

076°31'05.2" W thence to the north shoreline at latitude 39°00'54.7" N, longitude 076°30'44.8" W, this line is approximately 1300 yards northwest of the U.S. 50 fixed highway bridge. The regulated area is bounded to the southeast by a line drawn from the Naval Academy Light at latitude 38°58'39.5" N, longitude 076°28'49" W thence southeast to a point 700 yards east of Chinks Point, MD at latitude 38°58'1.9" N, longitude 076°28'1.7" W thence northeast to Greenbury Point at latitude 38°58'29" N, longitude 076°27'16" W. All coordinates reference Datum NAD 1983.

\* \* \* \* \*

(c) *Enforcement period.* (1) This section will be enforced during, and 30 minutes before each of the following annual events:

\* \* \* \* \*

#### § 100.518 [Suspended]

3. From March 1, 2006 through June 1, 2006, suspend § 100.518.

4. From March 1, 2006 through June 1, 2006, add temporary § 100.35–T06–007 to read as follows:

#### § 100.35–T06–007, Severn River, College Creek, Weems Creek and Carr Creek, Annapolis, Maryland.

(a) *Regulated area.* (1) The regulated area is established for the waters of the Severn River from shoreline to shoreline, bounded to the northwest by a line drawn from the south shoreline at latitude 39°00'38.9" N, longitude 076°31'05.2" W thence to the north shoreline at latitude 39°00'54.7" N, longitude 076°30'44.8" W, this line is approximately 1300 yards northwest of the U.S. 50 fixed highway bridge. The regulated area is bounded to the southeast by a line drawn from the Naval Academy Light at latitude 38°58'39.5" N, longitude 076°28'49" W thence southeast to a point 700 yards east of Chinks Point, MD at latitude 38°58'1.9" N, longitude 076°28'1.7" W thence northeast to Greenbury Point at latitude 38°58'29" N, longitude 076°27'16" W. All coordinates reference Datum NAD 1983.

(b) *Definitions.* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Sector Hampton Roads.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Hampton Roads with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(c) *Special local regulations.* (1) Except for persons or vessels authorized

by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the immediate vicinity of the regulated area shall:

(i) Stop the vessel immediately when directed to do so by any Official Patrol and then proceed only as directed.

(ii) All persons and vessels shall comply with the instructions of the Official Patrol.

(3) Any spectator vessel may anchor outside of the regulated area specified in paragraph (a)(1) of this section but may not block a navigable channel.

(d) *Enforcement period.* (1) This section will be enforced from 5 a.m. to 6 p.m. on those days and if the event's daily activities should conclude prior to 6 p.m., enforcement of this proposed regulation may be terminated for that day at the discretion of the Patrol Commander. Enforcement will be during, and 30 minutes before each of the following annual events:

(i) Safety at Sea Seminar, April 1, 2006;

(ii) Naval Academy Crew Races, March 25, April 15, April 22, April 23, May 12 and May 28, 2006;

(iii) Blue Angels Air Show, May 23 and May 24, 2006.

(2) The Commander, Fifth Coast Guard District will publish a notice in the Fifth Coast Guard District Local Notice to Mariners announcing the specific event times.

(e) *Effective period.* This section is effective from March 1, 2006 through June 1, 2006.

Dated: January 23, 2006.

Larry L. Hereth,

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

[FR Doc. E6–1738 Filed 2–8–06; 8:45 am]

BILLING CODE 4910–15–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 51

[EPA–HQ–OAR–2005–0175; FRL–8030–6]

### Transition to New or Revised Particulate Matter (PM); National Ambient Air Quality Standards (NAAQS)

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

**ACTION:** Advance Notice of Proposed Rulemaking (ANPR).

**SUMMARY:** The EPA recently issued a notice of proposed revisions to the national ambient air quality standards

(NAAQS) for particulate matter (PM). EPA will take final action on the proposal by September 27, 2006. This notice provides advance notice of key issues for consideration in the development of potentially new or revised policies and/or regulations to implement revisions to the NAAQS for PM recognizing that no final decision has been made concerning whether or how to revise the PM NAAQS. The EPA is posing a number of questions related to the transition from the current to potentially revised PM<sub>2.5</sub> standards, as well as the transition from the current PM<sub>10</sub> standards to potentially new PM<sub>10–2.5</sub> standards. In this ANPR, EPA is soliciting comment on the Agency's preferred approaches to revocation of the 1997 PM<sub>2.5</sub> standards once any new 2006 PM<sub>2.5</sub> standards would be in place, and also approaches to revocation of the 24-hour PM<sub>10</sub> standard in areas where it would remain after promulgation of any new PM<sub>10–2.5</sub> standards. The EPA is also highlighting and providing preliminary thinking on how to address some of the key New Source Review (NSR) issues related to the new PM<sub>10–2.5</sub> standards, and the transition from PM<sub>10</sub> standards to PM<sub>10–2.5</sub> standards. Finally, EPA is requesting comment on potential timeframes for designations, attainment demonstrations and State Implementation Plan (SIP) submittals and attainment dates for both any new PM<sub>2.5</sub> and PM<sub>10–2.5</sub> standards.

**DATES:** Comments must be received on or before April 10, 2006.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2005–0175, by one of the following methods:

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

- E-mail: [A-and-R-Docket@epa.gov](mailto:A-and-R-Docket@epa.gov), Attention Docket ID No. EPA–HQ–OAR–2005–0175.

- Fax: Fax your comments to (202) 566–1741, Attention Docket ID. No. EPA–HQ–OAR–2005–0175.

- Mail: Docket EPA–HQ–OAR–2005–0175 Environmental Protection Agency, Mail Code: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460. Please include a total of two copies.

- Hand Delivery: Deliver your comments to: Air Docket, Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B102, Washington, DC 20004, Attention Docket ID No. EPA–HQ–OAR–2005–0175. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA-HQ-OAR-2005-0175. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For further information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>. For additional instruction on submitting a comment, go to "What Should I Consider as I Prepare My Comments for the EPA?" of the **SUPPLEMENTARY INFORMATION** section of this document.

**Docket:** All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the EPA Docket Center, EPA/DC, EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. A

reasonable fee may be charged for copying. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

**FOR FURTHER INFORMATION CONTACT:** For questions regarding PM implementation issues, contact Ms. Barbara Driscoll, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Mail Code C504-02, Research Triangle Park, NC 27711, phone number (919) 541-1051 or by e-mail at: [driscoll.barbara@epa.gov](mailto:driscoll.barbara@epa.gov). Regarding NSR issues, contact Raj Rao, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Mail Code C339-03, Research Triangle Park, NC 27711, phone number (919) 541-5344 or by e-mail at [rao.raj@epa.gov](mailto:rao.raj@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **How Should I Submit CBI to the Agency?**

Do not submit information that you consider to be CBI through <http://www.regulations.gov> or e-mail. Clearly mark the part or all of the information that you claim to be CBI.

For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. Send or deliver information identified as CBI only to the following address: Roberto Morales, U.S. EPA, Office of Air Quality Planning and Standards, Mail Code C404-02, Research Triangle Park, NC 27711, telephone (919) 541-0880, e-mail at [morales.roberto@epa.gov](mailto:morales.roberto@epa.gov), Attention Docket ID No. EPA-HQ-OAR-2005-0175.

##### **What Should I Consider as I Prepare My Comments for EPA?**

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

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**I. What Actions Related to the PM NAAQS Have Recently Been Proposed or Will Soon Be Proposed Which Relate to This Notice?**

This ANPR is intended to solicit input into key issues related to the transition to any new or revised NAAQS for PM. The EPA has proposed two rulemakings, the NAAQS for Particulate Matter; Proposed Rule (71 FR 2620, January 17, 2006) and the Revisions to Ambient Air Monitoring Regulations (71 FR 2710, January 17, 2006), and will be proposing another rulemaking, Treatment of Data Influenced by Exceptional Events (anticipated to be published by March 2006). These proposals are summarized here to provide background for the issues and questions raised in this document. The EPA is not taking comment on these actions here. Rather, if you have comments, you should submit them to the docket for the proposed rulemaking to which they are applicable, following the procedures described in each proposal.

