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

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AN10

Prevailing Rate Systems; Redefinition of Certain Appropriated Fund Federal Wage System Wage Areas

AGENCY: U.S. Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The U.S. Office of Personnel Management (OPM) is issuing a final rule to redefine the geographic boundaries of several appropriated fund Federal Wage System (FWS) wage areas for pay-setting purposes. Based on recent reviews of Metropolitan Statistical Area boundaries in a number of wage areas, OPM is redefining the following wage areas: Washington, DC; Hagerstown-Martinsburg-Chambersburg, MD; Minneapolis-St. Paul, MN; Charlotte, NC; Columbia, SC, and Southwestern Wisconsin. In addition, this final rule makes three minor corrections to the Miami, FL; Columbus, GA, and Kansas City, MO, wage areas.

DATES: *Effective date:* This regulation is effective on March 23, 2015.

Applicability date: This change applies on the first day of the first applicable pay period beginning on or after April 22, 2015.

FOR FURTHER INFORMATION CONTACT: Madeline Gonzalez, by telephone at (202) 606–2838 or by email at *pay-leave-policy@opm.gov.*

SUPPLEMENTARY INFORMATION: On October 31, 2014, OPM issued a proposed rule (79 FR 64684) to redefine the following counties:

- Culpeper and Rappahannock Counties, VA, from the Hagerstown-Martinsburg-Chambersburg, MD, area of application to the Washington, DC, area of application;
- Fillmore County, MN, from the Southwestern Wisconsin area of application to the Minneapolis-St. Paul, MN, area of application; and
- Chester County, SC, from the Columbia, SC, area of application to the Charlotte, NC, area of application.

The Federal Prevailing Rate Advisory Committee, the national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, reviewed and recommended these changes by consensus. The proposed rule had a 30-day comment period, during which OPM received no comments.

In addition, this final rule (1) updates the name of the Columbus Consolidated Government in the Columbus, GA, FWS wage area because Columbus is the official name of the entity resulting from the consolidation of the City of Columbus and Muscogee County in 1971; (2) updates the name of Dade County in the Miami, FL, FWS wage area because the name of Dade County was officially changed to Miami-Dade County in 1997; and (3) deletes the name of the St. Louis, MO, wage area from the list of area of application counties in the Kansas City, MO, wage area because, due to a formatting error, the name of the St. Louis wage area was incorrectly printed as if it was an area of application county in the Kansas City wage area. These corrections do not affect the pay of any FWS employees.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

U.S. Office of Personnel Management.

Katherine Archuleta,

Director.

Accordingly, OPM amends 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

■ 1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

■ 2. Appendix C to subpart B is amended by revising the wage area listings for the Washington, DC; Miami, FL; Columbus, GA; Hagerstown-Martinsburg-Chambersburg, MD; Minneapolis-St. Paul, MN; Kansas City, MO; Charlotte, NC; Columbia, SC, and Southwestern Wisconsin wage areas to read as follows:

Appendix C to Subpart B of Part 532—Appropriated Fund Wage and Survey Areas

* * * * *

DISTRICT OF COLUMBIA

Washington, DC

Survey Area

District of Columbia:
  Washington, DC
Maryland:
  Charles
  Frederick
  Montgomery
  Prince George's
Virginia (cities):
  Alexandria
  Fairfax
  Falls Church
  Manassas
  Manassas Park
Virginia (counties):
  Arlington
  Fairfax
  Loudoun
  Prince William

Area of Application. Survey area plus:

Maryland:
  Calvert
  St. Mary's
Virginia (city):
  Fredericksburg
Virginia (counties):
  Clarke
  Culpeper
  Fauquier
  King George
  Rappahannock
  Spotsylvania
  Stafford
  Warren
West Virginia
  Jefferson

* * * * *

FLORIDA

* * * * *

Miami

Survey Area

Florida:
  Miami-Dade

Area of Application. Survey area plus:
Florida:
Broward
Collier
Glades
Hendry
Highlands
Martín
Monroe
Okeechobee
Palm Beach
St. Lucie

* * * * *

GEORGIA

* * * * *

Columbus
Survey Area
Alabama:
Autauga
Elmore
Lee
Macon
Montgomery
Russell
Georgia:
Chattahoochee
Columbus
Area of Application. Survey area plus:
Alabama:
Bullock
Butler
Chambers
Coosa
Crenshaw
Dallas
Lowndes
Pike
Tallapoosa
Wilcox
Georgia:
Harris
Marion
Quitman
Schley
Stewart
Talbot
Taylor
Troup
Webster

* * * * *

MARYLAND

* * * * *

Hagerstown-Martinsburg-Chambersburg
Survey Area
Maryland:
Washington
Pennsylvania:
Franklin
West Virginia:
Berkeley
Area of Application. Survey area plus:
Maryland:
Allegany
Garrett
Pennsylvania:
Fulton
Virginia (cities):
Harrisonburg
Winchester
Virginia (counties):
Frederick
Greene
Madison
Page
Rockingham
Shenandoah
West Virginia:
Hampshire
Hardy
Mineral
Morgan

* * * * *

MINNESOTA

* * * * *

Minneapolis-St. Paul
Survey Area
Minnesota:
Anoka
Carver
Chisago
Dakota
Hennepin
Ramsey
Scott
Washington
Wright
Wisconsin:
St. Croix
Area of Application. Survey area plus:
Minnesota:
Benton
Big Stone
Blue Earth
Brown
Chippewa
Cottonwood
Dodge
Douglas
Faribault
Fillmore
Freeborn
Goodhue
Grant
Isanti
Kanabec
Kandiyohi
Lac Qui Parle
Le Sueur
McLeod
Martin
Meeker
Mille Lacs
Morrison
Mower
Nicollet
Olmsted
Pope
Redwood
Renville
Rice
Sherburne
Sibley
Stearns
Steele
Stevens
Swift
Todd
Traverse
Wabasha
Wadena
Waseca
Watonwan
Yellow Medicine
Wisconsin:
Pierce
Polk

* * * * *

MISSOURI

Kansas City
Survey Area
Kansas:
Johnson
Leavenworth
Wyandotte
Missouri:
Cass
Clay
Jackson
Platte
Ray
Area of Application. Survey area plus:
Kansas:
Allen
Anderson
Atchison
Bourbon
Doniphan
Douglas
Franklin
Linn
Miami
Missouri:
Adair
Andrew
Atchison
Bates
Buchanan
Caldwell
Carroll
Chariton
Clinton
Cooper
Daviess
De Kalb
Gentry
Grundy
Harrison
Henry
Holt
Howard
Johnson
Lafayette
Linn
Livingston
Macon
Mercer
Nodaway
Pettis
Putnam
Saline
Schuyler
Sullivan
Worth

* * * * *

NORTH CAROLINA

* * * * *

Charlotte
Survey Area
North Carolina:
Cabarrus
Gaston
Mecklenburg
Rowan
Union

Area of Application. Survey area plus:
North Carolina:
Alexander
Anson
Catawba
Cleveland
Iredell
Lincoln
Stanly
Wilkes
South Carolina:
Chester
Chesterfield
Lancaster
York

* * * * *

SOUTH CAROLINA

* * * * *

Columbia
Survey Area
South Carolina:
Darlington
Florence
Kershaw
Lee
Lexington
Richland
Sumter

