site's program effectiveness.

### C. Fingerprinting Program Requirements

1. In a letter to the NRC, the licensee must nominate an individual who will review the results of the FBI CHRCs to make trustworthiness and reliability determinations for unescorted access to an ISFSI. This individual, referred to as the "reviewing official," must be someone who requires unescorted access to the ISFSI. The NRC will review the CHRC of any individual nominated to perform the reviewing official function. Based on the results of the CHRC, the NRC staff will determine whether this individual may have access. If the NRC determines that the nominee may not be granted such access, that individual will be

prohibited from obtaining access.<sup>1</sup> Once the NRC approves a reviewing official, the reviewing official is the only individual permitted to make access determinations for other individuals who have been identified by the licensee as having the need for unescorted access to the ISFSI, and have been fingerprinted and have had a CHRC in accordance with these ASMs. The reviewing official can only make access determinations for other individuals, and therefore cannot approve other individuals to act as reviewing officials. Only the NRC can approve a reviewing official. Therefore, if the licensee wishes to have a new or additional reviewing official, the NRC must approve that individual before he or she can act in the capacity of a reviewing official.

2. No person may have access to Safeguards Information (SGI) or unescorted access to any facility subject to NRC regulation, if the NRC has determined, in accordance with its administrative review process based on fingerprinting and an FBI identification and CHRC, that the person may not have access to SGI or unescorted access to any facility subject to NRC regulation.

3. All fingerprints obtained by the licensee under this Order, must be submitted to the Commission for transmission to the FBI.

4. The licensee shall notify each affected individual that the fingerprints will be used to conduct a review of his/her criminal history record and inform the individual of the procedures for revising the record or including an explanation in the record, as specified in the "Right to Correct and Complete Information," in section F of these ASMs.

5. Fingerprints need not be taken if the employed individual (e.g., a licensee employee, contractor, manufacturer, or supplier) is relieved from the fingerprinting requirement by 10 CFR 73.61, has a favorably adjudicated U.S. Government CHRC within the last five (5) years, or has an active Federal security clearance. Written confirmation from the Agency/employer who granted the Federal security clearance or reviewed the CHRC must be provided to the licensee. The licensee must retain this documentation for a period of three years from the date the individual no longer requires access to the facility.

### D. Prohibitions

1. A licensee shall not base a final determination to deny an individual

<sup>1</sup> The NRC's determination of this individual's unescorted access to the ISFSI, in accordance with the process, is an administrative determination that is outside the scope of the Order.

unescorted access to the protected area of an ISFSI solely on the basis of information received from the FBI involving: An arrest more than one (1) year old for which there is no information of the disposition of the case, or an arrest that resulted in dismissal of the charge, or an acquittal.

2. A licensee shall not use information received from a CHRC obtained pursuant to this Order in a manner that would infringe upon the rights of any individual under the First Amendment to the Constitution of the United States, nor shall the licensee use the information in any way that would discriminate among individuals on the basis of race, religion, national origin, sex, or age.

### E. Procedures for Processing Fingerprint Checks

1. For the purpose of complying with this Order, licensees shall, using an appropriate method listed in 10 CFR 73.4, submit to the NRC's Division of Facilities and Security, Mail Stop TWB-05B32M, one completed, legible standard fingerprint card (Form FD-258, ORIMDNRCOOOZ) or, where practicable, other fingerprint records for each individual seeking unescorted access to an ISFSI, to the Director of the Division of Facilities and Security, marked for the attention of the Division's Criminal History Check Section. Copies of these forms may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, by calling 301-415-5877, or by email to forms@nrc.gov. Practicable alternative formats are set forth in 10 CFR 73.4. The licensee shall establish procedures to ensure that the quality of the fingerprints taken results in minimizing the rejection rate of fingerprint cards because of illegible or incomplete cards.

2. The NRC will review submitted fingerprint cards for completeness. Any Form FD-258 fingerprint record containing omissions or evident errors will be returned to the licensee for corrections. The fee for processing fingerprint checks includes one re-submission if the initial submission is returned by the FBI because the fingerprint impressions cannot be classified. The one free re-submission must have the FBI Transaction Control Number reflected on the re-submission. If additional submissions are necessary, they will be treated as initial submittals and will require a second payment of the processing fee.

3. Fees for processing fingerprint checks are due upon application. The licensee shall submit payment of the

processing fees electronically. To be able to submit secure electronic payments, licensees will need to establish an account with Pay.Gov (<https://www.pay.gov>). To request an account, the licensee shall send an email to [det@nrc.gov](mailto:det@nrc.gov). The email must include the licensee's company name, address, point of contact (POC), POC email address, and phone number. The NRC will forward the request to Pay.Gov; who will contact the licensee with a password and user ID. Once the licensee has established an account and submitted payment to Pay.Gov, they shall obtain a receipt. The licensee shall submit the receipt from Pay.Gov to the NRC along with fingerprint cards. For additional guidance on making electronic payments, contact the Facilities Security Branch, Division of Facilities and Security, at 301-492-3531. Combined payment for multiple applications is acceptable. The application fee (currently \$26) is the sum of the user fee charged by the FBI for each fingerprint card or other fingerprint record submitted by the NRC on behalf of a licensee, and an NRC processing fee, which covers administrative costs associated with NRC handling of licensee fingerprint submissions. The Commission will directly notify licensees who are subject to this regulation of any fee changes.

4. The Commission will forward to the submitting licensee all data received from the FBI as a result of the licensee's application(s) for CHRCs, including the FBI fingerprint record.

#### *F. Right to Correct and Complete Information*

1. Prior to any final adverse determination, the licensee shall make available to the individual the contents of any criminal history records obtained from the FBI for the purpose of assuring correct and complete information. Written confirmation by the individual of receipt of this notification must be maintained by the licensee for a period of one (1) year from the date of notification.

2. If, after reviewing the record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, or update the alleged deficiency, or to explain any matter in the record, the individual may initiate challenge procedures. These procedures include either direct application by the individual challenging the record to the agency (i.e., law enforcement agency) that contributed the questioned information, or direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Assistant Director, Federal Bureau of

Investigation Identification Division, Washington, DC 20537-9700 (as set forth in 28 CFR 16.30 through 16.34). In the latter case, the FBI forwards the challenge to the agency that submitted the data and requests that agency to verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary in accordance with the information supplied by that agency. The licensee must provide at least 10 days for an individual to initiate an action challenging the results of a FBI CHRC after the record is made available for his/her review. The licensee may make a final access determination based on the criminal history record only upon receipt of the FBI's ultimate confirmation or correction of the record. Upon a final adverse determination on access to an ISFSI, the licensee shall provide the individual its documented basis for denial. Access to an ISFSI shall not be granted to an individual during the review process.

#### *G. Protection of Information*

1. The licensee shall develop, implement, and maintain a system for personnel information management with appropriate procedures for the protection of personal, confidential information. This system shall be designed to prohibit unauthorized access to sensitive information and to prohibit modification of the information without authorization.

2. Each licensee who obtains a criminal history record on an individual pursuant to this Order shall establish and maintain a system of files and procedures, for protecting the record and the personal information from unauthorized disclosure.

3. The licensee may not disclose the record or personal information collected and maintained to persons other than the subject individual, his/her representative, or to those who have a need to access the information in performing assigned duties in the process of determining suitability for unescorted access to the protected area of an ISFSI. No individual authorized to have access to the information may disseminate the information to any other individual who does not have the appropriate need to know.

4. The personal information obtained on an individual from a CHRC may be transferred to another licensee if the gaining licensee receives the individual's written request to re-disseminate the information contained in his/her file, and the gaining licensee

verifies information such as the individual's name, date of birth, social security number, sex, and other applicable physical characteristics for identification purposes.

5. The licensee shall make criminal history records, obtained under this section, available for examination by an authorized representative of the NRC to determine compliance with the regulations and laws.

[FR Doc. 2013-16648 Filed 7-10-13; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

[NRC-2013-0148]

### Proposed Revisions to Light Load Handling System and Operations

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Standard review plan-draft section revision; request for comment and use.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is revising and soliciting public comment on Section 9.1.4, "Light Load Handling System and Operations" of NUREG-0800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR Edition."

**DATES:** Submit comments by August 12, 2013. Comments received after this date will be considered, if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

**ADDRESSES:** You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2013-0148. Address questions about NRC dockets to Carol Gallagher; telephone: 301-492-3668; email: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov). For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: 3WFN 6-A56, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

For additional direction on accessing information and submitting comments, see "Accessing Information and Submitting Comments" in the

**SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jonathan DeGange, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-6992; email: *mailto:Jonathan.DeGange@nrc.gov*.

**SUPPLEMENTARY INFORMATION:**

**I. Accessing Information and Submitting Comments**

*A. Accessing Information*

Please refer to Docket ID NRC-2013-0148 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, by any of the following methods:

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2013-0148.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to *pdr.resource@nrc.gov*. The ADAMS Accession numbers for the redline document comparing the current revision and the proposed revision are available in ADAMS under Accession Nos.: Section 9.1.4, Proposed Revision 4 (ML13085A145), Current Revision 3 (ML070380200), Redline (ML13065A028).

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

*B. Submitting Comments*

Please include Docket ID NRC-2013-0148 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <http://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit

comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

**II. Further Information**

The Office of New Reactors is revising Section 9.1.4 from the initial issuance (ADAMS Accession No. ML070380200). In respect of this proposed revision 4 (ADAMS Accession No. ML13085A145), details of specific changes are included at the end of the proposed section.

The changes to Chapter 9 of this Standard Review Plan (SRP) reflect current staff review methods and practices based on lessons learned from NRC reviews of design certification and combined license applications completed since the last revision of this chapter. This section has been updated primarily to reflect operating experience associated with Bulletin 84-03, "Refueling Cavity Water Seals" (ADAMS Accession No. ML082700127).

The NRC staff is issuing this notice to solicit public comments on the proposed SRP Section 9.1.4 in Chapter 9. After the NRC staff considers any public comments, it will make a determination regarding the proposed SRP Section 9.1.4 in Chapter 9.

**III. Backfitting and Issue Finality**

This draft SRP, if finalized, would provide guidance to the staff for reviewing applications for a construction permit and an operating license under Part 50 of Title 10 of the Code of Federal Regulations (10 CFR) with respect to the light load handling system and related refueling operations. The draft SRP would also provide guidance for reviewing an application for a standard design approval, a standard design certification, a combined license, and a manufacturing license under 10 CFR Part 52 with respect to those same subject matters.

Issuance of this draft SRP, if finalized, would not constitute backfitting as defined in 10 CFR 50.109, or otherwise be inconsistent with the issue finality provisions in 10 CFR Part 52. The staff's position is based upon the following considerations.

1. *The draft SRP positions, if finalized, do not constitute backfitting, inasmuch as the SRP is internal guidance to NRC staff.*

The SRP provides interim guidance to the staff on how to review an application for NRC regulatory approval in the form of licensing. Changes in internal staff guidance are not matters for which applicants or licensees are protected under 10 CFR 50.109 or issue finality provisions in 10 CFR Part 52.

2. *Backfitting and issue finality—with certain exceptions discussed below—do not protect current or future applicants.*

Applicants and potential applicants are not, with certain exceptions, protected by either the Backfit Rule or any issue finality provisions under 10 CFR Part 52. This is because neither the Backfit Rule nor the issue finality provisions under 10 CFR Part 52—with certain exclusions discussed below—were intended to apply to every NRC action which substantially changes the expectations of current and future applicants.

The exceptions to the general principle are applicable whenever an applicant references a 10 CFR Part 52 license (e.g., an early site permit) and/or NRC regulatory approval (e.g., a design certification rule) with specified issue finality provisions. The staff does not, at this time, intend to impose the positions represented in the draft SRP section (if finalized) in a manner that is inconsistent with any issue finality provisions. If, in the future, the staff seeks to impose a position in the draft SRP section (if finalized) in a manner which does not provide issue finality as described in the applicable issue finality provision, then the staff must address the criteria for avoiding issue finality as described in the applicable issue finality provision.

3. *The staff has no intention to impose the draft SRP positions on existing nuclear power plant licenses or regulatory approvals either now or in the future (absent a voluntary request for change from the licensee, holder of a regulatory approval, or a design certification applicant).*

The staff does not intend to impose or apply the positions described in the draft SRP section to existing (already issued) licenses (e.g., operating licenses and combined licenses) and regulatory approvals—in this case, design certifications. Hence, the draft SRP—even if considered guidance which is within the purview of the issue finality provisions in 10 CFR Part 52—need not be evaluated as if it were a backfit or as being inconsistent with issue finality provisions. If, in the future, the staff seeks to impose a position in the draft

SRP (if finalized) on holders of already issued licenses in a manner which does not provide issue finality as described in the applicable issue finality provision, then the staff must make the showing as set forth in the Backfit Rule, or address the criteria for avoiding issue finality as described applicable issue finality provision, as applicable.

Dated at Rockville, Maryland, this 28th day of June 2013.

For the Nuclear Regulatory Commission.

**Joseph Colaccino,**

*Chief, Policy Branch, Division of Advanced Reactors and Rulemaking, Office of New Reactors.*

[FR Doc. 2013-16594 Filed 7-10-13; 8:45 am]

BILLING CODE 7590-01-P

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary of Transportation

#### Notice of Funding Availability for the Small Business Transportation Resource Center Program

**AGENCY:** Office of Small and Disadvantaged Business Utilization (OSDBU), Office of the Secretary of Transportation (OST), Department of Transportation (DOT).

**ACTION:** Notice of Funding Availability for the Gulf Region.

**SUMMARY:** The Department of Transportation (DOT), Office of the Secretary (OST), Office of Small and Disadvantaged Business Utilization (OSDBU) announces the opportunity for; (1) Business centered community-based organizations; (2) transportation-related trade associations; (3) colleges and universities; (4) community colleges or; (5) chambers of commerce, registered with the Internal Revenue Service as 501C(6) or 501C(3) tax-exempt organizations, to compete for participation in OSDBU's Small Business Transportation Resource Center (SBTRC) program in the Gulf Region.

OSDBU will enter into Cooperative Agreements with these organizations to provide outreach to the small business community in their designated region and provide financial and technical assistance, business training programs, business assessment, management training, counseling, marketing and outreach, and the dissemination of information, to encourage and assist small businesses to become better prepared to compete for, obtain, and manage DOT funded transportation-related contracts and subcontracts at the federal, state and local levels.

Throughout this notice, the term "small business" will refer to: 8(a), small disadvantaged businesses (SDB), disadvantaged business enterprises (DBE), women owned small businesses (WOSB), HubZone, service disabled veteran owned businesses (SDVOB), and veteran owned small businesses (VOSB). Throughout this notice, "transportation-related" is defined as the maintenance, rehabilitation, restructuring, improvement, or revitalization of any of the nation's modes of transportation.

**Funding Opportunity Number:** USDOT-OST-OSDBU-SBTRC2013-4.  
**Catalog of Federal Domestic Assistance (CFDA) Number:** 20.910 Assistance to Small and Disadvantaged Businesses.

**Type of Award:** Cooperative Agreement.

**Award Ceiling:** \$150,000.

**Award Floor:** \$125,000.

**Program Authority:** DOT is authorized under 49 U.S.C. 332(b)(4), (5) & (7) to design and carry out programs to assist small disadvantaged businesses in getting transportation-related contracts and subcontracts; develop support mechanisms, including management and technical services, that will enable small disadvantaged businesses to take advantage of those business opportunities; and to make arrangements to carry out the above purposes.

**DATES:** Complete Proposals must be electronically submitted to OSDBU via email on or before September 1, 2013 5:00 p.m. Eastern Standard Time (EST). Proposals received after the deadline will be considered non-responsive and will not be reviewed. The applicant is advised to request delivery receipt notification for email submissions. DOT plans to give notice of award for the competed region on or before September 27, 2013.

**ADDRESSES:** Applications must be electronically submitted to OSDBU via email at [SBTRC@dot.gov](mailto:SBTRC@dot.gov).

**FOR FURTHER INFORMATION:** For further information concerning this notice, contact Ms. Patricia Martin-Dean, Program Analyst, U.S. Department of Transportation, Office of Small and Disadvantaged Business Utilization, 1200 New Jersey Avenue SE., W56-462, Washington, DC, 20590. Telephone: 1-800-532-1169 or email [patricia.martin@dot.gov](mailto:patricia.martin@dot.gov).

#### SUPPLEMENTARY INFORMATION:

##### Table of Contents

1. Introduction
  - 1.1 Background
  - 1.2 Program Description and Goals

- 1.3 Description of Competition
- 1.4 Duration of Agreements
- 1.5 Authority
- 1.6 Eligibility Requirements
2. Program Requirements
  - 2.1 Recipient Responsibilities
  - 2.2 Office of Small and Disadvantaged Business Utilization Responsibilities
3. Submission of Proposals
  - 3.1 Format for Proposals
  - 3.2 Address, Number of Copies, Deadline for Submission
4. Selection Criteria
  - 4.1 General Criteria
  - 4.2 Scoring of Applications
  - 4.3 Conflicts of Interest

Format for Proposals—Appendix A

## Full Text of Announcement

### 1. Introduction

#### 1.1 Background

The Department of Transportation (DOT) established Office of Small and Disadvantaged Business Utilization (OSDBU) in accordance with Public Law 95-507, an amendment to the Small Business Act and the Small Business Investment Act of 1958.

The mission of OSDBU at DOT is to ensure that the small and disadvantaged business policies and goals of the Secretary of Transportation are developed and implemented in a fair, efficient and effective manner to serve small and disadvantaged businesses throughout the country. The OSDBU also administers the provisions of Title 49, Section 332, the Minority Resource Center (MRC) which includes the duties of advocacy, outreach and financial services on behalf of small and disadvantaged business and those certified under CFR 49 parts 23 and or 26 as Disadvantaged Business Enterprises (DBE) and the development of programs to encourage, stimulate, promote and assist small businesses to become better prepared to compete for, obtain and manage transportation-related contracts and subcontracts.