*A. National Ambient Air Quality Standards for Particulate Matter*

On December 20, 2005, the Administrator signed a notice proposing revisions to the primary and secondary NAAQS for PM, which was published on January 17, 2006 (71 FR 2620). The proposal can be found at: <http://www.epa.gov/oar/particlepollution/actions.html>. For the primary standards for fine particles (particles generally less than or equal to 2.5 micrometers (µm) in diameter, or PM<sub>2.5</sub>), EPA proposed to revise the level of the 24-hour PM<sub>2.5</sub> standard from 65 micrograms per cubic meter (µg/m<sup>3</sup>) to 35 µg/m<sup>3</sup>, providing increased protection against health effects associated with short-term exposure (including premature mortality and increased hospital admissions and emergency room visits)

and to retain the level of the annual PM<sub>2.5</sub> standard at 15 µg/m<sup>3</sup>, continuing protection against health effects associated with long-term exposure (including premature mortality and development of chronic respiratory disease). The EPA is also taking comment on alternative NAAQS levels. Additionally, EPA proposed to revise the criteria for spatial averaging of monitors for purposes of the annual PM<sub>2.5</sub> standard.

In addition, for the primary standards for coarse particles generally less than or equal to 10µm in diameter (PM<sub>10</sub>), EPA proposed to revise the 24-hour PM<sub>10</sub> standard in part by establishing a new indicator for thoracic coarse particles (particles generally between 2.5 and 10µm in diameter, PM<sub>10-2.5</sub>), qualified so as to include any ambient mix of PM<sub>10-2.5</sub> that is dominated by resuspended dust from high-density traffic on paved roads and PM generated by industrial sources and construction sources, and exclude any ambient mix of PM<sub>10-2.5</sub> that is dominated by rural windblown dust and soils and PM generated by agricultural and mining sources. The EPA also proposed that agricultural sources, mining sources and other similar sources of crustal material shall not be subject to control in meeting the proposed standard. The EPA proposed to set the new PM<sub>10-2.5</sub> standard at a level of 70 µg/m<sup>3</sup>, continuing to provide a generally equivalent level of protection against health effects associated with short-term exposure (including hospital admissions for cardiopulmonary diseases, increased respiratory symptoms and possibly premature mortality).

In addition, EPA proposed to revoke the annual PM<sub>10</sub> standard everywhere, and the 24-hour PM<sub>10</sub> standard everywhere except in areas where there is at least one monitor that is located in an urbanized area<sup>1</sup> with a minimum population of 100,000 people and that violates the 24-hour PM<sub>10</sub> standard based on the most recent 3 years of data. This revocation of the PM<sub>10</sub> standards would become effective upon promulgation of the PM<sub>10-2.5</sub> NAAQS (expected to be December 2006). In the January 17, 2006, notice, the Agency provided a specific list of areas where the 24-hour PM<sub>10</sub> standard would not be

<sup>1</sup> As defined by the U.S. Bureau of the Census, an urbanized area has "a minimum residential population of at least 50,000 people" and generally includes "core census block groups or blocks that have a population density of at least 1,000 people per square mile and surrounding census blocks that have an overall density of at least 500 people per square mile." The Census Bureau notes that "under certain conditions, less densely settled territory may be part of each UA." See [http://www.census.gov/geo/www/ua/ua\\_2k.html](http://www.census.gov/geo/www/ua/ua_2k.html).

revoked under the proposal based on the most recent 3 years of data. EPA proposed to revoke the 24-hour PM<sub>10</sub> standard in all other areas. In addition, EPA requested comment on whether the 24-hour PM<sub>10</sub> standard should be retained in additional areas that are either urbanized areas with populations less than 100,000 people or non-urbanized areas (i.e., populations less than 50,000) but where the majority of the ambient mix of PM<sub>10-2.5</sub> is generated by high density traffic on paved roads, industrial sources, and construction sources, and which have at least one monitor that violated the 24-hour PM<sub>10</sub> standard based on the most recent 3 years of data.

For the secondary PM standards, EPA proposed to revise the current standards by making them identical to the suite of proposed primary standards for fine and coarse particles.

*B. Revisions to Ambient Air Monitoring Regulations*

At the same time EPA proposed revisions to the PM NAAQS, EPA also proposed Revisions to the Ambient Air Monitoring Regulations (71 FR 2710, January 17, 2006) for criteria pollutants to support the proposed revisions to the NAAQS. The proposal can be found at: <http://www.epa.gov/oar/particlepollution/actions.html>. Included among the proposed PM-related changes are new provisions to be added to 40 CFR parts 53 and 58 which address approval of monitoring methods and PM<sub>10-2.5</sub> monitoring requirements. The added provisions in part 53 would address approval of PM<sub>10-2.5</sub> filter-based Federal Reference Method (FRM) samplers and both filter-based and continuous Federal Equivalent Method (FEM) monitors. Provisions in part 58 would provide the monitoring requirements for a PM<sub>10-2.5</sub> network, including the minimum number of monitors a State must deploy. In addition, the proposal adds provisions for the conditions under which a PM<sub>10-2.5</sub> monitor may be compared to the PM<sub>10-2.5</sub> NAAQS.

The proposal also amends a number of existing provisions for PM<sub>2.5</sub> monitoring, including changing the criteria for FEM equivalency determinations for continuous PM<sub>2.5</sub> monitors. This should allow States to operate continuous monitors at more required monitoring sites, thereby providing more robust data for the PM<sub>2.5</sub> air quality program.

*C. Treatment of Data Influenced by Exceptional Events*

The EPA will soon propose a rule to govern the review and handling of air

quality monitoring data influenced by exceptional events. Section 319 of the Clean Air Act (CAA) defines an event as an exceptional event if the event affects air quality; is not reasonably controllable or preventable; is a natural event, or an event caused by human activity that is unlikely to recur at a particular location; and is determined by the Administrator to be an exceptional event. The EPA will be proposing procedures and criteria related to the identification, evaluation, interpretation and use of air quality monitoring data related to the NAAQS where State air quality agencies petition EPA to exclude, in whole or in part, air quality data that are directly affected by exceptional events. Section 319 of the CAA, as amended by section 6013 of the Safe Accountable Flexible Efficient-Transportation Equity Act (SAFE-TEA) of 2005, requires EPA to publish a proposed rule in the **Federal Register**, no later than March 1, 2006.

## II. What Is EPA's Strategy for Addressing PM?

Our overall strategy for achieving the PM primary and secondary standards is based on the structure outlined in the CAA. The CAA outlines important roles for State and Tribal governments and for EPA in implementing NAAQS.

States have primary responsibility for developing and implementing SIPs that contain local and in-State measures needed to achieve the air quality standards in each area. We assist States and Tribes by providing technical tools, assistance and guidance, including information on potential control measures. The EPA recently issued a Proposed rule to Implement the Fine Particle NAAQS (70 FR 65984) to support implementation of the 1997 PM<sub>2.5</sub> NAAQS. In addition, we set national emissions standards/limits for some sources, such as new motor vehicles, certain categories of major new sources, and existing stationary sources of toxic air pollutants, all of which may obtain reductions in PM. Where upwind sources (such as coal-fired power plants) significantly contribute to downwind problems in other States or tribal areas, we can issue Federal regulations to ensure that the upwind States address these contributing emissions (such as the Clean Air Interstate Rule), or we can put in place Federal regulations in situations where the upwind States fail to address these sources.

### A. The State Implementation Plan (SIP) System

A SIP is the compilation of regulations and programs that a State

uses to carry out its responsibilities under the CAA, including the attainment, maintenance, and enforcement of the NAAQS. States use the SIP process to identify the emissions sources that contribute to the nonattainment problem in a particular area, and to select the emissions reductions measures most appropriate for that area, considering technical and economic feasibility, and a variety of local factors such as population exposure, enforceability, and economic impact. Under the CAA, SIPs must ensure that areas reach attainment as expeditiously as practicable. These plans take into consideration emissions reductions resulting from national programs (such as mobile source regulations, the acid rain program, or maximum achievable control technology (MACT) standards for air toxics), as well as from State or local programs not directly mandated under the CAA.

### B. National Rules

As described in a recent EPA report, *The Particle Pollution Report: Current Understanding of Air Quality and Emissions through 2003*,<sup>2</sup> State and Federal programs have made substantial progress in reducing ambient concentrations of PM<sub>10</sub> and PM<sub>2.5</sub>. For example, PM<sub>10</sub> concentrations have decreased 31 percent nationally since 1988. Regionally, PM<sub>10</sub> concentrations decreased most in areas with historically higher concentrations—the Northwest (39 percent decline), the Southwest (33 percent decline), and southern California (35 percent decline). Direct emissions of PM<sub>10</sub> have decreased approximately 25 percent nationally since 1988.

Programs aimed at reducing direct emissions of particles have played an important role in reducing PM<sub>10</sub> concentrations, particularly in western areas. Some examples of PM<sub>10</sub> controls include paving unpaved roads and using best management practices for agricultural sources of resuspended soil. Of the 87 areas that were designated nonattainment for PM<sub>10</sub> in the early 1990's, 64 now meet those standards. In cities that have not attained the PM<sub>10</sub> standards, the number of times the standard is exceeded is down significantly.

