Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government having first provided the funds to pay those costs. The proposed rule would not impose an unfunded mandate.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Environment

We considered the environmental impact of this proposal and concluded that under figure 2–1, paragraph (32)(e) of Commandant Instruction M16475.1C this proposed rule is categorically excluded from further environmental documentation. This proposed rule only involves the operating schedule of an existing drawbridge and will have no impact on the environment. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); Section 117.255 also issued under authority of Pub.L. 102–587, 106 Stat. 5039.

2. In § 117.733 add a new paragraph (k) to read as follows:

§ 117.733 New Jersey Intracoastal Waterway.

* * * * *

(k) The draw of Cape May Canal Railroad Bridge across Cape May Canal, mile 115.1, at Cape May shall operate as follows:

(1) The draw shall be maintained in the open position; the draw may close only for the crossing of trains and maintenance of the bridge. When the draw is closed for a train crossing a bridge tender shall be present to open the draw after the train has cleared the bridge. When the draw is closed for maintenance a bridge tender shall be present to open the draw upon signal.

(2) Train service generally operates as follows (please contact Cape May Seashore Lines for current train schedules):

(i) Winter (generally December through March): In general, there is no train service, therefore the bridge is unmanned and placed in the full open position.

(ii) Spring (generally April through May) and Fall (generally September through November): Generally weekend service only. Friday through Sunday train service starts at 10 a.m. and ends at 7:30 pm. Monday through Thursday the bridge is generally unmanned and placed in the open position.

(iii) Summer Service (generally June through August): Daily train service starting at 10 a.m. and ending at 7:30 p.m.

(3) When a vessel approaches the drawbridge with the draw in the open position, the vessel shall give the opening signal. If no acknowledgement is received within 30 seconds, the vessel may proceed, with caution, through the open draw. When the draw is open and will be closing promptly, the drawbridge will generally signal using sound signals or radio telephone.

(4) Opening of the draw span may be delayed for ten minutes after a signal to open except as provided in § 117.31(b). However, if a train is moving toward the bridge and has crossed the home signal for the bridge before the signal requesting opening of the bridge is given, the train may continue across the bridge and must clear the bridge interlocks as soon as possible in order to prevent unnecessary delays in the opening of the draw.

Dated: March 22, 2001.

J.E. Shkor,

Vice Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 01–7947 Filed 3–29–01; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA–232–0219, FRL–6960–4]

Approval and Promulgation of Ozone Attainment Plan and Finding of Failure To Attain; State of California, San Francisco Bay Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve in part and disapprove in part a state implementation plan (SIP) revision, the 1999 San Francisco Bay Area Ozone Attainment Plan (1999 Plan), submitted by the State of California to EPA to attain the 1-hour ozone national ambient air quality standard (NAAQS) in the San Francisco Bay Area. Specifically, EPA is proposing to approve the baseline emissions inventory, the Reasonable Further Progress (RFP) demonstration, control measure commitments, and contingency measures in the 1999 Plan as meeting the requirements of the Clean Air Act (CAA) applicable to the Bay Area ozone nonattainment area. We are proposing to disapprove the attainment assessment, its associated motor vehicle emissions budgets, and the reasonably available control measure (RACM) demonstration.

If EPA takes a final disapproval action, it will trigger the 18-month clock for mandatory application of sanctions, a 2-year time clock for a federal implementation plan (FIP), and a transportation conformity freeze.

EPA is also proposing to find that the San Francisco Bay Area ozone nonattainment area did not attain the 1-hour ozone NAAQS by November 15, 2000, the attainment deadline set by EPA when the area was designated to nonattainment in 1998. If EPA takes final action on this proposal, the State will be required to submit a new plan no later than 12 months thereafter.

DATES: Comments on the proposed actions must be received on or before May 14, 2001.

ADDRESSES: Comments may be mailed to: Celia Bloomfield, Planning Office, [AIR–2], Air Division, U.S. Environmental Protection Agency,

Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901; or to bloomfield.celia@epa.gov.

A copy of this proposed rule and related information are available in the air programs section of EPA Region 9's website, *http://www.epa.gov/region09/air*. The docket for this rulemaking is available for inspection during normal business hours at EPA Region 9, Planning Office, Air Division, 17th Floor, 75 Hawthorne Street, San Francisco, California 94105. A reasonable fee may be charged for copying parts of the docket. Please call (415) 744–1249 for assistance.

FOR FURTHER INFORMATION CONTACT: Celia Bloomfield (415) 744–1249, Planning Office (AIR–2), Air Division, EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105; bloomfield.celia@epa.gov.

SUPPLEMENTARY INFORMATION:

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I. Background

A. 1998 Redesignation to Nonattainment

The San Francisco Bay Area (Bay Area) was originally designated under section 107 of the 1977 CAA as nonattainment for ozone in 1978. Following the 1990 Clean Air Act Amendments, the Bay Area retained its nonattainment designation and was classified as ''moderate'' under section 181 by operation of law. 56 FR 56694 (Nov. 6, 1991). The Bay Area was then redesignated to attainment in 1995 based on then current air quality data (60 FR 27028, May 22, 1995) and subsequently redesignated back to nonattainment with the federal 1-hour ozone standard on July 10, 1998 (63 FR 37258). See 40 CFR 81.305 (1999).[1]

EPA's action in 1998 was prompted by persistent air quality problems in the two years following the redesignation to attainment. Ozone levels exceeded the federal 1-hour ozone standard on 11 days in 1995 and 8 days in 1996. As provided under section 107(d)(3) of the CAA, EPA revised the Bay Area's designation on the basis of those air quality data. The intent of the redesignation was to return healthy air as quickly as possible to the Bay Area.