The Regional Assistance Division of OSDBU, through the SBTRC program, allows OSDBU to partner with local organizations to offer a comprehensive delivery system of business training, technical assistance and dissemination of information, targeted towards small business transportation enterprises in their regions.

#### 1.2 Program Description and Goals

The national SBTRC program utilizes Cooperative Agreements with chambers of commerce, trade associations, educational institutions and business-centered community based organizations to establish SBTRCs to provide business training, technical assistance and information to DOT

grantees and recipients, prime contractors and subcontractors. In order to be effective and serve their target audience, the SBTRCs must be active in the local transportation community in order to identify and communicate opportunities and provide the required technical assistance. SBTRCs must already have, or demonstrate the ability to, establish working relationships with the state and local transportation agencies and technical assistance agencies (i.e., The U.S. Department of Commerce's Minority Business Development Centers (MBDCs), Small Business Development Centers (SBDCs), and Procurement Technical Assistance Centers (PTACs), SCORE and State DOT highway supportive services contractors in their region. Utilizing these relationships and their own expertise, the SBTRCs are involved in activities such as information dissemination, small business counseling, and technical assistance with small businesses currently doing business with public and private entities in the transportation industry.

Effective outreach is critical to the success of the SBTRC program. In order for their outreach efforts to be effective, SBTRCs must be familiar with DOT's Operating Administrations, its funding sources, and how funding is awarded to DOT grantees, recipients, contractors, subcontractors, and its financial assistance programs. SBTRCs must provide outreach to the regional small business transportation community to disseminate information and distribute DOT-published marketing materials, such as Short Term Lending Program (STLP) Information, Bonding Education Program (BEP) information, SBTRC brochures and literature, Procurement Forecasts; Contracting with DOT booklets, Women and Girls in Transportation Initiative (WITI) information, and any other materials or resources that DOT or OSDDBU may develop for this purpose. To maximize outreach, the SBTRC may be called upon to participate in regional and national conferences and seminars. Quantities of DOT publications for on-hand inventory and dissemination at conferences and seminars will be available upon request from the OSDDBU office.

### 1.3 Description of Competition

The purpose of this Request For Proposal (RFP) is to solicit proposals from transportation-related trade associations, chambers of commerce, community based entities, colleges and universities, community colleges, and any other qualifying transportation-related non-profit organizations with the

desire and ability to partner with OSDDBU to establish and maintain an SBTRC.

It is OSDDBU's intent to award a Cooperative Agreement to one organization in the Gulf Region, from herein referred to as "region", in this solicitation. However, if warranted, OSDDBU reserves the option to make multiple awards to selected partners. Proposals submitted for a region must contain a plan to service all states listed in the entire region, not just the SBTRC's state or local geographical area. The region's SBTRC headquarters must be established in one of the designated states set forth below. Submitted proposals must also contain justification for the establishment of the SBTRC headquarters in a particular city within the designated state.

#### *SBTRC Region Competed in This Solicitation:*

Gulf Region: Texas, Louisiana, New Mexico, Oklahoma.

Program requirements and selection criteria, set forth in Sections 2 and 4 respectively, indicate that the OSDDBU intends for the SBTRC to be multidimensional; that is, the selected organization must have the capacity to effectively access and provide supportive services to the broad range of small businesses within the respective geographical region. To this end, the SBTRC must be able to demonstrate that they currently have established relationships within the geographic region with whom they may coordinate and establish effective networks with DOT grant recipients and local/regional technical assistance agencies to maximize resources.

Cooperative agreement awards will be distributed to the region(s) as follows:

*Gulf Region:* Ceiling: \$150,000 per year, Floor: \$125,000 per year.

Cooperative agreement awards by region are based upon an analysis of DBEs, Certified Small Businesses, and US DOT transportation dollars in each region. It is OSDDBU's intent to maximize the benefits received by the small business transportation community through the SBTRC. Funding may be utilized to reimburse an on-site Project Director up to 100% of salary plus fringe benefits, an on-site Executive Director up to 20% of salary plus fringe benefits, up to 100% of a Project Coordinator salary plus fringe benefits, the cost of designated SBTRC space, other direct costs, and all other general and administrative expenses. Selected SBTRC partners will be expected to provide in-kind administrative support. Submitted proposals must contain an alternative funding source with which the SBTRC will fund administrative

support costs. Preference will be given to proposals containing in-kind contributions for the Project Director, the Executive Director, the Project Coordinator, cost of designated SBTRC space, other direct costs, and all other general and administrative expenses.

### 1.4 Duration of Agreements

The cooperative agreement will be awarded for a period of 12 months (one year) with options for two (2) additional one year periods. OSDDBU will notify the SBTRC of our intention to exercise an option year or not to exercise an option year 30 days in advance of expiration of the current year.

### 1.5 Authority

DOT is authorized under 49 U.S.C.332 (b) (4), (5) &(7) to design and carry out programs to assist small disadvantaged businesses in getting transportation-related contracts and subcontracts; develop support mechanisms, including management and technical services, that will enable small disadvantaged businesses to take advantage of those business opportunities; and to make arrangements to carry out the above purposes.

### 1.6 Eligibility Requirements

To be eligible, an organization must be an established, nonprofit, community-based organization, transportation-related trade association, chamber of commerce, college or university, community college, and any other qualifying transportation-related non-profit organization which has the documented experience and capacity necessary to successfully operate and administer a coordinated delivery system that provides access for small businesses to prepare and compete for transportation-related contracts.

In addition, to be eligible, the applicant organization must:

(A) Be an established 501 C (3) or 501 C (6) tax-exempt organization and provide documentation as verification. No application will be accepted without proof of tax-exempt status;

(B) Have at least one year of documented and continuous experience prior to the date of application in providing advocacy, outreach, and technical assistance to small businesses within the region in which proposed services will be provided. Prior performance providing services to the transportation community is preferable, but not required; and

(C) Have an office physically located within the proposed city in the designated headquarters state in the region for which they are submitting the

proposal that is readily accessible to the public.

## 2. Program Requirements

### 2.1 Recipient Responsibilities

#### (A) Assessments, Business Analyses

1. Conduct an assessment of small businesses in the SBTRC region to determine their training and technical assistance needs, and use information that is available at no cost to structure programs and services that will enable small businesses to become better prepared to compete for and receive transportation-related contract awards.

2. Contact other federal, state and local government agencies, such as the U.S. Small Business Administration (SBA), state and local highway agencies, state and local airport authorities, and transit authorities to identify relevant and current information that may support the assessment of the regional small business transportation community needs.

#### (B) General Management & Technical Training and Assistance

1. Utilize OSDBU's Monthly Reporting Form to document each small business assisted by the SBTRC and type of service(s) provided. The completed form must be transmitted electronically to the SBTRC Program Analyst on a monthly basis, accompanied by a narrative report on the activities and performance results for that period. The data gathered must be supportive by the narrative and must relate to the numerical data on the monthly reports.

2. Ensure that an array of information is made available for distribution to the small business transportation community that is designed to inform and educate the community on DOT/OSDBU services and opportunities.

3. Coordinate efforts with OSDBU's in order to maintain an on-hand inventory of DOT/OSDBU informational materials for general dissemination and for distribution at transportation-related conferences and other events.

#### (C) Business Counseling

1. Collaborate with agencies, such as the State, Regional, and Local Transportation Government Agencies, SBA, U.S. Department of Commerce's Minority Business Development Centers (MBDCs), Service Corps of Retired Executives (SCORE), Procurement Technical Assistance Centers (PTACs), and Small Business Development Centers (SBDCs), to offer a broad range of counseling services to transportation-related small business enterprises.

2. Create a technical assistance plan that will provide each counseled participant with the knowledge and skills necessary to improve the management of their own small business to expand their transportation-related contracts and subcontracts portfolio.

3. Provide a minimum of 20 hours of individual or group counseling sessions to small businesses per month.

#### (D) Planning Committee

1. Establish a Regional Planning Committee consisting of at least 7 members that includes representatives from the regional community and federal, state, and local agencies. The highway, airport, and transit authorities for the SBTRC's headquarters state must have representation on the planning committee. This committee shall be established no later than 60 days after the execution of the Cooperative agreement between the OSDBU and the selected SBTRC.

2. Provide a forum for the federal, state, and local agencies to disseminate information about upcoming procurements.

3. Hold either monthly or quarterly meetings at a time and place agreed upon by SBTRC and planning committee members.

4. Use the initial session (teleconference call) by the SBTRC explain the mission of the committee and identify roles of the staff and the members of the group.

5. Responsibility for the agenda and direction of the Planning Committee should be handled by the SBTRC Executive Director or his/her designee.

#### (E) Outreach Services/Conference Participation

1. Utilize the services of the System for Award Management (SAM) and other sources to construct a database of regional small businesses that currently or may in the future participate in DOT direct and DOT funded transportation related contracts, and make this database available to OSDBU, upon request.

2. Utilize the database of regional transportation-related small businesses to match opportunities identified through the planning committee forum, FedBiz Opps (a web-based system for posting solicitations and other Federal procurement-related documents on the Internet), and other sources to eligible small businesses and inform the small business community about those opportunities.

3. Develop a "targeted" database of firms (100–150) that have the capacity and capabilities, and are ready, willing

and able to participate in DOT contracts and subcontracts immediately. This control group will receive ample resources from the SBTRC, i.e., access to working capital, bonding assistance, business counseling, management assistance and direct referrals to DOT agencies at the state and local levels, and to prime contractors as effective subcontractor firms.

4. Identify regional, state and local conferences where a significant number of small businesses, with transportation related capabilities, are expected to be in attendance. Maintain and submit a list of those events to the SBTRC Program Analyst for review and posting on the OSDBU Web site on a monthly basis. Clearly identify the events designated for SBTRC participation and include recommendations for OSDBU participation.

5. Conduct outreach and disseminate information to small businesses at regional transportation-related conferences, seminars, and workshops. In the event that the SBTRC is requested to participate in an event, the SBTRC will send DOT materials, the OSDBU banner and other information that is deemed necessary for the event.

6. Submit a conference summary report to OSDBU no later than 5 business days after participation in the event or conference. The conference summary report must summarize activities, contacts, outreach results, and recommendations for continued or discontinued participation in future similar events sponsored by that organization.

7. Upon request by OSDBU, coordinate efforts with DOT's grantees and recipients at the state and/or local levels to sponsor or cosponsor an OSDBU transportation related conference in the region.

8. Participate in monthly teleconference call with the Regional Assistance Division Program Manager and OSDBU staff.

#### (F) Short Term Lending Program (STLP)

1. Work with STLP participating banks and if not available, other lending institutions to deliver a minimum of five (5) seminars/workshops per year on the STLP financial assistance program to the transportation-related small business community. The seminar/workshop must cover the entire STLP process, from completion of STLP loan applications and preparation of the loan package to graduation from the STLP.

2. Provide direct support, technical support, and advocacy services to potential STLP applicants to increase the probability of STLP loan approval

and generate a minimum of 7 approved STLP applications per year.

#### (G) Bonding Education Program (BEP)

Work with OSDBU, bonding industry partners, local small business transportation stakeholders, and local bond producers/agents in your region to deliver a minimum of 2 complete BEP seminars. The BEP consists of the following components; (1) The stakeholder's meeting; (2) the educational workshops component; (3) the bond readiness component; and (4) follow-on assistance to BEP participants via technical and procurement assistance based on the prescriptive plan determined by the BEP. For each BEP event, work with the local bond producers/agents in your region and the disadvantaged business participants to deliver minimum of 10 disadvantaged business participants in the BEP event with either access to bonding or an increase in bonding capacity.

Furnish all labor, facilities and equipment to perform the services described in this announcement.

#### (H) Women and Girls in Transportation Initiative (WITI)

Pursuant to Executive Order 13506, and 49 U.S.C. 332 (b) (4) & (7), the SBTRC shall administer the WITI in their geographical region. The SBTRC shall implement the DOT WITI program as defined by the DOT WITI Policy. The WITI program is designed to identify, educate, attract, and retain women and girls from a variety of disciplines in the transportation industry. The SBTRC shall also be responsible for outreach activities in the implementation of this program and advertising the WITI program to all colleges and universities and transportation entities in their region. The WITI program shall be developed in conjunction with the skill needs of the USDOT, state and local transportation agencies and appropriate private sector transportation-related participants including, S/WOBs/DBEs, and women organizations involved in transportation. Emphasis shall be placed on establishing partnerships with transportation-related businesses. The SBTRC will be required to host 1 WITI event and attend at least 5 events where WITI is presented and marketed.

#### 2.2 Office of Small and Disadvantaged Business Utilization (OSDBU) Responsibilities

(A) Provide consultation and technical assistance in planning, implementing and evaluating activities under this announcement.

(B) Provide orientation and training to the applicant organization.

(C) Monitor SBTRC activities, cooperative agreement compliance, and overall SBTRC performance.

(D) Assist SBTRC to develop or strengthen its relationships with federal, state, and local transportation authorities, other technical assistance organizations, and DOT grantees.

(E) Facilitate the exchange and transfer of successful program activities and information among all SBTRC regions.

(F) Provide the SBTRC with DOT/OSDBU materials and other relevant transportation related information for dissemination.

(G) Maintain effective communication with the SBTRC and inform them of transportation news and contracting opportunities to share with small businesses in their region.

(H) Provide all required forms to be used by the SBTRC for reporting purposes under the program.

(I) Perform an annual performance evaluation of the SBTRC. Satisfactory performance is a condition of continued participation of the organization as an SBTRC and execution of all option years.

### 3. Submission of Proposals

#### 3.1 Format for Proposals

Each proposal must be submitted to DOT's OSDBU in the format set forth in the application form attached as Appendix A to this announcement.

#### 3.2 Address; Number of Copies; Deadlines for Submission

Any eligible organization, as defined in Section 1.6 of this announcement, will submit only one proposal per organization for consideration by OSDBU.

Applications must be double spaced, and printed in a font size not smaller than 12 points. Applications will not exceed 35 single-sided pages, not including any requested attachments. All pages should be numbered at the top of each page. All documentation, attachments, or other information pertinent to the application must be included in a single submission. Proposal packages must be submitted electronically to OSDBU at [SBTRC@dot.gov](mailto:SBTRC@dot.gov). The applicant is advised to turn on request delivery receipt notification for email submission. Proposals must be received by DOT/OSDBU no later than September 1, 2013, 5:00 p.m., EST. If you have any problems submitting your proposal, please email [patricia.martin@dot.gov](mailto:patricia.martin@dot.gov) or telephone (202) 366-5337.

### 4. Selection Criteria

#### 4.1 General Criteria

OSDBU will award the cooperative agreement on a best value basis, using the following criteria to rate and rank applications:

Applications will be evaluated using a point system (maximum number of points = 100);

- Approach and strategy (25 points)
- Linkages (25 points)
- Organizational Capability/Site visit (25 points)
- Staff Capabilities and Experience (15 points)
- Cost Proposal (10 points)

#### (A) Approach and Strategy (25 Points)

The applicant must describe their strategy to achieve the overall mission of the SBTRC as described in this solicitation and service the small business community in their entire geographic regional area. The applicant must also describe how the specific activities outlined in Section 2.1 will be implemented and executed in the organization's regional area. OSDBU will consider the extent to which the proposed objectives are specific, measurable, time-specific, and consistent with OSDBU goals and the applicant organization's overall mission. OSDBU will give priority consideration to applicants that demonstrate innovation and creativity in their approach to assist small businesses to become successful transportation contractors and increase their ability to access DOT contracting opportunities and financial assistance programs. Applicants must also submit the estimated direct costs, other than labor, to execute their proposed strategy. OSDBU will consider the quality of the applicant's plan for conducting program activities and the likelihood that the proposed methods will be successful in achieving proposed objectives at the proposed cost.

#### (B) Linkages (25 Points)

The applicant must describe their established relationships within their geographic region and demonstrate their ability to coordinate and establish effective networks with DOT grant recipients and local/regional technical assistance agencies to maximize resources. OSDBU will consider innovative aspects of the applicant's approach and strategy to build upon their existing relationships and established networks with existing resources in their geographical area. The applicant should describe their strategy to obtain support and collaboration on SBTRC activities from DOT grantees and

recipients, transportation prime contractors and subcontractors, the SBA, U.S. Department of Commerce's Minority Business Development Centers (MBDCs), Service Corps of Retired Executives (SCORE), Procurement Technical Assistance Centers (PTACs), Small Business Development Centers (SBDCs), State DOTs, and State highway supportive services contractors. In rating this factor, OSDBU will consider the extent to which the applicant demonstrates ability to be multidimensional. The applicant must demonstrate that they have the ability to access a broad range of supportive services to effectively serve a broad range of transportation-related small businesses within their respective geographical region.

Emphasis will also be placed on the extent to which the applicant identifies a clear outreach strategy related to the identified needs that can be successfully carried out within the period of this agreement and a plan for involving the Planning Committee in the execution of that strategy.