National programs that affect regional emissions have contributed to lower

sulfate concentrations and, consequently, to lower PM<sub>2.5</sub> concentrations, particularly in the Industrial Midwest and Southeast. National ozone-reduction programs designed to reduce emissions of volatile organic compounds (VOCs) and nitrogen oxides (NO<sub>x</sub>) also have helped reduce carbon and nitrate particles, both of which are components of PM<sub>2.5</sub>. Power plant emissions of sulfur dioxide dropped 33% from 1990 to 2003, largely as a result of EPA's Acid Rain Program. Nationally, SO<sub>2</sub> emissions have declined 9 percent, NO<sub>x</sub> emissions have declined 9 percent, and VOC emissions have declined by 12 percent from 1999 to 2003. In eastern States affected by the Acid Rain Program, sulfates decreased 7 percent over the same period.

Over the next 10 to 20 years, national and regional regulations will make major reductions in ambient PM<sub>2.5</sub> levels. The Clean Air Interstate Rule (CAIR) and the NO<sub>x</sub> SIP Call will reduce SO<sub>2</sub> and NO<sub>x</sub> emissions from electric generating units and industrial boilers across the eastern half of the U.S., regulations to implement the current ambient air quality standards for PM<sub>2.5</sub> will likely result in direct PM<sub>2.5</sub> and PM<sub>2.5</sub> precursor controls in nonattainment areas, and new national mobile source regulations affecting off-highway diesel engines, highway gasoline and diesel vehicles, and other mobile sources will reduce emissions of NO<sub>x</sub>, direct PM<sub>2.5</sub>, SO<sub>2</sub>, and VOCs. The EPA estimates that these Federal regulations for stationary and mobile sources will cut SO<sub>2</sub> emissions by 6 million tons annually in 2015 from 2001 levels. Emissions of NO<sub>x</sub> will be cut by 9 million tons annually in 2015 from 2001 levels. Emissions of VOCs will drop by 3 million tons, and direct PM<sub>2.5</sub> emissions will be cut by 200,000 tons in 2015, compared to 2001 levels.

## III. How Should EPA Implement the Transition From the 1997 PM<sub>2.5</sub> NAAQS to Any New 2006 PM<sub>2.5</sub> NAAQS?

### A. What Is the Status of Areas Designated Under the 1997 PM<sub>2.5</sub> NAAQS?

On April 5, 2005, nonattainment designations became final for 39 nonattainment areas. These areas were designated based on air quality data from 2001–2003 and 2002–2004. Nationally, PM<sub>2.5</sub> concentrations have declined by 10 percent from 1999 to 2003. Generally, PM<sub>2.5</sub> concentrations have also declined the most in regions with the highest concentrations—the Southeast (20 percent decline), southern California (16 percent decline), and the

<sup>2</sup> Environmental Protection Agency (2004). The Particle Pollution Report: Current Understanding of Air Quality and Emissions through 2003. Office of Air Quality Planning and Standards; Emissions, Monitoring, and Analysis Division, Research Triangle Park, NC 27711; report no. EPA-454-R-04-002. December 2004.

Midwest (9 percent decline)—with the exception of the Northeast, where PM<sub>2.5</sub> concentrations increased by 1%. Direct emissions of PM<sub>2.5</sub> have decreased by 5 percent nationally over the past 5 years.

Modeling done by EPA indicates that by 2010, 18 of the 39 areas currently not attaining the 1997 PM<sub>2.5</sub> standards should come into attainment of those standards just based on regulatory programs already in place, including CAIR, the Clean Diesel Rules, and other Federal measures. Four more PM<sub>2.5</sub> areas are projected to attain the standards by 2015 based on the implementation of these programs. All areas in the eastern U.S. will have lower PM<sub>2.5</sub> concentrations in 2015 relative to present-day conditions. In most cases, the predicted improvement in PM<sub>2.5</sub> ranges from 10 percent to 20 percent.

*B. How Might EPA Implement the Transition From the 1997 PM<sub>2.5</sub> NAAQS to Any New 2006 PM<sub>2.5</sub> NAAQS?*

The EPA has evaluated several options for the transition from the 1997 PM<sub>2.5</sub> standards to any new 2006 PM<sub>2.5</sub> standards, and is elaborating on two potential options. Should the Agency decide to revise the current PM<sub>2.5</sub> standards, then either of the following two options would continue the momentum and continuity of the existing implementation program as areas look to reduce ambient PM<sub>2.5</sub> concentrations to meet the current and revised PM<sub>2.5</sub> NAAQS. Any suggested alternatives to these approaches should demonstrate how it will continue the momentum and continuity of the implementation program.

1. PM<sub>2.5</sub> NAAQS Option 1

Option 1 recognizes that the only proposed change to the 1997 annual PM<sub>2.5</sub> standard is a change in the application of spatial averaging (71 FR 2620). Because the EPA believes that the proposed change, if adopted, would not be significant enough to require new designations under section 107(d), we are soliciting comment on whether it would be appropriate to view this revision as minor, thus not requiring a designation process. Even though section 107(d) calls for EPA to commence the designation process for “any new or revised NAAQS,” exceptions could be made for revisions to a NAAQS of a *de minimis* or insignificant nature such that they should not lead to the initiation of the designation process and consequent establishment of new SIP submission and attainment deadlines. Option 1 would be considered only if EPA finalized a revision to the annual PM<sub>2.5</sub> standard that was of such a minor

nature as the proposed revision. It would not be available if EPA revised the standard more substantially.

Following this path, EPA would propose not to revoke the 1997 annual PM<sub>2.5</sub> standard, and would propose to revoke the 1997 24-hour PM<sub>2.5</sub> standard 1 year after designations are finalized under any new 2006 PM<sub>2.5</sub> standard. With the exception of 2 areas in California (South Coast Air Quality District and San Joaquin Valley) all areas designated as nonattainment for PM<sub>2.5</sub> were only violating the annual standard. Under this path, new nonattainment designations would only be made for the areas which do not meet any new 2006 24-hour PM<sub>2.5</sub> standard. Therefore, areas which are designated nonattainment for the 1997 annual PM<sub>2.5</sub> standard would continue to develop and implement their SIPs based on a final implementation rule for the PM<sub>2.5</sub> NAAQS (proposed on November 1, 2005 at 70 FR 65984). Areas which are newly designated nonattainment under any new 24-hour PM<sub>2.5</sub> standard would submit a SIP by April 2013 following the proposed schedule in part IV.C below. This approach would maintain the momentum in the PM<sub>2.5</sub> SIP development and implementation program. It would also not require the development and implementation of an anti-backsliding rule to maintain progress in the program, as no areas are in nonattainment based solely on the 24-hour PM<sub>2.5</sub> standard. Therefore control measures would still be in place under the approved PM<sub>2.5</sub> SIPs.

2. PM<sub>2.5</sub> NAAQS Option 2

Option 2 varies from Option 1 in that EPA would revoke the 1997 annual and 24-hour PM<sub>2.5</sub> standards 1 year after designations under any new 2006 PM<sub>2.5</sub> standards. This approach is similar to that promulgated under the ozone program (69 FR 23951, April 30, 2004) for the revocation of the 1-hour ozone standard one year after designations under the 8-hour ozone standard. Following this path, EPA would develop and implement an “anti-backsliding” rule to ensure that SIP control measures developed and adopted under the 1997 PM<sub>2.5</sub> NAAQS remained in place until SIPs could be submitted and approved to meet any new 2006 PM<sub>2.5</sub> standards. In the anti-backsliding rule, EPA would address issues similar to those addressed in the anti-backsliding rule adopted as part of the transition from implementation of the 1-hour ozone standard to the 8-hour ozone standard including: (1) Which planning and control requirements should remain in effect; (2) effect of the revised standards on the New Source

Review (NSR) program; and (3) how the transition would affect general and transportation conformity programs. In addressing some of these issues, EPA is inclined to follow the precedent set by the ozone program which required areas in nonattainment with both the 1-hour and 8-hour ozone NAAQS to maintain mandatory control measures already in place, and allowed such areas to revise or remove discretionary control measures following a section 110(l) demonstration. In addition, such areas would implement transportation conformity and NSR based on their designations for the revised standard only, for the reasons explained in the ozone anti-backsliding rule (69 FR 23954, April 30, 2004). The EPA invites comment on these two options, and solicits comments on any additional options which would ensure a smooth transition and continued improvement in air quality.

