ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2010–1100 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–1100 in the "Keyword" box and then clicking "Search". They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Terrance Knowles, Environmental Protection Specialist, Fifth Coast Guard District; telephone 757–398–6587, e-mail *Terrance.A.Knowles@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Maryland State Highway Administration owns and operates this bascule-type drawbridge and requested a temporary deviation from the current operating regulations set out in 33 CFR 117.570 to facilitate mechanical repairs and barrier gate replacement.

The Sassafras River Bridge (Route 213), at mile 10.0, in Georgetown, MD has a vertical clearance in the closed position to vessels of four feet, above mean high water. Under normal operating conditions, the draw would open on signal from November 1 through March 31, except from midnight to 8 a.m. when the draw only need open when at least a six-hour advance notice is given.

Under this temporary deviation, the Sassafras River (Route 213) Bridge will be maintained in the closed-to-navigation position beginning at 5 a.m. on January 10, 2011 until 5 p.m. on January 21, 2011. The drawbridge will not be able to open in the event of an emergency. Vessels that can pass under the bridge without a bridge opening may do so at all times. Based on historical bridge log data this may affect up to one vessel per day. Vessels with heights greater than 4 feet have no alternate routes.

The project being conducted during the month of January should have the least impact on mariners due to the lack of waterway use. The Coast Guard has and will continue to inform the users of the waterway through our Local and Broadcast Notices to Mariners Closure periods for the bridge will be announced so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: December 15, 2010.

Waverly W. Gregory, Jr.,

Chief, Bridge Administration Branch, Fifth Coast Guard District.

[FR Doc. 2010–32380 Filed 12–23–10; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 58

[EPA–HQ–OAR–2006–0735; FRL–9241–8]

RIN 2060–AP77

Revisions to Lead Ambient Air Monitoring Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA issued a final rule on November 12, 2008, (effective date January 12, 2009) that revised the primary and secondary National Ambient Air Quality Standards (NAAQS) for lead and associated monitoring requirements. On December 30, 2009, EPA proposed revisions to the lead monitoring requirements. This action promulgates revisions to the monitoring requirements pertaining to where State and local monitoring agencies ("monitoring agencies") would be required to conduct lead monitoring.

DATES: This final rule is effective on January 26, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2006–0735. All documents in the docket are listed on the *http://www.regulations.gov Web site.* Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Revisions to Lead Ambient Air Monitoring Requirements Docket, Docket ID No. EPA–OAR–2006–0735, EPA Docket Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m. Monday through Friday excluding legal holidays. The docket telephone number is (202) 566–1742. 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.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Cavender, Air Quality Assessment Division, Office of Air Quality Planning and Standards (C304–06), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number (919) 541–2364; fax number (919) 541–1903; e-mail address: *cavender.kevin@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. Does this action apply to me?

This action applies to State, territorial, and local air quality management programs that are responsible for ambient air monitoring under 40 CFR part 58. This action may also affect tribes that conduct ambient air monitoring similar to that conducted by States and that wish EPA to use their monitoring data in the same manner as State monitoring data.

Categories and entities potentially regulated by this action include:

Category	NAICS code [a]
State/territorial/local/tribal government	924110

[a] North American Industry Classification System.

II. Where can I obtain a copy of this action?

In addition to being available in the docket, an electronic copy of this rule will also be available on the Worldwide Web through the Technology Transfer Network (TTN). Following the Administrator's signature, a copy of the final rule will be placed on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control.

III. 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, the 2008 rule required monitoring agencies to monitor near lead sources that emit 1.0 ton per year (tpy) or more. However, the 2008 rule allows this requirement to 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 were also required by the 2008 rule to conduct lead monitoring in large urban areas (identified as Core Based Statistical Areas, or CBSA, as defined by the Office of Management and Budget (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, Physicians for Social Responsibility, and Coalition to End Childhood Lead Poisoning ("the Petitioners") petitioned (NRDC, 2009) EPA to reconsider the lead emission rate at which monitoring is required (the "emission threshold," set at 1.0 tpy by the 2008 rule).[1] On July 22, 2009, EPA granted the petition to reconsider aspects of the monitoring requirements (Jackson, 2009). In response to the petition, EPA reviewed and reconsidered the monitoring requirements and on December 30, 2009, EPA proposed revisions to the requirements for both source-oriented and non-source-oriented monitoring for lead (74 FR 69050). We proposed to lower the emission threshold at which monitoring would be required (or a waiver granted) to 0.50 tpy, to require lead monitoring at NCore sites, and remove the existing CBSA-based non-source-oriented monitoring requirement. The comment period ended February 16, 2010. This action promulgates changes to the lead monitoring requirements reflecting our consideration of the comments received on the proposed revisions.

IV. Source-Oriented Monitoring Requirements

We are finalizing revisions to the source-oriented monitoring requirements. Specifically, we are lowering the emission threshold from 1.0 tpy to 0.50 tpy for industrial sources of lead (*e.g.,* lead smelters and foundries). However, as discussed more thoroughly in Section V, we are maintaining the emission threshold for airports at 1.0 tpy, and implementing an airport monitoring study to determine the need for monitoring of airports which emit less than 1.0 tpy of lead. The following paragraphs discuss what we proposed, the comments we received, and our rationale for our final decisions regarding the emission thresholds in response to the petition for reconsideration.

A. What We Proposed for Source-Oriented Monitoring

An emission threshold is used to identify lead emission sources which should be monitored because their emissions may cause or contribute to ambient lead concentrations that exceed the lead NAAQS. Monitoring agencies are required to conduct source-oriented lead monitoring (unless a waiver is granted as allowed by 40 CFR part 58 Appendix D, paragraph 4.5(a)(ii)) to measure the maximum lead concentration in ambient air resulting from each lead source which emits lead at a rate equal to or more than the emission threshold. The emission threshold for the revised NAAQS was first set at 1.0 tpy as part of the October 2008 lead NAAQS revisions (73 FR 66964, codified at 40 CFR part 58). On December 30, 2009, we proposed to lower the emission threshold from 1.0 tpy to 0.50 tpy (74 FR 69050).