B. Nonattainment Area Requirements

In an effort to focus on near term air quality gains, EPA set an expedited attainment deadline of November 15, 2000 under CAA section 172(a)(2) in its redesignation action. At that time, EPA believed the Bay Area could attain by that date. EPA also required the Bay Area to submit an attainment plan by June 15, 1999 that addressed the section 172(c) requirements and specifically included a 1995 baseline emissions inventory, an assessment of the emissions reductions needed for attainment, and adopted control measures (or commitments to adopt and implement control measures) sufficient to meet reasonable further progress (RFP) and to attain the 1-hour ozone standard by the attainment deadline. The plan was also required to provide for the implementation of all reasonably available control measures (RACM) as expeditiously as practicable. Finally, the Bay Area was also required to include contingency measures that would take effect automatically should attainment not be achieved by November 15, 2000, and new transportation conformity emissions budgets capping volatile organic compounds (VOC) and nitrogen oxides (NO_X) emissions for ozone consistent with the new attainment plan. 63 FR at 37275–37276. See also CAA section 172(c)(1)–(3), (6)–(7) and (9).

C. Ozone Attainment Plan Submission

On August 13, 1999, the California Air Resources Board (CARB) submitted the 1999 San Francisco Bay Area Ozone Attainment Plan (1999 Plan) to EPA. The attainment plan was submitted as a proposed revision to the California State Implementation Plan (SIP) by CARB on behalf of the Bay Area Air Quality Management District (BAAQMD), the Metropolitan Transportation Commission (MTC), and the Association of Bay Area Governments (ABAG).

EPA found the submittal complete in a letter to the State of California on October 28, 1999.[2] EPA determined that the submittal met the criteria for completeness as set forth in 40 CFR part 51, appendix V.[3]

II. Evaluation of the State's Submittal

EPA evaluated the Bay Area ozone plan according to the general nonattainment plan requirements contained in section 172(c) of the CAA. Section 172(c) formed the basis for the nonattainment plan requirements set out in the final redesignation rulemaking. For a more complete discussion of section 172(c) as it applies to the Bay Area ozone plan, please refer to the proposed redesignation rulemaking, 62 FR 66580.

A. Baseline Emissions Inventory

CAA section 172(c)(3) requires nonattainment plans to include a comprehensive, accurate and current inventory of actual emissions from all sources. The purpose of this inventory is to provide a benchmark for attainment planning, and it is often referred to as a baseline inventory. To satisfy this requirement, EPA stated in the final redesignation rulemaking that the Bay Area must submit a 1995 emissions inventory for VOC and NO_X (63 FR 37274).

EPA has determined that the 1995 baseline emissions inventory contained in section 4 of the 1999 Plan satisfies the requirements of CAA section 172(c)(3). It is a seasonal inventory (typical summer day) representing emissions when ozone levels are at their highest. It is based on actual emissions in 1995 and addresses the full spectrum of stationary, mobile and miscellaneous

[1] As a moderate nonattainment area, the Bay Area was subject to the moderate classification provisions of title I, part D, subpart 2 of the CAA that were added as part of the 1990 Amendments. In redesignating the Bay Area back to nonattainment, EPA looked at the longstanding general nonattainment provisions of subpart 1 of the CAA as well as the subpart 2 provisions. EPA concluded, based on a number of legal and policy reasons described at length in the proposed and final redesignation actions, that the Act is best interpreted as placing the Bay Area under subpart 1 upon redesignation back to nonattainment. Thus the Bay Area was not classified under section 181 upon redesignation. (See 62 FR 66578, December 19, 1997; 63 FR 3725, July 10, 1998.)

[2] Letter from David P. Howekamp, Director, Air Division, U.S. EPA, to Michael Kenny, Executive Officer, California Air Resources Board, dated October 28, 1999.

[3] EPA adopted the completeness criteria pursuant to section 110(k)(1)(A) of the CAA on February 16, 1990 (55 FR 5830), and revised the criteria on August 26, 1991 (56 FR 42216).

sources of VOC and NO_X in the Bay Area. The inventory also takes rule effectiveness into account. Therefore, EPA proposes to approve the inventory as meeting the requirements of section 172(c)(3).

B. Attainment Assessment

As required by section 172(c)(1) and our final redesignation rulemaking, the plan for the Bay Area was required to provide for attainment of the ozone NAAQS by November 15, 2000. As EPA recognized at the time of the redesignation, there had been a sufficient number of exceedances of the standard in 1998 such that it was not possible for the Bay Area to attain the 1-hour standard based on data for the three year period 1998–2000.[4] However, EPA interprets the attainment planning requirement to mean that a State must show that it will have ''clean data'' as of the attainment year, such that the area would be eligible for an attainment date extension under section 181(a)(5), if applicable, or section 172(a)(2)(C). In the redesignation action for the Bay Area, EPA indicated that for the Bay Area this meant that the attainment assessment must show that there would be no more than one exceedance at any monitor in the attainment year (63 FR 37273, July 10, 1998).