**(C) Organizational Capability (25 Points)**

The applicant must demonstrate that they have the organizational capability to meet the program requirements set forth in Section 2. The applicant organization must have sufficient resources and past performance experience to successfully provide outreach to the small business transportation resources in their geographical area and carry out the mission of the SBTRC. In rating this factor, OSDBU will consider the extent to which the applicant's organization has recent, relevant and successful experience in advocating for and addressing the needs of small businesses. Applicants will be given points for demonstrated past transportation-related performance. The applicant must also describe technical and administrative resources it plans to use in achieving proposed objectives. In their description, the applicant must describe their facilities, computer and technical facilities, ability to tap into volunteer staff time, and a plan for sufficient matching alternative financial resources to fund the general and administrative costs of the SBTRC. The applicant must also describe their administrative and financial management staff. It will be the responsibility of the successful candidate to not only provide the services outlined herein to small businesses in the transportation industry, but to also successfully manage and maintain their internal

financial, payment and invoicing process with their financial management offices. OSDBU will place an emphasis on capabilities of the applicant's financial management staff. Additionally, a site visit will be required prior to award for those candidates that are being strongly considered. A member of the OSDBU team will contact those candidates to schedule the site visits prior to the award of the agreement.

**(D) Staff Capability and Experience (15 Points)**

The applicant organization must provide a list of proposed personnel for the project, with salaries, fringe benefit burden factors, educational levels and previous experience clearly delineated. The applicant's project team must be well-qualified, knowledgeable, and able to effectively serve the diverse and broad range of small businesses in their geographical region. The Executive Director and the Project Director shall be deemed key personnel. Detailed resumes must be submitted for all proposed key personnel and outside consultants and subcontractors. Proposed key personnel must have detailed demonstrated experience providing services similar in scope and nature to the proposed effort. The proposed Project Director will serve as the responsible individual for the program. 100% of the Project Director's time must be dedicated to the SBTRC. Both the Executive Director and the Project Director must be located on-site. In this element, OSDBU will consider the extent to which the applicant's proposed Staffing Plan; (a) clearly meets the education and experience requirements to accomplish the objectives of the cooperative agreement; b) delineates staff responsibilities and accountability for all work required and; (c) presents a clear and feasible ability to execute the applicant's proposed approach and strategy.

**(E) Cost Proposal (10 Points)**

Applicants must submit the total proposed cost of establishing and administering the SBTRC in the applicant's geographical region for a 12 month period, inclusive of costs funded through alternative matching resources. The applicant's budget must be adequate to support the proposed strategy and costs must be reasonable in relation to project objectives. The portion of the submitted budget funded by OSDBU cannot exceed the ceiling outlined in Section 1.3: Description of Competition of this RFP per fiscal year. Applicants are encouraged to provide

in-kind costs and other innovative cost approaches.

**4.2 Scoring of Applications**

A review panel will score each application based upon the evaluation criteria listed above. Points will be given for each evaluation criteria category, not to exceed the maximum number of points allowed for each category. Proposals which are deemed non-responsive, do not meet the established criteria, or incomplete at the time of submission will be disqualified. OSDBU will perform a responsibility determination of the prospective awardee in the region, which will include a site visit, before awarding the cooperative agreement.

**4.3 Conflicts of Interest**

Applicants must submit signed statements by key personnel and all organization principals indicating that they, or members of their immediate families, do not have a personal, business or financial interest in any DOT-funded transportation project, nor any relationships with local or state transportation agencies that may have the appearance of a conflict of interest.

**Appendix A**

**Format for Proposals for the Department of Transportation Office of Small and Disadvantaged Business Utilization's Small Business Transportation Resource Center (SBTRC) Program**

Submitted proposals for the DOT, Office of Small and Disadvantaged Business Utilization's Small Business Transportation Resource Center Program must contain the following 12 sections and be organized in the following order:

**1. Table of Contents**

Identify all parts, sections and attachments of the application.

**2. Application Summary**

Provide a summary overview of the following:

- The applicant's proposed SBTRC region and city and key elements of the plan of action/strategy to achieve the SBTRC objectives.
- The applicant's relevant organizational experience and capabilities.

**3. Understanding of the Work**

Provide a narrative which contains specific project information as follows:

- The applicant will describe its understanding of the OSDBU's SBTRC program mission and the role of the applicant's proposed SBTRC in advancing the program goals.
- The applicant will describe specific outreach needs of transportation-related small businesses in the applicant's region and how the SBTRC will address the identified needs.

#### 4. Approach and Strategy

- Describe the applicant's plan of action/strategy for conducting the program in terms of the tasks to be performed.
- Describe the specific services or activities to be performed and how these services/activities will be implemented.
- Describe innovative and creative approaches to assist small businesses to become successful transportation contractors and increase their ability to access DOT contracting opportunities and financial assistance programs.
- Estimated direct costs, other than labor, to execute the proposed strategy.

#### 5. Linkages

- Describe established relationships within the geographic region and demonstrate the ability to coordinate and establish effective networks with DOT grant recipients and local/regional technical assistance agencies.
- Describe the strategy to obtain support and collaboration on SBTRC activities from DOT grantees and recipients, transportation prime contractors and subcontractors, the SBA, U.S. Department of Commerce's Minority Business Development Centers (MBDCs), Service Corps of Retired Executives (SCORE), Procurement Technical Assistance Centers (PTACs), Small Business Development Centers (SBDCs), State DOTs, and State highway supportive services contractors.
- Describe the outreach strategy related to the identified needs that can be successfully carried out within the period of this agreement and a plan for involving the Planning Committee in the execution of that strategy.

#### 6. Organizational Capability

- Describe recent and relevant past successful performance in addressing the needs of small businesses, particularly with respect to transportation-related small businesses.
- Describe internal technical, financial management, and administrative resources.
- Propose a plan for sufficient matching alternative financial resources to fund the general and administrative costs of the SBTRC.

#### 7. Staff Capability and Experience

- List proposed key personnel, their salaries and proposed fringe benefit factors.
- Describe the education, qualifications and relevant experience of key personnel. Attach detailed resumes.
- Proposed staffing plan. Describe how personnel are to be organized for the program and how they will be used to accomplish program objectives. Outline staff responsibilities, accountability and a schedule for conducting program tasks.

#### 8. Cost Proposal

- Outline the total proposed cost of establishing and administering the SBTRC in the applicant's geographical region for a 12 month period, inclusive of costs funded through alternative matching resources. Clearly identify the portion of the costs funded by OSDDBU.
- Provide a brief narrative linking the cost proposal to the proposed strategy.

#### 9. Proof of Tax Exempt Status

#### 10. Assurances Signature Form

Complete the attached Standard Form 424B ASSURANCES-NON-CONSTRUCTION PROGRAMS.

#### 11. Certification Signature Forms

Complete form DOTF2307-1 Drug-Free Workplace Act Certification and Form DOTF2308-1 Certification Regarding Lobbying for Contracts, Grants, Loans, and Cooperative Agreements.

#### Signed Conflict of Interest Statements

The statements must say that they, or members of their immediate families, do not have a personal, business or financial interest in any DOT-funded transportation projects, nor any relationships with local or state transportation agencies that may have the appearance of a conflict of interest.

#### 12. Standard Form 424

Complete Standard Form 424 Application for Federal Assistance.

**Note:** All forms can be downloaded from U.S. Department of Transportation Web site at <http://www.dot.gov/gsearch/424%2Bform>.

Please be sure that all forms have been signed by an authorized official who can legally represent the organization.

Issued in Washington, DC on June 28, 2013.

**Brandon Neal,**

*Director, Office of Small and Disadvantaged Business Utilization, Office of the Secretary, U.S. Department of Transportation.*

[FR Doc. 2013-16623 Filed 7-10-13; 8:45 am]

**BILLING CODE 4910-9X-P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary of Transportation

### Notice of Funding Availability for the Small Business Transportation Resource Center Program

**AGENCY:** Office of the Secretary of Transportation, Department of Transportation (DOT). (OST), Office of Small and Disadvantaged Business Utilization (OSDBU).

**ACTION:** Notice of Funding Availability for the Great Lakes Region.

**SUMMARY:** The Department of Transportation (DOT), Office of the Secretary (OST), Office of Small and Disadvantaged Business Utilization (OSDBU) announces the opportunity for; (1) Business centered community-based organizations; (2) transportation-related trade associations; (3) colleges and universities; (4) community colleges or; (5) chambers of commerce, registered with the Internal Revenue Service as 501c(6) or 501c(3) tax-exempt organizations, to compete for

participation in OSDDBU's Small Business Transportation Resource Center (SBTRC) program in the Great Lakes Region.

OSDBU will enter into Cooperative Agreements with these organizations to provide outreach to the small business community in their designated region and provide financial and technical assistance, business training programs, business assessment, management training, counseling, marketing and outreach, and the dissemination of information, to encourage and assist small businesses to become better prepared to compete for, obtain, and manage DOT funded transportation-related contracts and subcontracts at the federal, state and local levels. Throughout this notice, the term "small business" will refer to: 8(a), small disadvantaged businesses (SDB), disadvantaged business enterprises (DBE), women owned small businesses (WOSB), HubZone, service disabled veteran owned businesses (SDVOB), and veteran owned small businesses (VOSB). Throughout this notice, "transportation-related" is defined as the maintenance, rehabilitation, restructuring, improvement, or revitalization of any of the nation's modes of transportation.

**Funding Opportunity Number:** USDOT-OST-OSDBU-SBTRC2013-5.  
**Catalog of Federal Domestic Assistance (CFDA) Number:** 20.910 Assistance to Small and Disadvantaged Businesses.

**Type of Award:** Cooperative Agreement.

**Award Ceiling:** \$202,000.

**Award Floor:** \$177,000.

**Program Authority:** DOT is authorized under 49 U.S.C. 332(b)(4), (5) & (7) to design and carry out programs to assist small disadvantaged businesses in getting transportation-related contracts and subcontracts; develop support mechanisms, including management and technical services, that will enable small disadvantaged businesses to take advantage of those business opportunities; and to make arrangements to carry out the above purposes.

**DATES:** Complete Proposals must be electronically submitted to OSDBU via email on or before September 1, 2013 5:00 p.m. Eastern Standard Time (EST). Proposals received after the deadline will be considered non-responsive and will not be reviewed. The applicant is advised to request delivery receipt notification for email submissions. DOT plans to give notice of award for the competed region on or before September 27, 2013.

**ADDRESSES:** Applications must be electronically submitted to OSDDBU via email at [SBTRC@dot.gov](mailto:SBTRC@dot.gov).

**FOR FURTHER INFORMATION CONTACT:** For further information concerning this notice, contact Ms. Patricia Martin, Program Analyst, U.S. Department of Transportation, Office of Small and Disadvantaged Business Utilization, 1200 New Jersey Avenue SE., W56-462, Washington, DC 20590. Telephone: 1-800-532-1169 or email [patricia.martin@dot.gov](mailto:patricia.martin@dot.gov).

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**

1. Introduction
    - 1.1 Background
    - 1.2 Program Description and Goals
    - 1.3 Description of Competition
    - 1.4 Duration of Agreements
    - 1.5 Authority
    - 1.6 Eligibility Requirements
  2. Program Requirements
    - 2.1 Recipient Responsibilities
    - 2.2 Office of Small and Disadvantaged Business Utilization Responsibilities
  3. Submission of Proposals
    - 3.1 Format for Proposals
    - 3.2 Address, Number of Copies, Deadline for Submission
  4. Selection Criteria
    - 4.1 General Criteria
    - 4.2 Scoring of Applications
    - 4.3 Conflicts of Interest
- Format for Proposals—Appendix A

**Full Text of Announcement**

**1. Introduction**

*1.1 Background*

The Department of Transportation (DOT) established Office of Small and Disadvantaged Business Utilization (OSDBU) in accordance with Public Law 95-507, an amendment to the Small Business Act and the Small Business Investment Act of 1958.

The mission of OSDBU at DOT is to ensure that the small and disadvantaged business policies and goals of the Secretary of Transportation are developed and implemented in a fair, efficient and effective manner to serve small and disadvantaged businesses throughout the country. The OSDBU also administers the provisions of Title 49, Section 332, the Minority Resource Center (MRC) which includes the duties of advocacy, outreach and financial services on behalf of small and disadvantaged business and those certified under CFR 49 parts 23 and or 26 as Disadvantaged Business Enterprises (DBE) and the development of programs to encourage, stimulate, promote and assist small businesses to become better prepared to compete for, obtain and manage transportation-related contracts and subcontracts.

The Regional Assistance Division of OSDBU, through the SBTRC program, allows OSDBU to partner with local organizations to offer a comprehensive delivery system of business training, technical assistance and dissemination of information, targeted towards small business transportation enterprises in their regions.

*1.2 Program Description and Goals*

The national SBTRC program utilizes Cooperative Agreements with chambers of commerce, trade associations, educational institutions and business-centered community based organizations to establish SBTRCs to provide business training, technical assistance and information to DOT grantees and recipients, prime contractors and subcontractors. In order to be effective and serve their target audience, the SBTRCs must be active in the local transportation community in order to identify and communicate opportunities and provide the required technical assistance. SBTRCs must already have, or demonstrate the ability to, establish working relationships with the state and local transportation agencies and technical assistance agencies (i.e., The U.S. Department of Commerce's Minority Business Development Centers (MBDCs), Small Business Development Centers (SBDCs), and Procurement Technical Assistance Centers (PTACs), SCORE and State DOT highway supportive services contractors in their region. Utilizing these relationships and their own expertise, the SBTRCs are involved in activities such as information dissemination, small business counseling, and technical assistance with small businesses currently doing business with public and private entities in the transportation industry.

Effective outreach is critical to the success of the SBTRC program. In order for their outreach efforts to be effective, SBTRCs must be familiar with DOT's Operating Administrations, its funding sources, and how funding is awarded to DOT grantees, recipients, contractors, subcontractors, and its financial assistance programs. SBTRCs must provide outreach to the regional small business transportation community to disseminate information and distribute DOT-published marketing materials, such as Short Term Lending Program (STLP) Information, Bonding Education Program (BEP) information, SBTRC brochures and literature, Procurement Forecasts; Contracting with DOT booklets, Women and Girls in Transportation Initiative (WITI) information, and any other materials or resources that DOT or OSDBU may

develop for this purpose. To maximize outreach, the SBTRC may be called upon to participate in regional and national conferences and seminars. Quantities of DOT publications for on-hand inventory and dissemination at conferences and seminars will be available upon request from the OSDBU office.

*1.3 Description of Competition*

The purpose of this Request For Proposal (RFP) is to solicit proposals from transportation-related trade associations, chambers of commerce, community based entities, colleges and universities, community colleges, and any other qualifying transportation-related non-profit organizations with the desire and ability to partner with OSDBU to establish and maintain an SBTRC.

It is OSDBU's intent to award a Cooperative Agreement to one organization in the Great Lakes Region, from herein referred to as "region", in this solicitation. However, if warranted, OSDBU reserves the option to make multiple awards to selected partners. Proposals submitted for a region must contain a plan to service all states listed in the entire region, not just the SBTRC's state or local geographical area. The region's SBTRC headquarters must be established in one of the designated states set forth below. Submitted proposals must also contain justification for the establishment of the SBTRC headquarters in a particular city within the designated state.

*SBTRC Region Competed in This Solicitation:*

*Great Lakes Region:* Illinois, Indiana, Michigan, Wisconsin.

Program requirements and selection criteria, set forth in Sections 2 and 4 respectively, indicate that the OSDBU intends for the SBTRC to be multidimensional; that is, the selected organization must have the capacity to effectively access and provide supportive services to the broad range of small businesses within the respective geographical region. To this end, the SBTRC must be able to demonstrate that they currently have established relationships within the geographic region with whom they may coordinate and establish effective networks with DOT grant recipients and local/regional technical assistance agencies to maximize resources.

Cooperative agreement awards will be distributed to the region(s) as follows:

*Gulf Region:* Ceiling: \$202,000 per year, Floor: \$177,000 per year.

Cooperative agreement awards by region are based upon an analysis of DBEs, Certified Small Businesses, and

US DOT transportation dollars in each region.

It is OSDBU's intent to maximize the benefits received by the small business transportation community through the SBTRC. Funding may be utilized to reimburse an on-site Project Director up to 100% of salary plus fringe benefits, an on-site Executive Director up to 20% of salary plus fringe benefits, up to 100% of a Project Coordinator salary plus fringe benefits, the cost of designated SBTRC space, other direct costs, and all other general and administrative expenses. Selected SBTRC partners will be expected to provide in-kind administrative support. Submitted proposals must contain an alternative funding source with which the SBTRC will fund administrative support costs. Preference will be given to proposals containing in-kind contributions for the Project Director, the Executive Director, the Project Coordinator, cost of designated SBTRC space, other direct costs, and all other general and administrative expenses.

#### 1.4 Duration of Agreements

The cooperative agreement will be awarded for a period of 12 months (one year) with options for two (2) additional one year periods. OSDBU will notify the SBTRC of our intention to exercise an option year or not to exercise an option year 30 days in advance of expiration of the current year.

#### 1.5 Authority

DOT is authorized under 49 U.S.C. 332(b)(4), (5) &(7) to design and carry out programs to assist small disadvantaged businesses in getting transportation-related contracts and subcontracts; develop support mechanisms, including management and technical services, that will enable small disadvantaged businesses to take advantage of those business opportunities; and to make arrangements to carry out the above purposes.

#### 1.6 Eligibility Requirements

To be eligible, an organization must be an established, nonprofit, community-based organization, transportation-related trade association, chamber of commerce, college or university, community college, and any other qualifying transportation-related non-profit organization which has the documented experience and capacity necessary to successfully operate and administer a coordinated delivery system that provides access for small businesses to prepare and compete for transportation-related contracts.

In addition, to be eligible, the applicant organization must:

(A) Be an established 501C(3) or 501C(6) tax-exempt organization and provide documentation as verification. No application will be accepted without proof of tax-exempt status;

(B) Have at least one year of documented and continuous experience prior to the date of application in providing advocacy, outreach, and technical assistance to small businesses within the region in which proposed services will be provided. Prior performance providing services to the transportation community is preferable, but not required; and

(C) Have an office physically located within the proposed city in the designated headquarters state in the region for which they are submitting the proposal that is readily accessible to the public.