**IV. What Are the Potential Timelines for Implementation of Any New 2006 PM<sub>2.5</sub> NAAQS?**

*A. How Would the Implementation Schedules of the 1997 PM<sub>2.5</sub> NAAQS and Any New 2006 PM<sub>2.5</sub> NAAQS Fit Together if the Revised PM<sub>2.5</sub> Standards Are More Stringent Than the Current Standards?*

Section 109(d)(1) of the CAA requires a thorough review of the NAAQS, and revisions if appropriate, at 5-year intervals. Current requirements of the CAA thus anticipate an overlap in review and implementation of standards. The EPA believes that for planning purposes, when EPA revises a standard as it has proposed to do, it is beneficial for States to understand control strategies that may be useful in attaining any new 2006 PM<sub>2.5</sub> standards when developing control strategies for the 1997 PM<sub>2.5</sub> standards.

*B. What Is EPA's Preferred Schedule for the Any New 2006 PM<sub>2.5</sub> Designation Process?*

Under the terms of the consent decree governing the review of the 1997 PM NAAQS, EPA agreed that no later than September 27, 2006, it would sign for publication a notice of final rulemaking concerning its review of the PM NAAQS. The EPA expects that any new 2006 PM<sub>2.5</sub> standards would be published in the **Federal Register** within 4 weeks, and become effective 60 days later probably in December 2006. Timeframes below are outlined based on this assumption. Section 107(d)(1) lays out a schedule allowing States up to 1 year in which to make recommendations to EPA for areas that

might be designated as nonattainment for any new PM<sub>2.5</sub> standards. State designation recommendations would then be due by December 2007. Tribes would also be encouraged, but not required, to submit designation recommendations to EPA for their reservations or other areas under their jurisdiction by December 2007.

These recommendations would be based on 3 years of the most recent monitoring data (e.g., 2004–2006). The EPA's evaluation of the existing PM<sub>2.5</sub> monitoring network indicates that it is adequate for designations under both the proposed revised annual and proposed revised 24-hour standards. Depending on which revocation process is selected for the 1997 PM<sub>2.5</sub> NAAQS, designations may be for the revised 24-hour standard alone or both the annual and 24-hour standards.

Following submittal of designation recommendations by the States, EPA would evaluate the recommendations and make possible modifications. Consistent with section 107, States would be notified of these changes, and would be allowed to make additional comments on the proposed designations. The EPA would issue final PM<sub>2.5</sub> designations under any new PM<sub>2.5</sub> NAAQS no later than December 2009. These designations would be effective by April 2010. The CAA provides EPA with up to 3 years to designate nonattainment areas following promulgation of a new or revised NAAQS. The EPA anticipates that this full time period may be necessary for a variety of reasons as it has been in the past, including evaluating more recent data in order to determine appropriate designation boundaries. This timeline would allow States to look at 2006–2008 monitoring data and update their

recommendations to EPA if they choose to do so based on the more recent data.

In addition, as was done for the 1997 PM<sub>2.5</sub> NAAQS designations, we would anticipate allowing a further update based on 2007–2009 monitoring data, and make designations effective in April 2010. Table 1 at the end of part IV(D) provides a timeline showing the dates that would result from such a designation process. The EPA would appreciate comments on this timeline and other potential approaches.

*C. What Would the Schedule Be for Attainment Demonstrations and SIP Submittals for Any New 2006 PM<sub>2.5</sub> Standards?*

Part D of title I of the CAA sets forth the requirements for SIPs needed to attain the NAAQS. Part D includes a general subpart 1 which applies to all NAAQS for which a specific subpart does not exist. These provisions apply to the PM<sub>2.5</sub> standards and would apply to any revised PM<sub>2.5</sub> standards. The EPA has currently proposed implementation rules for PM<sub>2.5</sub> (70 FR 65984) which, when finalized, will govern any revised standards.

Section 172(b) of the CAA requires that at the time the Agency promulgates nonattainment area designations, EPA must also establish a schedule for States to submit SIPs meeting the applicable requirements of section 172(c) and section 110(a)(2) of the CAA. Section 172(b) requires that such schedule allow a State to submit its attainment demonstration and SIP revision within no more than 3 years of nonattainment designation. Following the above timeline (outlined in IV.B), if nonattainment area designations become effective in April 2010, and EPA allows the maximum time for SIP

submissions, then attainment demonstrations and SIP revisions would be due by April 2013.

*D. What Are Attainment Dates for Any New 2006 PM<sub>2.5</sub> Standards?*

Section 172(a)(2)(A) states that the attainment date for a nonattainment area must be “as expeditiously as practicable, but no later than 5 years from the date of designation for the area.” If any new 2006 PM<sub>2.5</sub> designations are made in December 2009 and have an effective date of April 2010, the initial attainment date for any new PM<sub>2.5</sub> standard would be no later than April 2015. As an aside, this attainment date would correspond with the latest date an area designated in April 2005 could come into attainment with the 1997 PM<sub>2.5</sub> NAAQS. For an area with a maximum 5-year attainment date, EPA would determine whether it had attained the standard by evaluating air quality data from the three previous calendar years (2012–2014).

Section 172 also states that if EPA deems it appropriate, the Agency may extend the attainment date for an area for a period not greater than 10 years from the date of designation as nonattainment, taking into account the severity of the nonattainment problem in the area, and the availability and feasibility of pollution control measures. For any area that is granted the full 5-year attainment date extension, the attainment date would be as expeditiously as practicable, but no later than April 2020. For such areas, EPA would determine whether the area attained the standard by evaluating air quality data from 2017, 2018, and 2019. Table 1 is an overview of the proposed timeline for implementing any new 2006 PM<sub>2.5</sub> standards.

TABLE 1.—PROPOSED TIMELINE FOR ANY NEW 2006 PM<sub>2.5</sub> STANDARDS

Effective date of standard	December 2006
Monitoring data used for State recommendations .....	2005–2007.
State recommendations to EPA .....	December 2007.
Final designations signature .....	December 2009.
Effective date of designations .....	April 2010.
SIPs due .....	April 2013.
Attainment date .....	Up to April 2015 (based on 2012–2014 data).
Attainment date with a 5-year extension .....	Up to April 2020 (based on 2017–2019 data).

The EPA is soliciting comments on which relevant factors should influence EPA's decision on any potential timeline.

**V. What Are the Potential Timelines for Implementation of Any New PM<sub>10-2.5</sub> NAAQS?**

*A. What Is a Potential Schedule for Any New PM<sub>10-2.5</sub> Designation Process?*

Section 107(d)(1)(B) gives the Agency the authority to promulgate designations for all areas as expeditiously as

practicable, but no later than 3 years from the date of promulgation of the new or revised NAAQS.

Currently, a PM<sub>10-2.5</sub> monitoring network does not exist. The EPA's proposed monitoring regulations for PM<sub>10-2.5</sub> (71 FR 2710) call for monitors to be deployed by January 2009. If this schedule is adopted, the first period

when 3 years of data would be available for State designation recommendations would be mid-2012 based on air quality data for 2009–2011. As noted above, following the statutory timeline, designations for PM<sub>10-2.5</sub> would be required to occur no later than late 2009. Three years of PM<sub>10-2.5</sub> monitoring data will not be available at that time. For EPA to meet its statutory obligation, EPA would need to designate all areas as unclassifiable under section 107(d)(1)(A)(iii), on the basis that no information is available to determine whether an area is meeting any new NAAQS for PM<sub>10-2.5</sub>. From a historical perspective this was the situation in 1997 when we established the PM<sub>2.5</sub> NAAQS. Subsequent, to the establishment of the PM<sub>2.5</sub> NAAQS in 1997, Congress passed legislation which modified the CAA for the purposes of PM<sub>2.5</sub> designations. EPA is potentially confronting this issue again with respect to any new PM<sub>10-2.5</sub> NAAQS. As a policy, EPA does not think that designating all areas of the country as unclassifiable provides useful information to the public about their area meeting new air quality standards. EPA would prefer to not make designations until three years of monitoring data is available. EPA is soliciting comments on the best way to address this issue.

*B. What Is EPA’s Preferred Schedule for Designations for Any New PM<sub>10-2.5</sub> Standards?*

The first available 3 years of data from a monitoring network for PM<sub>10-2.5</sub> will be 2009–2011. If EPA had not previously designated areas unclassifiable, EPA could then request recommendations from States for areas that might be designated nonattainment for PM<sub>10-2.5</sub> by July 2012. This is approximately 6 months after a full 3 years of data would be available for some areas. EPA believes this is adequate time for evaluating and quality assuring data to make recommendations on designations. On the other hand, States have until May 1 to certify that their monitoring data is correct, and may need additional time for designation recommendations. Another

option would be to allow the States until October 2012 to make recommendations. The EPA would like to take comment on this option.