We based our proposed revision on a review of the analyses conducted to identify an appropriate emission threshold at the time of final NAAQS revision. The analyses and our review are documented in the preamble to the proposed monitoring revisions (74 FR 69052). Specifically, we re-evaluated one of the analyses that EPA believed provided the best information on the potential impact of lead sources on ambient lead concentrations. This analysis used source-monitor pairs to estimate the lowest emission rate at which an industrial facility could exceed the lead NAAQS (Cavender 2008). In this analysis, source-oriented lead monitors within one mile of a lead source (identified from the 2002 National Emissions Inventory (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 one mile of the same facility

[1] The Petitioners also filed a legal challenge to the monitoring provisions of the final lead NAAQS rule. *See Missouri Coalition for the Environment, et al.* v. *EPA,* (DC Cir. No. 09–1009). That litigation has been held in abeyance pending completion of EPA's reconsideration.

emitting 1 tpy or more of lead annually, EPA only used the monitor measuring the maximum lead concentration in the analysis. In this manner, 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, EPA developed an estimate of the maximum 3-month average lead concentration for each monitoring site.[2] 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 ($\mu g/m^3$) per tpy. Dividing the level of the lead NAAQS (0.15 $\mu g/m^3$) by this ratio provides an estimate of the annual emissions 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 ($\mu g/m^3$)	NEI 2002 facility emission rate (tpy)	Ratio ($\mu g/m^3$-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
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 the reconsideration, EPA evaluated the stability and sensitivity of the above analysis. To evaluate the stability of the site-specific emission threshold calculation, 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 (*i.e.,* 3-month rolling average Pb concentration as determined by 40 CFR part 50 Appendix R) 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 ($\mu g/m^3$)	2004–2006 design value ($\mu g/m^3$)
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	—[4]
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	2.93
340231003	1.11	0.63
420110717	3.00	1.41
471870100	0.42	—[4]
480850009	0.64	0.62

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

AQS site ID	Site-specific emission threshold	
	2002	2005
Minimum	0.42	0.32
Median	0.64	0.62
Maximum	4.90	2.93

Table 4 shows that, in most cases, the calculated emission threshold remained

[2] 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.

[3] 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.

[4] 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.

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.

EPA noted that these metrics may be exaggerated by outliers due to the limited number of facilities being evaluated. As such, 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 increased the minimum to 0.42 and the median to 0.64 tpy but did not affect the maximum.

In our discussion of the review, we noted that four of the seven lead sources used to determine an emission threshold support an emission threshold less than 1.0 tpy. Based on our review, we concluded that lead sources emitting less than 1.0 tpy of lead could cause or contribute to an exceedence of the lead NAAQS, and, as such, we proposed to lower the emission threshold to 0.50 tpy for all sources of lead. We requested comment on setting the emission threshold at a level above or below 0.50 tpy.

B. Comments Received on Source-Oriented Monitoring

We received 616 comments on our proposal to lower the emission threshold for all lead sources to 0.50 tpy. Of these comments, 601 were in favor of the proposed change to the emission threshold, four commenters supported maintaining the current 1.0 tpy emission threshold, and three commenters suggested emission thresholds below 0.50 tpy. The following paragraphs summarize the significant comments received and our responses to these comments.

The NRDC, on behalf of 20 additional organizations and two individuals,[5] supported our proposed revision of the emission threshold to 0.50 tpy, stating, "The latest and best available scientific evidence supports the adoption of a near-source monitoring threshold of 0.50 tons per year of lead to protect public health with an adequate margin of safety. The available evidence demonstrates that facilities emitting 0.5 tons per year of lead or more have the potential to contribute to a violation of the NAAQS." NRDC also states, "monitoring downwind of facilities that emit between 0.5 and 1 tons per year of lead is necessary to provide sufficient information about airborne lead levels near these facilities in order to adequately enforce the NAAQS and to protect health with an adequate margin of safety."

The National Association of Clean Air Agencies (NACAA) agreed there is evidence that high levels of lead exposure can occur near sources (other than airports) emitting 0.50 tpy of lead and supported the proposal to lower the source-oriented emissions threshold to 0.50 tpy, stating that lowering the threshold will help regulatory agencies gather the data necessary for fully implementing the lead NAAQS. Northeast States for Coordinated Air Use Management (NESCAUM) agreed with the proposal to change the emission threshold from 1.0 to 0.50 tpy at lead sources (other than airports). Other monitoring agencies that supported the change to an emission threshold of 0.50 tpy for industrial sources include the states of Maine, Illinois, and Wisconsin. In addition, several hundred comments supporting the change to a 0.50 tpy emission threshold were received from individuals as part of two mass comment campaigns.

The Doe Run Company offered two comments regarding the analysis used to identify the emission threshold. In its first comment, Doe Run questioned the use of the median of the site-specific emission thresholds rather than the arithmetic average of the individual site-specific emission thresholds. In response, we chose to use the median rather than the arithmetic average because the median is more representative of the central tendency of the site-specific emission thresholds. Outliers (values much higher or lower than the rest of the data set) can dramatically impact the arithmetic average, whereas the median is less affected by outliers. As can be seen in Table 1 above, the site-specific emission threshold calculated for site 290990013 is much higher than the rest of the site-specific emission thresholds, appears to be an outlier, and, as such, skews the average to a level much higher than the median (*i.e.,* central tendency) of the data. As can be seen, five of the seven site-specific emission threshold estimates (71 percent) are less than the average. Since the emission threshold is intended to represent an estimate of the lowest lead emission rate that under reasonable worst-case conditions (*e.g.,* meteorological and emission release conditions that lead to poor dispersion and high lead concentrations) could result in lead concentrations exceeding the NAAQS (Cavender, 2008), setting the emission threshold at a level that is higher than the site-specific emission thresholds for 71 percent of the sites evaluated is inappropriate. As such, we believe it is appropriate to use the median of this data set rather than the arithmetic mean to determine the emission threshold.

Doe Run also questioned why we limited the sites selected for the analysis to sources that were estimated to emit 1 tpy or more of lead. In response, we elected to only evaluate monitor-source pairs where the source was estimated to emit 1 tpy or more to better focus the analysis on those monitor-source pairs where the lead source was the primary contributor to the ambient lead concentrations. Based on our earlier review of the existing ambient lead measurements, we determined that even in areas where there is no current industrial source of lead, ambient lead concentrations were typically in the range of 0.02 to 0.03 $\mu g/m^3$ (USEPA, 2007). This "urban background" level of lead can impact the calculated site-specific emission thresholds, and has a higher impact as the source emissions (and consequently ambient lead concentrations) decrease. Therefore, we elected to limit our analysis to monitor-source pairs where the source was estimated to emit 1 tpy or more to minimize the impact on the emission threshold calculation from the ambient lead concentration impacts that were not due to the source's lead emissions. As can be seen in Table 1 above, the lead concentrations around the source-monitor pairs used were considerably higher than background, ranging from 0.23 to 1.8 $\mu g/m^3$ on a 3-month rolling average, and as such, by limiting the analysis to sources with emissions greater than 1 tpy, background Pb concentrations had a small impact on the emission threshold calculation.

