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**ENVIRONMENTAL PROTECTION  
AGENCY**

**40 CFR Part 58**

[EPA-HQ-OAR-2006-0735; FRL-9098-2]

RIN 2060-AP77

**Revisions to Lead Ambient Air  
Monitoring Requirements**

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

**ACTION:** Proposed rule.

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**SUMMARY:** The EPA issued a final rule on November 12, 2008, (effective date January 12, 2009) that revised the National Ambient Air Quality Standards (NAAQS) for lead and associated monitoring requirements. This action proposes revisions to the monitoring requirements in that final rule pertaining to where state and local monitoring agencies (“monitoring agencies”) would be required to conduct lead monitoring.

*D. How is this document organized?*

The information presented in this document is organized as follows:

- I. General Information
  - A. What should I consider as I prepare my comments for EPA?
  - B. Availability of Related Information
  - C. When would a public hearing occur?
  - D. How is this document organized?
- II. Background
- III. Source-Oriented Monitoring Requirements
  - A. Background on Source-Oriented Monitoring Requirements
  - B. Issues With Source-Oriented Monitoring Requirements
  - C. Reconsideration of Source-Oriented Monitoring Requirements
- IV. Monitoring of Airports
- V. Non-Source-Oriented Monitoring Requirements
  - A. Background on Non-Source-Oriented Monitoring Requirements
  - B. Issues With Non-Source-Oriented Monitoring Requirements
  - C. Reconsideration of Non-Source-Oriented Monitoring Requirements
- VI. Increase in Lead Monitors and Timeline for Deploying New Monitors
- VII. Statutory and Executive Order Reviews
  - A. Executive Order 12866: Regulatory Planning and Review
  - B. Paperwork Reduction Act
  - C. Regulatory Flexibility Act
  - D. Unfunded Mandates Reform Act
  - E. Executive Order 13132: Federalism
  - F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
  - G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
  - H. Executive Order 13211: Actions 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
- VIII. References

**II. Background**

The EPA issued a final rule on November 12, 2008, that revised the NAAQS for lead and associated ambient air lead monitoring requirements (73 FR 66964, codified at 40 CFR part 58). As part of the lead monitoring requirements, monitoring agencies are required to monitor ambient air near lead sources which are expected to or have been shown to have a potential to contribute to a 3-month average lead concentration in ambient air in excess of the level of the NAAQS. At a minimum, monitoring agencies must monitor near lead sources that emit 1.0 ton per year (tpy) or more. However, this requirement can be waived by the EPA Regional Administrator if the monitoring agency can demonstrate that

the source will not contribute to a 3-month average lead concentration in ambient air in excess of 50 percent of the level of the NAAQS (based on historical monitoring data, modeling, or other means).

Monitoring agencies are also currently required to conduct lead monitoring in large urban areas (identified as Core Based Statistical Areas, or CBSAs, as defined by the OMB) with a population of 500,000 people or more. The locations for these monitoring sites are intended to measure neighborhood-scale lead concentrations in urban areas impacted by resuspended dust from roadways, closed industrial sources which previously were significant sources of lead, hazardous waste sites, construction and demolition projects, or other fugitive dust sources of lead.

Following promulgation of the revised lead NAAQS and monitoring requirements, the Natural Resources Defense Council (NRDC), the Missouri Coalition for the Environment Foundation, the Physicians for Social Responsibility, and the Coalition to End Childhood Lead Poisoning (“the Petitioners”) petitioned (NRDC, 2009) for a reconsideration of the lead emission rate at which monitoring is required (the “emission threshold,” currently 1.0 tpy). On July 22, 2009, the EPA granted the petition to reconsider aspects of the monitoring requirements (Jackson, 2009). In response to the petition, the EPA reviewed and reconsidered the monitoring requirements and is proposing revisions to the requirements for both source-oriented and non-source-oriented monitoring for lead.

**III. Source-Oriented Monitoring Requirements**

The EPA is proposing to change the lead emission threshold at which monitoring agencies are presumptively required to conduct lead monitoring near a lead source to 0.50 tpy from an emissions threshold of 1.0 tpy. The EPA is also seeking comments on alternative emission thresholds between 0.50 tpy to 1.0 tpy. The following paragraphs discuss the issues considered, the proposed changes, and our rationale for the proposed changes to the source-oriented monitoring requirements.

*A. Background on Source-Oriented Monitoring Requirements*

In the final revisions to the lead NAAQS, the EPA noted that, due to the dramatic drop in lead concentrations since the phase-out of lead in motor vehicle gasoline, we expected concentrations of lead to approach the revised level of the lead NAAQS

primarily near sources of lead. Accordingly, the EPA required monitoring near lead emission sources such as lead smelters, metallurgical operations, battery manufacturing, and other source categories that emit lead.

The EPA also noted in the final NAAQS rulemaking that it is not practical to conduct monitoring at every lead emission source, nor is it likely that very small lead emission sources will cause ambient concentrations to exceed the promulgated NAAQS. Therefore, the EPA performed an analysis to determine at what level of lead emissions (the “emissions threshold”) it may be possible for an emission source to cause ambient lead concentrations to exceed the lead NAAQS (Cavender, 2008). This analysis looked at a range of levels and indicated that, under reasonable worst-case conditions, a 0.50 tpy lead source could cause ambient lead concentrations to exceed the revised lead NAAQS. The EPA also noted that, by basing the monitoring requirements on worst-case conditions, the EPA would be “placing an unnecessary burden on monitoring agencies to evaluate or monitor around sources that may not have a significant potential to exceed the NAAQS.” As such, the EPA required monitoring agencies to take into account lead sources which are expected to or have been shown to contribute to a maximum lead concentration in ambient air in excess of the NAAQS including, and, at a minimum, to conduct lead monitoring [or request monitoring waivers as allowed for under 40 CFR part 58, Appendix D, paragraph 4.5(a)(ii)] near lead sources emitting 1.0 or more tpy. To account for lead sources emitting less than 1.0 tpy of lead that may have the potential to cause lead concentrations to exceed the lead NAAQS, the November 12, 2008, final rule provided the EPA Regional Administrators the authority to require additional monitoring beyond the minimum monitoring requirements

where the likelihood of lead air quality violations is significant or where the emissions density, topography, or population locations are complex and varied. The EPA projected the source-oriented portion of the network to be up to 135 monitors based on these requirements and on information available at the time the final rule was published (*i.e.*, the 2002 National Emissions Inventory (NEI)).<sup>1</sup>