The specific attainment assessment requirement set out in EPA's redesignation rulemaking was as follows: ''[a]ssessment, employing available data and technical analyses, of the level of emissions reductions needed to attain the current 1-hour ozone National Ambient Air Quality Standard (NAAQS).'' EPA further noted that the assessment must ''take into account the meteorological conditions and ambient concentrations associated with the violations of the ozone NAAQS in the period 1995–6 * * *'' (63 FR 37276).

The 1999 Plan's attainment assessment looks at air quality in 1995 and then uses modeling to determine how much improvement in air quality would be needed between 1995 and 2000 to attain the standard. The difference between the level of emissions in 1995 and 2000 is the emissions reduction target. According to the analysis in the 1999 Plan, if VOCs were reduced by 128 tons per day (tpd) and NO_X emissions were reduced by 92 tpd between 1995 and 2000, the Bay Area would come into compliance with the federal 1-hour ozone standard. CARB submitted a SIP that included adopted measures or commitments to adopt measures to achieve those levels of reduction.

However, prior to the time EPA could take final action on the submitted plan, monitoring data for the attainment year became available. According to the monitoring data recorded by the Bay Area's official monitoring network, the Bay Area experienced three exceedance days in 2000, and two of those exceedances occurred at the same monitor.[5] Because the Bay Area had air quality data inconsistent with attainment in the attainment year, EPA must propose to disapprove the 1999 Plan's attainment demonstration.

C. Reasonable Further Progress Demonstration

In our final redesignation rulemaking, we required the Bay Area plan to provide for reasonable further progress toward attainment. 63 FR 37275. Section 172(c)(2) contains the requirement for reasonable further progress (RFP). RFP is defined as ''such annual incremental reductions in emissions * * * as are required by this part [D] or may reasonably be required by the Administrator for the purpose of ensuring attainment * * * by the applicable date.'' Section 171(1). In the proposed rule, we explained that ''[b]ecause EPA is not proposing to require submission of adopted measures until September 1998, the Agency believes that the RFP requirement would be satisfied if all required emission reductions occur by * * * [the] attainment year.'' 62 FR 66581. Because the Bay Area did adopt and implement the control measures in the 1999 Plan by the November 15, 2000 attainment deadline, we are proposing to find that the 1999 Plan provides for RFP through 2000.

D. Reasonably Available Control Measure Demonstration

In our proposed and final redesignation rulemakings, we indicated that the State's plan must comply with the general nonattainment plan requirements of CAA section 172 (62 FR 66580, December 19, 1997; and 63 FR 37275, July 10 1999). In the proposal, we summarized the section 172 requirements and specifically stated that the plan would have to provide for ''implementation of all reasonably available control measures (RACM) as expeditiously as practicable * * * to the extent that it [RACM] has not already been complied with.'' 62 FR 66580.

EPA's preliminary RACM guidance is set out in the General Preamble at 57 FR 13498, 13560 (April 16, 1992). Under this guidance, States must consider available control measures, adopt such measures as are reasonably available, and provide a justification why measures that may be available, were not considered RACM and were not adopted in the SIP. EPA also stated that ''[t]he section 108(f) measures should be considered by States as potential air quality control options'' and that states should consider ''any measure that a commenter indicates during the public comment period is reasonably available for a given area.''[6]

In the documentation accompanying the 1999 Plan submittal, there were a number of public comments made requesting consideration of specific transportation and stationary source control measures. Because the plan fails to justify why these or other potential measures are not reasonably available and would not advance the attainment date,[7] we are proposing to disapprove the RACM demonstration in the 1999 Plan. However, as discussed below, while we are not proposing to approve the control measure commitments in the 1999 Plan as meeting the CAA's RACM requirement, we are proposing to approve those commitments under CAA sections 110(k)(3) and 301(a) because they will strengthen the SIP.

E. Control Measures

Section 172(c)(6) requires attainment plans to contain enforceable emissions limitations and other control measures, means or techniques, necessary to provide for attainment by the applicable date. The 1999 Plan relies on both previously approved SIP measures and new measures to demonstrate emissions reductions consistent with the 128 tpd VOC and 92 tpd NO_X targets. One

[4] See 40 CFR 50.9 and appendix H.

[5] Attainment of the 1-hour ozone NAAQS is measured over a three-year period and is based on the number of exceedances that occur that period. An exceedance of the 1-hour ozone standard occurs when the hourly average ozone concentration at a given monitoring site is greater than or equal to 0.12 parts per million (ppm) (40 CFR 50.9(a); 40 CFR part 58, appendix F, section 2). An area is not attaining the 1-hour ozone NAAQS if, over a three-year period, the average number of exceedances per year exceeds one. The monitor with two exceedances was located on First Street in Livermore. See October 25, 2000 memorandum from Bob Pallarino, EPA Region 9 Technical Support Office, to Julia Barrow and Celia Bloomfield, EPA Region 9 Planning Office.

[6] The section 108(f) measures are transportation control measures listed in section 108(f) of the CAA. They include measures such as programs for improved public transit and trip-reduction ordinances.

[7] See EPA guidance memorandum from John Seitz, Director, Office of Air Quality Planning and Standards, to Regional Air Division Directors entitled, ''Guidance on the Reasonably Available Control Measures (RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas,'' dated November 30, 1999.

hundred percent of the NO_X reductions and about ninety percent of the VOC reductions are expected to come from already SIP-approved stationary, area, and mobile source measures.[8] The 1999 Plan describes ten new stationary, area, and mobile source control measures and includes a commitment to ''achieve an additional 11 tpd reduction in VOC emissions by June 2000 through adoption and implementation of any combination of the control measures listed in Table 10 and Table 12 [of the 1999 Plan]'' (1999 Plan, p. 25).