C. Final Decision on Source-Oriented Monitoring

Our review of the emission threshold analyses reflects a greater certainty that an emission source (other than airports which is discussed separately below) emitting 0.50 tpy or greater may cause

[5] NRDC's comments were submitted on behalf of the National Resources Defense Council, the Missouri Coalition for the Environment, Physicians for Social Responsibility, the Coalition to End Childhood Lead Poisoning, American Bottom Conservancy, American Lung Association, Center on Race, Poverty & the Environment, Citizens Against Ruining the Environment, Clean Air Council, East Michigan Environmental Action Council, Learning Disabilities Association of America, New York City Environmental Justice Alliance, The Point, Public Interest Law Center of Philadelphia's Public Health and Environmental Justice Project, Respiratory Health Association of Metropolitan Chicago, Science and Environmental Health Network, Trust for Lead Poisoning Prevention, UPROSE, Utah Physicians for a Healthy Environment, Leslie and Jack Warden, WEACT for Environmental Justice and the Wasatch Clean Air Coalition.

ambient lead concentrations to approach or exceed the lead NAAQS. We believe it is necessary to lower the emission threshold for industrial sources to 0.50 tpy to better identify areas where the lead NAAQS may be exceeded. Therefore, we are revising the emission threshold for industrial sources to 0.50 tpy. Based on the 2005 NEI, 96 industrial facilities are estimated to emit 0.50 tpy or more.[6] Monitoring agencies will be required to install and operate lead monitors at these sources, demonstrate actual emissions are less than 0.50 tpy based on the more current emissions or improved emission estimates, or request a waiver if they can demonstrate that the impact for the source will not contribute to ambient lead concentrations in excess of 50 percent of the lead NAAQS (as allowed for under 40 CFR part 58 appendix D, paragraph 4.5(a)(ii)).

V. Monitoring at Airport Facilities

We are maintaining a lead emission threshold for airports of 1.0 tpy, and are requiring a monitoring study at 15 airports with lead emission inventories of 0.50 to 1.0 tpy that we have identified as having characteristics that may cause or contribute to ambient lead concentrations that approach or exceed the lead NAAQS. This section summarizes what we proposed, the comments we received and our response to these comments, and our final decision and rationale.

A. What We Proposed for Airport Monitoring

We proposed to lower the emission threshold for airport monitoring from 1.0 tpy to 0.50 tpy. We explained that we had limited information on the ambient lead impact from airports. We identified one study conducted near the Santa Monica airport which measured a maximum 3-month average lead concentration of 0.1 $\mu g/m^3$ near the runway blast fence (Cavender, 2009a). Based on the 2002 lead emission estimate for the Santa Monica airport of 0.4 tpy (USEPA, 2008), an estimated site-specific emission threshold of 0.6 tpy was calculated using the same procedures used to estimate a site-specific emission threshold for industrial sources [i.e., 0.15 $\mu g/m^3$/(0.1 $\mu g/m^3$/0.4 tpy) = 0.6 tpy]. We noted that 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 did not support the case for different treatment of airports. As such, we proposed to require monitoring at airports that had an estimated emission rate of 0.50 or more tpy (or request a monitoring waiver as allowed under 40 CFR part 58, Appendix D, paragraph 4.5(a)(ii)).

We also requested information on additional data that could be used in setting a different emission threshold for airports, and comments on whether we should consider other factors or criteria that might be useful in determining whether a different approach is appropriate for identifying those airports that have the potential to cause or contribute to ambient lead concentrations approaching or exceeding the lead NAAQS. We provided one example of an alternative where we could require monitoring at airports that EPA determines have the potential to cause or contribute to increased ambient lead concentrations approaching or exceeding the NAAQS based on criteria including the estimated lead emissions and other factors such as the number of runways where piston-engine aircraft operate.

B. Comments Received on Monitoring at Airports

We received 16 comments on our proposal to lower the emission threshold for airport monitoring to 0.50 tpy. Of these, two commenters (on behalf of 21 organizations and three individuals) supported the proposed lowering of the emission threshold, and nine did not support the change. Five additional commenters provided input and advice for improving the emission inventories for airports. The following paragraphs summarize the significant comments received and our responses to these comments.

NRDC, on behalf of itself, 20 additional organizations and two individuals, supported the change to a 0.50 tpy emission threshold for airports, stating that the available evidence supports a 0.50 tpy monitoring threshold for airports. NRDC also stated that because piston-engine powered aircraft continue to be a significant presence at general aviation airports, these airports continue to be a source of lead emissions with the potential to result in lead concentrations in exceedence of the NAAQS, and that there is no evidence to support a departure from the monitoring threshold for industrial sources.

Based on the limited available ambient lead concentration data near airports, we agree that lead emissions from some airports have the potential to cause or contribute to exceedances of the lead NAAQS, and that lead monitoring of airports is necessary to ensure compliance with the lead NAAQS. To identify airports that have the greatest potential to cause or contribute to increased ambient lead concentrations approaching or violating the NAAQS, we are applying a 0.50 tpy emission threshold and additional criteria as described further below in the discussion of the airport monitoring study.

A number of States and State organizations commented against the use of a 0.50 tpy emission threshold for airports. NACAA urged EPA to develop an airport monitoring study of general aviation airports emitting more than 1.0 tpy of lead prior to the deployment of a full airport monitoring program. NACAA claimed that a study is necessary in order to determine sound sampling siting criteria and to evaluate whether the 0.50 tpy threshold should be applicable to airports. NESCAUM commented that a 0.50 tpy threshold is not appropriate for NAAQS monitoring purposes at general aviation airports, arguing that the airport study cited in the **Federal Register** (74 FR 69054) does not support the need for lowering the monitoring threshold for general aviation airports. NESCAUM claims the study indicates that neither the Santa Monica nor the Van Nuys airports showed lead concentrations higher than the Los Angeles basin average of 0.018 $\mu g/m^3$ at sites beyond the airport property. NESCAUM recommended that the monitoring threshold for general aviation airport lead monitoring remain at 1.0 tpy. NESCAUM noted that based on the draft 2008 NEI, a 1.0 tpy threshold would require monitoring at the eight largest general aviation airports. NESCAUM suggests that EPA reassess the need for additional lead monitoring at smaller general aviation airports in a future rulemaking based on information gathered from monitoring of the airports that emit 1.0 tpy or more. The State of New York also commented that the emission threshold for airports should remain at 1.0 tpy and that the data obtained from these airports should be used to assess the need for additional monitoring at airports. Other States, including Florida, Michigan, and North Carolina, suggested that an airport monitoring study should be conducted to gain information on the potential for airports to exceed the lead NAAQS.

In response, we agree that there is limited information available on which to evaluate the potential for lead emissions from piston-engine aircraft operations at airports to exceed or contribute to exceedances of the lead NAAQS. However, we believe that lead

[6] Note the 2008 NEI will be available before monitoring agencies will be required to develop their revised lead monitoring plans.

emissions from piston-engine aircraft operations at airports may cause ambient lead concentrations to exceed the lead NAAQS at some airports based on the limited data available on ambient lead concentrations at and near airports. We also agree with the commenters that an airport monitoring study would provide useful information that could be used to determine whether a revision to the 1.0 tpy threshold for monitoring of airports would be appropriate.

A number of States asserted that monitoring should not be required at airports because States do not have the authority to require controls on aircraft emissions that are not identical to EPA's standards, and regulatory authority to reduce or eliminate lead emissions from piston-engine aircraft resides with the Federal Government. We understand States are preempted by Clean Air Act (CAA) section 233 from adopting or attempting to enforce any standard for aircraft or aircraft engine emissions that is not identical to an EPA standard. However, that does not negate the responsibility to monitor sources of criteria pollutants to identify whether exceedences of the NAAQS are occurring.