**B. Issues With Source-Oriented Monitoring Requirements**

The Petitioners cited several reasons for EPA to reconsider the lead monitoring emission threshold (NRDC, 2009). They noted that the finalized emission threshold of 1.0 tpy was above the proposed range of 200 to 600 kilograms per year and, therefore, argued that the EPA failed to provide for proper public comment on the 1.0 tpy threshold. They also argued that the selection of the 1.0 tpy emission threshold was arbitrary and capricious and that the EPA did not follow its own analysis. Finally, they argued that the 1.0 tpy emission threshold would not provide for an adequate margin of safety as required by the Clean Air Act. The EPA granted the petition to reconsider the monitoring emission threshold (Jackson, 2009), and this proposed rule reflects our reconsideration of the emission threshold.

**C. Reconsideration of Source-Oriented Monitoring Requirements**

The monitoring emission threshold was intended to identify lead sources which may have the potential to contribute to or approach an exceedance of the lead NAAQS and near which lead monitoring should be conducted (or where a site-specific evaluation of the potential for the lead source to contribute to an exceedance of the lead NAAQS should be performed). The EPA’s analysis to determine the emission threshold relied on three different approaches.

One of the three approaches relied on the use of existing lead monitoring data near lead sources. The EPA believes this approach provides the best information on the potential impact of lead sources on ambient lead concentrations because it uses actual source-oriented lead monitoring data from lead sources. As such, this approach was reevaluated as part of the EPA’s reconsideration using updated design-values based on the final data handling procedures contained in 40 CFR part 50 Appendix R. Under this approach, source-oriented lead monitors within 1 mile of a lead source (identified from the 2002 NEI) were identified. This group of sites was then narrowed down to sites near facilities emitting 1 tpy or more of lead into the ambient air, and then to sites which were only impacted by one lead emitting facility. Also, in cases where more than one monitor was identified within 1 mile of the same facility emitting 1 tpy or more of lead annually, the EPA only used the monitor measuring the maximum lead concentration in the analysis. In this manner, the EPA identified seven monitor-facility pairs meeting the emissions and distance criteria. Using data in the Air Quality System (AQS) database (<http://www.epa.gov/ttn/airs/airsaqs/>) for the years 2001–2003, the EPA developed an estimate of the maximum 3-month average lead concentration for each monitoring site.<sup>2</sup> Next, EPA calculated a ratio of the maximum 3-month average concentration to the facility annual emissions (as identified in the 2002 NEI) to provide an estimate of the impact from the facility in units of micrograms per meter cubed (µg/m<sup>3</sup>) per tpy. Dividing the level of the lead NAAQS (0.15 µg/m<sup>3</sup>) by this ratio provides an estimate of the annual emission level for the facility which would result in ambient lead concentrations just meeting the lead NAAQS, referred to here as a “site-specific emission threshold” (see Table 1).

TABLE 1—DATA USED TO ESTIMATE FACILITY IMPACTS BASED ON MONITORING DATA

AQS site Id	Maximum 3-month average lead concentration (µg/m <sup>3</sup> )	NEI 2002 facility emission rate (tpy)	Ratio (µg/m <sup>3</sup> -tpy)	Site-specific emission threshold (tpy)
011090003 .....	1.2	4.5	0.27	0.56
171190010 .....	0.33	1.3	0.25	0.59
290990013 .....	1.8	58.8	0.03	4.90

<sup>1</sup> Note that the 2005 NEI is now available and the EPA has used the lead emission estimates in the 2005 NEI for estimating the impact of these proposed revisions. Based on the 2005 NEI, 111

source-oriented monitoring sites would be required under the existing monitoring requirements.

<sup>2</sup> The estimate of the maximum 3-month average lead concentration for this analysis was completed prior to promulgation of the final data handling

rules contained in 40 CFR Part 50 Appendix R. As such, minor differences in the estimated maximum 3-month average lead concentration appear in the estimates presented below for the same time period.

TABLE 1—DATA USED TO ESTIMATE FACILITY IMPACTS BASED ON MONITORING DATA—Continued

AQS site Id	Maximum 3-month average lead concentration (µg/m <sup>3</sup> )	NEI 2002 facility emission rate (tpy)	Ratio (µg/m <sup>3</sup> -tpy)	Site-specific emission threshold (tpy)
340231003 .....	0.23	1.7	0.14	1.11
420110717 .....	0.24	4.8	0.05	3.00
471870100 .....	0.93	2.6	0.36	0.42
480850009 .....	0.75	3.2	0.23	0.64

This analysis shows that four of these seven lead sources support an emission threshold less than the emission threshold of 1.0 tpy set by the final rule on the revised lead NAAQS.