All of the new measures have been adopted and submitted to EPA for approval into the SIP with the exception of the single mobile source control measure, MS–01 (which requires new golf cart purchases to be electric in ozone nonattainment areas throughout California). This rule was adopted by CARB in 1994 and became applicable to the Bay Area upon redesignation to nonattainment.

In this action, EPA is proposing to approve the adoption and implementation dates of the new measures and the commitment to achieve 11 tpd of VOC reductions from any combination of those measures. EPA is making this proposal pursuant to CAA sections 110(k)(3) and 301(a) for the purpose of strengthening the SIP.

A summary of the 1999 Plan's new control measures, along with their adoption dates, implementation dates, and estimated emissions reductions, are listed below in Table 1 labeled ''New Bay Area Measures.''

TABLE 1.—NEW BAY AREA MEASURES

VOC measure (BAAQMD regulation No.)	Adoption date	Implementation date	Estimated VOC reductions (tpd), 1995–2000
SS–01: Can and Coil Coating (8–11)	11/19/97	1/1/98, 1/1/2000	0.35
SS–02: Equipment Leaks at Refineries and Chemical Plants (8–18)	1/7/98	1/7/98	1.20
SS–03: Pressure Relief Devices (8–28)	12/17/97, 3/18/98	7/1/98	0.13
SS–04: Solvent Cleaning (8–16)	9/16/98	9/1/99	2.10
SS–05: Graphic Arts Operations (8–20)	3/2/99	7/1/99, 1/1/2000	0.80
SS–06: Polystyrene Manufacturing (8–52)	1999	6/2000	0.26
SS–07: Organic Liquid Storage: Low Emitting Retrofits for Slotted Guide Poles (8–5).	1999	6/2000	0.48
SS–08: Gasoline Dispensing Facilities (8–7)	1999	6/2000	3.20
SS–09/SS–10: Prohibit Aeration of Petroleum Contaminated Soil or Industrial Sludge at Landfills (8–40).	1999	6/2000	2.68
MS–01: Electric Golf Carts: Require New Golf Cart Purchases to be Electric (ARB State Rule).	1994	3/2000	0.1

F. Contingency Measures

Under CAA section 172(c)(9), a plan must contain contingency measures that go into effect if the area fails to attain the standard. The Act specifies that the measures must be implemented without further action by the air district or its co-lead agencies in the event of a failure to attain by the required date (CAA section 172(c)(9)). The general planning requirements of the CAA do not specify how many measures or what level of reductions must be included in a plan for contingency purposes. EPA, however, has stated that the contingency measures should, at a minimum, ensure that an appropriate level of emissions reduction progress continues to be made if attainment or RFP is not achieved and additional planning by the State is needed. 57 FR 13511.

EPA is proposing to approve as contingency measures the measures in Table 18 of the State submission, which are part of the SIP and can be implemented without further agency action. These measures are listed below in Table 2, ''Bay Area Contingency Measures.'' These measures provide for substantial emissions reductions of both VOC and NO_X in the years following the attainment year. (See Table 2 below.) We believe that these measures provide for sufficient emissions reductions to ensure continued progress toward attainment while the State is preparing its next plan and should be approved as meeting the requirements of section 172(c)(9).[9]

The obligation to implement the contingency measures is clearly stated in the 1999 Plan: ''If the Bay Area records more than one exceedance at a single monitoring site in 2000 (or in 2001 [if the attainment date is extended]), a requirement to implement contingency measures will be triggered.'' (See 1999 Plan, p. 27.) In fact, all of the measures are already being implemented as they were triggered by the area's failure to attain in 2000.

TABLE 2.—BAY AREA CONTINGENCY MEASURES

Adopted control measure (BAAQMD regulation or State/Federal measure)	Estimated VOC reductions (tpd)			Estimated NO_X reductions (tpd)		
	2001	2002	2003	2001	2002	2003
Gasoline Dispensing Facilities (8–7)	0.5	0.9	1.1	.....	.....	.....
Graphic Arts Printing and Coating Operations (8–20)	0.8	0.7	0.7	.....	.....	.....

[8] Existing SIP-approved control measures and their associated emissions reductions between 1995 and 2000 are listed in Table 9 and 11 of the 1999 Plan. The Plan also relies on one federally promulgated EPA measure related to gasoline-powered recreational boats to achieve 0.7 tpd of the VOC target.

[9] As explained in section IV.C. below, a new plan is required one year after a final finding of failure to attain is published. If EPA takes final action on the finding, we anticipate that we will do so in the summer of 2001. Therefore, a new plan would be due in the summer of 2002.