EPA has made some designations under the 2008 Lead NAAQS and anticipates making the remaining initial designations under that standard by October 2011. EPA does not anticipate that the additional monitors required under this rule would be installed and operating in time to provide data for consideration when EPA completes the remaining initial designations under the 2008 Lead NAAQS. If EPA receives monitoring data exceeding the NAAQS after the date of initial designations, EPA may determine whether to undertake a redesignation to nonattainment, issue a "SIP Call" under section 110(k)(5), or take other discretionary steps to ensure that an area attains and maintains the NAAQS. EPA recognizes that, if ambient air near an airport was found to be exceeding the standard, and EPA were to take such discretionary action, there would be limits under federal law as to the measures a state could propose to adopt in a state implementation plan. EPA may take such limits into consideration in determining what steps to take following an exceedance of the standard.

Separate from this Pb monitoring rule, EPA is responding to a petition submitted by Friends of the Earth (FOE) requesting that EPA determine whether Pb emissions from aircraft cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. As part of this work, EPA published in April 2010 an Advance Notice of Proposed Rulemaking (ANPR) on Lead Emissions from Piston-Engine Aircraft Using Leaded Aviation Gasoline. In this action we described and requested comment on the data available for evaluating lead emissions, ambient concentrations and potential exposure to lead from the use of leaded aviation gasoline (avgas) in piston-engine powered aircraft. This ANPR also described considerations regarding emission engine standards and requested comment on approaches for transitioning the piston-engine fleet to unleaded avgas. The EPA and FAA are working with industry to evaluate alternatives to leaded avgas. As part of this assessment, EPA and FAA are also considering safety, fuel supply, and economic impact issues including effects on small business.

C. Final Decision on Airport Monitoring

We are maintaining the previously promulgated 1.0 tpy monitoring threshold for airports, rather than promulgating the proposed lowering of the threshold to 0.50 tpy, and are requiring lead monitoring for a minimum of one year at 15 additional airports that we have identified as having characteristics that could lead to ambient lead concentrations approaching or exceeding the lead NAAQS. We are also revising the provision regarding the Regional Administrator's (RA) authority (40 CFR part 58, Appendix D, paragraph 4.5(c)), which allows the RA to require additional lead monitoring at locations where the RA suspects the lead NAAQS may be exceeded, to clarify that this RA authority also applies to airports. The following paragraphs provide our rationale for this approach to monitoring of ambient lead concentrations at airports.

As stated above and in the proposal to this rulemaking, we believe that lead emissions may approach or exceed the lead NAAQS at some airports based on the limited data available on ambient lead concentrations at airports. As such, we believe monitoring of airports is necessary. However, in light of the limited available data, and in consideration of the comments we have received, we believe that monitoring at airports with certain characteristics (as discussed below) is appropriate to identify airports with the potential for the highest ambient lead concentrations that could approach or exceed the lead NAAQS.

We agree with the comments that a monitoring study should be conducted to determine whether a revision to the 1.0 tpy threshold for monitoring airports would be appropriate. We do not agree with the comments that suggested the study should be limited to airports that emit 1.0 tpy or more, as airports emitting 1.0 tpy or more of lead often have much larger footprints and multiple runways (characteristics that we believe will result in lower ambient lead concentration impacts per ton of lead emitted) than many of the airports in the 0.50 tpy to 1.0 tpy emissions range. These differences would make the information gathered at 1.0 tpy airports less applicable to smaller airports. Consequently, we are requiring monitoring agencies to conduct monitoring at 15 selected airports where the most recent year of activity data indicates lead emissions are above 0.50 tpy, but below 1.0 tpy, for a minimum of one year as part of a monitoring study (Hoyer, 2010).[7] Details of the monitoring study are provided below. Table 5 lists the 15 selected airports for this monitoring study.

TABLE 5—AIRPORTS SELECTED FOR MONITORING STUDY

Airport	County	State
Merrill Field	Anchorage	AK
Pryor Field Regional	Limestone	AL
Palo Alto Airport of Santa Clara County	Santa Clara	CA
McClellan-Palomar	San Diego	CA
Reid-Hillview	Santa Clara	CA
Gillespie Field	San Diego	CA
San Carlos	San Mateo	CA

[7] Airports selected for the monitoring study must conduct ambient lead monitoring for the 12-month period of the study. Unlike other source-oriented lead monitors, the waiver provision will not apply to the short-term monitors in the airport monitoring study.

TABLE 5—AIRPORTS SELECTED FOR MONITORING STUDY—Continued

Airport	County	State
Nantucket Memorial	Nantucket	MA
Oakland County International	Oakland	MI
Republic	Suffolk	NY
Brookhaven	Suffolk	NY
Stinson Municipal	Bexar	TX
Northwest Regional	Denton	TX
Harvey Field	Snohomish	WA
Auburn Municipal	King	WA

These airports were selected because they have characteristics that we believe will result in lead concentrations higher than those at other airports with estimated emission rates between 0.50 tpy and 1.0 tpy. Specifically, in addition to having emissions greater than or equal to 0.50 tpy and less than 1.0 tpy (based on current emission inventories), these airports have ambient air within 150 meters of the location of maximum emissions (*e.g.,* the end of a runway or run-up location), and an airport configuration and meteorological scenario that leads to a greater frequency of operations from one runway. These characteristics were selected because we expect that, collectively, they allow us to identify airports with the highest potential to have ambient lead concentrations approaching or exceeding the lead NAAQS. A cutoff of 0.50 tpy was selected because it was the proposed emission threshold, and the higher the emission rate, the higher the ambient impact if all other factors are equal. We selected a maximum distance to ambient air from the location of maximum emissions of 150 meters because the available information indicates that ambient lead concentrations drop off quickly with distance, and it is less likely that an exceedence of the lead NAAQS will occur at greater distances. Finally, airport configuration and meteorology were evaluated because the lead impacts will be highest if the take-offs (and therefore lead emissions) are conducted at one or two runways. We evaluated every airport in the draft 2008 NEI based on these three characteristics and identified the 15 airports listed in Table 5 as those airports most likely to have the highest ambient lead impacts that could lead to ambient lead concentrations in excess of the lead NAAQS.

As part of the airport monitoring study, monitoring agencies will be required to conduct lead monitoring for a period of 12 consecutive months. Monitors will be sited at the location of estimated maximum lead concentration in ambient air, taking into account logistical considerations and the potential for population exposure. To ensure that the results of the study will be directly comparable to the lead NAAQS, monitoring agencies will be required to monitor using either Federal Reference Method (FRM) or Federal Equivalent Method (FEM) Pb-TSP samplers, and will not be allowed to use Pb-PM_{10} samplers for the study. Any monitoring location that measures a rolling 3-month average that exceeds 50 percent of the NAAQS as determined according to 40 CFR part 50, Appendix R during the monitoring study will become a required monitor according to 40 CFR part 58 paragraph 4.5(c). Data collected during the monitoring study will be reported to the AQS according to 40 CFR 58.16.