As part of this reconsideration, the EPA evaluated the stability and

sensitivity of the above analysis. To evaluate the stability of the site-specific emission threshold calculation, the EPA performed the same analysis for these same seven facilities based on the emission estimates from the 2002 and 2005 NEI (Table 2) and estimated design

values over the periods 2001–2003 and 2004–2006 (Table 3). Table 4 summarizes the site-specific emission thresholds calculated for these periods.

TABLE 2—NEI EMISSION ESTIMATES

AQS site Id	NEI facility Id	Facility name	2002 NEI facility emission rate (tpy)	2005 NEI facility emission rate (tpy)
011090003 .....	NEI18383 .....	Sanders Lead Co .....	4.5	4.44
171190010 .....	NEI55848 .....	National Steel Corp—Granite City Div .....	1.3	0.90
290990013 .....	NEI34412 .....	Doe Run Company, Herculaneum Smelter .....	58.8	28.09
340231003 .....	NEINJ16031 .....	Johnson Controls Battery Group Inc .....	1.7	1.34
420110717 .....	NEI117 .....	East Penn Mfg .....	4.8	1.88
471870100 .....	NEI715 .....	Metalico-College Grove, Inc. ....	2.6	2.55
480850009 .....	NEI6493 .....	Gnb Metals Div .....	3.2	3.18

TABLE 3—ESTIMATED DESIGN VALUES BASED ON ALTERNATIVE YEARS

AQS site Id	2001–2003 Design value (µg/m <sup>3</sup> )	2004–2006 Design value (µg/m <sup>3</sup> )
011090003 .....	1.2	1.16
171190010 .....	0.33	0.43
290990013 .....	1.8	1.44
340231003 .....	0.23	0.32
420110717 .....	0.24	0.20
471870100 .....	0.93	( <sup>3</sup> )
480850009 .....	0.75	0.77

TABLE 4—ESTIMATED SITE-SPECIFIC EMISSION THRESHOLDS BASED ON ALTERNATIVE YEARS

AQS site Id	Site-specific emission threshold	
	2002	2005
011090003 .....	0.56	0.57
171190010 .....	0.59	0.32
290990013 .....	4.90	<sup>3</sup> 2.93
340231003 .....	1.11	0.63
420110717 .....	3.00	1.41
471870100 .....	0.42	( <sup>4</sup> )
480850009 .....	0.64	0.62
Minimum .....	0.42	0.32
Median .....	0.64	0.62
Maximum .....	4.90	2.93

<sup>3</sup>The EPA notes that, for facilities where emissions have dramatically decreased in recent years, re-entrained lead from historical deposits may influence the emission threshold calculation to

a greater extent than for facilities where lead emissions have remained constant.

<sup>4</sup>Monitoring data at this site did not meet the minimum completeness requirements of 40 CFR

part 50 Appendix R for this time period. No design value or site-specific emission factor was calculated for this time period.

Table 4 shows that, in most cases, the calculated emission threshold remained fairly constant for a given facility over time, in general, varying by a factor of 2 or less. Site-specific emission thresholds varied from 0.32 tpy to 4.9 tpy with a median of 0.63 tpy.

The EPA notes that these metrics may be exaggerated by outliers due to the limited number of facilities being evaluated. As such, the EPA looked at how these metrics changed when the extreme sites (*i.e.*, the highest and lowest emitting sources) were removed. Excluding site 290990013 resulted in a lowering of the upper range to 3 tpy and the median to 0.62 tpy, but did not affect the minimum (0.32 tpy). Excluding site 171190010 increases the minimum to 0.42 and the median to 0.64 tpy, but does not affect the maximum.

In the final rule, the EPA stated that an emission threshold of 1.0 tpy "is more likely to clearly identify sources that would contribute to exceedances of the NAAQS" as compared to a lower emission threshold. Upon further consideration and based on the site-specific emission thresholds estimated above, the EPA has decided to propose a revision to the emission threshold. Based on this sample of lead sources, it appears that lead sources that emit less than 1.0 tpy have the potential to cause ambient lead concentrations to exceed or approach the lead NAAQS. Monitoring agencies would not identify these sources based on a 1.0 tpy emission threshold. This could result in a number of areas with the potential to have lead concentrations above the lead NAAQS not being properly monitored and could result in some areas where the NAAQS is exceeded not being identified as nonattainment for lead.

The EPA has reconsidered the emission threshold and proposes to lower the emission threshold to a level of 0.50 tpy, which the EPA believes is consistent with the analysis documented for the final rule (Cavender, 2008) and the findings of this reconsideration. If this proposal is finalized, monitoring agencies would be required to conduct monitoring near lead sources that emit 0.50 tpy or greater, or request a waiver as allowed by 40 CFR part 58, Appendix D, paragraph 4.5(a)(ii). The EPA believes an emission threshold of 0.50 tpy would adequately identify those sources with the potential to exceed the NAAQS without placing undue burden on monitoring agencies. The EPA is also

seeking comments and supporting information that could be used in setting an emission threshold lower than 0.5 tpy as well as higher than 0.5 tpy.

In addition, the EPA is proposing to edit the wording of the source-oriented monitoring requirement [40 CFR part 58, Appendix D, paragraph 4.5(a)] for clarity. The EPA believes the edits are merely editorial and do not change the purpose and intent of the existing requirement.

#### IV. Monitoring of Airports

In addition to the petition to reconsider, the EPA has received informal feedback from members of the National Association of Clean Air Agencies (NACAA) monitoring subcommittee regarding monitoring of airports from which lead is emitted as a result of the use of leaded aviation fuel (Cavender, 2009a). These NACAA members believe that the final lead NAAQS rulemaking inappropriately treats airports in the same manner as industrial lead sources and claim that lead emissions at airports will have a lesser impact on ambient lead concentrations since the lead emissions from airplanes taking off from or landing at airports are spread out over a larger area, unlike industrial sources where the emissions may be emitted from a few stacks.