## 2. Program Requirements

### 2.1 Recipient Responsibilities

#### (A) Assessments, Business Analyses

1. Conduct an assessment of small businesses in the SBTRC region to determine their training and technical assistance needs, and use information that is available at no cost to structure programs and services that will enable small businesses to become better prepared to compete for and receive transportation-related contract awards.

2. Contact other federal, state and local government agencies, such as the U.S. Small Business Administration (SBA), state and local highway agencies, state and local airport authorities, and transit authorities to identify relevant and current information that may support the assessment of the regional small business transportation community needs.

#### (B) General Management & Technical Training and Assistance

1. Utilize OSDBU's Monthly Reporting Form to document each small business assisted by the SBTRC and type of service(s) provided. The completed form must be transmitted electronically to the SBTRC Program Analyst on a monthly basis, accompanied by a narrative report on the activities and performance results for that period. The data gathered must be supportive by the narrative and must relate to the numerical data on the monthly reports.

2. Ensure that an array of information is made available for distribution to the small business transportation community that is designed to inform and educate the community on DOT/OSDBU services and opportunities.

3. Coordinate efforts with OSDBU's in order to maintain an on-hand inventory of DOT/OSDBU informational materials for general dissemination and for distribution at transportation-related conferences and other events.

#### (C) Business Counseling

1. Collaborate with agencies, such as the State, Regional, and Local Transportation Government Agencies, SBA, U.S. Department of Commerce's Minority Business Development Centers (MBDCs), Service Corps of Retired Executives (SCORE), Procurement Technical Assistance Centers (PTACs), and Small Business Development Centers (SBDCs), to offer a broad range of counseling services to transportation-related small business enterprises.

2. Create a technical assistance plan that will provide each counseled participant with the knowledge and skills necessary to improve the management of their own small business to expand their transportation-related contracts and subcontracts portfolio.

3. Provide a minimum of 20 hours of individual or group counseling sessions to small businesses per month.

#### (D) Planning Committee

1. Establish a Regional Planning Committee consisting of at least 7 members that includes representatives from the regional community and federal, state, and local agencies. The highway, airport, and transit authorities for the SBTRC's headquarters state must have representation on the planning committee. This committee shall be established no later than 60 days after the execution of the Cooperative agreement between the OSDBU and the selected SBTRC.

2. Provide a forum for the federal, state, and local agencies to disseminate information about upcoming procurements.

3. Hold either monthly or quarterly meetings at a time and place agreed upon by SBTRC and planning committee members.

4. Use the initial session (teleconference call) by the SBTRC explain the mission of the committee and identify roles of the staff and the members of the group.

5. Responsibility for the agenda and direction of the Planning Committee should be handled by the SBTRC Executive Director or his/her designee.

#### (E) Outreach Services/Conference Participation

1. Utilize the services of the System for Award Management (SAM) and other sources to construct a database of

regional small businesses that currently or may in the future participate in DOT direct and DOT funded transportation related contracts, and make this database available to OSDBU, upon request.

2. Utilize the database of regional transportation-related small businesses to match opportunities identified through the planning committee forum, FedBiz Opps (a web-based system for posting solicitations and other Federal procurement-related documents on the Internet), and other sources to eligible small businesses and inform the small business community about those opportunities.

3. Develop a "targeted" database of firms (100–150) that have the capacity and capabilities, and are ready, willing and able to participate in DOT contracts and subcontracts immediately. This control group will receive ample resources from the SBTRC, i.e., access to working capital, bonding assistance, business counseling, management assistance and direct referrals to DOT agencies at the state and local levels, and to prime contractors as effective subcontractor firms.

4. Identify regional, state and local conferences where a significant number of small businesses, with transportation related capabilities, are expected to be in attendance. Maintain and submit a list of those events to the SBTRC Program Analyst for review and posting on the OSDBU Web site on a monthly basis. Clearly identify the events designated for SBTRC participation and include recommendations for OSDBU participation.

5. Conduct outreach and disseminate information to small businesses at regional transportation-related conferences, seminars, and workshops. In the event that the SBTRC is requested to participate in an event, the SBTRC will send DOT materials, the OSDBU banner and other information that is deemed necessary for the event.

6. Submit a conference summary report to OSDBU no later than 5 business days after participation in the event or conference. The conference summary report must summarize activities, contacts, outreach results, and recommendations for continued or discontinued participation in future similar events sponsored by that organization.

7. Upon request by OSDBU, coordinate efforts with DOT's grantees and recipients at the state and/or local levels to sponsor or cosponsor an OSDBU transportation-related conference in the region.

8. Participate in monthly teleconference call with the Regional

Assistance Division Program Manager and OSDBU staff.

(F) *Short Term Lending Program (STLP)*

1. Work with STLP participating banks and if not available, other lending institutions to deliver a minimum of five (5) seminars/workshops per year on the STLP financial assistance program to the transportation-related small business community. The seminar/workshop must cover the entire STLP process, from completion of STLP loan applications and preparation of the loan package to graduation from the STLP.

2. Provide direct support, technical support, and advocacy services to potential STLP applicants to increase the probability of STLP loan approval and generate a minimum of 7 approved STLP applications per year.

(G) *Bonding Education Program (BEP)*

Work with OSDBU, bonding industry partners, local small business transportation stakeholders, and local bond producers/agents in your region to deliver a minimum of 2 complete BEP seminars. The BEP consists of the following components: (1) The stakeholder's meeting; (2) the educational workshops component; (3) the bond readiness component; and (4) follow-on assistance to BEP participants via technical and procurement assistance based on the prescriptive plan determined by the BEP. For each BEP event, work with the local bond producers/agents in your region and the disadvantaged business participants to deliver minimum of 10 disadvantaged business participants in the BEP event with either access to bonding or an increase in bonding capacity.

Furnish all labor, facilities and equipment to perform the services described in this announcement.

(H) *Women and Girls in Transportation Initiative (WITI)*

Pursuant to Executive Order 13506, and 49 U.S.C. 332 (b) (4) & (7), the SBTRC shall administer the WITI in their geographical region. The SBTRC shall implement the DOT WITI program as defined by the DOT WITI Policy. The WITI program is designed to identify, educate, attract, and retain women and girls from a variety of disciplines in the transportation industry. The SBTRC shall also be responsible for outreach activities in the implementation of this program and advertising the WITI program to all colleges and universities and transportation entities in their region. The WITI program shall be developed in conjunction with the skill needs of the USDOT, state and local transportation agencies and appropriate

private sector transportation-related participants including, S/WOBs/DBEs, and women organizations involved in transportation. Emphasis shall be placed on establishing partnerships with transportation-related businesses. The SBTRC will be required to host 1 WITI event and attend at least 5 events where WITI is presented and marketed.

2.2 *Office of Small and Disadvantaged Business Utilization (OSDBU) Responsibilities*

(A) Provide consultation and technical assistance in planning, implementing and evaluating activities under this announcement.

(B) Provide orientation and training to the applicant organization.

(C) Monitor SBTRC activities, cooperative agreement compliance, and overall SBTRC performance.

(D) Assist SBTRC to develop or strengthen its relationships with federal, state, and local transportation authorities, other technical assistance organizations, and DOT grantees.

(E) Facilitate the exchange and transfer of successful program activities and information among all SBTRC regions.

(F) Provide the SBTRC with DOT/OSDBU materials and other relevant transportation related information for dissemination.

(G) Maintain effective communication with the SBTRC and inform them of transportation news and contracting opportunities to share with small businesses in their region.

(H) Provide all required forms to be used by the SBTRC for reporting purposes under the program.

(I) Perform an annual performance evaluation of the SBTRC. Satisfactory performance is a condition of continued participation of the organization as an SBTRC and execution of all option years.

**3. Submission of Proposals**

*3.1 Format for Proposals*

Each proposal must be submitted to DOT's OSDBU in the format set forth in the application form attached as Appendix A to this announcement.

*3.2 Address; Number of Copies; Deadlines for Submission*

Any eligible organization, as defined in Section 1.6 of this announcement, will submit only one proposal per organization for consideration by OSDBU.

Applications must be double spaced, and printed in a font size not smaller than 12 points. Applications will not exceed 35 single-sided pages, not

including any requested attachments. All pages should be numbered at the top of each page. All documentation, attachments, or other information pertinent to the application must be included in a single submission. Proposal packages must be submitted electronically to OSDBU at [SBTRC@dot.gov](mailto:SBTRC@dot.gov). The applicant is advised to turn on request delivery receipt notification for email submission. Proposals must be received by DOT/OSDBU no later than September 1, 2013, 5:00 p.m., EST. If you have any problems submitting your proposal, please email [patricia.martin@dot.gov](mailto:patricia.martin@dot.gov) or telephone (202) 366-5337.

#### 4. Selection Criteria

##### 4.1 General Criteria

OSDBU will award the cooperative agreement on a best value basis, using the following criteria to rate and rank applications:

Applications will be evaluated using a point system (maximum number of points = 100);

- Approach and strategy (25 points)
- Linkages (25 points)
- Organizational Capability/Site visit (25 points)
- Staff Capabilities and Experience (15 points)
- Cost Proposal (10 points)

##### (A) Approach and Strategy (25 Points)

The applicant must describe their strategy to achieve the overall mission of the SBTRC as described in this solicitation and service the small business community in their entire geographic regional area. The applicant must also describe how the specific activities outlined in Section 2.1 will be implemented and executed in the organization's regional area. OSDBU will consider the extent to which the proposed objectives are specific, measurable, time-specific, and consistent with OSDBU goals and the applicant organization's overall mission. OSDBU will give priority consideration to applicants that demonstrate innovation and creativity in their approach to assist small businesses to become successful transportation contractors and increase their ability to access DOT contracting opportunities and financial assistance programs. Applicants must also submit the estimated direct costs, other than labor, to execute their proposed strategy. OSDBU will consider the quality of the applicant's plan for conducting program activities and the likelihood that the proposed methods will be successful in achieving proposed objectives at the proposed cost.

##### (B) Linkages (25 Points)

The applicant must describe their established relationships within their geographic region and demonstrate their ability to coordinate and establish effective networks with DOT grant recipients and local/regional technical assistance agencies to maximize resources. OSDBU will consider innovative aspects of the applicant's approach and strategy to build upon their existing relationships and established networks with existing resources in their geographical area. The applicant should describe their strategy to obtain support and collaboration on SBTRC activities from DOT grantees and recipients, transportation prime contractors and subcontractors, the SBA, U.S. Department of Commerce's Minority Business Development Centers (MBDCs), Service Corps of Retired Executives (SCORE), Procurement Technical Assistance Centers (PTACs), Small Business Development Centers (SBDCs), State DOTs, and State highway supportive services contractors. In rating this factor, OSDBU will consider the extent to which the applicant demonstrates ability to be multidimensional. The applicant must demonstrate that they have the ability to access a broad range of supportive services to effectively serve a broad range of transportation-related small businesses within their respective geographical region. Emphasis will also be placed on the extent to which the applicant identifies a clear outreach strategy related to the identified needs that can be successfully carried out within the period of this agreement and a plan for involving the Planning Committee in the execution of that strategy.

##### (C) Organizational Capability (25 Points)

The applicant must demonstrate that they have the organizational capability to meet the program requirements set forth in Section 2. The applicant organization must have sufficient resources and past performance experience to successfully provide outreach to the small business transportation resources in their geographical area and carry out the mission of the SBTRC. In rating this factor, OSDBU will consider the extent to which the applicant's organization has recent, relevant and successful experience in advocating for and addressing the needs of small businesses. Applicants will be given points for demonstrated past transportation-related performance. The applicant must also describe technical

and administrative resources it plans to use in achieving proposed objectives. In their description, the applicant must describe their facilities, computer and technical facilities, ability to tap into volunteer staff time, and a plan for sufficient matching alternative financial resources to fund the general and administrative costs of the SBTRC. The applicant must also describe their administrative and financial management staff. It will be the responsibility of the successful candidate to not only provide the services outlined herein to small businesses in the transportation industry, but to also successfully manage and maintain their internal financial, payment and invoicing process with their financial management offices. OSDBU will place an emphasis on capabilities of the applicant's financial management staff. Additionally, a site visit will be required prior to award for those candidates that are being strongly considered. A member of the OSDBU team will contact those candidates to schedule the site visits prior to the award of the agreement.

##### (D) Staff Capability and Experience (15 Points)

The applicant organization must provide a list of proposed personnel for the project, with salaries, fringe benefit burden factors, educational levels and previous experience clearly delineated. The applicant's project team must be well-qualified, knowledgeable, and able to effectively serve the diverse and broad range of small businesses in their geographical region. The Executive Director and the Project Director shall be deemed key personnel. Detailed resumes must be submitted for all proposed key personnel and outside consultants and subcontractors. Proposed key personnel must have detailed demonstrated experience providing services similar in scope and nature to the proposed effort. The proposed Project Director will serve as the responsible individual for the program. 100% of the Project Director's time must be dedicated to the SBTRC. Both the Executive Director and the Project Director must be located on-site. In this element, OSDBU will consider the extent to which the applicant's proposed Staffing Plan; (a) clearly meets the education and experience requirements to accomplish the objectives of the cooperative agreement; (b) delineates staff responsibilities and accountability for all work required and; (c) presents a clear and feasible ability to execute the applicant's proposed approach and strategy.

**(E) Cost Proposal (10 Points)**

Applicants must submit the total proposed cost of establishing and administering the SBTRC in the applicant's geographical region for a 12 month period, inclusive of costs funded through alternative matching resources. The applicant's budget must be adequate to support the proposed strategy and costs must be reasonable in relation to project objectives. The portion of the submitted budget funded by OSDDBU cannot exceed the ceiling outlined in Section 1.3; Description of Competition of this RFP per fiscal year. Applicants are encouraged to provide in-kind costs and other innovative cost approaches.

**4.2 Scoring of Applications**

A review panel will score each application based upon the evaluation criteria listed above. Points will be given for each evaluation criteria category, not to exceed the maximum number of points allowed for each category. Proposals which are deemed non-responsive, do not meet the established criteria, or incomplete at the time of submission will be disqualified. OSDDBU will perform a responsibility determination of the prospective awardee in the region, which will include a site visit, before awarding the cooperative agreement.

**4.3 Conflicts of Interest**

Applicants must submit signed statements by key personnel and all organization principals indicating that they, or members of their immediate families, do not have a personal, business or financial interest in any DOT-funded transportation project, nor any relationships with local or state transportation agencies that may have the appearance of a conflict of interest.

**Appendix A—Format for Proposals for the Department of Transportation Office of Small and Disadvantaged Business Utilization's Small Business Transportation Resource Center (SBTRC) Program**

Submitted proposals for the DOT, Office of Small and Disadvantaged Business Utilization's Small Business Transportation Resource Center Program must contain the following 12 sections and be organized in the following order:

**1. Table of Contents**

Identify all parts, sections and attachments of the application.

**2. Application Summary**

Provide a summary overview of the following:

- The applicant's proposed SBTRC region and city and key elements of the plan of

action/strategy to achieve the SBTRC objectives.

- The applicant's relevant organizational experience and capabilities.

**3. Understanding of the Work**

Provide a narrative which contains specific project information as follows:

- The applicant will describe its understanding of the OSDDBU's SBTRC program mission and the role of the applicant's proposed SBTRC in advancing the program goals.
- The applicant will describe specific outreach needs of transportation-related small businesses in the applicant's region and how the SBTRC will address the identified needs.

**4. Approach and Strategy**

- Describe the applicant's plan of action/strategy for conducting the program in terms of the tasks to be performed.
- Describe the specific services or activities to be performed and how these services/activities will be implemented.
- Describe innovative and creative approaches to assist small businesses to become successful transportation contractors and increase their ability to access DOT contracting opportunities and financial assistance programs.
- Estimated direct costs, other than labor, to execute the proposed strategy.

**5. Linkages**

- Describe established relationships within the geographic region and demonstrate the ability to coordinate and establish effective networks with DOT grant recipients and local/regional technical assistance agencies.
- Describe the strategy to obtain support and collaboration on SBTRC activities from DOT grantees and recipients, transportation prime contractors and subcontractors, the SBA, U.S. Department of Commerce's Minority Business Development Centers (MBDCs), Service Corps of Retired Executives (SCORE), Procurement Technical Assistance Centers (PTACs), Small Business Development Centers (SBDCs), State DOTs, and State highway supportive services contractors.
- Describe the outreach strategy related to the identified needs that can be successfully carried out within the period of this agreement and a plan for involving the Planning Committee in the execution of that strategy.

**6. Organizational Capability**

- Describe recent and relevant past successful performance in addressing the needs of small businesses, particularly with respect to transportation-related small businesses.
- Describe internal technical, financial management, and administrative resources.
- Propose a plan for sufficient matching alternative financial resources to fund the general and administrative costs of the SBTRC.

**7. Staff Capability and Experience**

- List proposed key personnel, their salaries and proposed fringe benefit factors.

- Describe the education, qualifications and relevant experience of key personnel. Attach detailed resumes.
- Proposed staffing plan. Describe how personnel are to be organized for the program and how they will be used to accomplish program objectives. Outline staff responsibilities, accountability and a schedule for conducting program tasks.

**8. Cost Proposal**

- Outline the total proposed cost of establishing and administering the SBTRC in the applicant's geographical region for a 12 month period, inclusive of costs funded through alternative matching resources. Clearly identify the portion of the costs funded by OSDDBU.
- Provide a brief narrative linking the cost proposal to the proposed strategy.