Area of Application. Survey area plus:
South Carolina:
Abbeville
Anderson
Calhoun
Cherokee
Clarendon
Fairfield
Greenville
Greenwood
Laurens
Newberry
Oconee
Orangeburg
Pickens
Saluda
Spartanburg
Union

* * * * *

WISCONSIN

* * * * *

Southwestern Wisconsin
Survey Area
Wisconsin:
Chippewa
Eau Claire
La Crosse
Monroe
Trempealeau

Area of Application. Survey area plus:
Minnesota:
Houston
Winona
Wisconsin:
Barron
Buffalo
Clark
Crawford
Dunn
Florence
Forest
Jackson
Juneau
Langlade
Lincoln
Marathon
Marinette
Menominee
Oneida
Pepin
Portage
Price
Richland
Rusk
Shawano
Taylor
Vernon
Vilas
Waupaca
Wood

* * * * *

[FR Doc. 2015–06410 Filed 3–20–15; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0752; Directorate Identifier 2014–NM–079–AD; Amendment 39–18110; AD 2015–04–08]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2014–06–08 for certain Bombardier, Inc. Model DHC–8–100, –200, and –300 series airplanes. AD 2014–06–08 required repetitive functional checks of the nose and main landing gear, and corrective actions if necessary; and also provided optional terminating action modification for the repetitive functional checks. This new AD requires a terminating action modification. This AD was prompted by a report that the emergency downlock indication system (EDIS) had given a false landing gear down-and-locked indication and a determination that a terminating action modification is necessary to address the identified unsafe condition. We are issuing this AD to detect and correct a false down-and-locked landing gear indication, which, on landing, could result in possible collapse of the landing gear.

DATES: This AD becomes effective April 27, 2015.

The Director of the Federal Register approved the incorporation by reference of publications listed in this AD as of April 14, 2014 (79 FR 17390, March 28, 2014).

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2014-0752;* or in person at the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

For service information identified in this AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

FOR FURTHER INFORMATION CONTACT: Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7318; fax 516–794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2014–06–08, Amendment 39–17812 (79 FR 17390, March 28, 2014). AD 2014–06–08 applied to certain Bombardier, Inc. Model DHC–8–100, –200, and –300 series airplanes. The NPRM published in the **Federal Register** on October 17, 2014 (79 FR 62363).

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2014–11, dated February 13, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Bombardier, Inc. Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes. The MCAI states:

> During an in-service event where the landing gear control panel indicated an unsafe nose landing gear, the flight crew observed that all three green lights were illuminated on the emergency downlock indication system. The nose landing gear was not down and locked, and collapsed during landing.

Investigation found ambient light and wiring shorts can lead to incorrect illumination of the green lights on the emergency downlock indication system.

This [Canadian] AD mandates the functional check of the nose and main landing gear alternate indication phototransistors and the modification of the emergency downlock indication system [incorporation of Modsums 8Q101955, 8Q101968, and 8Q101969 as applicable].

The unsafe condition is a false down-and-locked landing gear indication, which, on landing, could result in possible collapse of the landing gear. The modification consists of installing certain new electrical components and cable assemblies.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2014-0752-0002.*

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comment received. An anonymous commenter supported the NPRM (79 FR 62363, October 17, 2014).

Change Made to This AD

We have revised paragraphs (h)(1), (h)(2), and (h)(3) of this AD to clarify the affected airplanes identified in those paragraphs. This change does not affect the intent of those paragraphs.

Clarification of Repair Approval Required by Paragraph (g) of AD 2014–06–08, Amendment 39–17812 (79 FR 17390, March 28, 2014)

In paragraph (g) of AD 2014–06–08, Amendment 39–17812 (79 FR 17390, March 28, 2014), the functional check and corrective actions are done in accordance with Bombardier Service Bulletin 8–32–173, Revision A, dated December 17, 2012. That service information specifies to contact the manufacturer for further instructions if certain discrepancies are found. As noted in paragraph (j)(2) of AD 2014–06–08, ''For any requirement in this AD to obtain corrective actions from a manufacturer, use these actions if they are FAA-approved. . .'' and ''. . . corrective actions are considered FAA-approved if they were approved by the State of Design Authority (or its delegated agent, or the DAH with a State of Design Authority's design organization approval, as applicable).''

To clarify the repair approval for the action specified in paragraph (g) of this AD, we have added an exception to paragraph (g) of this AD, including specific delegation approval language. The exception clarifies that where the service information specifies to contact the manufacturer for further instructions, this AD requires repairing using a method approved by the Manager, New York Aircraft Certification Office, ANE–170, FAA; or TCCA; or Bombardier, Inc.'s TCCA Design Approval Organization.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting this AD with the changes described previously and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (79 FR 62363, October 17, 2014) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (79 FR 62363, October 17, 2014).

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this AD.

Costs of Compliance

We estimate that this AD affects 85 airplanes of U.S. registry.

The actions that are required by AD 2014–06–08, Amendment 39–17812 (79 FR 17390, March 28, 2014), and retained in this AD take about 3 work-hours per product, at an average labor rate of $85 per work-hour. Based on these figures, the estimated cost of the actions that were required by AD 2014–06–08 is $21,675, or $255 per product, per inspection cycle.

We also estimate that it will take up to 40 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost up to $19,436 per product. Based on these figures, we estimate the cost of this AD on U.S. operators to be up to $1,941,060, or $22,836 per product.

We have received no definitive data that will enable us to provide cost estimates for the on-condition actions specified in this AD.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2014-0752;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2014–06–08, Amendment 39–17812 (79 FR 17390, March 28, 2014), and adding the following new AD:

2015–04–08 Bombardier, Inc.: Amendment 39–18110. Docket No. FAA–2014–0752; Directorate Identifier 2014–NM–079–AD.

(a) Effective Date

This AD becomes effective April 27, 2015.

(b) Affected ADs

This AD replaces AD 2014–06–08, Amendment 39–17812 (79 FR 17390, March 28, 2014).

(c) Applicability

This AD applies to Bombardier, Inc. Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes, certificated in any category, serial numbers 003 through 672 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 32, Landing Gear.

(e) Reason

This AD was prompted by a report that the emergency downlock indication system (EDIS) had given a false landing gear down-and-locked indication and a determination that a terminating action modification is necessary to address the identified unsafe condition. We are issuing this AD to detect and correct a false down-and-locked landing gear indication, which, on landing, could result in possible collapse of the landing gear.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Retained Functional Check With Repair Approval Clarification

This paragraph restates the requirements of paragraph (g) of AD 2014–06–08, Amendment 39–17812 (79 FR 17390, March 28, 2014), with specific delegation approval language. Within 600 flight hours or 100 days, whichever occurs first, after April 14, 2014 (the effective date of AD 2014–06–08): Perform a functional check of the alternate indication phototransistors of the nose and main landing gear; and do all applicable corrective actions; in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–32–173, Revision A, dated December 17, 2012; except where Bombardier Service Bulletin 8–32–173, Revision A, dated December 17, 2012, specifies to contact the manufacturer for further instructions, before further, flight, repair using a method approved by the Manager, New York Aircraft Certification Office, ANE–170, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). Do all applicable corrective actions before further flight. Repeat the functional check thereafter at intervals not to exceed 600 flight hours or 100 days, whichever occurs first, until accomplishment of the applicable actions specified in paragraph (h) of this AD.