TABLE 2.—BAY AREA CONTINGENCY MEASURES—Continued

Adopted control measure (BAAQMD regulation or State/Federal measure)	Estimated VOC reductions (tpd)			Estimated NO_X reductions (tpd)		
	2001	2002	2003	2001	2002	2003
Aeration of Contaminated Soil and Removal of Underground Storage Tanks (8–40)	0.5	1.0	1.5	.....	.....	.....
On Road motor Vehicles-Light and Medium Duty Cars and Trucks (ARB)	14.4	26.8	39.1	16.8	26.4	35.3
On Road Motor Vehicles—Heavy Duty Trucks (??)	0.1	0.5	0.7	3.3	5.0	6.7
Off Road Mobile Sources (ARB)	0.1	0.1	0.2	3.8	7.8	9.5
Gasoline-Powered Recreational Boats—Exhaust Emission Standards (EPA)	0.7	1.6	3.6	(.1)	(.1)	(.2)
Stationary Internal Combustion Engines (9–8)	.....	.....	.....	1.0	1.0	0.9
Stationary Gas Turbines (9–9)	.....	.....	.....	0.9	0.9	0.8
Glass Melting Furnaces (9–12)	.....	.....	.....	0.2	0.2	0.1

G. Transportation Conformity Budgets

EPA's conformity rule, 40 CFR part 93, requires that transportation plans, programs, and projects conform to the SIP and establishes the criteria and procedures for determining whether or not they do conform. Conformity to a SIP means that transportation activities will produce no new air quality violations, will not worsen existing violations, and will not delay timely attainment of the NAAQS (CAA section 176(c)(1)). Transportation activities must not exceed the emissions budgets in the SIP.[10]

The 1999 Plan includes a budget of 175.2 tpd for VOC and 247.1 tpd for NO_X, both for the year 2000. These budgets are based on projected emissions for motor vehicles in the attainment year and take into account expected growth. Since we know that the attainment year emissions levels were insufficient to provide for attainment (See II.B. above) and the attainment assessment cannot be approved, the budgets that are based on those levels are inadequate and cannot be used for conformity purposes.[11] (See 40 CFR 93.118(e)).

H. Transportation Control Measure Deletions

The Bay Area's SIP currently includes 28 transportation control measures (TCMs) that were developed to reduce emissions from automobiles. The first 12 TCMs were approved into the SIP in 1983 when EPA approved the Bay Area's 1982 attainment plan (48 FR 57130, December 28, 1983). EPA approved TCMs numbered 13 through 28 in 1995 as part of the Bay Area Maintenance Plan (60 FR 27028, May 22, 1995).

TCMs, like other control measures, remain in the SIP and must continue to be implemented until they are either substituted or removed from the SIP in accordance with section 110(l) and, if applicable, section 193. (See also 64 FR 66832, November 30, 1999.) Section 110(l) states that the ''Administrator shall not approve a revision to a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress * * *;'' Substitution or removal of TCMs that are in a nonattainment plan and that were approved prior to 1990 or based on a plan established before 1990 must also ''insure equivalent or greater emission reductions'' (CAA section 193). For more information on TCM replacement and removal, please see 58 FR 62188, 62198 (Nov. 24, 1993).

The Bay Area's 1999 Plan proposes to remove four TCMs from the ozone SIP: TCMs 6, 11, 12, and 16. Two of the TCMs identified for removal were intended as carbon monoxide (CO) control measures and not ozone control measures. The Bay Area is therefore requesting to remove TCMs 11 and 12 from the SIP for ozone purposes but to keep them in the SIP for CO purposes. In addition, the Bay Area requests removal from the SIP of TCMs 6 and 16 because these measures require transit construction activities that have been completed, are permanent, and cannot be reversed.

EPA is proposing to approve the request to remove TCMs 11 and 12 from the Bay Area ozone SIP as the measures were not intended to provide ozone reductions and will remain in the SIP as part of the CO maintenance plan. In short, the requirement to implement them will continue.

EPA is also proposing to approve the deletion of TCMs 6 and 16 from the approved SIP. TCM 6 is a measure to improve light rail construction in the Guadalupe Corridor and various BART extensions. No emissions reductions were credited for TCM 6 in the SIP indicating that the TCM did not assume future implementation. EPA believes that the TCM 6 projects have been fully constructed, cannot be reversed, and that removal of TCM 6 will not result in the loss of any air quality benefit credited in the SIP. TCM 16 is a measure to extend BART to Colma. Unlike TCM 6, TCM 16 does take credit for emissions reductions, implying continued future operation of the Colma BART station. EPA is specifically requesting comment on our proposal to remove TCM 16 from the SIP, as the Colma BART extension has been constructed, and we believe, given the investment in the construction and future transportation needs in the area, its operation is certain to continue with or without TCM 16 remaining in the SIP.

TABLE 3.—TCMS PROPOSED FOR DELETION FROM THE SIP

TCM 6	Construction of Guadalupe light rail in Santa Clara County and design work for the North Concord BART extension and Warm Springs extension.
TCM 11	Gasoline Conservation Awareness Program (GasCAP).
TCM 12	Santa Clara Commuter Transportation Program.
TCM 16	Construction of BART extension to Colma.

[10] The Bay Area's conformity rules, which include consultation procedures, were approved into the SIP on October 21, 1997 (62 FR 54587).

[11] EPA proposed in 1999 to find these budgets adequate (64 FR 55220, October 12, 1999). Several public comments were received objecting to the proposal. Commenters argued that the budgets were not adequate to protect air quality and that they were not adequate to prevent environmental justice problems. The proposal was never finalized. Some of these same commenters are party to the January 8, 2001 lawsuit compelling EPA action on the 1999 plan, which is the subject of this notice. *Bayview Hunters Point Community Advocates et al.* v. *Whitman,* C 01 0050 BZ (N.D.Ca).

I. Environmental Justice

Environmental justice (EJ) was a significant issue in public comments to EPA on its proposal to find the conformity budgets in the 1999 submittal adequate (64 FR 55220, October 12, 1999). It has also been an issue in subsequent discussions between EPA and other parties regarding conformity budgets and air quality plans. These parties include community groups, local and State agencies, and the U.S. Department of Transportation (U.S. DOT).