The EPA has limited quantitative information with which to evaluate the impact on either on-airport or off-airport ambient lead concentrations from airports. One study conducted near the Santa Monica airport measured a maximum 3-month average lead concentration of 0.1  $\mu\text{g}/\text{m}^3$  near the runway blast fence (Cavender, 2009b). Based on the 2002 lead emission estimate for the Santa Monica airport of 0.4 tpy (USEPA, 2008a), an estimated site-specific emission threshold of 0.6 tpy can be calculated using the same procedures used to estimate a site-specific emission threshold as above [*i.e.*,  $0.15 \mu\text{g}/\text{m}^3 / (0.1 \mu\text{g}/\text{m}^3 / 0.4 \text{ tpy}) = 0.6 \text{ tpy}$ ]. This site-specific emission threshold (0.6 tpy) falls within the lower end of the range of specific emission thresholds calculated for industrial sources above (0.32 to 4.9 tpy) and does not support the case for different treatment of airports.<sup>5</sup> The EPA is not

<sup>5</sup>The EPA notes that "urban background lead" (typically 0.02–0.03  $\mu\text{g}/\text{m}^3$ ) may have a higher impact on this estimate of the site-specific emission threshold than in the estimates made for industrial facilities since the urban background represents a

higher percentage of the total lead concentration. Basing the calculation on just the impact from the airport would result in a higher site-specific emission threshold estimate.

aware of similar studies where lead was monitored at or near the maximum impact area and does not believe there are sufficient data to develop or justify a separate emission threshold for airports.<sup>6</sup> As such, the EPA proposes to treat airports identically to other sources of lead, and require monitoring agencies to conduct lead monitoring [or request a monitoring waiver as allowed under 40 CFR part 58, Appendix D, paragraph 4.5(a)(ii)] at or near airports that emit 0.50 tpy of lead, as is required for other sources of lead.

The EPA estimates airport-specific lead inventories using a method similar to that used by the Federal Aviation Administration (FAA) to estimate inventories of other criteria pollutants emitted by aircraft at airport facilities in its Emissions and Dispersion Modeling System (EDMS). The method EPA uses to calculate airport-specific lead inventories is briefly described here and a more complete description is available in other documents (USEPA 2008a). The EPA's method for calculating airport-specific lead inventories requires as input the following data: The activity of piston-engine aircraft at a facility, fuel consumption rates by these aircraft during the various modes of the landing and takeoff cycle (LTO), time in each mode (taxi/idle-out, takeoff, climb-out, approach, and taxi/idle-in), the concentration of lead in the fuel, and the retention of lead in the engine and oil. We use information from national databases to supply this information. The data inputs for which states or local authorities may be able to obtain airport-specific data are:

(1) Airport-specific LTO activity for piston-powered aircraft, including the fraction of piston-engine activity conducted by single versus twin-engine aircraft. There are no national databases that provide airport-specific LTO activity data for piston-engine aircraft separately from turbojet and turboprop aircraft (turboprop and turbojet powered aircraft use jet fuel, which does not contain lead). Some airport facilities

<sup>6</sup>EPA notes that additional information may become available regarding the Santa Monica airport lead study, or other similar studies, prior to the issuance of a final rule. If additional information does become available before this rule is finalized (*e.g.*, a final study report on the Santa Monica airport), EPA will take such information into account.

collect this information and states may use these data to calculate airport-specific lead inventories.

(2) The time spent in each mode of the LTO cycle. EPA uses the EDMS scenario property of International Civil Aviation Organization/USEPA Default—Times in Mode, with a 16-minute taxi-in/taxi-out time according to EPA's Procedures for Emission Inventory Preparation, Volume IV: Mobile Sources, 1992. We are requesting airport-specific information for these times in each mode of the LTO cycle. We also request information regarding the time spent in run-up checks conducted by piston-engine aircraft prior to take-off. This mode of operation is not currently included in EPA's airport-specific lead inventories.

(3) Other data inputs for the airport-specific lead inventory calculation for which states or local authorities may provide airport-specific information include the concentration of lead in the aviation gasoline supplied at an airport, and the fraction of lead in fuel that is retained in the engine and oil, and actual fuel consumption rates by the piston-engine aircraft operating at specific airports.

The EPA identified 55 airports that may exceed the proposed 0.50 tpy emission threshold. Under this proposed rule, state and local monitoring agencies would be required to monitor these airports, request a waiver as allowed under 40 CFR part 58 Appendix D (by performing dispersion modeling to demonstrate that estimated maximum lead concentrations would be less than 50 percent of the lead NAAQS), or demonstrate that the actual emissions from a given airport are less than 0.50 tpy (by using site-specific values for the factors identified above in lieu of the national average values used by the EPA). The EPA is requesting airport-specific data inputs that states or other local authorities could provide to EPA, particularly for airports that would be subject to lead monitoring in the context of this proposed rule.

The EPA solicits comments on the availability of other data that may be useful in considering an alternative emission threshold for airports. The Agency also seeks comment on whether EPA should consider other factors or criteria that might be useful in determining if a different approach is appropriate for identifying those airports that have the potential to approach or contribute to violations of the lead NAAQS. For example, the EPA could require monitoring at airports that the EPA determines have the potential to cause increased ambient lead concentrations approaching or

contributing to violations of the NAAQS based on criteria including the estimated lead emissions and other factors such as the number of runways where piston-engine aircraft operate. However, we do not currently have information regarding the impact of airport-specific attributes on ambient lead concentrations. The EPA solicits comments on alternative approaches including the factors that could be considered in identifying airports that may require monitoring. We also request data to support the relationship between airport-specific factors or attributes and ambient lead concentrations.