Following submittal of designation recommendations by the States, EPA will evaluate the recommendations and make modifications by December 2012. States will be notified of these changes, and given another opportunity to comment on the proposed modifications to designations. The EPA would then issue final modified PM<sub>10-2.5</sub> designations by May 2013 which would be effective approximately July 2013.

If EPA had previously designated areas unclassifiable, then, once EPA had sufficient monitoring data available, EPA would move forward in accordance with the provisions of section 107(d)(3)(A) to notify States that it believed designations for areas should be revised. States would then have the opportunity to respond in accordance with section 107(d)(3)(B), and EPA would take action regarding any revisions of the designations in accordance with section 107(d)(3)(C).

Since classifications under Title I are done at the same time as designations, EPA is considering the role a classification system could play in facilitating the implementation of any new PM<sub>2.5</sub> NAAQS. The EPA prefers not to develop a classification system to use in determining the amount of time permitted for attainment, for reasons similar to those outlined in the Proposed Rule to Implement the Fine Particle National Ambient Air Quality Standards; Proposed Rule (70 FR page 66000, November 1, 2005). Developing a classification system is only an option, not a requirement under section 172(a)(1), and for the reasons noted EPA does not believe it would be preferable to implement a classification scheme. The EPA would like comments on this potential designation timeline, and on its intentions to not develop a classification system.

*C. What Is EPA’s Preferred Schedule for Attainment Demonstrations and SIP Submittals for Any New PM<sub>10-2.5</sub> Standards?*

Section 172(b) of the CAA requires EPA to establish a schedule for a State to submit its attainment demonstration and SIP revision within 3 years of nonattainment designation. Following the schedule outlined in part V(B) above, if nonattainment designations for any new PM<sub>10-2.5</sub> standards were effective in July 2013, then attainment demonstrations and SIP revisions would be due by July 2016. The EPA would like comments on this proposed timeline.

*D. What Is EPA’s Preferred Schedule for Attaining Any New PM<sub>10-2.5</sub> Standards?*

Section 172(a)(2)(A) states that the attainment date for a nonattainment area must be “as expeditiously as practicable, but no later than 5 years from the date of designation for the area.” If new PM<sub>10-2.5</sub> designations are made in May 2013 and are effective in July 2013, the initial attainment date for PM<sub>10-2.5</sub> would be as expeditiously as practicable but no later than July 2018. For an area with an attainment date of July 2018, EPA would determine whether it had attained the PM<sub>10-2.5</sub> standards by evaluating air quality data from the 3 previous calendar years (*i.e.*, 2015, 2016 and 2017).

Section 172 also states that if EPA deems it appropriate, the Agency may extend the attainment date for an area for a period not greater than 10 years from the date of designation, taking into account the severity of the nonattainment problem in the area, and the availability and feasibility of pollution control measures. For any area that is granted the full 5-year attainment date extension, the attainment date would be no later than July 2023. For such areas, EPA would determine whether they have attained the standard by evaluating air quality data from 2020, 2021 and 2022. Table 2 is an overview of this proposed timeline for designation, SIP submittal and attainment dates under this proposed schedule.

TABLE 2.—PROPOSED TIMELINE FOR A POSSIBLE 2006 PM<sub>10-2.5</sub> STANDARDS

Effective date of standard	December 2006
Monitoring data used for State recommendations .....	2009–2011.
State recommendations to EPA .....	July 2012.
Final designations signature .....	May 2013.
Effective date of designations .....	July 2013.
SIPs due .....	July 2016.
Attainment date .....	Up to July 2018 (based on 2015–2017 data).
Attainment date with extension .....	Up to July 2023 (based on 2020–2022 data).

The EPA requests comment on this potential timeline for attaining any new PM<sub>10-2.5</sub> standards.

## VI. How Should EPA Implement the Transition From the PM<sub>10</sub> Standards to Any New PM<sub>10-2.5</sub> Standards?

### A. What Is EPA's Proposal for Revoking the PM<sub>10</sub> Standards?

Before areas are designated under any new PM<sub>10-2.5</sub> standards, we intend to address how to transition from implementation of the PM<sub>10</sub> standards to any new PM<sub>10-2.5</sub> standards. As part of the NAAQS proposal (71 FR 2620), EPA proposed to revoke the annual PM<sub>10</sub> standard everywhere, and the 24-hour PM<sub>10</sub> standard everywhere except in areas where there is at least one monitor that is located in an urbanized area with a minimum population of 100,000 people and that violates the 24-hour PM<sub>10</sub> standard based on the most recent 3 years of data. This revocation would be effective upon promulgation of the PM NAAQS in December 2006. The EPA also provided a list of places where the 24-hour PM<sub>10</sub> standard would not be revoked under the proposal. In addition, EPA requested comment on whether the 24-hour PM<sub>10</sub> standard should be retained in areas that are either urbanized areas with populations less than 100,000 people or non-urbanized areas (*i.e.*, population less than 50,000) but where the majority of the ambient mix of PM<sub>10-2.5</sub> is generated by high density traffic on paved roads, industrial sources, and construction sources, and which have at least one monitor that violated the 24-hour PM<sub>10</sub> standard. Comments on this revocation plan should be submitted under that notice (71 FR 2620).

This raises a number of issues for those areas where the 24-hour PM<sub>10</sub> standard would still apply including: When and how should the 24-hour PM<sub>10</sub> standard be revoked for these areas; should anti-backsliding provisions apply; how to address NSR and maintenance issues; and other implementation issues. Our principal objective for the transition is to ensure that air quality will not degrade in areas where the potential new PM<sub>10-2.5</sub> NAAQS would apply, and that areas continue to make progress toward attainment of the PM standards. Subject to requirements under the CAA for revising SIPs, EPA expects States would take the opportunity to revise their SIPs to reflect the revocation of the PM<sub>10</sub> standards.

### B. What Should the Timing Be for Revoking the 24-Hour PM<sub>10</sub> Standard for Those Areas Where the 24-Hour PM<sub>10</sub> Standard Is Retained?

The EPA contemplates that the 24-hour PM<sub>10</sub> standard would be revoked one year after attainment/nonattainment designations are effective for a 24-hour PM<sub>10-2.5</sub> standard. Because attainment/nonattainment designations would not occur until July 2013, it is reasonable to expect that some areas where the 24-hour PM<sub>10</sub> standard has not been revoked would come into attainment with the PM<sub>10</sub> standard prior to July 2013. We invite comment on how these areas should be treated.

### C. What Transition Issues Are Created by Revoking the 24-Hour PM<sub>10</sub> Standard in Areas Where It Is Currently Proposed To Be Retained and How Might They Be Addressed?

#### 1. Control Measures

EPA wants to ensure that air quality is not degraded if we move from one version of the NAAQS to another. What protections should remain in place to ensure that air quality will not degrade once the 24-hour PM<sub>10</sub> standard is revoked, and that progress will continue as areas transition from implementing the 24-hour PM<sub>10</sub> standard to implementing the 24-hour PM<sub>10-2.5</sub> standard?

##### a. What requirements based on an area's classification for the PM<sub>10</sub> standard should continue to apply?

The EPA believes an approach similar to what was done under the ozone transition from the 1-hour to the 8-hour standard (69 FR 23951 page 23969) would be appropriate here in that control measures which remain in place were determined by the area's classification. Such an approach would mean that moderate PM<sub>10</sub> nonattainment areas should continue to require reasonably available control measures (RACM) (as described in section 189(a)(1)(C) of the CAA). Serious PM<sub>10</sub> nonattainment areas should also continue to require best available control measures (BACM) (section 189(b)(1)(B) of the CAA). All nonattainment areas should have an EPA-approved part D SIP in place, and continue to implement the nonattainment requirements and control measures identified in the SIP. Any effort to change SIP-approved measures would be subject to a section 110(l) demonstration of no interference with applicable requirements.

The EPA also believes that those areas where the 24-hour PM<sub>10</sub> standard is being violated and has not been revoked should continue to implement the

requirements of the CAA until nonattainment and attainment designations for PM<sub>10-2.5</sub> are completed. However, this could represent a significant period of time (from 2006–2013). Consequently, EPA is interested in alternative views regarding the appropriate implementation pathway for the PM<sub>10</sub> standard in these areas.

b. How should EPA address maintenance? Those PM<sub>10</sub> nonattainment areas where the 24-hour PM<sub>10</sub> standard has not been revoked which come into attainment with the 24-hour PM<sub>10</sub> NAAQS prior to designations under the 24-hour PM<sub>10-2.5</sub> standard, may request to be redesignated as attainment for PM<sub>10</sub> under section 107(d). As such they would need to submit a maintenance plan under section 175A. Maintenance areas do not have any outstanding obligation to adopt further mandatory control obligations. We would anticipate an approach to maintenance requirements similar to what was provided in the ozone rule where maintenance areas retain the discretion to modify any discretionary control measures upon a demonstration under section 110(l) (69 FR 23951 page 23955). The EPA requests comments on how to address maintenance areas.