(h) New Requirement of This AD: Terminating Action

Within 6,000 flight hours or 36 months after the effective date of this AD, whichever occurs first: Do the applicable actions specified in paragraphs (h)(1) through (h)(3) of this AD. Accomplishment of the applicable actions specified in paragraphs (h)(1) through (h)(3) of this AD terminates the requirements of paragraph (g) of this AD.

(1) For airplanes on which Bombardier ModSum 8/1519 is installed: Incorporate Modsum 8Q101968, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–33–56, Revision A, dated February 22, 2013.

(2) For airplanes on which Bombardier Modsums 8/0235, 8/0461, and 8/0534 are installed: Incorporate Modsum 8Q101955, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–32–176, Revision A, dated February 22, 2013.

(3) For airplanes on which Bombardier Modsum 8/0534 is not installed: Incorporate Modsum 8Q101969, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–32–177, dated October 9, 2013.

(i) Credit for Previous Actions

(1) This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 8–32–173, dated October 28, 2011, which is not incorporated by reference in this AD.

(2) This paragraph provides credit for actions required by paragraph (h)(1) of this AD, if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 8–33–56, dated February 11, 2013, which is not incorporated by reference in this AD.

(3) This paragraph provides credit for actions required by paragraph (h)(2) of this AD, if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 8–32–176, dated February 11, 2013, which is not incorporated by reference in this AD.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* As of the effective date of this AD, for any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York Aircraft Certification Office, ANE–170, FAA; or TCCA; or Bombardier, Inc.'s TCCA DAO. If approved by the DAO, the approval must include the DAO-authorized signature.

(k) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2014–11, dated February 13, 2014, for related information. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2014-0752-0002.*

(l) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(3) The following service information was approved for IBR on April 14, 2014 (79 FR 17390, March 28, 2014).

(i) Bombardier Service Bulletin 8–32–173, Revision A, dated December 17, 2012.

(ii) Bombardier Service Bulletin 8–32–176, Revision A, dated February 22, 2013.

(iii) Bombardier Service Bulletin 8–32–177, dated October 9, 2013.

(iv) Bombardier Service Bulletin 8–33–56, Revision A, dated February 22, 2013.

(4) For service information identified in this AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.com.*

(5) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(6) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on February 19, 2015.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–05033 Filed 3–20–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–0489; Directorate Identifier 2015–NM–013–AD; Amendment 39–18112; AD 2015–05–02]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; request for comments.

SUMMARY: We are superseding Airworthiness Directive (AD) 2014–23–15 for all Airbus Model A318, A319, A320, and A321 series airplanes. AD 2014–23–15 required revising the maintenance or inspection program to incorporate new, more restrictive airworthiness limitations. This new AD retains the requirement to revise the maintenance or inspection program and removes a conflicting requirement. This AD was prompted by a determination that certain limitations required by AD 2014–23–15 conflict with limitations required by another AD. We are issuing this AD to prevent fatigue cracking, accidental damage, or corrosion in principal structural elements, and possible failure of certain life limited parts, which could result in reduced structural integrity of the airplane.

DATES: This AD becomes effective March 23, 2015.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of March 2, 2015 (80 FR 3871, January 26, 2015).

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of August 22, 2011 (76 FR 42024, July 18, 2011).

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of November 7, 2007 (72 FR 56262, October 3, 2007).

We must receive comments on this AD by May 7, 2015.

ADDRESSES: You may send comments by any of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Fax: 202–493–2251.
- Mail: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- Hand Delivery: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–0489; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

On December 23, 2014, we issued AD 2014–23–15, Amendment 39–18031 (80 FR 3871, January 26, 2015), to supersede AD 2011–14–06, Amendment 39–16741 (76 FR 42024, July 18, 2011). AD 2014–23–15 applied to all Airbus Model A318, A319, A320, and A321 series airplanes. AD 2014–23–15 was prompted by the determination that more restrictive airworthiness limitations were necessary. AD 2014–23–15 required revising the maintenance program to incorporate new, more restrictive airworthiness limitations. We issued AD 2014–23–15 to prevent fatigue cracking, accidental damage, or corrosion in principal structural elements, and possible failure of certain life limited parts, which could result in reduced structural integrity of the airplane.

AD 2014–23–15, Amendment 39–18031 (80 FR 3871, January 26, 2015), corresponds to Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency Airworthiness Directives 2012–0008, dated January 16, 2012; and 2013–0147, dated July 16, 2013. You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–0489.

Since we issued AD 2014–23–15, Amendment 39–18031 (80 FR 3871, January 26, 2015), we have determined that certain limitations required by AD 2014–23–15 conflict with limitations required by AD 2014–26–10, Amendment 39–18061 (80 FR 2813, January 21, 2015). Paragraph (n) of AD 2014–23–15 requires revising the maintenance or inspection program, as applicable, to incorporate the airworthiness limitations specified in paragraphs (n)(1), (n)(2), and (n)(3) of AD 2014–23–15. Paragraph (n)(3) of AD 2014–23–15 references Airbus A318/A319/A320/A321 ALS Part 4—Ageing Systems Maintenance, dated January 8, 2008. However, paragraph (g) of AD 2014–26–10 requires revising the maintenance or inspection program, as applicable, to incorporate Airbus A318/A319/A320/A321 Airworthiness Limitations Section, ALS Part 4, Aging Systems Maintenance, Revision 01, dated June 15, 2012.

Airbus A318/A319/A320/A321 Airworthiness Limitations Section, ALS Part 4, Aging Systems Maintenance, Revision 01, dated June 15, 2012, contains the most recent airworthiness limitations for ALS Part 4. Therefore, Airbus A318/A319/A320/A321 ALS Part 4—Ageing Systems Maintenance, dated January 8, 2008, should not be incorporated as required by AD 2014–23–15, Amendment 39–18031 (80 FR 3871, January 26, 2015). We have removed paragraph (n)(3) of AD 2014–23–15 from this AD. We have also revised the introductory text of paragraph (n) of this AD to refer only to paragraphs (n)(1) and (n)(2) of this AD.

FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are issuing this

AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of these same type designs.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because operators must comply with the most recent airworthiness limitations, which are specified in Airbus A318/A319/A320/A321 ALS Part 4—Ageing Systems Maintenance, Revision 01, dated June 15, 2012, as required by AD 2014–26–10, Amendment 39–18061 (80 FR 2813, January 21, 2015). Since AD 2014–23–15, Amendment 39–18031 (80 FR 3871, January 26, 2015), requires an earlier version of the airworthiness limitations, *i.e.,* Airbus A318/A319/A320/A321 ALS Part 4—Ageing Systems Maintenance, dated January 8, 2008, we must remove that requirement in order to avoid a conflict with certain requirements of AD 2014–26–10. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2015–0489; Directorate Identifier 2015–NM–013–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

Costs of Compliance

We estimate that this AD affects 851 airplanes of U.S. registry.