Data from this monitoring study will be used to assess the need for additional lead monitoring at airports. Under EPA's previously established monitoring network requirements, required source-oriented monitors that read above 50 percent of the NAAQS (0.075 $\mu g/m^3$ on a rolling 3-month average) may not be taken down or stop operating (40 CFR part 58 Appendix D, paragraph 4.5(a)(ii)). The purpose of that provision is to ensure monitoring of an area where ambient concentrations could be of concern. EPA continues to believe that this rationale is also applicable to monitors at airports; therefore, 40 CFR part 58 Appendix D, paragraph 4.5(a)(ii) will apply to the results of airport monitors that show concentrations higher than 50 percent of the NAAQS. Such monitors will remain in operation, affected States will include them in annual monitoring network plans, and the monitors will become a part of the State and local monitoring network.

If after a review of the data from the monitoring study we have information that indicates additional airports may have the potential to cause or contribute to ambient lead concentrations that exceed the lead NAAQS, we will consider use of the RA authority to require monitoring at additional airports where appropriate. Finally, data from this study will be used in future lead NAAQS reviews when considering requirements for monitoring at airports.

VI. Non-Source-Oriented Monitoring Requirements

We are revising the non-source-oriented lead monitoring requirements. We are requiring lead monitoring at NCore sites in CBSA with a population greater than 500,000 people in lieu of the requirement for non-source-oriented monitoring in each CBSA with a population of 500,000 people or more. This section summarizes what we proposed, the comments we received and our response to these comments, and our final decision and rationale for the revisions to the non-source-oriented monitoring requirement.

A. What We Proposed for Non-Source Oriented Monitoring

We proposed to replace the existing requirement to have one non-source-oriented monitor in each CBSA with a population greater than 500,000 people with the requirement to monitor lead at NCore sites. We indicated that the existing requirement was intended to monitor non-inventoried lead sources such as closed industrial sources, hazardous waste sites, and construction and demolition projects. We noted that non-inventoried sources would be better addressed under the existing source-oriented monitoring requirements, and that the existing RA authority could be used to require source-oriented monitoring at locations where it was suspected that a non-inventoried source was likely to cause an exceedence of the lead NAAQS.

We discussed the original objectives 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 provide information that could assist with the determination of nonattainment boundaries) and that non-source-oriented sites are important to support the development of long-term

trends at typical concentrations sites. We noted that these objectives match those of the multi-pollutant NCore network required under section 3 of Appendix D to 40 CFR part 58. We also noted that many NCore sites will have the low-volume PM_{10} sampler appropriate for conducting Pb-PM_{10} monitoring, reducing the cost and time necessary to implement the non-source-oriented monitoring requirements. Due to the many advantages of including lead monitoring at NCore sites rather than having separate non-source-oriented monitoring requirements, we proposed 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. Finally, we requested comments on whether lead monitoring should be required at all NCore sites or only NCore sites in large urban areas (*e.g.,* in CBSA with a population greater than 500,000 people).

B. Comments on Non-Source-Oriented Monitoring

We received 13 comments on our proposal to require lead monitoring at NCore sites instead of the existing requirement to have one non-source-oriented monitor in each CBSA with a population greater than 500,000 people. Of these, three supported the proposed change to require lead monitoring at all NCore sites, six supported changing the requirement to require lead monitoring at only urban NCore sites, and no comments supported maintaining the existing non-source-oriented monitoring requirement. In addition, two commenters requested we provide guidance on when the RA authority should be used to require monitoring at non-inventoried lead sources. The following paragraphs summarize the significant comments received and our responses to these comments.

In their comments, NACAA supported the proposal to conduct non-source-oriented lead monitoring using the NCore network but recommended that EPA require monitoring only at NCore sites located in larger urban areas (*i.e.,* CBSA with a population greater than 500,000). NACAA indicated that doing so would allow States to use their limited resources to focus non-source-oriented monitoring and control strategies in the most sensitive areas. NESCAUM commented that the proposed inclusion of the rural NCore sites is inconsistent with the monitoring goal and would be a waste of State resources. New York commented that in many CBSA, the tentatively approved NCore monitoring location is probably well suited for non-source-oriented monitoring objectives, but that there is no need to monitor lead at the rural NCore sites. North Carolina commented that using the NCore sites provides efficient use of EPA and State resources and provides data on background levels of lead most cost-effectively. Wisconsin supported population-oriented sites located at urban NCore locations and questioned monitoring at rural NCore sites where concentrations likely will be extremely low.

In their comments, NRDC supported the inclusion of lead at all NCore sites stating that it will provide valuable data on multi-pollutant exposures in cities and towns across the county. However, they added that inclusion of lead at NCore sites does not sufficiently address all of the original objectives of the non-source-oriented monitoring, and that the RA authority is not adequate to ensure that non-inventoried sources that have the potential to exceed the NAAQS will be monitored without additional guidance to the States. They suggested that the source-oriented monitoring requirement should be revised to provide additional guidance to States on monitoring non-inventoried sources that have the potential to exceed the NAAQS. We agree that additional guidance is needed on identifying locations that have the potential to exceed the lead NAAQS due to re-suspension of deposited lead and, as discussed below, are clarifying the language for the RA authority provision to include requiring monitoring of re-entrained dust sources as well as other sources of lead.

Several commenters suggested we provide for the use of alternative sites such as National Air Toxic Trends Sites (NATTS) where measuring lead at NCore is either impractical or the alternative site would provide more useful information on urban lead concentrations. We note that lead measurements taken at NATTS sites would satisfy the objectives for non-source-oriented monitoring. Furthermore, we proposed to require lead non-source-oriented monitoring at NCore in part due to expected efficiencies (*i.e.,* use of the same equipment needed for $PM_{10-2.5}$ mass measurements). We believe that the requested flexibility is appropriate for situations where non-NCore sites such as NATTS sites can meet the non-source-oriented monitoring objectives at a lower cost to monitoring agencies.[8]

Two commenters noted that the non-source-oriented lead monitoring sites will be the only lead monitoring site in many primary quality assurance organizations (PQAO). The collocation requirement in Appendix A to 40 CFR part 58, paragraph 3.3.4.3, would require these PQAO to collocate a second lead monitor at each of the non-source-oriented lead monitoring sites, nearly doubling the cost of non-source-oriented lead monitoring in these CBSA. Both commenters questioned the need for such extensive collocation when lead concentrations are expected to be well below the lead NAAQS at the non-source-oriented lead monitoring sites. We agree with the commenters that, as currently written, the collocation requirement would lead to an unnecessarily high level of collocation at the non-source-oriented monitoring sites. We have modified the quality assurance requirements to allow the 15 percent collocation requirement to be based on the entire NCore network rather than on a per PQAO basis which is consistent with the $PM_{10-2.5}$ collocation requirement for NCore sites.