## V. Non-Source-Oriented Monitoring Requirements

The EPA is proposing to replace the current non-source-oriented monitoring approach with the requirement for lead monitoring at the national multi-pollutant monitoring network known as NCore. The following paragraphs discuss the issues considered, the proposed changes, and our rationale for the proposed changes to the non-source-oriented monitoring requirements.

### A. Background on Non-Source-Oriented Monitoring Requirements

As part of the November 2008 revisions to the lead NAAQS, the EPA required one lead monitor site in each CBSA with a population of 500,000 people or more—leading to 101 monitors. These monitors are to be located to measure neighborhood scale (as described in 40 CFR part 58, Appendix D, paragraph 1.2(b)(3)) lead concentrations in urban areas impacted by re-suspended dust from roadways, closed industrial sources which previously were significant sources of lead, hazardous waste sites, construction and demolition projects, or other fugitive dust sources of lead.

The EPA had proposed (73 FR 29184) and taken comment on a smaller non-source-oriented lead monitoring network that included 1 monitor in each CBSA with a population of 1,000,000 or more people, located to measure typical neighborhood scale lead concentrations in urban areas—which would have required 50 monitors. The EPA noted that data from these non-source-oriented monitors would be helpful in better characterizing population exposure to ambient air related lead and may assist in determining nonattainment boundaries.

Concerns were raised during review of the draft final notice that non-inventoried lead sources in urban areas, such as closed industrial sources, hazardous waste sites, and construction and demolition projects could

potentially result in ambient lead concentrations in excess of the lead NAAQS. To address these concerns, the EPA modified the siting criteria to require non-source-oriented monitors to be sited to evaluate these non-inventoried lead sources. The EPA also lowered the population threshold from requiring monitoring at CBSAs with a population of 1,000,000 people or more to requiring monitoring at CBSAs with a population of 500,000 people or more.

### B. Issues With Non-Source-Oriented Monitoring Requirements

Some sources of lead which are not in the current NEI that could result in ambient lead concentrations in excess of the lead NAAQS have been identified (USEPA, 2008b). However, as currently written, it is not clear that the non-source-oriented monitoring requirements would result in monitors near such non-inventoried sources. The non-source-oriented monitors are to be sited as neighborhood scale monitors. Yet, lead concentrations drop off rapidly with distance away from a source, such that it is unlikely that non-source-oriented monitors would identify the maximum lead concentration near non-inventoried sources where the lead NAAQS could be exceeded. Furthermore, locations near non-inventoried sources outside of CBSAs with a population of 500,000 people or more would not be addressed by the current non-source-oriented requirements and, as such, these sources would not necessarily be monitored. The final siting requirements also would not support the measurement of trends in typical urban lead concentrations, one of EPA's original objectives.

### C. Reconsideration of Non-Source-Oriented Monitoring Requirements

After further consideration, the EPA believes the most appropriate approach to achieve the placement of monitors near non-inventoried sources that have the potential to cause an exceedance of the NAAQS is through the existing source-oriented monitoring network requirements (paragraph 4.5(a) of Appendix D to 40 CFR part 58) which require monitoring agencies to conduct lead monitoring at sources "which are expected to or have been shown to contribute to a maximum lead concentration in ambient air in excess of the NAAQS" and the EPA Regional Administrators' authority to require monitoring "where the likelihood of lead air quality violations is significant." These non-inventoried lead sources may be identified by monitoring agencies, the EPA, or concerned citizens as part of the network plan review and

approval requirements. Furthermore, monitors sited under the source-oriented monitoring requirements are required to be sited at the location of estimated maximum concentration and, as such, better serve the purpose of identifying violations of the lead NAAQS.

The EPA believes it is appropriate to re-emphasize the objectives identified in the prior proposed rule for non-source-oriented monitors, *i.e.*, measuring typical neighborhood-scale lead concentrations in urban areas so we can better understand the risk posed by lead to the general population, and to provide information that could assist with the determination of nonattainment boundaries. In addition, the EPA believes non-source-oriented sites are important to support the development of long-term trends at typical concentrations sites.

The EPA notes that these objectives match those of the multi-pollutant NCore network required under section 3 of Appendix D to 40 CFR part 58 and also believes that EPA's increasing support for multi-pollutant measurements should be considered in the design of the lead network. The NCore network is intended to be a long-term, multi-pollutant, monitoring network that not only provides information useful to NAAQS attainment decisions, but also provides data needed to broaden the understanding of air quality conditions and pollutant interactions, evaluate air quality models, develop emission control strategies, and support long-term health studies. We also note that lead monitoring is already required in at least one NCore site per EPA Region. As such, one option for implementing lead non-source-oriented monitoring is to require lead monitoring at all NCore sites rather than the population-based approach currently used. This option provides a similar result to that of basing the non-source-oriented monitoring requirements on population (as was established in the November 2008 final rule) and has additional similarities with the provisions adopted in the final rule on the revised lead NAAQS including:

- The size of the network would be approximately the same as the original proposal but would span a wider range of populations. The NCore network will consist of approximately 80 sites, with approximately 50 of these being in urban areas with a population of 500,000 people or more.
- NCore sites will be neighborhood-scale sites.

- NCore sites are long-term trends sites suitable for long-term population exposure studies.