The actions required by AD 2014–23–15, Amendment 39–18031 (80 FR 3871, January 26, 2015), and retained in this AD take about 2 work-hours per product, at an average labor rate of $85 per work-hour. Based on these figures, the estimated cost of the actions that were required by AD 2014–23–15 is $170 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2014–23–15, Amendment 39–18031 (80 FR 3871, January 26, 2015), and adding the following new AD:

2015–05–02 Airbus: Amendment 39–18112. Docket No. FAA–2015–0489; Directorate Identifier 2015–NM–013–AD.

(a) Effective Date

This AD becomes effective March 23, 2015.

(b) Affected ADs

This AD replaces AD 2014–23–15, Amendment 39–18031 (80 FR 3871, January 26, 2015).

(c) Applicability

This AD applies to all Airbus Model A318–111, –112, –121, and –122 airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–111, –211, –212, –214, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes; certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 05, Periodic Inspections.

(e) Reason

This AD was prompted by a determination that certain limitations required by AD 2014–23–15, Amendment 39–18031 (80 FR 3871, January 26, 2015), conflict with limitations required by AD 2014–26–10, Amendment 39–18061 (80 FR 2813, January 21, 2015). We are issuing this AD to prevent fatigue cracking, accidental damage, or corrosion in principal structural elements, and possible failure of certain life limited parts, which could result in reduced structural integrity of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Retained Revision of Airworthiness Limitations Section (ALS) to Incorporate Safe Life Airworthiness Limitation Items (ALIs), With No Changes

This paragraph restates the requirements of paragraph (g) of AD 2014–23–15, Amendment 39–18031 (80 FR 3871, January 26, 2015), with no changes. For Model A318–111 and –112 airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–111, –211, –212, –214, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes: Within 3 months after November 7, 2007 (the effective date of AD 2007–20–05, Amendment 39–15215 (72 FR 56262, October 3, 2007)), revise

the ALS of the Instructions for Continued Airworthiness to incorporate Sub-part 1–2, Life Limits, and Sub-part 1–3, Demonstrated Fatigue Lives, of Airbus A318/A319/A320/A321 ALS Part 1—Safe Life Airworthiness Limitation Items, Revision 00, dated February 28, 2006. Accomplish the actions in Sub-part 1–2, Life Limits, and Sub-part 1–3, Demonstrated Fatigue Lives, of Airbus A318/A319/A320/A321 ALS Part 1—Safe Life Airworthiness Limitation Items, Revision 00, dated February 28, 2006, at the times specified in Sub-part 1–2, Life Limits, and Sub-part 1–3, Demonstrated Fatigue Lives, of Airbus A318/A319/A320/A321 ALS Part 1—Safe Life Airworthiness Limitation Items, dated February 28, 2006, except as provided by paragraph (i) of this AD. Accomplishing the actions required by paragraph (j) of this AD terminates the requirements of this paragraph.

(h) Retained Revision of ALS for Certain Airplanes To Incorporate Damage Tolerant ALIs, With No Changes

This paragraph restates certain provisions of paragraph (h) of AD 2014–23–15, Amendment 39–18031 (80 FR 3871, January 26, 2015), with no changes. For Model A318–111 and –112 airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–111, –211, –212, –214, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes; except Model A319 airplanes on which Airbus Modifications 28238, 28162, and 28342 have been incorporated in production: Within 14 days after November 7, 2007 (the effective date of AD 2007–20–05, Amendment 39–15215 (72 FR 56262, October 3, 2007)), revise the ALS of the Instructions for Continued Airworthiness to incorporate Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, Issue 7, dated December 2005 (approved by the European Aviation Safety Agency (EASA) on February 7, 2006); Issue 08, dated March 2006 (approved by the EASA on January 4, 2007); or Issue 09, dated November 2006 (approved by the EASA on May 21, 2007). Accomplish the actions in Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, Issue 7, dated December 2005; Issue 08, dated March 2006; or Issue 09, dated November 2006; at the times specified in Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, Issue 7, dated December 2005; Issue 08, dated March 2006; or Issue 09, dated November 2006; as applicable; except as provided by paragraph (i) of this AD. Accomplishing the actions required by paragraph (j) or (n) of this AD, as applicable, terminates the requirements of this paragraph.

(i) Retained Grace Period for New or More Restrictive Actions, With No Changes

This paragraph restates certain provisions of paragraph (i) of AD 2014–23–15, Amendment 39–18031 (80 FR 3871, January 26, 2015), with no changes. For Model A318–111 and –112 airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–111, –211, –212, –214, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes: For any new or more restrictive life–limit introduced with Sub-part 1–2, Life Limits, and Sub-part 1–3, Demonstrated Fatigue Lives, of Airbus A318/A319/A320/A321 ALS Part 1—Safe Life Airworthiness Limitation Items, Revision 00, dated February 28, 2006, replace the part at the time specified in Sub-part 1–2, Life Limits, and Sub-part 1–3, Demonstrated Fatigue Lives, of Airbus A318/A319/A320/A321 ALS Part 1—Safe Life Airworthiness Limitation Items, Revision 00, dated February 28, 2006, or within 6 months after November 7, 2007 (the effective date of AD 2007–20–05, Amendment 39–15215 (72 FR 56262, October 3, 2007)), whichever is later. Accomplishing the actions required by paragraph (n) of this AD terminates the requirements of this paragraph.

(j) Retained Revision of ALS To Incorporate Damage-Tolerant ALIs, With No Changes

This paragraph restates the requirements of paragraph (j) of AD 2014–23–15, Amendment 39–18031 (80 FR 3871, January 26, 2015), with no changes. Within 9 months after August 22, 2011 (the effective date of AD 2011–14–06, Amendment 39–16741 (76 FR 42024, July 18, 2011)): Revise the maintenance program by incorporating all maintenance requirements and associated airworthiness limitations specified in the Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, Issue 10, dated October 2009; or Issue 11, dated September 2010. Comply with all applicable maintenance requirements and associated airworthiness limitations included in Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, Issue 10, dated October 2009; or Issue 11, dated September 2010; except as provided by paragraph (k) of this AD. Accomplishing the actions required by this paragraph terminates the requirements of paragraph (h) of this AD. Accomplishing the actions required by paragraph (n) of this AD terminates the requirements of this paragraph.

(k) Retained Special Compliance Times for Certain Tasks, With No Changes

This paragraph restates the requirements of paragraph (k) of AD 2014–23–15, Amendment 39–18031 (80 FR 3871, January 26, 2015), with no changes. For new and more restrictive tasks introduced with Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, Issue 10, dated October 2009; or Issue 11, dated September 2010; as specified in table 1 to paragraph (k) of this AD: The initial compliance time for doing the tasks is specified in table 1 to paragraph (k) of this AD. Accomplishing the actions required by paragraph (n) of this AD terminates the requirements of this paragraph.

TABLE 1 TO PARAGRAPH (K) OF THIS AD—COMPLIANCE TIMES FOR TASKS

Task	Applicability (as specified in the applicability column of the task)	Compliance time, whichever occurs later	
545102–01–6	Group 19–1A CFM, Group 19–1B CFM, and Model A320–200 airplanes with CFM Industrial (CFM)/International Aero Engine (IAE) engines.	The threshold as defined in Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, Issue 10, dated October 2009; or Issue 11, dated September 2010.	Within 2,000 flight cycles or 5,500 flight hours, after August 22, 2011 (the effective date of AD 2011–14–06, Amendment 39–16741 (76 FR 42024, July 18, 2011)), whichever occurs first.
545102–01–7	Model A320–100 series airplanes	The threshold as defined in Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, Issue 10, dated October 2009; or Issue 11, dated September 2010.	Within 2,000 flight cycles or 2,000 flight hours, after August 22, 2011 (the effective date of AD 2011–14–06, Amendment 39–16741 (76 FR 42024, July 18, 2011)), whichever occurs first.