#### 2. Transportation Conformity

Transportation conformity is required under section 176(c) of the CAA (42 U.S.C. 7506(c)) to ensure that federally supported highway and transit project activities are consistent with (conform to) the purpose of a SIP. Conformity to the purpose of a SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. Transportation conformity applies in nonattainment areas and maintenance areas. The EPA's transportation conformity rule, 40 CFR part 93, establishes the criteria and procedures for determining whether transportation activities conform to the State air quality plan. It also establishes criteria and procedures for determining whether transportation activities conform in areas where no SIP containing motor vehicle emissions budgets yet exists.

Transportation conformity rulemakings, as well as other relevant conformity materials such as guidance documents, policy memoranda, the complete text of the conformity rule, and conformity research can be found at EPA's transportation conformity Web site, at <http://www.epa.gov/otaq/transp.htm> (once at the site, click on "Transportation Conformity.")

Until areas are designated nonattainment, transportation conformity will not apply for any new PM<sub>10-2.5</sub> standard. Based on the timeline outlined above, designations for any new PM<sub>10-2.5</sub> NAAQS could be effective in July 2013, and for all nonattainment areas transportation conformity would then apply 1 year later. Prior to the designation date, EPA would propose to update the transportation conformity rule to address any new PM<sub>10-2.5</sub> standard.

The EPA will solicit public comment on these and other issues associated with determining transportation conformity in any new PM<sub>10-2.5</sub> nonattainment areas when it proposes to revise the conformity rule to address the new standard. Once we revoke the PM<sub>10</sub> standard and the associated designations, transportation conformity will no longer apply under the terms of the statute for that standard.

### 3. General Conformity

Section 176(c) of the CAA requires that before a Federal entity takes an action, it must make a determination that the proposed action will not interfere with the SIP or the State's ability to attain and maintain the NAAQS. In November 1993, EPA promulgated two sets of regulations to implement section 176(c). One set, known as the general conformity regulations, deals with all other Federal activities besides funding of highway and mass transit projects. These activities include funding and approval of airport projects, expansion of military bases, and permitting of projects to deepen waterways.

Federal agencies take thousands of actions every day and requiring determinations on every action would not be possible. Therefore, EPA established a number of exemptions to the rule requirements including a de minimis emission level generally based upon the size of a major stationary source in the nonattainment or maintenance area.

Following are a series of questions related to implementation of general conformity on which EPA is soliciting input:

- What de minimis levels should EPA establish for direct and precursor emissions for any new PM<sub>10-2.5</sub> standards? The EPA currently does not have speciated monitoring data for PM<sub>10-2.5</sub>. Consequently, we do not know if the mass of PM<sub>10-2.5</sub> contains a significant amount of particulate matter formed by atmospheric chemical reactions.

- In transitioning to a new standard, how should EPA treat previous

conformity evaluations and determinations based on the PM<sub>10</sub> standard?

- Are there any categories of actions that should be exempt from the conformity requirements for any new PM<sub>10-2.5</sub> standards? If so, how could such exemptions be devised?

### 4. New Source Review Program

The NSR program is a preconstruction permitting program that applies when a new source is constructed or an existing one is modified. The major NSR program applies to major stationary sources and is comprised of the Prevention of Significant Deterioration (PSD) program that applies in attainment areas and a nonattainment NSR program that applies to pollutants for which an area is designated nonattainment.

There are many major NSR program implementation issues that EPA will address for a new PM<sub>10-2.5</sub> NAAQS, including revocation of the existing PM<sub>10</sub> NAAQS. In this ANPR, EPA is highlighting some of the key issues and providing EPA's preliminary thinking on approaches for addressing them. We recognize that there may be other implementation issues not identified here, and we invite you to identify them. When submitting comments, please support your comments with adequate data and/or practical scenarios or illustrations.

a. Does PM<sub>10</sub> continue to be a regulated NSR pollutant for PSD in areas where the 24-hour PM<sub>10</sub> NAAQS would be revoked?

The PSD program applies when a major stationary source of any "regulated NSR pollutant", that is located in an area designated as attainment or unclassifiable for any criteria pollutant, is constructed or undergoes a major modification (40 CFR 52.21(a)(2); 40 CFR 51.166(a)(7)). EPA defines a "regulated NSR pollutant" to include (1) any pollutant for which a NAAQS has been promulgated (otherwise known as a "criteria" pollutant); (2) any pollutant subject to a NewSource Performance Standard promulgated under section 111 of the CAA; and (3) any pollutant that is otherwise regulated under the Act, except for hazardous air pollutants regulated under section 112 of the Act<sup>3</sup> (40 CFR 52.21(b)(50); 40 CFR 51.166(b)(49)). Thus, in addition to applying to criteria pollutants for which EPA has promulgated a NAAQS, the

<sup>3</sup>This definition also covers any pollutant that is subject to any standard promulgated under or established by Title VI of the Act, but this is not relevant to particulate matter.

PSD program also applies to any non-criteria pollutant that is covered by the additional prongs of the definition of a "regulated NSR pollutant" described above. However, not all of the PSD program requirements outlined below are applicable to non-criteria pollutants that are subject to the PSD program.

The PSD requirements include but are not limited to:

- Installation of Best Available Control Technology (BACT),
- Air quality monitoring and modeling analyses to ensure that a project's emissions will not cause or contribute to a violation of any NAAQS or maximum allowable pollutant increase (PSD increment),
- Notification of Federal Land Manager when a proposed source or modification may affect nearby Class I areas, and

- Public comment on the permit.

For any criteria pollutant subject to PSD, all PSD requirements including the PSD increments analyses apply. However, since there are no NAAQS for non-criteria pollutants, only some requirements, including BACT, apply to these pollutants (See 42 U.S.C. 7475(a)(4); 40 CFR 52.21(j)); 40 CFR 52.166(j)).

The proposed revocation of the 24-hour PM<sub>10</sub> NAAQS in certain areas raises issues about whether existing PSD regulations would continue to apply to PM<sub>10</sub> in any respect after the revocation of the NAAQS in these areas. The extent to which all or some of the PSD requirements apply depends on whether PM<sub>10</sub> continues to be a regulated NSR pollutant in these areas, either as a criteria or a non-criteria pollutant, under EPA's regulations and the CAA. We seek comment on the following options to address these issues:

*Option 1.* Since the 24-hour PM<sub>10</sub> standard would remain in effect at least in some areas, we could conclude that PM<sub>10</sub> continues to be a regulated NSR pollutant for the PSD program. Thus, even in those areas in which the 24-hour PM<sub>10</sub> NAAQS is revoked (24-hour revoked areas), PM<sub>10</sub> would be regarded as a regulated NSR pollutant only by virtue of being otherwise subject to regulation under the CAA (40 CFR 52.21(b)(50)(iv)) because a 24-hour PM<sub>10</sub> NAAQS continues to apply in other areas. Under this approach, PSD for PM<sub>10</sub> would continue to apply in all areas. However, as stated earlier, only a few PSD requirements, including BACT, would apply in 24-hour revoked areas since PM<sub>10</sub> would be regarded as a non-criteria pollutant in those areas. In those areas where the 24-hour PM<sub>10</sub> NAAQS is not revoked, all PSD program elements would continue to apply for

PM<sub>10</sub> because it remains a criteria pollutant in these areas.

*Option 2.* Alternatively, we could interpret all prongs of the “regulated NSR pollutant” definition to be area-specific. Thus, in 24-hour revoked areas, PM<sub>10</sub> would no longer be a criteria pollutant, and none of the other prongs of the definition of “regulated NSR pollutant” would apply to PM<sub>10</sub> in these areas. Therefore, none of the PSD requirements would apply to PM<sub>10</sub> in such areas. We request comment on whether there is any other basis for retaining PM<sub>10</sub> as a regulated NSR pollutant, even if it is no longer a criteria pollutant.

b. Does the CAA require continued obligation for some form of PM increment?

Section 163 of the CAA states that each SIP should contain measures assuring that maximum allowable increases over baseline concentration (increments) for PM shall not be exceeded in attainment areas. Section 163 contains specific numerical increments (expressed as µg/m<sup>3</sup>) for PM, which EPA initially implemented using the total suspended particulate indicator. After EPA transitioned to PM<sub>10</sub> as the indicator for PM in 1987, the Agency substituted PM<sub>10</sub> increments for the PM increments in section 163 based on the authority of section 166(f) of the Act (58 FR 31622, June 3, 1993). Section 166(f), which was enacted in the 1990 amendments to the CAA, authorized EPA to substitute PM<sub>10</sub> increments “of equal stringency in effect” as the section 163 PM increments, but also required that the PM increments remain in effect until the new PM<sub>10</sub> increments were promulgated.