In addition, many NCore sites will have the low-volume PM<sub>10</sub> sampler necessary to conduct lead monitoring, reducing the cost and time necessary to implement the non-source-oriented monitoring requirements.<sup>7</sup> Additional information on the objectives and specific sites for NCore can be obtained online at <http://www.epa.gov/ttn/amtic/ncore/index.html>. Due to the many advantages of including lead monitoring at NCore sites rather than having separate non-source-oriented monitoring requirements, the EPA is proposing to revise the existing non-source-oriented monitoring requirements (paragraph 4.5(b) of Appendix D to 40 CFR part 58) to require lead monitoring at all NCore sites in place of the current CBSA population-based requirements. The EPA seeks comments on the use of the NCore network to meet the non-source-oriented monitoring objectives for lead. The EPA also seeks comments on whether lead monitoring should be required at all NCore sites, or only NCore sites in large urban areas (*e.g.*, in CBSAs with a population greater than 500,000 people).

The EPA is also proposing to make a minor edit to the existing monitoring requirements. Paragraph 3(c) of Appendix D to 40 CFR part 58 requires lead monitoring at 10 NCore sites, located in the most populated MSA/CSA in each of the 10 EPA Regions. This requirement was added prior to the recent lead monitoring revisions and was intended to provide for measurement of long-term lead trends away from lead sources. Since lead monitoring would be required at all NCore sites if this proposal is finalized, paragraph 3(c) of Appendix D to 40 CFR part 58 is redundant and, as such, the EPA proposes to delete this paragraph.

## VI. Increase in Lead Monitors and Timeline for Deploying New Monitors

These proposed revisions to the monitoring requirements will result in an increase in the number of lead monitors that monitoring agencies must

<sup>7</sup> EPA expects that low-volume PM<sub>10</sub> samplers will be used at many NCore sites in order to meet the existing requirement for PM<sub>10-2.5</sub> measurements. However, EPA notes that some NCore sites may use a dichotomous sampler or a continuous PM<sub>10-2.5</sub> sampler that would not be compatible with lead-PM<sub>10</sub> sampling such that these sites would need to add an additional low-volume PM<sub>10</sub> sampler to perform lead-PM<sub>10</sub> sampling. In addition, if lead-PM<sub>10</sub> concentrations are found to be greater than 0.10 µg/m<sup>3</sup>, a lead-TSP sampler would be required at the NCore site according to paragraph 2.10.1.1 of Appendix C to 40 CFR part 58, within 6 months.

deploy and operate relative to the estimated number of monitors for the November 2008 final rule. Based on the 2005 NEI and the 2002 estimates for lead emissions from airports (EPA, 2008a), the current monitoring requirements would require up to 212 lead monitors—111 source-oriented monitors<sup>8</sup> (106 industrial and 5 airport) and 101 non-source-oriented monitors. Based on the monitoring requirements proposed here, the number of total required monitors increases to 352 monitors with 272 source-oriented monitors (217 industrial and 55 airport) and 80 non-source-oriented monitors. However, we expect that the number of actual lead monitors will likely be less than 352 since these numbers do not take into account the probability that monitoring agencies will request and attain waivers from source-oriented monitoring requirements for some of the lead sources identified as emitting more than 0.50 tpy of lead.

This proposal does not change the current requirement for monitoring agencies to have lead monitors installed and operating near sources emitting 1.0 tpy of lead or more by January 1, 2010 (*i.e.*, the deadline specified in the November 2008 final rule). The EPA proposes that if we revise the monitoring requirements, monitoring agencies would have 6 months from the effective date of the final rule to update their annual monitoring network plans. The update would incorporate plans for source-oriented monitors near lead sources emitting 0.50 tpy or more, but less than 1.0 tpy. The EPA is also proposing to allow 1 year from the date of the final rule for monitoring agencies to install and begin operation of source-oriented monitors near lead sources emitting 0.50 tpy or more, but less than 1.0 tpy.

The EPA notes that the timeline described above would require monitoring agencies to evaluate, site, and install up to 161 source-oriented monitoring sites within 1 year of promulgation of the revised monitoring requirements. While the EPA believes this is feasible, the EPA seeks comments on the appropriateness of allowing deployment in phases requiring half of the sites for sources between 0.50 and 1.0 tpy to be installed during the first year following promulgation of the final monitoring requirements, and for the remaining half to be installed during the second year following promulgation of the final monitoring requirements. The

<sup>8</sup> Note that the current estimate of the required source-oriented sites is lower than the estimate identified in the final rule (135 sites) because the current estimate is based on the 2005 NEI rather than the 2002 NEI.

EPA solicits comments on what factors should be considered when prioritizing which sites should be installed during the first year versus the second. The EPA specifically solicits comments on an alternative deployment schedule that would allow for monitors near airports to be deployed over 2 years, and on what factors should be considered when prioritizing airports to receive monitors in the first year of deployment.

Monitoring agencies must have installed and begun operation of required NCore sites and monitors (other than lead) by January 1, 2011. Because the necessary siting and site installation will already be in place at NCore sites, the EPA does not believe any additional time beyond that of the existing NCore schedule is required for monitoring agencies to install any necessary lead monitors and begin lead sampling at NCore sites. As such, the EPA is proposing to require monitoring agencies to commence lead sampling at NCore sites when NCore sites are to become operational, no later than January 1, 2011.

The EPA recognizes that these proposed requirements will not be finalized until spring 2010 at the earliest which is just a few months before monitoring agencies are currently required to submit their lead network plans for non-source-oriented monitors (July 1, 2010). Because this reconsideration may affect where non-source-oriented monitors may be required, the EPA is advising monitoring agencies to not site or install non-source-oriented monitors until after this reconsideration is complete and the final revisions are promulgated.

## VII. Statutory and Executive Order Reviews

### A. Executive Order 12866: Regulatory Planning and Review

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

### B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to OMB under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document

prepared by EPA has been assigned EPA ICR number 2378.01.