TABLE 1 TO PARAGRAPH (K) OF THIS AD—COMPLIANCE TIMES FOR TASKS—Continued

572050–01–1 or alternative task 572050–02–1.	Group 19–1A and Group 19–1B airplanes.	At the time of the next due accomplishment of any one of the tasks 572004, 572020, or 572053 as currently described in the Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, Issue 7, dated December 2005; Issue 08, dated March 2006; or Issue 09, dated November 2006.	Within 6 months after August 22, 2011 (the effective date of AD 2011–14–06, Amendment 39–16741 (76 FR 42024, July 18, 2011)).
572050–01–4 or alternative task 572050–02–4.	Model A320–200 series airplanes	At the time of the next due accomplishment of any one of the tasks 572004, 572020, or 572053 as currently described in the Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, Issue 7, dated December 2005; Issue 08, dated March 2006; or Issue 09, dated November 2006.	Within 6 months after August 22, 2011 (the effective date of AD 2011–14–06, Amendment 39–16741 (76 FR 42024, July 18, 2011)).
572050–01–5 or alternative task 572050–02–5.	Group 21–1A airplanes	At the time of the next due accomplishment of any one of the tasks 572004, 572020, or 572053 as currently described in the Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, Issue 7, dated December 2005; Issue 08, dated March 2006; or Issue 09, dated November 2006.	Within 6 months after August 22, 2011 (the effective date of AD 2011–14–06, Amendment 39–16741 (76 FR 42024, July 18, 2011)).
572050–01–7 or alternative task 572050–02–7.	Model A320–100 series airplanes	At the time of the next due accomplishment of any one of the tasks 572004, 572020, or 572053 as currently described in the Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, Issue 7, dated December 2005; Issue 08, dated March 2006; or Issue 09, dated November 2006.	Within 6 months after August 22, 2011 (the effective date of AD 2011–14–06, Amendment 39–16741 (76 FR 42024, July 18, 2011)).
534132–01–1	Model A320 PRE 30748 airplanes	The threshold/interval as defined in Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, Issue 10, dated October 2009; or Issue 11, dated September 2010.	Within 100 days after August 22, 2011 (the effective date of AD 2011–14–06, Amendment 39–16741 (76 FR 42024, July 18, 2011)), without exceeding the previous threshold/interval as defined in Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, Issue 7, dated December 2005; Issue 08, dated March 2006; or Issue 09, dated November 2006.
531118–01–1	Model A318 (except (A318–121 and –122), Group 19–1A, Group 19–1B, and Model A320 and A321 series airplanes.	The threshold/interval as defined in Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, Issue 10, dated October 2009; or Issue 11, dated September 2010.	Within 100 days after August 22, 2011 (the effective date of AD 2011–14–06, Amendment 39–16741 (76 FR 42024, July 18, 2011)), without exceeding the previous threshold/interval as defined in Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, Issue 7, dated December 2005; Issue 08, dated March 2006; or Issue 09, dated November 2006.
531118–01–1	Model A318–121 and –122 airplanes ..	The threshold/interval as defined in Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, Issue 10, dated October 2009; or Issue 11, dated September 2010.	Within 100 days after August 22, 2011 (the effective date of AD 2011–14–06, Amendment 39–16741 (76 FR 42024, July 18, 2011)).

Note 1 to table 1 to paragraph (k) of this AD: ALI Task 572050 refers to the outer wing dry bay and is comprised of extracts from three ALI Tasks 572004, 572020, and 572053. The threshold of ALI Task 572050 for the whole dry bay area is that of the lowest threshold of the source ALI tasks, *i.e.,* that of ALI Task 572053.

(l) Retained Limitation: No Alternative Life Limits, Inspections, or Inspection Intervals After Accomplishment of the Actions Specified in Paragraphs (g) and (h) of This AD, With No Changes

This paragraph restates the requirements of paragraph (l) of AD 2014–23–15, Amendment 39–18031 (80 FR 3871, January 26, 2015), with no changes. After the actions specified in paragraphs (g) and (h) of this AD have been accomplished, no alternative life limits, inspections, or inspection intervals may be used, except as provided by paragraphs (i) and (m) of this AD, and except as required by paragraphs (j) and (n) of this AD.

(m) Retained Limitation: No Alternative Life Limits, Inspections, or Inspection Intervals After Accomplishment of the Actions Specified in Paragraph (j) of This AD, With No Changes

This paragraph restates the requirements of paragraph (m) of AD 2014–23–15, Amendment 39–18031 (80 FR 3871, January 26, 2015), with no changes. After the actions specified in paragraph (j) of this AD have been accomplished, no alternative life limits, inspections, or inspection intervals may be used, except as required by paragraph (n) of this AD.

(n) Retained Maintenance or Inspection Program Revision, With Changes

This paragraph restates the requirements of paragraph (n) of AD 2014–23–15, Amendment 39–18031 (80 FR 3871, January 26, 2015), except that paragraph (n)(3) of AD 2014–23–15 is not retained. Within 30 days after March 2, 2015 (the effective date of AD 2014–23–15), revise the maintenance or inspection program, as applicable, to incorporate the ALIs specified in paragraphs (n)(1) and (n)(2) of this AD. The initial compliance time for the accomplishing the actions is at the applicable time specified in the ALIs specified in paragraphs (n)(1) and (n)(2) of this AD; or within 4 months after March 2, 2015 (the effective date of AD 2014–23–15); whichever occurs later. Accomplishing these actions terminates the requirements of paragraphs (g), (h), (i), (j), and (k) of this AD.

(1) Airbus A318/A319/A320/A321 ALS Part 1—Safe Life Airworthiness Limitation Items, Revision 02, dated May 13, 2011.

(2) Airbus A318/A319/A320/A321 ALS Part 2—Damage-Tolerant Airworthiness Limitation Items (DT ALI), Revision 02, dated May 28, 2013.

(o) Retained Limitation: No Alternative Actions, Intervals, and/or Critical Design Configuration Control Limitations (CDCCLs), With No Changes

This paragraph restates the requirements of paragraph (o) of AD 2014–23–15, Amendment 39–18031 (80 FR 3871, January 26, 2015), with no changes. After accomplishing the revision required by paragraph (n) of this AD, no alternative actions (*e.g.*, inspections), intervals, and/or CDCCLs may be used unless the actions, intervals, and/or CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (p)(1) of this AD.

(p) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*.

(i) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(ii) AMOCs approved previously for AD 2011–14–06, Amendment 39–16741 (76 FR 42024, July 18, 2011), are approved as AMOCs for the corresponding actions of this AD.

(2) *Contacting the Manufacturer:* As of March 2, 2015 (the effective date of AD 2014–23–15, Amendment 39–18031 (80 FR 3871, January 26, 2015)), for any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(q) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directives 2012–0008, dated January 16, 2012; and 2013–0147, dated July 16, 2013; for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–0489.

(r) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(3) The following service information was approved for IBR on March 2, 2015 (80 FR 3871, January 26, 2015).