**9. Proof of Tax Exempt Status****10. Assurances Signature Form**

Complete the attached Standard Form 424B ASSURANCES-NON-CONSTRUCTION PROGRAMS.

**11. Certification Signature Forms**

Complete form DOTF2307-1 Drug-Free Workplace Act Certification and Form DOTF2308-1 Certification Regarding Lobbying for Contracts, Grants, Loans, and Cooperative Agreements.

**Signed Conflict of Interest Statements**

The statements must say that they, or members of their immediate families, do not have a personal, business or financial interest in any DOT-funded transportation projects, nor any relationships with local or state transportation agencies that may have the appearance of a conflict of interest.

**12. Standard Form 424**

Complete Standard Form 424 Application for Federal Assistance.

**Note:** All forms can be downloaded from U.S. Department of Transportation Web site at <http://www.dot.gov/gsearch/424%2Bform>.

Please be sure that all forms have been signed by an authorized official who can legally represent the organization.

Issued in Washington, DC, on June 28, 2013.

**Brandon Neal,**

*Director, Office of Small and Disadvantaged Business Utilization, Office of the Secretary, U.S. Department of Transportation.*

[FR Doc. 2013-16622 Filed 7-10-13; 8:45 am]

**BILLING CODE 4910-9X-P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****Public Notice for Waiver of Aeronautical Land-Use Assurance**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of intent of waiver with respect to land; Bismarck Municipal Airport, Bismarck, North Dakota.

**SUMMARY:** The FAA is considering a proposal to change 4.78 acres of airport land from aeronautical use to non-aeronautical use and to authorize the sale of airport property located at Bismarck Municipal Airport, Bismarck, North Dakota. The property's location for Parcel A is a triangular parcel of 3.68 acres located west of the street intersection of Airway Avenue and Rifle Range Drive; and the Parcel B is a triangular parcel of 1.1 acres located north of the street intersection of Airway Avenue and Rifle Range Drive within the City of Bismarck, ND. The property's existing aeronautical use is grasslands located outside the approach and departure surfaces of Runway 21 at the Bismarck Municipal Airport, Bismarck, ND. Currently, ownership of the property provides for protection of FAR Part 77 surfaces and compatible land use which would continue to be protected with deed restrictions required in the transfer of land ownership. The proposed non-aeronautical use of the property will likely be zoned industrial however, the exact usage has not been determined. The property is no longer needed for aeronautical use.

**DATES:** Comments must be received on or before August 12, 2013.

**ADDRESSES:** Documents are available for review by appointment at the FAA Airports District Office, Mark J. Holzer, Program Manager, 2301 University Drive- Building 23B, Bismarck ND 58504-7595 Telephone: 701-323-7380/ Fax: 701-323-7399 and Bismarck Municipal Airport, PO Box 991, Bismarck, ND 58502.

Written comments on the Sponsor's request must be delivered or mailed to: Mark J. Holzer, Program Manager, Federal Aviation Administration, Airports District Office, 2301 University Drive- Building 23B, Bismarck, ND 58504-7595, Telephone Number: 701-323-7380/FAX Number: 701-323-7399.

**FOR FURTHER INFORMATION CONTACT:** Mark J. Holzer, Program Manager, Federal Aviation Administration, Airports District Office, 2301 University Drive-Building 23B, Bismarck, ND 58504-7595, Telephone Number: 701-323-7380/FAX Number: 701-323-7399.

**SUPPLEMENTARY INFORMATION:** In accordance with section 47107(h) of Title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that

requires the property to be used for an aeronautical purpose.

The property was acquired by the Bismarck Municipal Airport under Federal ADP grant 8-38-0003-04. The proposed non-aeronautical use of the property will likely be zoned industrial, however, the exact usage has not been determined until sold to a private party. The property is currently hayed. The release of the property and use of the property will be in conformity with local and state laws. The Bismarck Municipal Airport will receive Fair Market Value for the land.

Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA. The disposition of proceeds from the sale of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999 (64 FR 7696).

*Property Description:* within Section 12, Township 138 North, Range 80 West in Burleigh County of the State of North Dakota for; Tract A description as part of Lot Two (2), Block One (1), of Bismarck Airport Addition, Burleigh County, North Dakota, described as follows: beginning at the most northerly corner of Lot Two (2), Block One (1), of said Bismarck Airport Addition; thence South 00 degrees 34 minutes 26 seconds West, along the westerly boundary of said Lot Two (2), a distance of 810.8 feet; thence North 39 degrees 12 minutes 28 seconds East to the east boundary line of said Lot Two (2), a distance of 633.16 feet; thence North 50 degrees 46 minutes 12 seconds West, along the easterly boundary of said Lot 2 (2), a distance of 506.22 feet to the point of beginning. The above-described tract contains 3.68 acres, more or less.

Tract B description is Lot One (1) Block Twelve (12) of the Bismarck Airport Addition. The above-described tract contains 1.1 acres, more or less.

Issued in Bismarck Airports District Office, ND, on June 17, 2013.

**Laurie J. Suttmeier,**

*Manager, Bismarck Airports District Office  
FAA, Great Lakes Region.*

[FR Doc. 2013-16661 Filed 7-10-13; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Public Notice for Waiver of Aeronautical Land-Use Assurance

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of intent of waiver with respect to land; Wittman Regional Airport, Oshkosh, Wisconsin.

**SUMMARY:** The FAA is considering a proposal to change approximately 0.242 acres of airport land consisting of two separate parcels from aeronautical use to non-aeronautical use, and to authorize the transfer of these airport properties located at Wittman Regional Airport, to the City of Oshkosh (City) in exchange for 4.764 acres owned by the City.

The two parcels of airport land which are currently primarily used as roadway right-of-way and ditches are proposed for non-aeronautical uses. These parcels are no longer needed for aeronautical use. Cul-de-sacs are proposed to be built on each property and the land swapped with the City of Oshkosh in exchange for 4.764 acres of land within two existing public road rights-of-way (portions of West Waukau Avenue and Knapp Street). The lands the airport will receive were vacated by the City of Oshkosh in May 2013 and access will be maintained to adjacent uses by private streets within fenced airport property. A portion of airport property for the proposed West Waukau Avenue cul-de-sac has a portable building used by the Winnebago Sheriff's Department during EAA AirVenture. The building will be shifted 140 feet north to remain on airport property.

**DATES:** Comments must be received on or before August 12, 2013.

**ADDRESSES:** Documents are available for review by appointment at the FAA Airports District Office, Gina Mitchell, Community Planner, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota, 55450, Telephone: (612) 253-4641/Fax: (612) 253-4611 and Peter Moll, Airport Director, 525 West 20th Avenue, Oshkosh, Wisconsin, 54902-6871, Telephone: (920) 236-4930.

Written comments on the Sponsor's request must be delivered or mailed to: Gina Mitchell, Community Planner, Federal Aviation Administration, Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, MN 55450, Telephone: (612) 253-4641/Fax: (612) 253-4611.

**FOR FURTHER INFORMATION CONTACT:** Gina Mitchell, Community Planner, Federal

Aviation Administration, Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, MN 55450, Telephone: (612) 253-4641/Fax: (612) 253-4611.

**SUPPLEMENTARY INFORMATION:** In accordance with section 47107(h) of Title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

The two parcels proposed to be released are no longer needed for aeronautical use. Parcel 108 is 0.11 acres in size and located north of the intersection of Knapp Street and Schaick Avenue. A cul-de-sac will be constructed in what will become the north termini of Knapp Street. This land was acquired as part of Airport Property Parcel 81 in 1996 with an Airport Improvement Program (AIP) grant (AIP-16). Parcel 109 is 0.132 acres in size and located near the current site of the Winnebago Sheriff's Department building. A cul-de-sac and stormwater detention pond will be constructed in what will become the east termini of West Waukau Avenue. This land was acquired as part of Airport Property Parcel 66 in 1995 with AIP grant (AIP-15). The land to become dedicated City of Oshkosh public road right-of-way totals 0.242 acres.

The airport is proposing to exchange 4.764 acres with the City of Oshkosh comprised of approximately 1,510 feet of West Waukau Avenue located west of Runway 18/36 and approximately 1,634 feet of Knapp Street located north of Schaick Avenue and south of West Waukau Avenue. Access will be maintained to adjacent FAA and EAA AirVenture land uses by means of private streets within fenced airport property.

Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA.

An appraisal was not completed for the two proposed parcels to be released, because the fair market value of the land was determined to be less than \$25,000. The airport property will be an even exchange for the City of Oshkosh road right-of-way. There will be no proceeds from the exchange and the exchange will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999 (64 FR 7696).

Parcel 108:

A parcel of land being part of the Southeast Quarter of the Northeast Quarter of Section 3, T17N, R16E, City of Oshkosh, Winnebago County, Wisconsin more fully described as follows:

Commencing at the East Quarter Corner of Section 3, T17N, R16E,

Thence N01°22'55" E coincident with the East line of the Northeast Quarter of Section 3 a distance of 1012.07 feet;

Thence N88°04'26" W a distance of 33.02 feet to the point of beginning;

Thence N01°22'55" E coincident with the existing West right-of-way of Knapp Street Road a distance of 121.24 feet;

Thence N88°37'05" W a distance of 45.00 feet;

Thence S04°23'53" W a distance of 80.17 feet;

Thence S48°41'10" E a distance of 64.16 feet to the point of beginning.

Parcel 109:

A parcel of land being part of the Southeast Quarter of the Southeast Quarter of Section 34, T18N, R16E, City of Oshkosh, Winnebago County, Wisconsin more fully described as follows:

Commencing at the Southeast corner of Section 34, T18N, R16E,

Thence N88°47'19" W coincident with the South line of the Southeast Quarter of Section 34 a distance of 704.18 feet; Thence N01°02'02" E a distance of 33.00' to the beginning of a curve which is also the point of beginning;

Thence coincident with said curve turning the left through an angle of 160°34'55" having a radius of 60.00 feet and whose long chord bears N79°04'46" W and is 118.28 feet in length coincident with the new Northerly right-of-way line for West Waukau Avenue a distance of 168.16 feet to a point of reverse curvature; said curve turning to the right through an angle of 66°25'52" having a radius of 30.00 feet and whose long chord bears S53°50'43" W and is 32.87 feet in length coincident with the new Northerly right-of-way line for West Waukau Avenue a distance of 34.78 feet to the existing Northerly right-of-way line of West Waukau Avenue; thence S88°47'19" E coincident with said right-of-way line a distance of 142.71 feet to the point of beginning.

Issued in Minneapolis, Minnesota on June 18, 2013.

**Christopher Hugunin,**

*Manager, Minneapolis Airports District Office, FAA, Great Lakes Region.*

[FR Doc. 2013-16662 Filed 7-10-13; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

[Docket No. FTA-2013-0026]

#### Enhanced Mobility for Seniors and Individuals With Disabilities: Proposed Circular

**AGENCY:** Federal Transit Administration (FTA), DOT.

**ACTION:** Notice of Availability of Proposed Circular and Request for Comments.

**SUMMARY:** The Federal Transit Administration (FTA) has placed in the docket and on its Web site, proposed guidance in the form of a circular to assist grantees in implementing the Enhanced Mobility for Seniors and Individuals with Disabilities Program. The Moving Ahead for Progress in the 21st Century Act (MAP-21, Pub. L. 112-141) blended the New Freedom Program (49 U.S.C. 5317) and the Elderly Individuals and Individuals with Disabilities Program (49 U.S.C. 5310) into a new Enhanced Mobility for Seniors and Individuals with Disabilities Program, authorized at 49 U.S.C. 5310. FTA is updating the circular due to these changes in the law. By this notice, FTA invites public comment on the proposed circular for this program.

**DATES:** Comments must be submitted by September 9, 2013. FTA will consider late-filed comments to the extent practicable.

**ADDRESSES:** Please submit your comments by only one of the following methods, identifying your submission by docket number FTA-2013-0026. All electronic submissions must be made to the U.S. Government electronic site at <http://www.regulations.gov>.

(1) *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and follow the online instructions for submitting comments.

(2) *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.

(3) *Hand Delivery or Courier:* West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. Eastern time, Monday through Friday, except Federal holidays.

(4) *Fax:* 202-493-2251.

*Instructions:* You must include the agency name (Federal Transit Administration) and Docket number (FTA-2013-0026) for this notice at the beginning of your comments. Submit two copies of your comments if you

submit them by mail. For confirmation that FTA received your comments, include a self-addressed stamped postcard. Note that all comments received will be posted without change to [www.regulations.gov](http://www.regulations.gov) including any personal information provided and will be available to Internet users. You may review DOT's complete Privacy Act Statement published in the **Federal Register** on April 11, 2000 (65 FR 19477).

*Docket:* For access to the docket to read background documents and comments received, go to [www.regulations.gov](http://www.regulations.gov) at any time or to the U.S. Department of Transportation, 1200 New Jersey Ave. SE., Docket Operations, M-30, West Building Ground Floor, Room W12-140, Washington, DC 20590 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** For program questions, Gilbert Williams, Office of Program Management, Federal Transit Administration, 1200 New Jersey Ave. SE., Room E44-409, Washington, DC, 20590, phone: (202) 366-0797, fax: (202) 366-7951, or email, [Gilbert.Williams@dot.gov](mailto:Gilbert.Williams@dot.gov). For legal questions, Bonnie Graves, Office of Chief Counsel, same address, Room E56-306, phone: (202) 366-4011, fax: (202) 366-3809, or email, [Bonnie.Graves@dot.gov](mailto:Bonnie.Graves@dot.gov).

#### SUPPLEMENTARY INFORMATION:

##### Table of Contents

- I. Overview
- II. Chapter-by-Chapter Analysis
  - A. Chapter I—Introduction and Background
  - B. Chapter II—Program Overview
  - C. Chapter III—General Program Information
  - D. Chapter IV—Program Development
  - E. Chapter V—Coordinated Planning
  - F. Chapter VI—Program Management and Administrative Requirements
  - G. Chapter VII—State and Program Management Plans
  - H. Chapter VIII—Other Provisions
  - I. Appendices

#### I. Overview

FTA is updating Circular 9070.1F, "Elderly Individuals and Individuals with Disabilities Program Guidance and Application Instructions," last revised in 2007, in order to incorporate changes in the law subsequent to passage of the Moving Ahead for Progress in the 21st Century Act (MAP-21, Pub. L. 112-141). MAP-21 blended the previous "Section 5310 Program" and the New Freedom Program (49 U.S.C. 5317, authorized by the Safe, Accountable, Flexible, Efficient Transportation Equity

Act—A Legacy for Users (SAFETEA-LU), and repealed by MAP-21).

The new Section 5310 Program, as amended by MAP-21, authorizes grants for the activities previously authorized under two separate grants programs, including public transportation capital projects planned, designed, and carried out to meet the special needs of seniors and people with disabilities when public transportation is insufficient, unavailable, or inappropriate; public transportation projects that exceed the requirements of the Americans with Disabilities Act (ADA) of 1990; and alternatives to public transportation that assist people with disabilities with transportation. Notably, the "alternatives to public transportation" language now applies to seniors as well as to people with disabilities, and projects no longer have to be "new" to be eligible for funding. In addition to the previously eligible activities, MAP-21 adds a new eligible activity under this section entitled: "public transportation projects that improve access to fixed route service and decrease reliance by people with disabilities on complementary paratransit." The objective of this activity is to remove barriers, including improving access to public rights-of-way and installing elevators in rail stations that are not required by the ADA to have elevators, so people who use wheelchairs or have other mobility impairments have greater access to bus stops and rail stations.

Several aspects of the new Section 5310 Program carry forward language from the previous Sections 5310 and 5317 (New Freedom) Programs. For example, projects funded under the new Section 5310 must also be part of a program of projects that is annually submitted to FTA. Recipients of Section 5310 funds may coordinate and assist with meal delivery services for homebound people, if the service does not interfere with the provision of transportation services. The Federal share of costs remains at 80 percent for capital projects and 50 percent for operating. Consistent with previous law, facilities or equipment may be transferred to other recipients under certain conditions. Further, the requirement for coordinated planning is retained, and projects must be included in the coordinated plan. In addition, seniors and people with disabilities must be included in the development and approval of the coordinated plan.

Under MAP-21, funding for the new Section 5310 Program is no longer apportioned only to States; however, it is now apportioned in the same way that Section 5317 (New Freedom) funds

were apportioned under the previous authorization, except the senior population (age 65 and over) is now included in the new formula. Sixty percent of the funds are apportioned to designated recipients in large urbanized areas with a population of 200,000 or more in a ratio reflecting the number of seniors and people with disabilities in each such urbanized area; 20 percent of the funds are apportioned to the States in a ratio reflecting the number of seniors and people with disabilities in urbanized areas with a population of less than 200,000; and, likewise, 20 percent of the funds are apportioned to the States in a ratio reflecting the number of seniors and people with disabilities in rural areas with a population of less than 50,000 in each State.

The competitive selection process, required under the previous New Freedom Program, is no longer mandatory. However, whether or not a State or a designated recipient uses a competitive selection process to award funds to subrecipients, the State or designated recipient must certify that funds allocated to subrecipients are allocated on a fair and equitable basis.

Finally, the new Section 5310 Program requires FTA to establish performance measures for grants made under Section 5310. This notice, in the section describing changes in Chapter II, seeks comment on proposed performance measures for this program.

This notice also provides a summary of proposed changes to FTA Circular 9070.1F. Once the final circular is adopted, it will supersede the existing 5310 Program Circular. The proposed circular itself is not included in this notice; instead, an electronic version may be found on FTA's Web site, at [www.fta.dot.gov](http://www.fta.dot.gov), and in the docket, at [www.regulations.gov](http://www.regulations.gov). Paper copies of the proposed circular may be obtained by contacting FTA's Administrative Services Help Desk, at (202) 366-4865. FTA seeks comment on the proposed circular.