C. Final Decision on Non-Source-Oriented Monitoring

We are adding the requirement for lead monitoring to the list of pollutants to be monitored for NCore sites in CBSA with a population of 500,000 people or more and revoking the existing requirement for non-source-oriented monitoring (40 CFR part 58, Appendix D, paragraph 4.5(b)). Also, we are revoking the existing requirement to conduct lead monitoring at 10 NCore sites because it is redundant to the new non-source-monitoring requirement being promulgated today (40 CFR part 58, Appendix D, paragraph 3(c)). This change will improve our ability to track changes in typical urban lead concentrations and provide useful information on typical urban lead exposures. In addition, we are revising the RA authority (40 CFR part 58, Appendix D, paragraph 4.5(c)) provision to clarify that the RA may require monitoring of re-entrained lead dust sources which are expected to cause or contribute to ambient lead concentrations that may approach or exceed the lead NAAQS. Finally, we are revising the 15 percent collocation requirement for non-source-oriented lead monitors to be based on the entire NCore network rather than based on each PQAO.

[8] Note that some NATTS sites do not use FRM/FEM methods. If a NATTS site is to be used to meet the non-source-oriented monitoring requirement, the monitoring agency would be required to switch to an FRM/FEM method.

VII. Monitor Deployment Schedule

We are requiring that monitoring agencies install and begin operation of source-oriented monitors near lead sources emitting 0.50 tpy or more but less than 1.0 tpy, and at the 15 airports identified for the airport monitoring study by December 27, 2011. We are requiring monitoring agencies to install and begin operation of non-source-oriented monitors at NCore sites (or approved alternative sites) in CBSA with a population of 500,000 people or more by December 27, 2011. We are also requiring that monitoring agencies update their annual monitoring network plans by July 1, 2011, to incorporate plans for all required source-oriented (including airports) and non-source-oriented lead monitors. This section summarizes what we proposed, the comments we received and our response to these comments, and our final decision and rationale for the final monitoring deployment schedule.

A. What We Proposed for Monitor Deployment Schedule

We proposed that monitoring agencies would have six 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. We also proposed to allow one 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. We also requested comment on staggering the monitor deployment over two years. Note, we did not propose changes to the existing schedules for updating plans (July 1, 2009) and beginning operation (January 1, 2010) of source-oriented monitors near lead sources emitting 1.0 tpy or more.

We proposed to require monitoring agencies to commence lead sampling at NCore sites when NCore sites are to become operational no later than January 1, 2011. Monitoring agencies must have installed and begun operation of required NCore sites and monitors (other than lead) by January 1, 2011. Many NCore sites will have the necessary PM_{10} sampler needed to conduct Pb-PM_{10} sampling due to the existing requirement to conduct $PM_{10-2.5}$ sampling. As such, we proposed to require monitoring agencies to commence lead sampling at NCore sites when NCore sites are to become operational no later than January 1, 2011.

B. Comments on Monitor Deployment Schedule

We received several comments on the proposed monitoring deployment schedule. Seven commenters supported allowing for a longer deployment period. NACAA recommended that States' new source-oriented monitoring be deployed over a two year period which would give State and local agencies adequate time to adjust their resources and ensure that new monitors are properly sited and supported. Iowa commented that any new source-oriented monitors required under the provisions of this rule should be installed over a two year period, with the first tier of source-oriented monitors operational by January 2012, and the second tier of monitors by January 2013. Iowa states that this would allow States adequate time to refine emissions estimates by use of stack tests, to model the refined estimates, and to attempt to locate monitoring sites in the "hot spots" indentified by the modeling. Other monitoring agencies requesting a deployment period longer than one year include Texas, New York, Illinois, and Arkansas.

We recognize the difficulty monitoring agencies will have in deploying the newly required monitors. However, as is discussed below, we believe it is feasible for monitoring agencies to deploy the monitors necessary to comply with this final rule within one year. We note that the estimated number of new sites that States will need to site and install (or receive waivers for) in this final rule is 111,[9] which is 50 less than the number estimated based on the proposed rule. Following the 2008 revision, monitoring agencies were able to install approximately 100 new lead sites, and were granted waivers for an additional 35 sites. Based on the success and the experience gained from the deployment of the monitors to address the 2008 revision, we believe requiring up to 111 new sites to be sited and installed within one year will not create an excessive burden on monitoring agencies.

One commenter requested that we synchronize the dates of the required revision to the lead monitoring plan with the date for the existing annual monitoring plan requirement. We recognize the efficiency of having the same dates for the revision to the lead monitoring plan and required annual monitoring plan. We also note that due to the timing of this final rule, the proposed deadline of 6-months following the final rule (June 27, 2011) is close to the deadline for the required 2011 annual monitoring network plans (July 1, 2011). We agree that it is appropriate to use the same date for the two plans due to the proximity of the two dates.

Several commenters noted a discrepancy in the required dates in the preamble to the proposed rule and the proposed regulatory language. We note that the proposed regulatory language published in the **Federal Register** inadvertently indicated dates for the required plan and installation and operation of new monitors based on the date of the proposed rule. The preamble correctly indicated that the proposed dates would be based on the date the final rule was published.

C. Final Decision on Monitoring Deployment Schedule

We are requiring that monitoring agencies install and begin operation of source-oriented monitors near lead sources emitting 0.50 tpy or more but less than 1.0 tpy and at the 15 airports identified for the airport monitoring study by December 27, 2011, one year from the date of publication of this final rule. We estimate that monitoring agencies will be required to site and install up to 111 new source-oriented monitors [10] based on the final monitoring requirements. This number is slightly higher than the 100 monitors that have already been installed near sources emitting 1.0 tpy or more. We believe monitoring agencies can install the newly required source-oriented-monitoring sites within one year of the publication of this final rule especially in light of the experience and success achieved by monitoring agencies in complying with the previous source-oriented-monitoring requirement.

We are requiring monitoring agencies to install and begin operation of non-source-oriented monitors at NCore sites in CBSA with a population of 500,000 people or more by December 27, 2011. To allow monitoring agencies sufficient time to plan for and install any necessary equipment, we are allowing monitoring agencies a reasonable time, 1 year, from the time of publication of this final rule to comply with the non-source-oriented monitoring requirements.

We are also requiring that monitoring agencies update their annual monitoring

[9] The total number of newly required lead sites is 174. However, this number includes 63 NCore sites which have already been sited and installed due to the existing requirements for installing and operating NCore sites.

[10] The total number of new source oriented sites installed will likely be less as this estimate does not account for waivers.

network plans by July 1, 2011, to incorporate plans for all required source-oriented (including airports) and non-source-oriented lead monitoring. This date is the same as the existing requirement for States to submit their 2011 annual monitoring plan as required by 40 CFR Part 58.10(a)(i).