(i) Airbus A318/A319/A320/A321 ALS Part 1—Safe Life Airworthiness Limitation Items, Revision 02, dated May 13, 2011. The revision level of this document is identified on only the title page and in the Record of Revisions. The revision date is not identified on the title page of this document.

(ii) Airbus A318/A319/A320/A321 ALS Part 2—Damage-Tolerant Airworthiness Limitation Items (DT ALI), Revision 02, dated May 28, 2013. The revision date of this document is not identified on the title page of this document.

(4) The following service information was approved for IBR on August 22, 2011 (76 FR 42024, July 18, 2011).

(i) Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, Issue 10, dated October 2009. The revision level of this document is identified on only the title page and in the Record of Revisions.

(ii) Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, Issue 11, dated September 2010. The revision level of this document is identified on only the title page and in the Record of Revisions.

(5) The following service information was approved for IBR on November 7, 2007 (72 FR 56262, October 3, 2007).

(i) Airbus A318/A319/A320/A321 ALS Part 1—Safe Life Airworthiness Limitation Items, Revision 00, dated February 28, 2006.

(ii) Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, Issue 7, dated December 2005.

Note 2 to paragraph (r)(5)(ii) of this AD: This document contains the following errors: The Summary of Changes is comprised of 11 pages, which are all identified as Page 2—LEP of Section LEP instead of Page 1—SOC [through] Page 11—SOC of Section SOC; the List of Effective Pages only refers to Page 1—SOC for the Summary of Changes. The List of Effective Pages is comprised of two pages, and both of those pages are identified as Page 2—LEP. The first page of Section 2 is identified as Page 6 of Section 1 and is not referred to in the List of Effective Pages.

(iii) Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, Issue 08, dated March 2006.

Note 3 to paragraph (r)(5)(iii) of this AD: This document contains the following errors: Pages 3—ROR and 2—SOC are not referred to in the List of Effective Pages. The List of Effective Pages is identified as Pages 1—SOC and 2—SOC, instead of 1—LEP and 2—LEP. The first page of Section 2 is identified as Page 6 of Section 1 and is not referred to in the List of Effective Pages.

(iv) Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, Issue 09, dated November 2006.

(6) For service information identified in this AD, contact Airbus, Airworthiness

Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com*; Internet *http://www.airbus.com*.

(7) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(8) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Renton, Washington, on February 25, 2015.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–05731 Filed 3–20–15; 8:45 am]

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FEDERAL TRADE COMMISSION

16 CFR Parts 2, 3, and 4

Revisions to Rules of Practice

AGENCY: Federal Trade Commission.

ACTION: Final rules.

SUMMARY: The Commission is revising certain of its rules of practice to promote fairness, flexibility and efficiency in its investigations, studies, and adjudicative proceedings. These rule revisions include a revision to the rule governing the status of cases in administrative adjudication following a district court's denial of preliminary injunctive relief in an ancillary proceeding. Other changes include revisions to the list of Commission officials who have authority to modify the terms and timeframe for compliance with compulsory process, and a change to the deadline for the Commission to dispose of petitions to limit or quash compulsory process. In addition, the Commission is updating its procedures for accessing public records and list of exempt Privacy Act systems.

DATES: These rule revisions are effective on March 23, 2015.

FOR FURTHER INFORMATION CONTACT: Josephine Liu, Attorney, (202) 326–2170, Office of the General Counsel, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580. For information about the revisions to 16 CFR part 4, contact G. Richard Gold, Attorney, (202) 326–3355, Office of the General Counsel, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: The Federal Trade Commission is revising certain rules in parts 2 and 3 of its rules of practice that govern investigations and adjudicative proceedings, and is revising other rules in part 4 of its rules of practice.

The Commission is amending Rules 2.7 and 2.10 to provide the Office of Policy Planning (''OPP'') Director and Deputy Directors with the authority to modify the terms of compliance with compulsory process, alter the meet-and-confer prerequisite, and extend the deadline for filing a petition to limit or quash compulsory process. This change reflects OPP's role in frequently conducting and leading studies under section 6(b) of the FTC Act. The Commission is also revising Rule 2.10(c) to impose a 40-day deadline for disposing of petitions to limit or quash compulsory process.

In part 3 of its Rules, the Commission is amending Rule 3.26 to make clear that administrative litigation will be suspended if respondents file a qualifying motion for withdrawal or dismissal after a district court denies preliminary injunctive relief in an ancillary proceeding brought under section 13(b) of the FTC Act. As discussed below, the Commission will continue to follow the 1995 Policy Statement Regarding Administrative Merger Litigation Following the Denial of a Preliminary Injunction [1] and consider the specific circumstances of each case when deciding whether to pursue administrative litigation. In addition, the Commission is revising the Part 3 rules to correct typographical errors, ensure consistency between sections, clarify paragraph headings, and make other technical changes.

In part 4 of its Rules, the Commission is revising the procedures and contact information for accessing public records in Rule 4.9, making a technical correction to Rule 4.11, and updating the names of exempt Privacy Act systems in Rule 4.13.

Because these rule revisions relate solely to agency procedure and practice, publication for notice and comment is not required under the Administrative Procedure Act. 5 U.S.C. 553(b).[2] These rule revisions are effective on March 23, 2015.

[1] *Administrative Litigation Following the Denial of a Preliminary Injunction: Policy Statement,* 60 FR 39741 (Aug. 3, 1995).

[2] For this reason, the requirements of the Regulatory Flexibility Act are also inapplicable. 5 U.S.C. 601(2), 604(a). Likewise, the amendments do not modify any FTC collections of information within the meaning of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

I. Revisions to Rules of Practice for Nonadjudicative Investigations (Part 2)

In 2012, the Commission undertook an extensive revision of its rules governing the conduct of its investigations.[3] The Commission is now revising certain of those rules to promote fairness, flexibility, and efficiency in FTC investigations, which includes studies conducted under section 6(b) of the FTC Act.

Rules 2.7(l) and 2.10(a)(5): Officials With Authority To Modify Compulsory Process and Extend the Deadline for Petitions To Quash

The Commission is revising Rules 2.7(*l*) and 2.10(a)(5) to reflect the fact that the FTC's Office of Policy Planning frequently conducts and leads section 6(b) studies. The Commission is amending Rule 2.7(*l*) to include the Office of Policy Planning Director and Deputy Directors among the identified Commission officials authorized to modify the terms of compliance with orders to file special reports under section 6(b) of the FTC Act and other forms of compulsory process. Commission rules provide that the officials designated in Rule 2.7(*l*) also have the power to modify the manner and form of production of electronically stored information (in Rule 2.7(j)), and alter the meet-and-confer prerequisite for filing a petition to limit or quash compulsory process (in Rule 2.7(k)). Consistent with these amendments, the Commission is also revising Rule 2.10(a)(5) to state that the Office of Policy Planning Director and Deputy Directors are authorized to extend the deadline for filing a petition to limit or quash. The revised rules will better reflect Commission practice and provide further flexibility and efficiency for 6(b) studies and other investigations.