#### II. Chapter-by-Chapter Analysis

##### A. Chapter I—Introduction and Background

Chapter I of the proposed circular is an introductory chapter and covers general information about FTA and how to contact us, briefly reviews the authorizing legislation for FTA programs generally, includes definitions applicable to the Section 5310 Program, and provides a brief history of the Section 5310 Program. Where applicable, we have used the same definitions found in statute,

rulemakings, and other circulars to ensure consistency.

There are few substantive changes to this chapter. We have removed the reference to Grants.gov, since Section 5310 grants are distributed by formula, and only discretionary grants are listed on Grants.gov. We have added, amended, or removed definitions as necessary. For example, MAP-21 amended the definition of “disability” in title 49 U.S.C. 5302 to be consistent with the definition as it appears in the Americans with Disabilities Act (ADA). We have added a number of definitions that are used throughout FTA Circulars, such as “Capital Lease,” “Cost of Project Property,” “Master Agreement,” and “Operating Expenses.” Some terms have changed in accordance with MAP-21: “Chief Executive Officer of a State” is now “Governor;” “Elderly Individual” is now “Senior;” and “Other than Urbanized Area” is now “Rural Area.” We have also added a definition of “Traditional Section 5310 Projects”—meaning those capital projects planned, designed, and carried out to meet the special needs of seniors and individuals with disabilities when public transportation is insufficient, inappropriate, or unavailable, and carried out by eligible subrecipients as described in Chapter III. The new Section 5310 Program requires that not less than 55 percent of funds apportioned to a State or designated recipient shall be available for these Traditional Section 5310 Projects.

Finally, we have updated the Program History section to include the changes to the program effective with MAP-21.

FTA seeks comment on the content of Chapter I.

#### *B. Chapter II—Program Overview*

We propose amending some of the content of this chapter. We propose amending Section 1, Statutory Authority, to remove references to SAFETEA-LU and instead include MAP-21. This section includes a number of statutory provisions, including the list of eligible activities, the requirement that 55 percent of funds be available for Traditional Section 5310 Projects, the types of entities that are eligible subrecipients for Traditional Section 5310 Projects, as well as the types of entities that may be subrecipients for other eligible activities. We propose amending Section 2, Program Goal, to reflect the additional goal of removing barriers to transportation services and expanding the transportation mobility options available.

As stated previously, the Section 5310 Program is no longer administered

exclusively by the States. Instead, funds are apportioned to States and designated recipients in large urbanized areas. FTA proposes changes to Chapter II to address these changes in the law. The recipient’s role in program administration has been streamlined, and includes references to both States and designated recipients. We propose extensive edits to section 6, Relationship to Other FTA Programs, as both the Job Access and Reverse Commute (JARC) and New Freedom Programs were repealed, and the coordination provisions needed to be updated due to these repeals. We propose only minor edits to section 7, Coordination with Other Federal Programs. We propose updating the information related to the Coordinating Council on Access and Mobility (CCAM), and adding a paragraph on other interagency coordination.

#### *Performance Measures*

Section 3 of this chapter includes information on performance measures. Section 5310(h) requires FTA to submit a report to Congress no later than September 30, 2013, making recommendations on the establishment of performance measures for grants under Section 5310. Such report shall be developed in consultation with national nonprofit organizations that provide technical assistance and advocacy on issues related to transportation services for seniors and individuals with disabilities.

The performance measures to be considered in the report require the collection of quantitative and qualitative information, as available, concerning—

- (1) Modifications to the geographic coverage of transportation service, the quality of transportation service or service times that increase the availability of transportation services for seniors and individuals with disabilities;
- (2) ridership;
- (3) accessibility improvements; and
- (4) other measures, as the Secretary determines is appropriate.

Additionally, Section 5335(c) requires all FTA grant recipients, including grant recipients under Section 5310, to report an asset inventory or condition assessment conducted by the recipient to the National Transit Database (NTD). Taken together, these requirements are similar to the requirements pertaining to FTA’s Section 5311 Rural Area Formula Program. Section 5335(b) requires all recipients of grants under Section 5311 to report financial, operating, and asset condition information to the NTD. Additionally, Section 5311(b)(4) requires each recipient of grants under

Section 5311 to annual report total annual revenue, sources of revenue, total annual operating costs, total annual capital costs, fleet size and type, related facilities, vehicle revenue miles, and ridership. Further, many recipients or subrecipients of Section 5310 grants may also be recipients of the Section 5307 Urbanized Area Formula Program, and as such are already required to submit comprehensive reports to the NTD.

One option FTA is considering is to simplify the reporting burden by combining all of the above reporting requirements into a single requirement for recipients of Section 5310 or Section 5311 to report to the NTD on behalf of all of their subrecipients, and for recipients of Section 5310 or Section 5307 to report on behalf of all of their subrecipients, under a single, unified reporting system. The current NTD reporting requirements for Section 5311 already include ridership, accessibility improvements (as part of the revenue vehicle inventory, and other measures as the Secretary deems appropriate (vehicle revenue miles, total operating and capital expenses.)) In order to implement this option, FTA would have to expand the current Rural and Urbanized Area Annual data collections to include a measure of “geographic coverage of transportation service” and “service times that increase the availability of transportation services for seniors and individuals with disabilities.” As such, any Section 5310 recipient that is already reporting to the NTD as either a Section 5307 recipient or as a Section 5311 subrecipient would already meet the proposed Section 5310 reporting requirements through their existing NTD reports. Section 5310 grant recipients would then only need to add NTD reports for any subrecipients that are not already reporting to the NTD.

FTA seeks comment on the above approach:

- a. Should FTA consider implementing a unified and combined NTD Reporting Requirement for the Section 5310 and 5311 programs, and the Section 5310 and 5307 programs? This would require States to report on behalf of all subrecipients from both the 5310 and 5311 programs, except those already reporting to the NTD; Urbanized Area designated recipients would also have to report on behalf of all subrecipients, except those already reporting to the NTD.

(1) If not, what approach should FTA consider for implementing the requirements of Section 5335(c) for all FTA grant recipients to report an asset inventory or condition assessment to the NTD?

(2) If not, what approach(es) should FTA consider in making recommendations to Congress on collecting quantitative and qualitative data to support performance measures for the Section 5310 program?

b. What information should FTA consider collecting in order to establish performance measures for “geographic coverage of transportation service?”

(1) Would collecting the size and location of the demand response service area (either as operated, or else as required by the Americans with Disabilities Act to complement fixed-route service) be suitable?

(2) If so, would collecting these data on the basis of political jurisdictions (e.g. counties served (for full-counties) or townships served (when serving less than a county) be suitable?

(3) Would another information collection be more appropriate for meeting this requirement? Please be as specific as possible.

c. What information should FTA consider collecting in order to establish performance measures for “service quality or service times that increase the availability of transportation services for seniors and individuals with disabilities?”

(1) Would collecting the hours of operation for the demand response service (either as operated, or else as required by the Americans with Disabilities Act to complement fixed-route service) for each day of the week be suitable?

(2) Would collecting the service terms and conditions (e.g. advance notice requirement, eligibility (e.g. general public, limited on the basis of disability, etc.), pick-up window, etc.) be suitable?

(3) Would another information collection be more appropriate for meeting this requirement? Please be as specific as possible.

d. Once the data collection is established, how should FTA establish the performance measures?

FTA seeks comment on the content of Chapter II.

### C. Chapter III—General Program Information

Due to the changes in Section 5310 under MAP–21, FTA proposes substantially revising this chapter. Since funding for the program is apportioned to States and designated recipients in large urbanized areas, FTA proposes inserting a number of sections from the circular that implemented the New Freedom Program (C. 9045.1, May 2007). This includes information regarding recipient designation, role of the designated recipient, and eligible direct recipients. In urbanized areas

over 200,000 in population, the recipient charged with administering the Section 5310 Program must be officially designated through a process consistent with 49 U.S.C. 5302(4). Consistent with the former New Freedom program, FTA proposes that it is appropriate for the designated recipient for the Section 5307 Program to be the designated recipient for the Section 5310 Program, but another entity may be designated as the recipient for Section 5310 funds based on local circumstances. A State agency may be the designated recipient for large urbanized areas, but funds apportioned to the large UZA(s) must be allocated to those areas. The only other entity that may be a direct recipient for Section 5310 funds (for example, at the conclusion of the project selection process) in a large UZA is a Section 5307 designated recipient.

Consistent with the Section 5310 program under previous authorizations, for Traditional Section 5310 Projects, the designated recipient or State applies for Section 5310 funds on behalf of private non-profit agencies and eligible local governmental authorities within the rural area of the State or the urbanized area. This provision ensures continued support for non-profit providers of public transportation, and maintains the status quo for these projects. For the remaining 45 percent of Section 5310 funds available to a rural or urbanized area, the designated recipient applies to FTA on behalf of itself and eligible subrecipients.

FTA proposes two sections on subrecipients: One section for Traditional Section 5310 Projects, and one for additional eligible projects. The new Section 5310 Program essentially maintains the status quo for Traditional Section 5310 Projects—those public transportation capital projects planned, designed, and carried out to meet the special needs of seniors and individuals with disabilities when public transportation is insufficient, unavailable or inappropriate. These projects are carried out by private non-profit organizations; or a State or local governmental authority that is approved by a State to coordinate services for seniors and individuals with disabilities, or certifies that there are no non-profit organizations readily available in the area to provide the service. Eligible subrecipients for other eligible Section 5310 activities include a State or local governmental authority, a private non-profit organization, or an operator of public transportation that receives a Section 5310 grant indirectly through a recipient.

In an effort to address one of the frequently asked questions of the New Freedom Program, FTA proposes including a new section that discusses private taxi operators as subrecipients. Taxi operators that provide shared-ride service may be subrecipients for non-Traditional Section 5310 Projects, as an operator of public transportation. Local (municipal/State) statutes or regulations, or company policy, will generally determine whether a taxi company provides shared-ride or exclusive-ride service. Taxi companies that wish to participate in the Section 5310 Program that do not provide shared-ride service may do so as contractors to recipients or subrecipients.

Sections 8, 9, and 10 of Chapter III discuss apportionment of funds, funds availability, and transfer of funds. FTA apportions funds by statutory formula: 60 percent among designated recipients in large urbanized areas; 20 percent to the States for small urbanized areas; and 20 percent to the States for rural areas under 50,000 in population. The formula is based on the ratio that the number of seniors and individuals with disabilities in an area (such as a large UZA) bears to the number of seniors and individuals with disabilities in all such areas. Consistent with the previous guidance, Section 5310 funds are available for obligation in the year of apportionment plus two additional years.

Under the previous Section 5310 Program, States could transfer funds to an apportionment under Section 5311(c) or 5307. This transfer provision is no longer part of the law. However, funds apportioned to small urbanized areas or rural areas may be transferred to projects in large urbanized areas if the Governor certifies that objectives of the Section 5310 program are being met in the small urbanized or rural areas that received the initial apportionment. Alternatively, a State may transfer funds apportioned to small urbanized areas or rural areas for a project anywhere in the State, in accordance with an established statewide program for meeting the objectives of the Section 5310 program. A recipient may transfer apportioned funds only after consulting with responsible local officials, publicly owned operators of public transportation, and nonprofit providers in the area from which the funds to be transferred were originally apportioned. Funds apportioned to large urbanized areas may not be transferred to other areas.

As stated previously, the new Section 5310 Program requires that not less than 55 percent of funds apportioned to a

State or designated recipient shall be available for Traditional Section 5310 Projects—those public transportation capital projects planned, designed, and carried out to meet the specific needs of seniors and individuals with disabilities when public transportation is insufficient, unavailable or inappropriate, and carried out by eligible subrecipients. Notably, this 55 percent is a floor, not a ceiling—recipients may use more than 55 percent of their apportionment for this type of project.

In addition to the above required capital projects, up to 45 percent of the apportionments may be utilized for additional public transportation projects: Projects that exceed the ADA minimum requirements; projects that improve access to fixed route service and decrease reliance by individuals with disabilities on ADA complementary paratransit service; and projects that provide alternatives to public transportation that assist seniors and individuals with disabilities with transportation. Such projects must be targeted toward meeting the transportation needs of individuals with disabilities, although they may also be used by the general public.

In order to be clear about which projects are Traditional Section 5310 Projects and meet the 55 percent minimum threshold, FTA proposes dividing the eligible activities into two sections: Eligible capital expenses that meet the 55 percent requirement; and other eligible capital and operating expenses. The list of proposed eligible activities for the Traditional Section 5310 Projects is virtually identical to the list of eligible activities in FTA Circular 9070.1F (Section 5310), with some streamlining. In addition, based on historical uses of the funds, FTA is proposing to include the eligibility of rolling stock for and acquisition of ADA complementary paratransit services as Traditional Section 5310 Projects when carried out by eligible subrecipients that can count toward the minimum 55 percent required, so long as the projects are planned, designed, and carried out to meet the specific needs of seniors and individuals with disabilities when public transportation is insufficient, unavailable or inappropriate, and the projects are included in the area's coordinated plan. The list of proposed eligible activities in the other eligible capital and operating expenses is virtually identical to the list of eligible activities in FTA Circular 9045.1 (New Freedom). The list of eligible activities is illustrative and not exhaustive.

Under SAFETEA-LU, a higher Federal share for Section 5310 eligible

capital projects was available to 14 States with a high proportion of Federal lands, as described in 23 U.S.C. 120(b) (also known as the “sliding scale”). MAP-21 struck this provision. Therefore, the Federal share for all States for Section 5310 funds is 80 percent for capital projects and 50 percent for operating projects. The proposed circular reflects this change in the law. However, when funds are transferred to Section 5310 from FHWA programs, the higher Federal share by the sliding scale is permissible, but they are limited in use to eligible capital projects.

FTA seeks comment on the content and format of Chapter III.

#### *D. Chapter IV—Program Development*

FTA proposes only minor changes to Chapter IV, generally to address the change from a State-managed program to a program managed by designated recipients as well as States. However, FTA did make changes to the categories of approval and the revisions to the program of projects sections. First, FTA proposes to eliminate Category C, which was typically used for program reserve. Given that Section 5310 funds are available for obligation for a total of three years, if the State or designated recipient does not have a project identified that fits in either Category A or B, FTA recommends the funds remain unobligated until future needs arise. Second, FTA proposed an update to the revisions to the program of projects sections to provide flexibility to States or designated recipients to make minor revisions without having to necessarily obtain FTA's prior approval.

FTA seeks comment on the content of Chapter IV.

#### *E. Chapter V—Coordinated Planning*

This chapter describes the required coordinated planning process. FTA proposes only minor changes to this chapter, including the change to the definition of a coordinated plan, which now requires that selected projects be included in, and not merely derived from, the coordinated plan, and that seniors and individuals with disabilities be involved in the development and approval of the coordinated plan. Even with the change in language to “included in”, FTA proposes to maintain flexibility in how projects appear in the coordinated plan. For example, for purposes of the coordinated plan, a project is a strategy, activity or specific action addressing an identified service gap or transportation coordination objective articulated and prioritized within the plan. FTA seeks comment on maintaining this approach

to coordinated planning and the content of Chapter V.

#### *F. Chapter VI—Program Management and Administrative Requirements*

FTA proposes only minor changes to Chapter VI, generally to address the change from a State-managed program to a program managed by designated recipients as well as States. This section is also updated to reflect MAP-21 updates. FTA expects to further amend section 23, Reporting Requirements, subsection d., Program Measures, in response to comments sought on performance measures. Please see the section on Performance Measures, above. FTA seeks comment on the content of Chapter VI.

#### *G. Chapter VII—State and Program Management Plans*

FTA proposes only minor changes to Chapter VII, generally to address the change from a State-managed program to a program managed by designated recipients as well as States. This includes the requirement that designated recipients that are not States must have a Program Management Plan for the Section 5310 Program. This is the same requirement designated recipients had for the New Freedom Program, so FTA proposes continuing the requirement. In the case of designated recipients that are not States, FTA will review the Program Management Plan during triennial reviews.

FTA seeks comment on the content of this chapter.

#### *H. Chapter VIII—Other Provisions*

This chapter describes cross-cutting FTA and Federal requirements that apply to the Section 5310 Program. FTA includes minor language changes to this chapter that reflect the change in Section 5310 from a State-managed program to a program managed by designated recipients as well as States, and to update for MAP-21 changes. FTA proposes removing the section on public hearing requirements, as the authority for that section was formerly in 49 U.S.C. 5323(b) as amended by SAFETEA-LU, and repealed by MAP-21. We propose removing the section on pre-award and post-delivery reviews, since this information is already covered in the procurement section of Chapter VI. We propose streamlining the section on drug and alcohol testing section. We have updated the section on civil rights to reflect updated guidance implemented since the last publication of this circular. We have similarly updated the safety and security section to reflect changes in the law.

FTA seeks comment on the content of this chapter.

### I. Appendices

FTA made only a few changes to the appendices, generally to reflect changes in the law. For example, at least 55 percent of the annual apportionment must be identified for Traditional 5310 Projects, and the applicant must clearly identify the capital projects satisfying the 55 percent minimum requirement. The extended budget descriptions should confirm which activities are supporting this requirement. For public transportation projects that exceed the requirements of the ADA, projects that reduce barriers to people with disabilities, or for alternatives to public transportation that assist seniors and individuals with disabilities, the applicant should use scope 647-00.

Appendix B provides a Sample Section 5310 Program of Projects, and demonstrates how the applicant will have a line item for traditional Section 5310 capital projects at the 55 percent minimum level and a line item for operating expenses and other capital expenses at the 45 percent maximum level.

FTA seeks comment on the appendices.