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/ttnnaaqs/standards/lead/data/20081015Cavender.pdf.*

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White, J. (2010). Environmental Justice Analysis for Revisions to Lead Monitoring Requirements. Memorandum to the Lead NAAQS Review Docket. EPA–HQ–OAR–2006–0735.

IX. Judicial Review

Under section 307(b)(1) of the CAA, judicial review of this final rule is available by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by February 25, 2011. Moreover, under section 307(b)(2) of the CAA, the requirements established by this action may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

X. 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 rule will be submitted for approval to the OMB under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* The information collection requirements are not enforceable until OMB approves them.

The information 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 final amendments revise the technical requirements for lead monitoring sites, require the siting and operation of additional lead ambient air monitors, and the reporting of the collected ambient lead monitoring data to EPA's AQS database. We have estimated the burden based on the final monitoring requirements of this rule. Based on these requirements, the annual average reporting burden for the collection under 40 CFR part 58 (averaged over the first 3 years of this Information Collection Request(ICR)) for 100 respondents is estimated to increase by a total of 1,726 labor hours per year with an increase of $119,172 per year. Burden is defined at 5 CFR 1320.3(b).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in this final rule.

C. Regulatory Flexibility Act

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

For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration (SBA) regulations at 13 CFR 121.21; (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 final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities. Rather, this rule establishes monitoring requirements for State and local (where applicable) monitoring agencies.

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. The amendments to 40 CFR part 58 are estimated to increase the ambient air monitoring costs by 22,376 labor hours per year with an increase of $1,910,059 per year 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 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

This final rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The 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. Thus, Executive Order 13132 does not apply to this rule. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and state and local governments, EPA specifically solicited comment on the 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.

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

EPA interprets Executive Order 13045 (62 F.R. 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 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 rule would result in an insignificant increase in power consumption associated with the additional power required to run 111 additional lead 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 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 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.

This proposed action revises the ambient monitoring requirements for measuring airborne lead. As such, the rule does not establish an environmental standard. Instead, by lowering the emissions threshold from 1.0 tons per year (tpy) to 0.5 tpy used to determine if an air quality monitor for lead should be placed near an industrial facility, this rule requires assessment of compliance at smaller emissions sources, and therefore effectively strengthens the lead monitoring requirements and, in turn, may increase the public health protection provided by the NAAQS itself. The rule maintains a 1.0 tpy emissions threshold for airports and implements an airport monitoring study to determine the need for monitoring of airports which emit less than 1.0 tpy of lead. The rule also replaces the existing non-source-oriented monitoring requirement for lead monitoring in large urban areas with a requirement that lead be added to the list of pollutants to be monitored at NCore sites in CBSA with a population of 500,000 people or more. These rule amendments are designed to improve the lead monitoring network's capability to better assess compliance with the revised NAAQS (73 FR 66964, codified at 40 CFR part 58).

Pursuant to E.O. 12898 EPA has undertaken to determine the aggregate demographic makeup of the communities potentially affected by this proposed rule revision. The EPA focused its analysis on 111 industrial sources of lead (*e.g.*, lead smelters, and foundries) impacted by the lowering of the emissions threshold from 1.0 tpy to 0.5 tpy. The analytical approach, which assumed "proximity-to-a-source" as a surrogate for determining a population's potential exposure to lead emissions from these sources, evaluated several socio-demographic parameters and compared them against the respective national averages for the same parameters.

The socio-demographic parameters used in the analysis included estimates of the percentage of the population near the sources that were White, Minority (*i.e.,* all Non-White), African American, Native American, Other/Multiracial, and Hispanic. The study also evaluated the percentages of the same populations less than or equal to 18 years of age; greater than or equal to 65 years of age; and the total below poverty line.

The analysis determined the composition of those census blocks that lay within a circular distance of one mile (or approximately 1.6 kilometers) of affected sources with respect to the selected socio-demographic parameters. The study area radius (*i.e.,* 1 mile) was used because available data generally indicate that lead emissions from such sources are rapidly deposited and ambient lead concentrations decline quickly with distance from the emission source.

The analysis indicated that the aggregate population living within a one-mile area around these sources tends to have lower proportions of Whites and higher proportions of African-Americans, Hispanics, and "Other and Multi-racial" populations than their respective national averages. The Minority (*i.e.,* total Non-White) population in these areas is greater than the national average (*i.e.,* 29% versus 25% respectively). The Tribal population percentages are similar for both those living within the study area and the national average (*i.e.,* both < 1%). The percentage of the population of those living below the poverty line within the area of study is higher than the national average (*i.e.,* 17% versus 13% respectively). However, the percentage of the population less than or equal to 18 years of age and the percentage age 65 or older are similar for those within the area of study and the national average.

Based on the fact that this proposed rule does not allow emission increases, but promulgates revisions to existing monitoring requirements that lower the threshold at which monitoring by state and local monitoring agencies would be

required, the EPA has determined that the proposed rule will not have disproportionately high and adverse human health or environmental effects on minority, low-income, or Tribal populations. Furthermore, to the extent that any minority, low-income, or Tribal subpopulation is disproportionately impacted by current lead emissions as a result of the proximity to lead emissions sources, that group also stands to benefit from the improvement in compliance with the lead NAAQS which will result from this rule and thereby potentially experience associated increases in environmental and health benefits.

This proposed change is a "notice and comment rulemaking" and public involvement is encouraged. All monitoring changes at the local level will be documented in each state's monitoring plan and are available for public review and comment. In addition, EPA defines "Environmental Justice" to include meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. To promote meaningful involvement, EPA has developed a communication and outreach strategy to ensure that interested communities have access to this proposed rule, are aware of its content, and have an opportunity to comment during the comment period. During the comment period, EPA will publicize the rulemaking via EJ newsletters, Tribal newsletters, EJ listservs, and the internet, including the Office of Policy (OP) Rulemaking Gateway Web site (*http://yosemite.epa.gov/opei/RuleGate.nsf/*). EPA will also provide general rulemaking fact sheets (*e.g.,* why is this important for my community) for EJ community groups and conduct conference calls with interested communities.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective January 26, 2011.

List of Subjects in 40 CFR Part 58

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

Dated: December 14, 2010.

Lisa P. Jackson,

Administrator.

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

PART 58—[AMENDED]

■ 1. The authority citation for part 58 is revised to read as follows:

Authority: 42 U.S.C. 7403, 7405, 7410, 7414, 7601, 7611, 7614, 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 Pb monitoring sites in accordance with the requirements of appendix D to this part for Pb 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 Pb monitoring sites for Pb sources emitting 1.0 tpy or greater to be operational by January 1, 2010. A plan for establishing source-oriented Pb monitoring sites in accordance with the requirements of appendix D to this part for Pb sources emitting equal to or greater than 0.50 tpy but less than 1.0 tpy shall be submitted to the EPA Regional Administrator no later than July 1, 2011. The plan shall provide for the required source-oriented Pb monitoring sites for Pb sources emitting equal to or greater than 0.50 tpy but less than 1.0 tpy to be operational by December 27, 2011.