Executive Order 12898 mandates that each federal agency ''[t]o the greatest extent practicable * * * shall make achieving environmental justice part of its mission.'' EPA intends to fulfill its obligation to avoid disproportionate adverse impacts on minority and low-income populations.

Some of the specific issues raised by commenters were that the budgets adopted by the local agencies and CARB were not sufficiently protective of air quality. They also argued that approving such budget caps would allow the area to increase driving substantially, and that this would have disproportionate adverse impacts on people and communities near major roads. Many members of these communities have low incomes and/or are people of color. Commenters also expressed objections to the budgets on the basis that they would decrease pressure on local agencies to increase transit ridership. They stated that this harms transit-dependent communities and public health.

EPA has made it clear to the State and local agencies that in developing a new air quality plan there must be a full public involvement process that provides opportunities to satisfy environmental justice concerns. The U.S. DOT has also issued guidance on environmental justice (''Implementing Title VI Requirements in Metropolitan and Statewide Planning'', Linton and Wykle, Administrators respectively of the Federal Transit Administration and the Federal Highway Administration). We believe that this means that the transportation planning process must include a comprehensive and transparent public component. MTC has just initiated an EJ Workgroup to begin addressing that need. The BAAQMD adopted ''Guiding Principles for Environmental Justice'' on May 12, 1999, including the principle to ''continue outreach and education programs to strengthen the public's ability to participate in the District's Plan and rule development * * *'' and has convened an environmental working group to advise it in implementing those principles. EPA will work with and support the local agencies and CARB in addressing these concerns and issues. EPA also intends to address EJ principles as appropriate in its review of and action on new air quality plan submittals and in reviewing transportation planning activities and commenting on them.

III. Summary of Proposed Action on the 1999 Plan

A. Proposed Approval

EPA is proposing to approve the following portions of the 1999 Plan: The baseline emissions inventory; the RFP demonstration through 2000; the commitment to achieve additional reductions from implementation of new control measures (see Table 1 above); and contingency measures for failure to attain in 2000 (see Table 2 above). EPA has determined that these plan elements meet the requirements of CAA section 172(c) and EPA's final redesignation rulemaking (63 FR 37258, July 10, 1998). EPA is also proposing to approve removal of TCMs 6, 11, 12, and 16 (see Table 3 above) from the SIP for ozone purposes as EPA has concluded that the removal is consistent with sections 110(l) and 193 of the CAA. EPA's evaluation of the baseline emissions inventory, RFP demonstration, control measure commitments, contingency measures, and TCM deletions are discussed in sections II.A., II.C., II.E., II.F., and II.H. above.

B. Proposed Disapproval

EPA is proposing to disapprove the attainment assessment contained in the 1999 Plan because monitoring information indicates that the area failed to attain the ozone NAAQS by November 15, 2000 (CAA section 172(c)(1) and (2)). EPA is proposing this disapproval without issuing a protective finding for the motor vehicle emissions budgets contained in the 1999 Plan because the attainment assessment did not provide for attainment in 2000. EPA can only issue a protective finding for budgets from an attainment SIP that is based on control measures that fully satisfy statutory requirements for demonstrating attainment. EPA is also proposing to disapprove the RACM demonstration as not meeting the requirements of CAA section 172(c)(1). EPA's evaluation of the attainment assessment, emissions budgets, and RACM and reasons for proposed disapproval of these plan elements are discussed in sections II.B., II. D. and II.G. above.

C. Consequences of the Proposed Disapproval

The CAA establishes specific consequences if EPA disapproves a state plan. Section 179(a) sets forth four findings that form the basis for application of mandatory sanctions, including disapproval by EPA of a state's submission based on its failure to meet one or more required CAA elements. EPA has issued a regulation, codified at 40 CFR 51.31, interpreting the application of sanctions under section 179 (a) and (b).

If EPA has not approved a SIP revision correcting the deficiency within 18 months of the effective date of a final disapproval rulemaking, pursuant to CAA section 179(a) and 40 CFR 52.31, the offset sanction identified in CAA section 179(b) will be applied in the affected area. If EPA has still not approved a SIP revision correcting the deficiency 6 months after the offset sanction is imposed, then the highway funding sanction will also apply in the affected area, in accordance with 40 CFR 52.31. In addition, CAA section 110(c)(1) provides that EPA must promulgate a FIP no later than 2 years after a finding under section 179(a) unless EPA takes final action to approve a revised plan correcting the deficiency within 2 years of EPA's findings.

For more details on the timing and implementation of the sanctions, see 59 FR 39859 (August 4, 1994), promulgating 40 CFR 52.31, ''Selection of sequence of mandatory sanctions for findings made pursuant to section 179 of the Clean Air Act.'' There are, however, certain exceptions to the general rule for the application of sanctions described above. The reader is referred to 40 CFR 52.31(d) for the circumstances under which the application of sanctions may be stayed or deferred.

In addition, one of the conformity consequences of the plan disapproval without a protective finding is commencement of a transportation conformity freeze. Under a conformity freeze, the area can proceed only with transportation projects included in the first three years of the current transportation plan and transportation improvement program (TIP) or with exempt projects. No new or amended transportation plans or TIPs can be adopted until the freeze is lifted. This would mean that no significant changes could be made to the design concept or scope of projects in the existing Regional Transportation Plan (RTP) or TIP. If the area submits a new attainment assessment with associated motor vehicle emissions budgets for

VOC and NO_X, the freeze will be lifted once EPA finds the new attainment budgets to be adequate. Note that the conformity freeze would not begin until the effective date of the final plan disapproval. (62 FR 43796, August 15, 1997 and EPA guidance memorandum from Gay McGregor, Director, Regional and State Programs Division, Office of Mobile Sources, to EPA Regional Air Offices entitled, ''Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision,'' dated May 14, 1999, p. 9.)