Issued in Washington, DC, this 3rd day of July, 2013.

**Peter Rogoff,**  
Administrator.

[FR Doc. 2013-16624 Filed 7-10-13; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

[Docket No: PHMSA-2013-0003]

#### Pipeline Safety: Information Collection Activities, Revision to Annual Report for Hazardous Liquid Pipeline Systems

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and comments. A **Federal Register** notice with a 60-day comment period soliciting comments on the information collection was published on February 6, 2013, (78 FR 8699).

PHMSA received one comment in response to that notice. PHMSA is publishing this notice to respond to the comment, provide the public with an additional 30 days to comment on the proposed revisions to the forms and the instructions, and announce that the revised information collections will be submitted to OMB for approval.

**DATES:** Comments must be submitted on or before August 12, 2013.

**FOR FURTHER INFORMATION CONTACT:** Blaine Keener by telephone at 202-366-0970, by fax at 202-366-4566, or by email at [blaine.keener@dot.gov](mailto:blaine.keener@dot.gov).

**ADDRESSES:** You may submit comments identified by the docket number PHMSA-2013-0003 by any of the following methods:

- **Fax:** 1-202-395-5806.
- **Mail:** Office of Information and Regulatory Affairs (OIRA), Records Management Center, Room 10102 NEOB, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer for the U.S. Department of Transportation\PHMSA.
- **Email:** Office of Information and Regulatory Affairs, OMB, at the following email address:  
[OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov).

Requests for a copy of the Information Collection should be directed to Angela Dow by telephone at 202-366-1246, by fax at 202-366-4566, by email at [Angela.Dow@dot.gov](mailto:Angela.Dow@dot.gov), or by mail at U.S. Department of Transportation, PHMSA, 1200 New Jersey Avenue SE., PHP-30, Washington, DC 20590-0001.

**SUPPLEMENTARY INFORMATION:** Section 1320.8 (d), Title 5, Code of Federal Regulations, requires PHMSA to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies a revised information collection request that PHMSA will be submitting to OMB for approval. The information collected from hazardous liquid operators' annual reports is an important tool for identifying safety trends in the hazardous liquid pipeline industry.

#### Summary of Topic Comments/ Responses

During the two-month response period, PHMSA received one joint comment from the following stakeholders:

- American Petroleum Institute (API)
- Association of Oil Pipelines (AOPL)

This 30-day notice responds to the comments, which may be found at <http://www.regulations.gov>, at docket number PHMSA-2013-0003.

The following is a summary of the joint comments to PHMSA regarding the

proposed changes to the Hazardous Liquid Operator Annual Report. Most of the comments are in reference to the reporting of Parts D and E information on a by-state basis.

#### A. By-State Reporting for Parts D and E

**Comment:** API and AOPL commented that state-by-state reporting for parts D and E will not enhance pipeline safety or provide meaningful data, and that data collection will impose more burden on operators than PHMSA estimated. They point out that "although the notice states that state-by-state information is "essential for PHMSA's response to state regulators, Congress, state officials, and the public following pipeline incidents," the notice fails to explain how the data will be used to quantify risk or advance pipeline safety. PHMSA already receives the data on a total system basis, which is consistent with PHMSA's regulatory approach of overseeing the safety of the interstate liquids pipeline network overall, not on a state-by-state basis.

**PHMSA's Response:** PHMSA is responsible for safety oversight of both interstate and intrastate pipeline systems. For those states that are certified, the state pipeline safety agency provides oversight and enforcement on pipeline facilities within that state. PHMSA funds up to 80 percent of costs for state pipeline safety programs. By-state reporting will increase PHMSA's ability to oversee state pipeline regulatory activities. Without by-state reporting for the proposed information, PHMSA is unable to respond to elementary questions from State Governors, Senators, Congressmen, and the media, who frequently ask for such information especially following significant accidents within their state. Safety analysis is a large part of PHMSA's mission, but responding to information needs from stakeholders is also critical to the mission. By-state information can also help track overall improvements in pipe inventory at a state level, which aides in understanding national improvement trends. For example, cast iron replacement became a special concern for the Secretary of Transportation and others after an accident involving cast iron pipe in Pennsylvania in 2011. PHMSA is able to track by-state replacement rates for such pipe because that information is available on a by-state basis. PHMSA also believes that the increasing use of Geographic Information System (GIS) tools by industry makes it increasingly easier for operators to provide such information.

*Comment:* According to API and AOPL, “The notice’s regulatory impact analysis underestimates the burden of the revisions upon pipeline operators. PHMSA believes that most of the regulated hazardous liquid pipeline industry already collects this information on a by-state basis so the burden for providing it would be minimal. The notice incorrectly characterizes the nature of the information currently collected by the industry and seeks a level of reporting granularity that imposes significant burdens. The industry does not collect this information, but rather, it collects total intrastate mileage through its Pipeline Performance Tracking System (PPTS), a reporting system where industry members voluntarily report release data in an effort to understand and improve industry performance.”

*PHMSA’s Response:* The annual report currently collects data about the size, age, pressure range, and high consequence area status on both a by-state and by-commodity basis. Fifty-six percent of operators in the calendar year 2011 data set reported in only one state. There will be no additional burden for these operators. For the 44 percent of operators reporting in more than one state, PHMSA expects that the additional data proposed for collection is already integrated with information systems containing the data currently reported on both a by-state and by-commodity basis. However, PHMSA acknowledges that operators without GIS capability would have added burden in computing by-state totals. PHMSA has modified the burden estimate to reflect that some operators will incur costs to extract the requested data.

*Comment:* The proposal requires the intrastate data be broken down additionally into a complex matrix that would categorize state pipeline mileage by material type, corrosion prevention status, and location onshore or offshore. Consequently, the notice would compel operators to further collect and sort the information into smaller subcategories. Compiling, mining, and assessing the data in the complex matrices that the notice proposes is not a trivial exercise. API and AOPL would not characterize this burden as minimal. Moreover, the burden estimates included in the notice do not consider the costs required by operators to modify their existing geospatial technological architecture to incorporate these changes. In general, API and AOPL members manage their data networks on a system-wide foundation, not a state-wide foundation. Consequently, operators are not able to easily access the information that would

be collected and would need to modify their systems to access this data more readily. In fact, during the report’s last revision, which occurred only a few years ago, operators incurred noteworthy modification costs to upgrade their geospatial architecture. Those operators that are unable to upgrade current systems will be relegated to manually mining the data for this information, expending significant time and human resources not fully recognized in the notice’s burden estimate.

*PHMSA’s Response:* PHMSA’s understanding is that it is already common practice to integrate the proposed data with the information systems containing the data that is currently reported. PHMSA believes that by way of these information systems, the proposed data could be easily extracted on both a by-state and by-commodity basis. Nonetheless, PHMSA has modified the burden estimate to reflect that some operators will incur costs to extract the requested data.

Regarding the comment about intrastate filing difficulty, based on conversation with industry, PHMSA expects most, if not all, hazardous liquid pipeline companies contain primary information regarding their enterprise in a GIS, and as such, the information requested should be readily available by state. PHMSA believes that the information proposed for by-state collection can be obtained or derived from any GIS system with state boundary data that is free to the public. PHMSA can also provide state boundary data information on request. Also, queries to calculate a by-state basis should be trivial if the information is within a GIS system, on a system-wide basis, or otherwise at a national level.

#### *B. Online Reporting Enhancements*

*Comment:* If PHMSA nonetheless proceeds with the revisions, API and AOPL request that PHMSA incorporate several changes to its navigation of the online report. Specifically, the report’s instructions indicate that Parts N and O are to be completed after Parts P and Q. The proposed revisions would also require operators to complete Part L prior to Part F. Since these changes would require operators to complete the report out of sequence, API and AOPL request that PHMSA provide a notification in the electronic report, in addition to changes in the instructions that would direct operators to bypass the respective Parts. API and AOPL also request that PHMSA provide corresponding navigation that will permit operators to freely move between

the related Parts on the report. Such revisions will facilitate accurate and quality data collection.

*PHMSA’s Response:* The on-line navigation will allow the users to move freely among the Parts of the form. If an operator attempts to enter Part F or G data before the prerequisite entries have been made in Part L, the online system will explain why data entry is not yet permitted.

*Comment:* Time Stamp Requested: API and AOPL note that there is currently no confirmation of the date and time that an initial or supplemental Annual Report has been submitted. Confirmation would certify that the operator has successfully submitted the report, and will verify those viewing a hard copy have the most recent version of the report. In fact, PHMSA inspectors request this information during inspections. API and AOPL request that PHMSA supply confirmation upon submittal of any report.

*PHMSA’s Response:* PHMSA is implementing the date confirmation suggested by API and AOPL. In the Summary section of the PHMSA Portal, operators have access to all original and supplemental reports.

#### *C. Improved Instructions*

*Comment:* Reporting of actionable anomalies removed due to pipe replacement or abandonment: To streamline operator reporting in this section of the report, API and AOPL request that the report’s instructions include examples of how to calculate reportable anomalies for any repair. API and AOPL believe the following are suitable examples of such guidance:

*Example 1.* An area on the pipe has three actionable anomalies in the same general area, per the assessment data. If an operator excavates this area and installs a repair sleeve over these three actionable anomalies as well as 20 smaller anomalies, the total reported number of actionable anomalies for this repair should equal three.

*Example 2.* An area on the pipe has three actionable anomalies in the same general area, per the assessment data. Upon ditch investigation, if there are four anomalies that meet the actionable definitions (if, for instance, the ILI tool missed one anomaly) as well as several smaller anomalies, the reported number of actionable anomalies should equal four.

*Example 3.* An area on the pipe has three actionable anomalies in the same general area, per the assessment data. If upon in the ditch investigation it is discovered that only one of the anomalies is actionable, the reported number should be one.

*Example 4.* An area on the pipe has three actionable anomalies in the same general area per the assessment data. The operator elects to do a pipe replacement or abandonment without a ditch investigation. The reported

number of actionable anomalies should equal three per the assessment data.

The definition for the term repair presents another example of where modest changes to the instructions will improve the understanding of those entering the data as well as the quality of the data. Specifically, API and AOPL request that PHMSA adopt the term “repair” as included in the PPTS Advisory Bulletin: Reporting Integrity Management Program Activity in the Infrastructure Survey (2004), which defines “repair” as “a mechanical fix of some kind—a sleeve or clamp, for instance—that restores the pressure-containing capability of the pipe.” A pipe repair can include the installation of pressure containing sleeves or non-pressure containing sleeves, replacement of a weld or welding to fill in an anomaly, and removal of stress concentrators through grinding. A repair should not include touching-up, re-establishing or replacing coating. A “replacement” on the other hand, is a type of repair.

*PHMSA’s Response:* API’s and AOPL’s suggestion regarding instructions for reporting repairs is already partially implemented in PHMSA’s proposed changes. For example, the instructions clearly state that recoating is not considered a repair. However, the suggestion that replacement be treated as a type of repair directly conflicts with PHMSA’s proposal to collect actionable anomalies eliminated by pipe abandonment or replacement. PHMSA will proceed with collecting replacement data separately from repair data.

*Comment:* High Consequence Area Mileage: API and AOPL request that PHMSA clarify the instructions on page 11 of the “60 day Version” of the Report’s General Instructions. Page 11 instructs operators that, “Part F includes inspection, assessment, and repair data both within and outside HCAs.” Although the instructions in Part F later detail section-by-section how to report mileage, AOPL and API request that PHMSA include a notation on this page noting that, “where 49 CFR 195.452 is cited, only ‘could affect’ HCA mileage should be reported,” to avoid potential confusion.

*PHMSA’s Response:* PHMSA has modified page 11 of the instructions to clarify that “in HCA” means “on pipeline segments that could affect an HCA.”

The following information is provided for each information collection:

(1) Abstract for the affected annual report form; (2) title of the information collection; (3) OMB control number; (4)

affected annual report form; (5) description of affected public; (6) estimate of total annual reporting and recordkeeping burden; and (7) frequency of collection. PHMSA will request a three-year term of approval for each information collection activity and, when approved by OMB, publish a notice of the approval in the **Federal Register**.

PHMSA requests comments on the following information collection:

*Title:* Transportation of Hazardous Liquids by Pipeline: Recordkeeping and Annual Reporting.

*OMB Control Number:* 2137–0614.

*Current Expiration Date:* 1/31/2014.

*Type of Request:* Revision.

*Abstract:* To ensure adequate public protection from exposure to potential hazardous liquid pipeline failures, PHMSA collects information on reportable hazardous liquid pipeline accidents. Additional information is also obtained concerning the characteristics of an operator’s pipeline system on the Annual Report for Hazardous Liquid Pipeline Systems form (PHMSA F 7000–1.1). This information is needed for normalizing the accident information to provide for adequate safety trending. The form is required to be filed annually by June 15 of each year for the preceding calendar year.

*Affected Public:* Hazardous liquid pipeline operators.

*Annual Reporting and Recordkeeping Burden:*

*Total Annual Responses:* 447.

*Total Annual Burden Hours:* 8,063 (8,046 + 17).

*Frequency of collection:* Annually.

*Comments are invited on:*

(a) The need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Issued in Washington, DC, on July 5, 2013.

**Jeffrey D. Wiese,**

*Associate Administrator for Pipeline Safety.*

[FR Doc. 2013–16606 Filed 7–10–13; 8:45 am]

**BILLING CODE 4910–60–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[Docket No. FD 35744]

#### Charles Barenfanger, Jr.—Acquisition of Control Exemption—Vandalia Railroad Company<sup>1</sup>

Charles Barenfanger, Jr., a noncarrier, has filed a verified notice of exemption under 49 CFR 1180.2(d)(2) to acquire control of Vandalia Railroad Company (Vandalia), a Class III rail carrier.

Under the proposed transaction, Barenfanger would acquire 51 percent of Vandalia.<sup>2</sup> According to Barenfanger, he currently controls Effingham Railroad Company (EFR), a Class III rail carrier in Illinois, and Illinois Western Railroad Company (IWR).<sup>3</sup>

Barenfanger states that the proposed transaction is scheduled to be consummated no sooner than the effective date of the notice of exemption, but no later than 30 days after the filing of the verified notice of exemption. The earliest this transaction can be consummated is July 25, 2013, the effective date of the exemption (30 days after the verified notice of exemption was filed).<sup>4</sup>

Barenfanger represents that: (1) The properties to be operated by Vandalia and the properties operated by EFR and IWR do not connect with each other;<sup>5</sup> (2) the proposed transaction is not part of a series of anticipated transactions

<sup>1</sup> In the verified notice of exemption initially filed on June 20, 2013, this proceeding was captioned as a “continuance in control” exemption, with Charles Barenfanger, Jr. and Agracel, Inc. (Agracel) as co-applicants. On June 25, 2013, however, Barenfanger filed a letter supplementing and clarifying the verified notice of exemption. As clarified, Barenfanger is the only party to whom the exemption will apply, and the described transaction involves an acquisition of control rather than continuance in control. See *Class Exemption for Acquis. or Operation of Rail Lines by Class III Rail Carriers Under 49 U.S.C. 10902*, EP 529, slip op. at 2 (STB served Nov. 29, 1996); *Nev. 5, Inc.—Control Exemption—GTR Leasing LLC*, FD 35635, slip op. at 1 n.1 (STB served June 15, 2012). The proceeding has been re-captioned accordingly.

<sup>2</sup> Agracel, a company in which Barenfanger has no ownership interest, would acquire 49 percent of Vandalia.

<sup>3</sup> See *Ill. W. R.R.—Change in Operator Exemption—City of Greenville, Ill.*, FD 32853 (STB served Jan. 30, 1996). But see *Effingham R.R.—Pet. for Declaratory Order—Constr. at Effingham, Ill.*, 2 S.T.B. 606 (1997), *reconsideration denied* (STB served Sept. 18, 1998), *aff’d sub nom. United Transp. Union v. STB*, 183 F.3d 606 (7th Cir. 1999). Barenfanger indicates that he owns 51 percent of EFR and IWR and that Agracel owns 49 percent of these companies.

<sup>4</sup> Barenfanger’s verified notice of exemption is deemed to have been filed on June 25, 2013, the date Barenfanger filed his supplemental information.

<sup>5</sup> In his June 25 letter, Barenfanger states that Vandalia operates in Vandalia, Ill.; EFR operates in Effingham, Ill.; and IWR operates in Greenville, Ill.

that would connect the carriers with each other or any railroad in their corporate family; and (3) the transaction does not involve a Class I rail carrier. The proposed transaction is therefore exempt from the prior approval requirements of 49 U.S.C. 11323 pursuant to 49 CFR 1180.2(d)(2). Barenfanger states that the purpose of the transaction is the achievement of operating efficiency and improved rail service in Vandalia, Ill.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than July 18, 2013 (at least seven days before the exemption becomes effective).

An original and ten copies of all pleadings, referring to Docket No. FD 35744, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on John M. Robinson, Vinson & Elkins LLP, 2200 Pennsylvania Avenue NW., Suite 500 West, Washington, DC 20037-1701.

Board decisions and notices are available on our Web site at "[www.stb.dot.gov](http://www.stb.dot.gov)."

Decided: July 5, 2013.

By the Board, Rachel D. Campbell,  
Director, Office of Proceedings.

**Derrick A. Gardner,**  
*Clearance Clerk.*

[FR Doc. 2013-16632 Filed 7-10-13; 8:45 am]

**BILLING CODE 4915-01-P**

## DEPARTMENT OF THE TREASURY

### Open Meeting of the Financial Research Advisory Committee

**AGENCY:** Office of Financial Research, Department of the Treasury.

**ACTION:** Notice of open meeting.

**SUMMARY:** The Financial Research Advisory Committee for the Treasury's

Office of Financial Research (OFR) is convening for its second meeting on Thursday, August 1, 2013 in the Hearing Room, Securities and Exchange Commission, 3 World Financial Center, New York, NY 10281, beginning at 9:45 a.m. Eastern Time. The meeting will be open to the public via live webcast at <http://www.treasury.gov/ofr> and limited seating may also be available.