* * * * *

■ 3. Section 58.13 is amended by revising paragraph (a) to read as follows:

§ 58.13 Monitoring network completion.

(a) The network of NCore multipollutant sites must be physically established no later than January 1, 2011, and at that time, operating under all of the requirements of this part, including the requirements of appendices A, C, D, E, and G to this part. NCore sites required to conduct Pb monitoring as required under 40 CFR part 58 appendix D paragraph 3(b), or approved alternative non-source-oriented Pb monitoring sites, shall begin Pb monitoring in accordance with all of the requirements of this part, including the requirements of appendices A, C, D, E, and G to this part no later than December 27, 2011.

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■ 4. Appendix A to Part 58 is amended by revising paragraph 3.3.4.3 to read as follows:

Appendix A to Part 58—Quality Assurance for SLAMS, SPMs, and PSD Air Monitoring

* * * * *

3.3.4.3 *Collocated Sampling.* PQAO that have a combination of source and non-source–oriented sites (unless the only non-source-oriented site is an NCore site) will follow the procedures described in sections 3.3.1 of this appendix with the exception that the first collocated Pb site selected must be the site measuring the highest Pb concentrations in the network. If the site is impractical, alternative sites, approved by the EPA Regional Administrator, may be selected. If additional collocated sites are necessary, collocated sites may be chosen that reflect average ambient air Pb concentrations in the network. The collocated sampling requirements for PQAO that only have Pb monitoring at a non-source-oriented NCore site for sampling required under 40 CFR 58, Appendix D, paragraph 4.5(b) shall be implemented as described in section 3.2.6 of this appendix with the exception that the collocated monitor will be the same method designation as the primary monitor.

* * * * *

■ 5. Appendix D to Part 58 is amended as follows:

■ a. By revising paragraph 3.(b) introductory text,

■ b. By removing and reserving paragraph 3.(c),

■ c. By revising paragraph 4.5.(a),

■ d. By revising paragraph 4.5.(b), and

■ e. By revising paragraph 4.5.(c).

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

* * * * *

3. * * *

(b) The NCore sites must measure, at a minimum, $PM_{2.5}$ particle mass using continuous and integrated/filter-based samplers, speciated $PM_{2.5}$, $PM_{10-2.5}$ particle mass, speciated $PM_{10-2.5}$, O_3, SO_2, CO, NO/NO_y, wind speed, wind direction, relative humidity, and ambient temperature. NCore sites in CBSA with a population of 500,000 people (as determined in the latest Census)

or greater shall also measure Pb either as Pb-TSP or Pb-PM_{10}. The EPA Regional Administrator may approve an alternative location for the Pb measurement where the alternative location would be more appropriate for logistical reasons and the measurement would provide data on typical Pb concentrations in the CBSA.

* * * * *

(c) [Reserved.]

* * * * *

4.5 * * * (a) State and, where appropriate, local agencies are required to conduct ambient air Pb monitoring near Pb sources which are expected to or have been shown to contribute to a maximum Pb 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 Pb concentration in ambient air resulting from each non-airport Pb source which emits 0.50 or more tons per year and from each airport which emits 1.0 or more tons per year based on either the most recent National Emission Inventory (*http://www.epa.gov/ttn/chief/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 Pb concentration due to one Pb source is expected to also be impacted by Pb 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 Pb 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 Pb sources if the State or, where appropriate, local agency can demonstrate the Pb source will not contribute to a maximum Pb 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).

(iii) State and, where appropriate, local agencies are required to conduct ambient air Pb monitoring near each of the airports listed in Table D–3A for a period of 12 consecutive months commencing no later than December 27, 2011. Monitors shall be sited to measure the maximum Pb concentration in ambient air, taking into account logistics and the potential for population exposure, and shall use an approved Pb-TSP Federal Reference Method or Federal Equivalent Method. Any monitor that exceeds 50 percent of the Pb NAAQS on a rolling 3-month average (as determined according to 40 CFR part 50, Appendix R) shall become a required monitor under paragraph 4.5(c) of this Appendix, and shall continue to monitor for Pb unless a waiver is granted allowing it to stop operating as allowed by the provisions in paragraph 4.5(a)(ii) of this appendix. Data collected shall be submitted to the Air Quality System database according to the requirements of 40 CFR part 58.16.

TABLE D–3A AIRPORTS TO BE MONITORED FOR LEAD

Airport	County	State
Merrill Field	Anchorage	AK
Pryor Field Regional	Limestone	AL
Palo Alto Airport of Santa Clara County	Santa Clara	CA
McClellan-Palomar	San Diego	CA
Reid-Hillview	Santa Clara	CA
Gillespie Field	San Diego	CA
San Carlos	San Mateo	CA
Nantucket Memorial	Nantucket	MA
Oakland County International	Oakland	MI
Republic	Suffolk	NY
Brookhaven	Suffolk	NY
Stinson Municipal	Bexar	TX
Northwest Regional	Denton	TX
Harvey Field	Snohomish	WA
Auburn Municipal	King	WA

(b) State and, where appropriate, local agencies are required to conduct non-source-oriented Pb monitoring at each NCore site required under paragraph 3 of this appendix in a CBSA with a population of 500,000 or more.

(c) The EPA Regional Administrator may require additional monitoring beyond the minimum monitoring requirements contained in paragraphs 4.5(a) and 4.5(b) where the likelihood of Pb air quality violations is significant or where the emissions density, topography, or population locations are complex and varied. EPA Regional Administrators may require additional monitoring at locations including, but not limited to, those near existing additional industrial sources of Pb, recently closed industrial sources of Pb, airports where piston-engine aircraft emit Pb, and other sources of re-entrained Pb dust.

* * * * *

[FR Doc. 2010–32153 Filed 12–23–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 484

[CMS–1510–CN2]

RIN 0938–AP88

Medicare Program; Home Health Prospective Payment System Rate Update for Calendar Year 2011; Changes in Certification Requirements for Home Health Agencies and Hospices

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Correction of final rule.

SUMMARY: This document corrects a technical error that appeared in the November 17, 2010 **Federal Register** entitled "Medicare Program; Home Health Prospective Payment System Rate Update for Calendar Year 2011; Changes in Certification Requirements for Home Health Agencies and Hospices" final rule (75 FR 70372).

DATES: *Effective Date:* This correction is effective January 1, 2011.

FOR FURTHER INFORMATION CONTACT: Sharon Ventura, (410) 786–1985.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2010–27778 of November 17, 2010 (75 FR 70372), there was a technical error that this notice serves to identify and correct. The provisions of this notice are effective as if they had been included in the "Medicare Program; Home Health Prospective Payment System Rate Update for Calendar Year 2011; Changes in Certification Requirements for Home Health Agencies and Hospices" final