The monitoring, recordkeeping, and reporting requirements in 40 CFR parts 58 are specifically authorized by sections 100, 301(a), and 319 of the Clean Air Act (CAA). All information submitted to EPA pursuant to the monitoring, recordkeeping, and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency policies in 40 CFR part 2, subpart B.

The information collected and reported under 40 CFR part 58 is needed to determine compliance with the NAAQS, to characterize air quality and associated health and ecosystem impacts, to develop emissions control strategies, and to measure progress for the air pollution program. The proposed amendments would revise the technical requirements for lead monitoring sites, require the siting and operation of additional lead ambient air monitors, and require the reporting of the collected ambient lead monitoring data to EPA's AQS. The annual average reporting burden for the collection under 40 CFR part 58 (averaged over the first 3 years of this ICR) for 105 respondents is estimated to increase by a total of 19,551 labor hours per year with an increase of \$1,849,264 per year. Burden is defined at 5 CFR 1320.3(b). State, local, and tribal entities are eligible for state assistance grants provided by the federal government under the CAA which can be used for monitors and related activities.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, EPA has established a public docket for this rule, which includes this ICR, under Docket ID number EPA-HQ-OAR-2006-0735. Submit any comments related to the ICR to EPA and OMB. See **ADDRESSES** section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after December 30, 2009, a comment to OMB is best assured of having its full effect if OMB receives it

by January 29, 2010. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

### C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

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

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities. Rather, this rule establishes monitoring requirements for state and local (where applicable) monitoring agencies. The EPA continues to be interested in the potential impacts of the proposed rule on small entities and welcomes comments on issues related to such impacts.

### D. Unfunded Mandates Reform Act (UMRA)

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 1 year. The proposed amendments to 40 CFR part 58 are estimated to increase the ambient air monitoring costs by \$1.8 million and 19,551 labor hours from present levels. 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. Small governments that may be affected

by the proposed amendments are already meeting similar requirements under the existing rules, and the costs of changing the network design requirements would be borne, in part, by the federal government through state assistance grants.

#### *E. Executive Order 13132: Federalism*

Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure “meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” are defined in the Executive Order to include regulations that have “substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.”

This proposed rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The rule does not alter the relationship between the federal government and the states regarding the establishment and implementation of air quality improvement programs as codified in the CAA. Under section 109 of the CAA, EPA is mandated to establish NAAQS; however, CAA section 116 preserves the rights of states to establish more stringent requirements if deemed necessary by a state. Furthermore, this rule does not impact CAA section 107 which establishes that the states have primary responsibility for implementation of the NAAQS. Finally, as noted in section D (above) on UMRA, this rule does not impose significant costs on state, local, or Tribal governments or the private sector. Thus, Executive Order 13132 does not apply to this rule.

However, EPA recognizes that states will have a substantial interest in this rule and any corresponding revisions to associated air quality surveillance requirements, 40 CFR part 58. Therefore, in the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and state and local governments, EPA specifically solicits comment on this proposed rule from state and local officials.

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

This action does not have Tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It does not have a substantial direct effect on one or more Indian Tribes, since Tribes are not obligated to adopt or implement any NAAQS. Thus, Executive Order 13175 does not apply to this action. EPA specifically solicits additional comment on this proposed action from Tribal officials.

#### *G. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks*

The EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

This action is not a “significant energy action” as defined in Executive Order 13211 (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 proposed rule would result in an insignificant increase in power consumption associated with the additional power required to run 140 additional monitors nationwide.

#### *I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore,

EPA is not considering the use of any voluntary consensus standards.

#### *J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

The EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population.

#### **VIII. References**

- Cavender, K. (2008). Development of Final Source-oriented Monitoring Emission Threshold. Memorandum to the Lead NAAQS Review Docket. EPA–HQ–OAR–2006–0735. Available online at: <http://www.epa.gov/ttnnaqs/standards/lead/data/20081015Cavender.pdf>.
- Cavender, K. (2009a). Summary of Discussion of Lead Monitoring Near Airports at Spring 2009 NACAA Monitoring Subcommittee Meeting. Memorandum to the Lead NAAQS Review Docket. EPA–HQ–OAR–2006–0735.
- Cavender, K. (2009b). Review of Pb Monitoring Conducted Near General Aviation Airports. Memorandum to the Lead NAAQS Review Docket. EPA–HQ–OAR–2006–0735.
- Fine, Philip (2007). Community-Scale Air Toxics Monitoring—Sun Valley Neighborhood and General Aviation Airports. Presented at the U.S. EPA Air Toxics Data Analysis Workshop—Chicago, IL, October 2–4, 2007. EPA–HQ–OAR–2006–0735. Available online at: [http://www.epa.gov/ttn/amtic/files/ambient/airtox/2007-workshop/07\\_100307\\_fine.pdf](http://www.epa.gov/ttn/amtic/files/ambient/airtox/2007-workshop/07_100307_fine.pdf).
- Jackson, L. (2009). Letter to petitioners. EPA–HQ–OAR–2006–0735. Available online at: <http://www.epa.gov/air/lead/pdfs/OAR.09.000.7687.pdf>.
- NRDC, et al. (2009). Petition to Reconsider. EPA–HQ–OAR–2006–0735. Available online at: <http://www.epa.gov/air/lead/pdfs/0122009petitionReconsideration.pdf>.
- U.S. Environmental Protection Agency. (2006). Air Quality Criteria for Lead

(Second External Review Draft). Washington, DC, EPA/600/R-05/144aB-bB. Available online at: <http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=158823>.