The Bay Area's current RTP is scheduled to expire in January 2002, if it is not updated by then. If a conformity freeze is in effect when the current transportation plan or program expires, then a conformity lapse will result. A new transportation plan and TIP would need to be approved to end the conformity lapse, but as discussed above, a new plan and TIP cannot be approved until the conformity freeze is lifted. Under a conformity lapse, no transportation projects can proceed except for safety projects, transit projects, projects using transit operating funds, and projects implementing TCMs in the approved SIP.

D. Correcting the Deficiencies

In order to correct the deficiencies, the State must submit a new RACM demonstration, a new attainment assessment and new motor vehicle emissions budgets that remedy the deficiencies noted above, and are otherwise approvable under section 110 of the Act. Because the 2000 attainment deadline has already passed and EPA is proposing to make a finding that the Bay Area has failed to attain that deadline, the new attainment deadline would be governed by section 179(d)(3). Thus the new attainment assessment must demonstrate attainment ''as expeditiously as practicable'' but no later than 5 years from the finding of failure to attain. See section IV.C. of this proposal for further details on the requirements for the new plan.

IV. Proposed Finding of Failure To Attain

A. Clean Air Act Requirements for Attainment Findings Under Part D, Subpart 1

Under CAA section 179(c), we must determine within six months of the applicable attainment date whether an ozone nonattainment area has attained the 1-hour ozone standard. As noted above, the 1-hour ozone NAAQS is 0.12 ppm not to be exceeded on average more than one day per year over any three year period. We determine if an area has attained the 1-hour standard by calculating, at each monitor, the average number of days per year during the preceding three year period that the area has monitored levels above the standard. 40 CFR part 50, appendix H. This means that if an area has four or more exceedances at a single monitor during a three-year period, the average number of exceedance days per year exceeds one and the area has not attained the standard.

B. The Bay Area Failed To Attain by Its CAA Deadline

Table 5 lists each monitoring site in the Bay Area nonattainment area that experienced four or more days over the standard in the period 1998 to 2000. The table lists the number of days over the standard in all three years as well as the three-year average. For each of these sites, the average number of exceedance days per year over the three-year period 1998–2000 exceeds one.

TABLE 4.—OZONE AIR QUALITY IN THE SAN FRANCISCO BAY AREA NONATTAINMENT AREA (1999–2000)

Monitoring station	Exceedance days 1998	Exceedance days 1999	Exceedance days 2000	Average number of exceedance days per year 1998–2000
Concord	2	2	1	1.7
Livermore	6	2	2	3.3
San Martin	3	1	0	1.3

C. Consequences of Failure To Attain

Under section 179(d) of the Act, areas that fail to attain are required to submit a revision to the SIP that meets the requirements of CAA sections 110 and 172, including, but not limited to: (1) Demonstrations of attainment and RFP; (2) all reasonably available control measures (RACM); (3) baseline and attainment year inventories; and (4) motor vehicle emissions budgets. The plan must be submitted no later than one year after EPA publishes its final finding (CAA section 179(d)(1)).

Such a plan must demonstrate attainment as expeditiously as practicable, but no later than five years from the date of the final notice (CAA section 179(d)(3)). If the attainment deadline is before 2005, we propose that post-2000 RFP can be satisfied by implementing the reductions needed for attainment by the attainment date. If the attainment deadline is 2005 or later, EPA is proposing that the RFP requirement can be satisfied by phasing in 50% of the needed reductions half way between the time of the attainment demonstration and the attainment date.

At the same time that the State submits the plan described above, it must also submit new contingency measures meeting the requirements of CAA section 172(c)(9).

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted these regulatory actions from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 13132

Executive Order 13132, ''Federalism,'' (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, ''Federalism,'' and 12875, ''Enhancing the Intergovernmental Partnership.'' Executive Order 13132 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'' is 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.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal

government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

These proposed actions will not have substantial direct effects on California, on the relationship between the national government and California, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The proposed actions do not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to these proposed actions.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13175

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements 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 not-for-profit enterprises, and small governmental jurisdictions.

EPA's proposed partial approval/partial disapproval of the Bay Area SIP revision under section 110 and subchapter I, part D of the Clean Air Act does not affect any existing requirements applicable to small entities. Any pre-existing federal requirements remain in place after this partial approval/partial disapproval. Federal disapproval of the state submittal does not affect state-enforceability. Moreover, EPA's partial approval/partial disapproval of the submittal does not impose any new Federal requirements. EPA's proposed finding of failure to attain also does not impose additional requirements on small entities. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

F. Unfunded Mandates

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed actions do not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This proposed partial approval/partial disapproval acts on pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

With respect to the proposed finding of EPA's failure to attain, EPA notes that action in and of itself establishes no new requirements, and EPA believes that it is questionable whether a requirement to submit a SIP revision constitutes a federal mandate. The obligation for a State to revise its SIP arises out of sections 110(a) and 179(d) of the CAA and is not legally enforceable by a court of law, and at most is a condition for continued receipt of highway funds. Therefore, it is possible to view an action requiring such a submittal as not creating any enforceable duty within the meaning of section 421(5)(9a)(I) of UMRA (2 U.S.C. 658(a)(I)). Even if it did, the duty could be viewed as falling within the exception for the condition of Federal assistance under section 421(5)(a)(i)(I) of UMRA (2 U.S.C. 658(5)(a)(i)(I)).