Rule 2.10(c): Disposition of Petitions To Limit or Quash Compulsory Process

The Commission revised Rule 2.10 in 2012 to eliminate the two-step procedure for rulings on petitions to limit or quash compulsory process by requiring the full Commission to rule on the petition in the first instance. The rule also imposed a 30-day deadline for disposition of the petition. The Commission received no comments regarding this provision, and adopted it as proposed, noting that if the Commission did not meet the deadline, the petition would not be automatically granted or denied.[4] To enable sufficient time for full Commission review of the merits of the petition, the Commission

[3] *See Rules of Practice,* 77 FR 59294 (2012).

[4] 77 FR 59300.

is revising Rule 2.10(c) to impose a 40-day deadline. The extra 10 days for Commission review do not pose a substantial hardship to recipients of compulsory process because Rule 2.10(b) continues to provide that the timely filing of a petition to limit or quash stays the remaining amount of time permitted for compliance.

II. Revisions to Rules of Practice for Adjudicative Proceedings (Part 3)

Rule 3.26

Rule 3.26 sets out two procedures that facilitate Commission consideration of whether to pursue administrative merger litigation following judicial denial of preliminary injunctive relief in an ancillary proceeding brought under section 13(b) of the Federal Trade Commission Act, 15 U.S.C. 53(b).[5] As explained further below, the rule allows respondents to file a motion to withdraw the administrative case from adjudication or a motion to dismiss the administrative complaint. Such motions can only be filed within a certain time after the district court has denied the preliminary injunction or after the court of appeals has denied the Commission's motion for relief pending appeal.

In revising Rule 3.26, the Commission is also making clear it will continue to consider the specific circumstances of each case when deciding whether to proceed with administrative litigation, as outlined in a 1995 Policy Statement[6] issued in conjunction with the original version of the rule.[7] As discussed below, the revisions ensure that, if respondents file either type of motion in accordance with the rule, the administrative litigation will be suspended unless and until the Commission rules that maintenance of the litigation would serve the public interest. These revisions follow the approach of the original version of the rule.

Rule 3.26, as first issued in 1995, provided that a motion for withdrawal would generally result in an automatic withdrawal and that a motion for dismissal would result in an automatic stay. The procedure for a withdrawal enabled *ex parte* communications (otherwise prohibited by Rule 4.7) while the matter was withdrawn from Part 3 administrative adjudication. During this period, complaint counsel and respondents (and third parties) could communicate informally with Commissioners to discuss the matter without the constraints of the adjudicative rules. In addition, because such communications would not be on the record of the administrative proceeding, counsel could discuss the case without concern that their statements might compromise their litigation position if the case were returned to adjudication.

The alternative procedure in the 1995 Rule provided for an automatic stay of the adjudication if a respondent filed a motion to dismiss the administrative complaint and to brief the matter on the public record. The *ex parte* restrictions remained in place.

Because of the long delays that often resulted from the filing of motions under the 1995 Rule, the Commission revised the rule in 2009.[8] The 2009 rule continued to allow respondents to file either type of motion but no longer provided that such a motion would result in an automatic withdrawal or an automatic stay. Although it was revising the 1995 rule, the Commission indicated, however, that it would continue to adhere to the case-by-case approach articulated in the 1995 Policy Statement in determining whether to continue with administrative litigation challenging a merger after a district court had denied preliminary injunctive relief. In addition, the Commission authorized motions under Rule 3.26 to be filed at an earlier time following the district court's denial of preliminary injunctive relief and required the Commission to dispose of such motions within 30 days.

Since 2009, the Commission has continued to be guided by the 1995 Policy Statement when determining whether to proceed with administrative litigation. For example, in *Laboratory Corporation of America,* the district court denied the Commission's request for preliminary injunctive relief, the respondents then moved to withdraw the matter from administrative adjudication, and the Commission granted the respondents' motion for withdrawal six days after it was filed.[9] Less than a month later, after carefully considering the factors outlined in the Policy Statement, the Commission voted unanimously to end the administrative litigation.[10] The Policy Statement will continue to guide the Commission in the future.

The Commission has now decided to return to the automatic mechanisms in the 1995 rule. The new rule now provides for an automatic withdrawal or automatic stay, depending on the type of motion filed. Because the Commission is retaining the deadlines in the 2009 rule for the filing of motions and specifying deadlines for Commission determinations of the motions, an automatic withdrawal or stay is not likely to disrupt the resolution of the matter.

First, respondents may move to have the administrative case withdrawn from adjudication. The Commission is retaining the provision in the 2009 rule that motions for withdrawal can be filed jointly or separately, so long as all of the respondents agree to seek withdrawal. The administrative case will automatically be withdrawn two days after the motion is filed, unless complaint counsel files an objection asserting that the procedural requirements have not been satisfied,[11] in which case the Commission will

[5] Although Rule 3.26 applies to any type of administrative litigation where the Commission has sought a preliminary injunction, the Commission typically seeks such relief during a challenge to an unconsummated merger, acquisition, joint venture or similar transaction.

[6] *Statement of Federal Trade Commission Policy Regarding Administrative Merger Litigation Following the Denial of a Preliminary Injunction, supra* note 1, at 39743. The Commission indicated in 1995 that the principles of the Policy Statement would apply also in the context of consumer protection litigation and non-merger competition litigation.

[7] *Administrative Litigation Following the Denial of a Preliminary Injunction,* 60 FR 39640 (Aug. 3, 1995).

[8] *Rules of Practice,* 74 FR 1804, 1811–12 (Jan. 13, 2009).

[9] *See* Order Withdrawing Matter from Adjudication Pursuant to Rule 3.26(c) of the Commission Rules of Practice, *In re Lab. Corp. of Am.,* Docket No. 9345, *https://www.ftc.gov/sites/default/files/documents/cases/2011/03/110324labcorpcommorder.pdf* (Mar. 23, 2011). In *Phoebe Putney,* the other merger matter since the 2009 rule change in which the Commission lost a motion for preliminary injunction, the respondents did not invoke Rule 3.26. Rather, the Commission granted an unopposed motion to stay the Part 3 proceedings after the Eleventh Circuit granted an injunction pending appeal; and the Commission subsequently lifted its stay after prevailing in the Supreme Court. *See* Order Granting Respondents' Unopposed Motion to Stay Proceeding, *In re Phoebe Putney Health Sys., Inc.,* Docket No. 9348, *https://www.ftc.gov/system/files/documents/cases/130222ccnoa_0.pdf* (July 15, 2011); Order Granting Complaint Counsel's Motion to Lift Stay, *In re Phoebe Putney Health Sys., Inc.,* Docket No. 9348, *https://www.ftc.gov/sites/default/files/documents/cases/2013/03/130314phoebeordermotion.pdf* (Mar. 14, 2013).

[10] *See* Statement of Commissioners Leibowitz, Kovacic, and Ramirez, *In re Lab. Corp. of Am.,* Docket No. 9345, *http://www.ftc.gov/system/files/documents/public_statements/568671/110422labcorpcommstmt.pdf* (Apr. 21, 2011); Concurring Statement of Commissioner Brill, *In re Lab. Corp. of Am.,* Docket No. 9345, *http://www.ftc.gov/system/files/documents/public_statements/568681/110422labcorpstmtbrill.pdf* (Apr. 21, 2011).