For pollutants other than PM and sulfur dioxide,<sup>4</sup> Section 166(a) of the CAA directs the Administrator to conduct a study and promulgate regulations, which may include increments, to prevent significant deterioration of air quality. EPA promulgated increments for nitrogen oxides under this authority (70 FR 59582, Oct. 12, 2005, and 53 FR 40656, Oct. 17, 1988). Section 166(a) also directs the Administrator to promulgate pollutant-specific PSD regulations for pollutants for which NAAQS are promulgated after 1977. The proposed revocation of the PM<sub>10</sub> NAAQS raises two issues with respect to EPA’s PSD regulations for PM. The first is whether EPA has a continuing obligation under section 163 or 166(f) of the CAA to implement some form of a PM

increment. The second question concerns the methodology that EPA should use to establish PSD regulations for PM<sub>2.5</sub> and PM<sub>10-2.5</sub> to replace the increments for PM<sub>10</sub>. We seek comment on the following options to address these issues:

*Option 1.* Once the PM<sub>10</sub> NAAQS is revoked, one approach would be to conclude that section 166(f), requiring equivalent PM<sub>10</sub> increments, is no longer applicable in the absence of a PM<sub>10</sub> NAAQS. Furthermore, since section 166(f) effectively superseded section 163, we would not construe the latter provision to require that EPA maintain a PM increment after the revocation of the PM<sub>10</sub> NAAQS. Thus, we could conclude that neither the section 163 increment requirement for PM nor the section 166(f) increment requirement for PM<sub>10</sub> remains effective after revocation of the PM<sub>10</sub> standard.

Accordingly, we would need to develop new increments<sup>5</sup> for PM<sub>2.5</sub> and PM<sub>10-2.5</sub>. In the interest of simplicity and ease of implementation, we could develop new increments for PM<sub>2.5</sub> and PM<sub>10-2.5</sub> pursuant to section 166 of the CAA. This approach would include among other things, establishing new baseline dates and trigger dates for PM<sub>2.5</sub> and PM<sub>10-2.5</sub> on the theory that these are separate, new pollutants, at least for NSR purposes. Otherwise the alternative approach, described below, of trying to continue the implementation of the section 163 increments for PM (using the new indicators) would involve retroactively estimating PM<sub>2.5</sub> and PM<sub>10-2.5</sub> emissions in 1978 (based on the original PSD requirements for PM), and would be extremely difficult in most cases.

*Option 2.* Another approach would be to interpret sections 163 and 166(f) to require some form of PM increments on a continuous basis. However, we would recognize the Congressional intent reflected in section 166(f) that EPA update the PM increments as it modifies the NAAQS for PM. Under this option, we could substitute PM<sub>10</sub> increments with two new increments (PM<sub>2.5</sub> and PM<sub>10-2.5</sub>) “of equal stringency in effect” based on section 166(f) of the CAA by using the methodology reflected in our 1993 PM<sub>10</sub> increments regulation. This approach would provide continuity with the existing PM<sub>10</sub> increments system and would most likely involve retaining the existing baseline areas and dates.

<sup>5</sup> Alternatively, if we promulgate such regulations under section 166, EPA could develop equivalent PSD regulations for PM<sub>2.5</sub> and PM<sub>10-2.5</sub> that include other measures instead of increments.

c. How should permitting authorities implement the PM<sub>2.5</sub> program upon revocation of the PM<sub>10</sub> NAAQS?

When EPA first promulgated the NAAQS for PM<sub>2.5</sub> in 1997, we encountered a number of technical difficulties with implementing the PSD program for PM<sub>2.5</sub> upon the effective date of the NAAQS for PM<sub>2.5</sub>. To address these difficulties, EPA established a policy that enabled permitting authorities to use the implementation of the PSD program for PM<sub>10</sub> as a surrogate for a PM<sub>2.5</sub> PSD program until the necessary tools were in place to measure PM<sub>2.5</sub> and implement PSD permitting programs for PM<sub>2.5</sub>. See Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, to Regional Air Directors, Interim Implementation of New Source Review for PM<sub>2.5</sub> (October 23, 1997) at: <http://www.epa.gov/Region7/programs/artd/air/nsr/nsrmemos/pm25.pdf>. The EPA extended this PM<sub>10</sub> surrogate policy to implementation of the NSR program in nonattainment areas, once PM<sub>2.5</sub> nonattainment designations became effective on April 5, 2005. See Memorandum from Stephen D. Page, Director, Office of Air Quality Planning and Standards, to Regional Air Directors, Interim Implementation of New Source Review for PM<sub>2.5</sub> in Nonattainment Areas (April 5, 2005) at: <http://www.epa.gov/Region7/programs/artd/air/nsr/nsrmemos/pm25guid.pdf>. These policies remain in effect today pending the promulgation of EPA’s PM<sub>2.5</sub> implementation rules for NSR and approval of SIPs containing PSD programs for PM<sub>2.5</sub>.

Because of the proposed revocation of the PM<sub>10</sub> NAAQS, there may not be a PM<sub>10</sub> PSD program remaining in 24-hour revoked areas to rely upon as a surrogate for implementation of a PSD program for PM<sub>2.5</sub>. This raises the issue of how States may continue to satisfy the PSD program requirements for PM<sub>2.5</sub> in the interim period. We seek comment on the following options to address this issue:

*Option 1.* One approach that we might use would be to continue using an analysis of PM<sub>10</sub> air quality as a surrogate for the air quality analysis under the PM<sub>2.5</sub> program with a change. Permitting authorities may continue to analyze PM<sub>10</sub> emissions and concentrations, but they would have to compare these concentrations with the PM<sub>2.5</sub> NAAQS to show that the predicted PM<sub>10</sub> concentrations would not exceed the PM<sub>2.5</sub> NAAQS. This approach would overpredict actual PM<sub>2.5</sub> concentrations in most cases, but it would represent a conservative

<sup>4</sup> Section 163 also contains increments for sulfur dioxide. 42 U.S.C. 7473.

screening mechanism that could demonstrate that a new source or major modification would not cause or contribute to a violation of the PM<sub>2.5</sub> NAAQS. We believe that this would be a suitable interim approach until all the necessary implementation elements for carrying out an independent PM<sub>2.5</sub> program have been finalized.

*Option 2.* An alternative approach would be to continue to apply the existing surrogate policy for implementing the PM<sub>2.5</sub> program, even after the PM<sub>10</sub> standard has been revoked. In other words, the impacts of the PM<sub>10</sub> emissions would continue to be compared with the former PM<sub>10</sub> NAAQS. Again this would serve as an interim policy, until all the PM<sub>2.5</sub> implementation elements for carrying out an independent PM<sub>2.5</sub> program have been finalized.

d. How should EPA implement the PSD program for PM<sub>10-2.5</sub> upon the effective date of the promulgation of the PM<sub>10-2.5</sub> NAAQS?

The EPA has interpreted various provisions in title I, part C of the CAA to require immediate implementation of the PSD program in all areas for each pollutant upon the effective date of a NAAQS for that pollutant. See SeitzMemorandum (October 27, 1997). As noted earlier, EPA's PSD regulations define a regulated NSR pollutant to include, among other things, any pollutant for which a NAAQS is promulgated (40 CFR 51.166(b)(49); 52.21(b)(50)). In contrast, under part D of the CAA, the nonattainment NSR program is not required to be implemented for a particular pollutant subject to a NAAQS until nonattainment areas are designated pursuant to section 107 of the CAA, and are in effect for that pollutant.