U.S. Environmental Protection Agency. (2008a). Lead Emissions from the Use of Leaded Aviation Gasoline in the United States. EPA420-R-08-020. Available online at: [http://www.epa.gov/ttn/chieff/net/tsd\\_avgas\\_lead\\_inventory\\_2002.pdf](http://www.epa.gov/ttn/chieff/net/tsd_avgas_lead_inventory_2002.pdf). U.S. Environmental Protection Agency. (2008b). Regulatory Impact Analysis of the Proposed Revisions to the National Ambient Air Quality Standards for Lead. EPA-HQ-OAR-2006-0735.

#### List of Subjects in 40 CFR Part 58

Air pollution control, Environmental protection, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 23, 2009.

**Lisa P. Jackson,**  
Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 58 of the Code of Federal Regulations is proposed to be amended as follows:

#### PART 58—[AMENDED]

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

**Authority:** 42 U.S.C. 7403, 7410, 7601(a), 7611, and 7619.

#### Subpart B—[Amended]

2. Section 58.10 is amended by revising paragraph (a)(4) to read as follows:

##### § 58.10 Annual monitoring network plan and periodic network assessment.

(a) \* \* \*

(4) A plan for establishing source-oriented lead monitoring sites in accordance with the requirements of appendix D to this part for lead sources emitting 1.0 tpy or greater shall be submitted to the EPA Regional Administrator no later than July 1, 2009, as part of the annual network plan required in paragraph (a)(1) of this section. The plan shall provide for the required source-oriented lead monitoring sites for lead sources emitting 1.0 tpy or greater to be operational by January 1, 2010. A plan for establishing source-oriented lead monitoring sites in accordance with the requirements of appendix D to this part for lead sources emitting greater than 0.50 tpy but less than 1.0 tpy shall be submitted to the EPA Regional Administrator no later than June 30, 2010. The plan shall provide for the required source-oriented lead monitoring sites for lead sources emitting greater than 0.50 tpy but less

than 1.0 tpy to be operational by December 30, 2010.

\* \* \* \* \*

3. Appendix D to Part 58 is amended as follows:

- a. By revising paragraph 3.(b),
- b. By removing and reserving paragraph 3.(c),
- c. By revising 4.5.(a), and
- d. By revising paragraph 4.5.(b).

#### Appendix D to Part 58—Network Design Criteria for Ambient Air Quality Monitoring

\* \* \* \* \*

3. \* \* \*

(b) The NCore sites must measure, at a minimum, PM<sub>2.5</sub> particle mass using continuous and integrated/filter-based samplers, speciated PM<sub>2.5</sub>, PM<sub>10-2.5</sub> particle mass, speciated PM<sub>10-2.5</sub>, O<sub>3</sub>, SO<sub>2</sub>, CO, NO/NO<sub>y</sub>, lead, wind speed, wind direction, relative humidity, and ambient temperature.

(c) [Reserved.]

\* \* \* \* \*

4.5 \* \* \* (a) State and, where appropriate, local agencies are required to conduct ambient air lead monitoring near lead sources which are expected to or have been shown to contribute to a maximum lead concentration in ambient air in excess of the NAAQS, taking into account the logistics and potential for population exposure. At a minimum, there must be one source-oriented SLAMS site located to measure the maximum lead concentration in ambient air resulting from each lead source which emits 0.50 or more tons per year based on either the most recent National Emission Inventory (<http://www.epa.gov/ttn/chieff/eiinformation.html>) or other scientifically justifiable methods and data (such as improved emissions factors or site-specific data) taking into account logistics and the potential for population exposure.

(i) One monitor may be used to meet the requirement in paragraph 4.5(a) for all sources involved when the location of the maximum lead concentration due to one lead source is expected to also be impacted by lead emissions from a nearby source (or multiple sources). This monitor must be sited, taking into account logistics and the potential for population exposure, where the lead concentration from all sources combined is expected to be at its maximum.

(ii) The Regional Administrator may waive the requirement in paragraph 4.5(a) for monitoring near lead sources if the state or, where appropriate, local agency can demonstrate the lead source will not contribute to a maximum lead concentration in ambient air in excess of 50 percent of the NAAQS (based on historical monitoring data, modeling, or other means). The waiver must be renewed once every 5 years as part of the network assessment required under § 58.10(d).

(b) State and, where appropriate, local agencies are required to conduct non-source-

oriented lead monitoring at each NCore site required under paragraph 3 of this appendix.

\* \* \* \* \*

[FR Doc. E9-31049 Filed 12-29-09; 8:45 am]

BILLING CODE 6560-50-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 09-2605; MB Docket No. 09-230; RM-11586]

### Television Broadcasting Services; Seaford, DE

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission proposes the allotment of channel 5 to Seaford, Delaware. The Commission is waiving the freeze on the filing of new DTV allotments to initiate this proceeding and to advance the policy, as set forth in Section 331(a) of the Communications Act of 1934, as amended, to allocate not less than one very high frequency (“VHF”) commercial television channel to each State, if technically feasible.

**DATES:** Comments must be filed on or before January 29, 2010, and reply comments on or before February 16, 2010.

**ADDRESSES:** Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., Washington, DC 20554.

#### FOR FURTHER INFORMATION CONTACT:

Adrienne Y. Denysyk,  
[adrienne.denysyk@fcc.gov](mailto:adrienne.denysyk@fcc.gov), Media Bureau, (202) 418-1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission’s Notice of Proposed Rule Making, MB Docket No. 09-230, adopted December 17, 2009, and released December 18, 2009. The full text of this document is available for public inspection and copying during normal business hours in the FCC’s Reference Information Center at Portals II, CY-A257, 445 12th Street, SW., Washington, DC, 20554. This document will also be available via ECFS (<http://www.fcc.gov/cgb/ecfs/>). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission’s duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 1-800-478-3160 or via e-mail <http://www.BCPIWEB.com>. To request this