In addition, even if the obligation for a State to revise its SIP does create an enforceable duty within the meaning of UMRA, this action does not trigger section 202 of UMRA because the aggregate to the State, local, and tribal governments to comply are less than $100,000,000 in any one year. Because this action does not trigger section 202 of UMRA, the requirement in section 205 of UMRA that EPA identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most effective, or least burdensome alternative that achieves the objectives of the rule is not applicable.

Furthermore, EPA is not directly establishing any regulatory requirements that may significantly impact or uniquely affect small governments, including tribal governments. Thus, EPA is not obligated to develop under section 203 of UMRA a small government agency plan.

G. National Technology Transfer and Advancement Act of 1995 (NTTAA)

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: March 21, 2001.

Michael Schulz,

Acting Regional Administrator, Region IX.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 010111010–1010–01; I.D. 113000B]

RIN 0648-AO42

International Fisheries Regulations; Pacific Tuna Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; implementation of Inter-American Tropical Tuna Commission (IATTC) recommendations to reduce bycatch in the purse seine fishery and to establish a regional vessel register.

SUMMARY: NMFS proposes fishery conservation and management measures for the purse seine fishery in the eastern Pacific Ocean (EPO) to reduce bycatch of juvenile tuna, non-target fish species, and non-fish species. The measures were recommended by the IATTC and approved by the Department of State (DOS), in accordance with the Tuna Conventions Act of 1950. These proposed regulations are intended to ensure that U.S. fisheries are conducted according to the IATTC's recommendations, as approved by the DOS. In addition, the proposed rule would establish reporting requirements for U.S. vessels fishing for tuna in the EPO so that NMFS can provide information to the IATTC for a regional vessel register. This will promote more consistent compliance across all member nations.

DATES: Comments must be submitted by April 30, 2001. A public hearing will be held on this action in San Diego, CA and announced by NMFS in a separate document.

ADDRESSES: Comments on the proposed rule should be sent to Dr. Rebecca Lent, Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802. Send comments regarding the reporting burden estimate or any other aspect of the collection-of-information requirements in this proposed rule to the NMFS address and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 00503 (Attn: NOAA Desk Officer). Copies of the Environmental Assessment/Initial Regulatory Flexibility Analysis (IRFA) are available from Svein Fougner at the NMFS address.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, Sustainable Fisheries Division, Southwest Region, NMFS, 562–980–4030.

SUPPLEMENTARY INFORMATION: The United States is a member of the IATTC, which was established under the Convention for the Establishment of an Inter-American Tropical Tuna Commission signed in 1949. The IATTC was established to provide an international arrangement to ensure conservation and management of yellowfin and other fish species taken by tuna fishing vessels in the EPO (also known as the Convention Area), which is generally described as the waters bounded by the coast of the Americas, 40° N. lat., 150° W. long., and 40° S. lat. The IATTC has maintained a scientific research and fishery monitoring program for many years and annually assesses the status of tuna stocks and conditions in the fisheries to determine appropriate harvest levels or other measures to prevent overexploitation and promote maximum sustainable yield. The IATTC also has recently devoted increasing time and resources to assessing the need for and recommending conservation and management measures to deal with problems such as bycatch in the tuna fisheries.

At its annual meeting in June 2000, the IATTC adopted a resolution that recommended a number of measures to address concerns about bycatch in the purse seine fishery. First, the IATTC agreed to a 1-year pilot project in which all purse seine vessels must retain on board and land all bigeye, skipjack, and yellowfin tuna caught, except fish considered unfit for human consumption for reasons other than size, in order to provide fishermen with a disincentive to capture small tuna. That is, requiring full retention would fill the vessel earlier such that total fishing mortality from a full vessel would represent fewer dead fish than if discard of dead juvenile fish had allowed further fishing on a trip. A single exception would be the final set of a trip, when there might be insufficient well space to accommodate all fish caught in the net.

In addition, the IATTC recommendation calls for requiring purse seine fishers to promptly release all sea turtles, sharks, billfishes, rays, mahimahi, and other non-target species. The recommendation also specifies measures to handle and release encircled or entangled sea turtles. These include stationing a speedboat close to the net whenever a sea turtle is sighted in the net in order to assist in the release of the turtle; ceasing net roll if a turtle is entangled in the net, and not resuming net roll until the turtle has been disentangled and released; and if necessary, resuscitating before releasing a turtle that is brought aboard the vessel.

The IATTC staff would evaluate the effects and effectiveness of the pilot program and provide advice as to whether the program should be extended, modified, or replaced by alternative measures. DOS approved this recommendation.

At its June meeting, the IATTC also adopted a resolution to establish a regional vessel register. The vessel register would include all commercial vessels fishing for tuna in the Convention Area. Thus, purse seine, troll, harpoon, drift gillnet, and longline vessels would be included on this register. Charter and commercial passenger fishing vessels would not be included on the register. The register is intended to promote better and more consistent national monitoring and enforcement of IATTC recommendations and thus promote compliance with those recommendations. It also would provide a sound basis for identifying vessels that