As described in detail in the earlier PM<sub>2.5</sub> implementation discussion, EPA established a policy that enabled permitting authorities to use the implementation of a PSD program for PM<sub>10</sub> as a surrogate for implementation of the PSD program for PM<sub>2.5</sub> until the necessary tools were in place to measure PM<sub>2.5</sub> and implement permitting programs for PM<sub>2.5</sub>. The EPA anticipates that it will encounter similar difficulties with implementing a PSD program for PM<sub>10-2.5</sub> upon the effective date of a NAAQS for PM<sub>10-2.5</sub>. However, as discussed above in the context of PM<sub>2.5</sub>, the revocation of the PM<sub>10</sub> NAAQS may leave EPA without a PM<sub>10</sub> program to rely upon as a surrogate for implementation of a PSD program for PM<sub>10-2.5</sub>. Thus, we are exploring other approaches that EPA might use to fulfill the PSD requirements in title I, part C of the CAA upon the effective date of a

NAAQS for PM<sub>10-2.5</sub>. We request comment on the following approaches and welcome suggestions for additional approaches we might use for a temporary, interim period to prevent significant deterioration of air quality from new and modified sources of PM<sub>10-2.5</sub>:

*Option 1.* One approach that we might use would be to continue using an analysis of PM<sub>10</sub> air quality as a surrogate for the air quality analysis under a PM<sub>10-2.5</sub> program. Permitting authorities may continue to analyze PM<sub>10</sub> emissions and concentrations and compare that with the PM<sub>10-2.5</sub> NAAQS to show that the predicted PM<sub>10</sub> concentrations would not exceed the PM<sub>10-2.5</sub> NAAQS. This approach would overpredict actual PM<sub>10-2.5</sub> concentrations in most cases, but it would represent a conservative screening mechanism that could demonstrate that a new source or major modification would not cause or contribute to a violation of the PM<sub>10-2.5</sub> NAAQS.

*Option 2.* Another approach might be to compare the PM<sub>10</sub> analysis to the former PM<sub>10</sub> NAAQS and thus use compliance with the former PM<sub>10</sub> NAAQS as a surrogate for compliance with the new PM<sub>10-2.5</sub> NAAQS for a temporary period. This latter approach might be used independently or as a secondary step in a tiered analysis if the first approach discussed above was found to be overly conservative.

*Option 3.* Another approach might be to use compliance with BACT for PM<sub>10-2.5</sub> as a surrogate for the PM<sub>10-2.5</sub> NAAQS compliance demonstration. In this approach, we might make a determination for an interim period that the first major sources that trigger PSD requirements for PM<sub>10-2.5</sub> are not likely to cause or contribute to noncompliance with the PM<sub>10-2.5</sub> NAAQS if they meet BACT for PM<sub>10-2.5</sub>. Thus, we might consider compliance with BACT to represent a surrogate for the PM<sub>10-2.5</sub> NAAQS compliance demonstration for a limited period until we have the tools in place to assess PM<sub>10-2.5</sub> concentrations.

e. How should ambient PM<sub>10-2.5</sub> dominated by rural windblown dust and soils, and generated by agricultural and mining sources be treated in the NSR program for the proposed PM<sub>10-2.5</sub> standard?

The proposed PM<sub>10-2.5</sub> indicator is qualified so as to include any ambient mix of PM<sub>10-2.5</sub> that is dominated by resuspended dust from high density traffic on paved roads and PM generated by industrial sources and construction sources, and excludes any ambient mix of PM<sub>10-2.5</sub> that is dominated by rural

windblown dust and soils and PM generated by agricultural and mining sources. This suggests that the NSR applicability test would exclude these sources from consideration. We request comment on how we would implement the NSR program if we promulgate a NAAQS with these characteristics.

## VII. What Emission Inventory Requirements Should Apply Under Any New PM<sub>2.5</sub> and PM<sub>10-2.5</sub> NAAQS?

Emission inventories are critical for the efforts of State, local, tribal and Federal agencies to attain and maintain the NAAQS that EPA has established for criteria pollutants including PM<sub>2.5</sub> and any new PM<sub>10-2.5</sub> standards. Pursuant to its authority under section 110 of Title I of the CAA, EPA has long required States to submit emission inventories containing information regarding the emissions of criteria pollutants and their precursors. The EPA codified these requirements in 40 CFR part 51, subpart Q in 1979 and amended them in 1987.

In June 2002, EPA promulgated the Consolidated Emissions Reporting Rule (CERR)(67 FR 39602, June 10, 2002). The CERR consolidates the various emissions reporting requirements into one place in the CFR. In January 2006, EPA proposed the Air Emissions Reporting Requirements (AERR) (71 FR 69, January 3, 2006) which proposes to modify some of the reporting requirements established by CERR. In addition, EPA has developed guidance "Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations, EPA-454/R-99-006 available at: <http://www.epa.gov/ttn/chief/eidocs/eiguid/index.html>. The EPA developed this guidance document to complement the CERR and proposed AERR and to provide specific guidance to State and local agencies and Tribes on how to develop emissions inventories for 8-hour ozone, PM<sub>2.5</sub>, and regional haze SIPs. The CERR and AERR set forth national requirements for emission data elements for all States, regardless of NAAQS attainment status. EPA guidance complements these requirements and indicates how the data should be prepared for SIP submissions. The SIP inventory, which may be derived from the CERR inventory, applies only to nonattainment areas. The SIP inventory also must be approved by EPA as a SIP element and is therefore subject to public hearing requirements, and is thus regulatory in nature. The inventory required by the CERR is not. Because of the regulatory significance of the SIP

inventory, EPA will need more documentation on how the SIP inventory was developed by the State as opposed to the documentation required for the CERR inventory.

Therefore, the basis for EPA's emission inventory program is specified in the CERR, the AERR notice of proposed rulemaking (NPRM) and the related guidance document. The EPA is interested in receiving comments on whether or not additional emission inventory requirements or guidance are needed to implement any new PM<sub>2.5</sub> standards and any new PM<sub>10-2.5</sub> NAAQS. Following are a set of questions on which we would like input:

a. Are the data elements specified within the CERR and AERR sufficient to develop adequate SIPs for PM<sub>2.5</sub> and PM<sub>10-2.5</sub>? For example, should EPA expand the listing of reportable compounds to include elemental and organic carbon?

b. Fugitive emissions are a significant contributor to ambient levels of PM<sub>10-2.5</sub>. Should EPA require and/or develop more precise methods for estimating fugitive particulate emissions, perhaps including wind blown dust?

c. The EPA believes that daily emissions will be important under both PM<sub>2.5</sub> and PM<sub>10-2.5</sub>. Should EPA require any additional emission inventory data elements or temporal allocation techniques to estimate more accurately daily emissions and their variability?

d. Are there other inventory issues that EPA should define through either regulation or guidance?

### VIII. Statutory and Executive Order Reviews

Under Executive Order 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is, therefore, not subject to review by the Office of Management and Budget.

#### List of Subjects in 40 CFR Part 51

Environmental protection, Particulate matter.

Dated: February 3, 2006.

**Stephen L. Johnson,**  
Administrator.

[FR Doc. E6-1798 Filed 2-8-06; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 51

[OAR-2005-0124; FRL-8030-1]

RIN 2060-AN34

### Air Quality: Revision to Definition of Volatile Organic Compounds—Exclusion of HFE-7300

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

**ACTION:** Proposed rule.

**SUMMARY:** This action proposes to revise EPA's definition of volatile organic compounds (VOC) for purposes of preparing State implementation plans (SIPs) to attain the national ambient air quality standards (NAAQS) for ozone under title I of the Clean Air Act (CAA). This proposed revision would add 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane [also known as HFE-7300 or L-14787 or C<sub>2</sub>F<sub>5</sub>CF(OCH<sub>3</sub>)CF(CF<sub>3</sub>)<sub>2</sub>] to the list of compounds excluded from the definition of VOC on the basis that this compound makes a negligible contribution to tropospheric ozone formation. If you use or produce HFE-7300 and are subject to EPA regulations limiting the use of VOC in your product, limiting the VOC emissions from your facility, or otherwise controlling your use of VOC for purposes related to attaining the ozone NAAQS, then you will not count HFE-7300 as a VOC in determining whether you meet these regulatory obligations. This action may also affect whether HFE-7300 is considered as a VOC for State regulatory purposes, depending on whether the State relies on EPA's definition of VOC. As a result, if you are subject to certain Federal regulations limiting emissions of VOCs, your emissions of HFE-7300 may not be regulated for some purposes.

**DATES:** Comments on this proposal must be received by March 13, 2006. Requests for a hearing must be submitted by February 24, 2006.

**ADDRESSES:** Submit your comments, identified by Docket ID No. OAR-2005-0124, by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- Agency Web site: <http://www.epa.gov/edocket>. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- E-mail: Send e-mail to the EPA

Docket Center at *a-and-r-Docket@epa.gov*.

- Fax: Send faxes to the EPA Docket Center at (202) 566-1741.

- Mail: Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Attn: Docket No. OAR-2005-0124, "Air Quality: Revision to Definition of Volatile Organic Compounds—Exclusion of HFE-7300." Please include a total of two copies.

- Hand Delivery: EPA Docket Center, U.S. Environmental Protection Agency, EPA West Building, Room B102, 1301 Constitution Avenue, NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. OAR-2005-0124. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.epa.gov/edocket>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the Federal regulations.gov Web sites are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material,