**DATES:** The meeting will be held on Thursday, August 1, 2013, beginning at 9:45 a.m. Eastern Time.

**ADDRESSES:** The meeting will be held in the Hearing Room, Securities and Exchange Commission, 3 World Financial Center, New York, NY 10281. The meeting will be open to the public via live webcast at <http://www.treasury.gov/ofr>. A limited number of seats may be available for those interested in attending the meeting in person, and those seats would be on a first-come, first-served basis. Because the meeting will be held in a secured facility, members of the public who plan to attend the meeting must contact the Office of Financial Research (OFR) by email at [andrea.b.ianniello@treasury.gov](mailto:andrea.b.ianniello@treasury.gov) by 5 p.m. Eastern Time on July 17, 2013 to inform the OFR of their desire to attend the meeting and to receive further instructions about building clearance.

**FOR FURTHER INFORMATION CONTACT:** Andrea Ianniello, Designated Federal Officer, Office of Financial Research, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220, (202) 622-3002 (this is not a toll-free number), [andrea.b.ianniello@treasury.gov](mailto:andrea.b.ianniello@treasury.gov). Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Relay Service at 800-877-8339.

**SUPPLEMENTARY INFORMATION:** Notice of this meeting is provided in accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 2, 10(a)(2), through implementing regulations at 41 CFR 102-3.150.

*Public Comment:* Members of the public wishing to comment on the business of the Financial Research Advisory Committee are invited to submit written statements by any of the following methods:

- *Electronic Statements.* Email the Committee's Designated Federal Officer at [andrea.b.ianniello@treasury.gov](mailto:andrea.b.ianniello@treasury.gov).
- *Paper Statements.* Send paper statements in triplicate to the Financial Research Advisory Committee, Attn: Andrea Ianniello, Office of Financial Research, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

The OFR will post statements on its Web site, <http://www.treasury.gov/ofr>, including any business or personal information provided, such as names, addresses, email addresses, or telephone numbers. The OFR will also make such statements available for public inspection and copying in the Department of the Treasury's library, Annex Room 1020, 1500 Pennsylvania Avenue NW., Washington, DC 20220 on official business days between the hours of 8:30 a.m. and 5:30 p.m. Eastern Time. You may make an appointment to inspect statements by telephoning (202) 622-0990. All statements, including attachments and other supporting materials, will be part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

*Tentative Agenda/Topics for Discussion:* The Committee provides an opportunity for researchers, industry leaders, and other qualified individuals to offer their advice and recommendations to the OFR, which, among other things, is responsible for collecting and standardizing data on financial institutions and their activities and for supporting the work of financial regulatory agencies.

This is the second meeting of the Financial Research Advisory Committee. At this meeting, the agenda will include OFR Senior Management Presentations on the activities of the OFR, Subcommittee reports to the Committee, and Committee recommendations. For more information on the OFR and the Committee, please visit the OFR Web site at <http://www.treasury.gov/ofr>.

Dated: July 3, 2013.

**Richard Berner,**

*Director, Office of Financial Research.*

[FR Doc. 2013-16647 Filed 7-10-13; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF THE TREASURY

### Departmental Offices; Debt Management Advisory Committee Meeting

Notice is hereby given, pursuant to 5 U.S.C. App. 2, § 10(a)(2), that a meeting will be held at the Hay-Adams Hotel, 16th Street and Pennsylvania Avenue NW., Washington, DC, on July 30, 2013 at 9:30 a.m. of the following debt management advisory committee:

Treasury Borrowing Advisory Committee of The Securities Industry and Financial Markets Association.

The agenda for the meeting provides for a charge by the Secretary of the

Treasury or his designate that the Committee discuss particular issues and conduct a working session. Following the working session, the Committee will present a written report of its recommendations. The meeting will be closed to the public, pursuant to 5 U.S.C. App. 2, § 10(d) and Public Law 103-202, § 202(c)(1)(B) (31 U.S.C. 3121 note).

This notice shall constitute my determination, pursuant to the authority placed in heads of agencies by 5 U.S.C. App. 2, § 10(d) and vested in me by Treasury Department Order No. 101-05, that the meeting will consist of discussions and debates of the issues presented to the Committee by the Secretary of the Treasury and the making of recommendations of the Committee to the Secretary, pursuant to Public Law 103-202, § 202(c)(1)(B). Thus, this information is exempt from disclosure under that provision and 5 U.S.C. 552b(c)(3)(B). In addition, the meeting is concerned with information that is exempt from disclosure under 5 U.S.C. 552b(c)(9)(A). The public interest requires that such meetings be closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decisions on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community. When so utilized, such a committee is recognized to be an advisory committee under 5 U.S.C. App. 2, § 3.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of the Committee, premature disclosure of the Committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, this meeting falls within the exemption covered by 5 U.S.C. 552b(c)(9)(A).

Treasury staff will provide a technical briefing to the press on the day before the Committee meeting, following the release of a statement of economic conditions and financing estimates. This briefing will give the press an opportunity to ask questions about financing projections. The day after the Committee meeting, Treasury will release the minutes of the meeting, any charts that were discussed at the meeting, and the Committee's report to the Secretary.

The Office of Debt Management is responsible for maintaining records of debt management advisory committee

meetings and for providing annual reports setting forth a summary of Committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. 552(b). The Designated Federal Officer or other responsible agency official who may be contacted for additional information is Fred Pietrangeli, Director for Office of Debt Management (202) 622-1876.

Dated: July 1, 2013.

**Matthew S. Rutherford,**

*Assistant Secretary, (Financial Markets).*

[FR Doc. 2013-16597 Filed 7-10-13; 8:45 am]

**BILLING CODE 4810-25-M**

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

#### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; OCC Supplier Registration Form

**AGENCY:** Office of the Comptroller of the Currency (OCC), Treasury.

**ACTION:** Notice and request for comment.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (PRA).

**DATES:** Comments must be submitted on or before August 12, 2013.

**ADDRESSES:** Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557-NEW, 400 7th Street SW., Suite 3E-218, Mail Stop 9W-11, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465-4326 or by electronic mail to [regs.comments@occ.treas.gov](mailto:regs.comments@occ.treas.gov). You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649-6700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in

order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Additionally, please send a copy of your comments by mail to: OCC Desk Officer, 1557-NEW, U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503, or by email to: [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov).

**FOR FURTHER INFORMATION CONTACT:** You may request additional information of the collection from Johnny Vilela or Mary H. Gottlieb, OCC Clearance Officers, (202) 649-5490, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Suite 3E-218, Mail Stop 9W-11, Washington, DC 20219.

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, the OCC has submitted the following proposed collection of information to OMB for review and clearance.

*Title:* OCC Supplier Registration Form.

*OMB Number:* 1557-NEW.

*Frequency of Response:* On occasion.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 1000.

*Estimated Burden Hours per Response:* 10 minutes.

*Estimated Total Annual Burden Hours:* 167 hours.

*Abstract:* Section 342 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) requires the (OCC) to develop and implement standards and procedures to ensure, to the maximum extent possible, the fair inclusion and utilization of minorities, women, and minority-owned and women-owned businesses in all business and activities of the agency at all levels, including in procurement, insurance, and all types of contracts<sup>1</sup> and to develop standards for coordinating technical assistance to such business.<sup>2</sup>

In order to comply with the Congressional mandates to develop standards for the fair inclusion and utilization of minority- and women-owned businesses and to provide effective technical assistance to these

<sup>1</sup> 12 U.S.C. 5452(c)(1)

<sup>2</sup> 12 U.S.C. 5452(b)(2)(B)

businesses, the OCC is developing an on-going system to collect up-to-date contact information and capabilities statements from potential suppliers. This information will allow the OCC to update and enhance its internal database of interested minority- and women-owned businesses. This information also will allow the OCC to measure the effectiveness of its technical assistance and outreach efforts and target areas where additional outreach efforts are necessary.

In the **Federal Register** of May 3, 2013 (78 FR 26114), the OCC published a 60-

day notice requesting public comment on the proposed collection of information. The OCC received no comments.

Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the information collection burden;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 8, 2013.

**Michele Meyer,**

*Assistant Director, Legislative and Regulatory Activities Division.*

[FR Doc. 2013-16645 Filed 7-10-13; 8:45 am]

**BILLING CODE 4810-33-P**

# Reader Aids

## Federal Register

Vol. 78, No. 133

Thursday, July 11, 2013

### CUSTOMER SERVICE AND INFORMATION

#### Federal Register/Code of Federal Regulations

General Information, indexes and other finding aids **202-741-6000**

**Laws 741-6000**

#### Presidential Documents

Executive orders and proclamations **741-6000**

**The United States Government Manual 741-6000**

#### Other Services

Electronic and on-line services (voice) **741-6020**

Privacy Act Compilation **741-6064**

Public Laws Update Service (numbers, dates, etc.) **741-6043**

TTY for the deaf-and-hard-of-hearing **741-6086**

### ELECTRONIC RESEARCH

#### World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: [www.fdsys.gov](http://www.fdsys.gov).

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: [www.ofr.gov](http://www.ofr.gov).

#### E-mail

**FEDREGTOC-L** (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to <http://listserv.access.gpo.gov> and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings)*; then follow the instructions.

**PENS** (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to <http://listserv.gsa.gov/archives/publaws-l.html> and select *Join or leave the list (or change settings)*; then follow the instructions.

**FEDREGTOC-L** and **PENS** are mailing lists only. We cannot respond to specific inquiries.

**Reference questions.** Send questions and comments about the Federal Register system to: [fedreg.info@nara.gov](mailto:fedreg.info@nara.gov)

The Federal Register staff cannot interpret specific documents or regulations.

**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/>.

### FEDERAL REGISTER PAGES AND DATE, JULY

39163-39542.....	1
39543-39956.....	2
39957-40380.....	3
40381-40624.....	5
40625-40934.....	8
40935-41258.....	9
41259-41676.....	10
41677-41834.....	11

### CFR PARTS AFFECTED DURING JULY

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

#### 3 CFR

**Proclamations:**  
8997.....39949

**Executive Orders:**  
13646.....39539  
13648.....40621

**Administrative Orders:**  
**Memorandums:**  
Memorandum of June 25, 2013.....39535

#### 5 CFR

1201.....39543  
1209.....39543

#### 7 CFR

2.....40935  
210.....39163, 40625  
220.....40625  
245.....40625  
253.....39548  
272.....40625  
319.....41259  
357.....40940  
925.....39548  
1205.....39551  
1206.....39564  
**Proposed Rules:**  
1205.....39632

#### 10 CFR

170.....39162  
171.....39162  
430.....41265  
433.....40945  
**Proposed Rules:**  
26.....39190  
32.....41720  
429.....41610  
430.....40403, 41610  
431.....41333

#### 11 CFR

104.....40625

#### 12 CFR

701.....40953  
741.....40953  
911.....39957  
1073.....41677  
1091.....40352  
1214.....39957  
1215.....39959  
1703.....39959  
**Proposed Rules:**  
1002.....39902  
1024.....39902  
1026.....39902

#### 14 CFR

25.....41684

39.....39567, 39571, 39574,  
40954, 40956, 41274, 41277,  
41280, 41283, 41285, 41286  
71.....40381, 40382, 41289,  
41290, 41685, 41686  
73.....39964, 40958  
91.....39576, 39968  
97.....40383, 40385  
121.....39968  
125.....39968

**Proposed Rules:**  
39.....39190, 39193, 39633,  
40045, 40047, 40050, 40053,  
40055, 40057, 40060, 40063,  
40065, 40069, 40072, 40074,  
40640, 40642, 41005  
71.....40076, 40078, 41333,  
41335, 41336, 41337

#### 15 CFR

740.....40892  
742.....40892  
748.....41291  
770.....40892  
772.....40892  
774.....39971, 40892  
902.....39583

**Proposed Rules:**  
997.....39638

#### 16 CFR

803.....41293  
1500.....41298  
**Proposed Rules:**  
310.....41200

#### 18 CFR

**Proposed Rules:**  
40.....41339

#### 19 CFR

12.....40388, 40627  
111.....41299  
163.....40627  
178.....40627

#### 21 CFR

21.....39184  
**Proposed Rules:**  
890.....39649

#### 22 CFR

120.....40922  
121.....40922  
123.....40630, 40922  
124.....40922  
125.....40922  
502.....39584

#### 23 CFR

1200.....39587  
1205.....39587

1206.....39587  
 1250.....39587  
 1251.....39587  
 1252.....39587  
 1313.....39587  
 1335.....39587  
 1345.....39587  
 1350.....39587

**24 CFR**

**Proposed Rules:**

207.....41339

**26 CFR**

1.....39973, 39984  
 54.....39870  
 602.....39973, 39984

**Proposed Rules:**

1.....39644

**27 CFR**

**Proposed Rules:**

9.....40644

**28 CFR**

90.....40959

**29 CFR**

2510.....39870  
 2590.....39870

**30 CFR**

49.....39532

**33 CFR**

1.....39163  
 3.....39163  
 6.....39163  
 13.....39163  
 72.....39163  
 80.....39163  
 83.....39163  
 100.....39588, 40391, 41299,  
 41300  
 101.....39163  
 103.....39163  
 104.....39163  
 105.....39163, 41304  
 106.....39163

110.....39163  
 114.....39163  
 115.....39163  
 116.....39163  
 117.....39163, 39591, 40393,  
 40632, 40960

118.....39163  
 133.....39163  
 136.....39163  
 138.....39163  
 148.....39163  
 149.....39163  
 150.....39163  
 151.....39163  
 161.....39163  
 164.....39163  
 165.....39163, 39592, 39594,  
 39595, 39597, 39598, 39599,  
 39601, 39604, 39606, 39608,  
 39610, 39992, 39995, 39997,  
 39998, 40000, 40394, 40396,  
 40399, 40632, 40635, 40961,  
 41300, 41687, 41689, 41691,  
 41694  
 177.....40963

**Proposed Rules:**

100.....40079  
 165.....40081, 40651, 41009  
 334.....39198

**34 CFR**

Ch. II.....41694  
 690.....39613  
**Proposed Rules:**  
 Ch. II.....40084

**36 CFR**

1280.....41305  
**Proposed Rules:**  
 1196.....39649

**37 CFR**

**Proposed Rules:**  
 201.....39200

**39 CFR**

111.....41305  
**Proposed Rules:**  
 111.....41721

**40 CFR**

50.....40000  
 52.....40011, 40013, 40966,  
 40968, 41307, 41311, 41698  
 60.....40635  
 61.....40635  
 62.....40015  
 63.....40635  
 80.....41703  
 81.....41698  
 180.....40017, 40020, 40027

**Proposed Rules:**

Ch. I.....41768  
 49.....41012, 41731  
 52.....39650, 39651, 39654,  
 40086, 40087, 40654, 40655,  
 41342, 41735, 41752  
 60.....40663  
 61.....40663  
 62.....40087  
 63.....40663  
 81.....39654, 40655, 41735,  
 41752

**41 CFR**

**Proposed Rules:**

413.....40836  
 414.....40836

**42 CFR**

121.....40033  
**Proposed Rules:**  
 88.....39670  
 431.....40272, 41013

**45 CFR**

5b.....39184, 39186  
 147.....39870  
 155.....39494  
 156.....39494, 39870  
**Proposed Rules:**  
 1100.....40664

**47 CFR**

1.....41314  
 25.....41314  
 51.....39617  
 53.....39617  
 54.....40968

63.....39617  
 64.....38617, 40582  
 73.....40402  
 79.....39619

**Proposed Rules:**

2.....39200, 39232, 41343  
 5.....39232  
 22.....41343  
 43.....39232  
 51.....39233  
 53.....39233  
 64.....39233, 40407  
 73.....41014  
 79.....39691, 40421  
 90.....41771

**48 CFR**

5.....41331  
 15.....41331  
 204.....40043  
 209.....40043  
 216.....40043  
 225.....40043, 41331  
 229.....40043  
 247.....40043

**Proposed Rules:**

9904.....40665

**49 CFR**

395.....41716  
**Proposed Rules:**  
 541.....41016

**50 CFR**

17.....39628, 39836, 40970  
 216.....40997, 41228  
 622.....39188, 40043  
 635.....40318  
 679.....39631, 40638, 41332,  
 41718

**Proposed Rules:**

17.....39698, 40669, 40673,  
 41022, 41550  
 50.....39273  
 600.....40687  
 622.....39700  
 697.....41772

---

**LIST OF PUBLIC LAWS**

---

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

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's Federal Digital System (FDsys) at <http://www.gpo.gov/fdsys>. Some laws may not yet be available.

**H.R. 475/P.L. 113-15**

To amend the Internal Revenue Code of 1986 to include vaccines against seasonal influenza within the definition of taxable vaccines. (June 25, 2013; 127 Stat. 476)

**Last List June 17, 2013**

---

**Public Laws Electronic Notification Service (PENS)**

---

**PENS** is a free electronic mail notification service of newly enacted public laws. To subscribe, go to <http://listserv.gsa.gov/archives/publaws-l.html>

**Note:** This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

---

**Public Laws Update Service (PLUS)**

---

**PLUS** is a recorded announcement of newly enacted public laws.

**Note:** Effective July 1, 2013, the PLUS recording service will end.

Public Law information will continue to be available on **PENS** at <http://listserv.gsa.gov/archives/publaws-l.html> and the Federal Register Twitter feed at <http://twitter.com/fedregister>.