[11] As the Commission noted in 1995, the procedural requirements might not be satisfied if the Rule 3.26 motion is filed untimely, or if there is a question as to whether a particular court order constitutes a denial of preliminary injunctive relief. 60 FR 39640 n.3. Rule 3.26 is intended for situations where the court refuses to grant the Commission any form of preliminary relief. If, for example, the court denies the Commission's request for a preliminary injunction halting a proposed merger but nonetheless imposes a ''hold separate'' order, Rule 3.26 would not be available.

decide whether to withdraw the case from adjudication.

Second, any respondent may file a motion for dismissal that will be briefed on the public record. The administrative case will automatically be stayed until 7 days after the Commission rules on the motion for dismissal, and all deadlines established by the rules will be tolled for the amount of time the proceeding is stayed.

As noted above, the Commission is retaining the 2009 rule's timing requirements for such motions but simplifying the wording in Rule 3.26(b). If the Commission does not file a motion with the court of appeals for relief pending appeal within 7 days following the district court's denial of a preliminary injunction, the Rule 3.26 motion must be filed within 14 days after the denial of the preliminary injunction. If the Commission files a motion with the court of appeals for relief pending appeal, the Rule 3.26 motion must be filed within 14 days after, but no earlier than, denial by the court of appeals of the Commission's motion for relief pending appeal.

In addition, in order to expedite these proceedings, the Commission is specifying deadlines for deciding motions under Rule 3.26. If respondents file a motion for withdrawal under Rule 3.26(c) and complaint counsel files an objection, the Commission must rule on the motion within 10 days of the objection. If respondents file a motion for dismissal under Rule 3.26(d), the Commission is retaining the requirement of the current rule that the Commission decide such motions within 30 days.

The Commission is retaining current Rule 3.26(e), which sets out the requirements for memoranda filed in support of or in opposition to these motions, and retaining with minor changes Rule 3.26(f), which sets out the requirements for filings that contain *in camera* materials.

Finally, the Commission is making one other, minor modification to the rule: the timeframe for complaint counsel to respond to motions for dismissal has been shortened from 14 days to 7 days.

Technical Changes to Other Part 3 Rules

The Commission is making a number of non-substantive changes to the part 3 rules to correct typographical errors, ensure consistency in the terminology and the requirements in different sections of the rules, clarify paragraph headings, and delete or restore material that was inadvertently retained or deleted when the Commission last amended the rules in 2011.

Rule 3.22(a) is being amended to clarify that Rule 3.22(a) does not govern the presentation and timing requirements for motions under Rule 3.26. Similarly, Rule 3.22(b) is being revised to reflect the fact that, under the Commission's rules, the filing of certain motions automatically stays the proceedings. In particular, motions under Rule 3.26(d) as revised by this notice and some motions under existing Rule 3.25(c) will result in automatic stays. For the same reasons, the Commission is amending Rule 3.41(f) by adding a cross-reference to Rule 3.26, to make clear that Rule 3.41(f) does not govern in situations where Rule 3.26 applies.

Rule 3.23(b) is being amended to clarify that a party opposing interlocutory review may file an answer to both (1) the initial request for determination that is filed with the ALJ, and (2) the subsequent application for review that is filed with the Commission. Existing Rule 3.23(b) could create confusion about whether the first type of answer is permitted, because the rule does not expressly authorize answers to initial requests but nonetheless mentions the deadline for filing such answers.

The general discovery provisions were previously amended in 2009 to prohibit filing discovery materials with the Secretary, except in certain circumstances. See 16 CFR 3.31(h). To ensure consistency with the 2009 amendment, the Commission is now (1) eliminating the requirement in Rule 3.32(a) and (b) that requests for admissions and responses thereto be filed with the Secretary, and (2) revising the paragraph heading for Rule 3.33(c)(2) and clarifying the text of that paragraph. The Commission is also eliminating redundant text for two numbers mentioned in Rule 3.32(a) and (b), as well as correcting a typographical error in the last sentence of Rule 3.32(b).

To maintain consistency in how the terms ''prehearing'' and ''subpoenas'' are used throughout the part 3 rules, the Commission is revising Rules 3.35(b)(2) and 3.42(c)(2).

The Commission is revising Rule 3.45(e) to reflect the fact that the parties who submit documents containing *in camera* or confidential information must comply with all of the Commission's rules governing the filing and service of documents—including those located in 16 CFR part 4—not just with the Commission's part 3 rules. In addition, Rule 3.45(f) is being revised to delete two sentences that were inadvertently not deleted when the Commission amended the rule in 2011. Similarly, Rule 3.52(a)(2) is being revised to restore a clause that was inadvertently deleted after the 2011 amendments.

In Rule 3.46(c)(4), an erroneous reference to the public or nonpublic status of each ''exhibit'' in the witness index is being replaced with ''witness testimony.''

III. Revisions to Miscellaneous Rules (Part 4)

Rule 4.9: The Public Record

The Commission's public record regulation, 16 CFR 4.9, sets out procedures and contact information for accessing public record materials. The Commission is amending Rule 4.9(a)(1), (2), (3), (4), and 10(viii), 16 CFR 4.9(a)(1), (2), (3), (4), and (10)(viii), to reflect updates to these procedures and contact information. The revised rule states that these materials are available either electronically at the FTC's Web site, *www.ftc.gov,* or for older materials not on the Web site, through telephonic requests with the FTC's Reading Room at (202) 326–2222, extension 2.

Under the prior policy, the FTC's Consumer Response Center (CRC) maintained an in-person physical reading room at the Headquarters building, where members of the public could inspect records and file public record requests. Once requests were received, the CRC worked with the Commission's Records and Filings Office, which researched public record requests, retrieved documents from storage, and provided them to CRC staff and authorized contractors to distribute to the requestors to review and make copies in the physical reading room.

The CRC no longer maintains a physical reading room. To obtain a copy of any public records not available on the agency's Web site, members of the public can call the Reading Room, which is now staffed by the FTC's Library.

Rule 4.11: Disclosure Requests

The Commission is amending Rule 4.11(a)(1)(i)(F) to conform with recent changes made to Rule 4.8(d)(3), which granted Freedom of Information Act requesters twenty calendar days to respond to Commission notification when there was no fee agreement for processing a request and the estimated costs exceed $25.[12]

Rule 4.13: Privacy Act Rules

The Commission is making technical corrections and updates to its Privacy Act rules at 16 CFR 4.13(m). Paragraph

[12] See 79 FR 15680, 15685 (Mar. 21, 2014). The Commission is also amending Rule 4.11(a)(1)(i)(A) to make a minor grammatical change.

(m) sets out systems of records that are exempt from certain Privacy Act provisions. The exempt systems contain:

(1) Investigatory materials maintained by an agency component in connection with any activity relating to criminal law enforcement, exempt under subsection (j)(2) of the Privacy Act (see paragraph (m)(1) of the rules);

(2) investigatory materials compiled for law enforcement purposes, exempt under subsection (k)(2) of the Privacy Act (see paragraph (m)(2) of the rules); or

(3) investigatory materials compiled to determine suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only where disclosure would reveal the identity of a confidential source of information, exempt under subsection (k)(5) of the Privacy Act (see paragraph (m)(3) of the rules).

These Privacy Act systems are exempted from certain Privacy Act restrictions and procedural requirements (*e.g.,* access by the subject individual) due to the investigatory nature of the records contained in those systems. As permitted by the Privacy Act, these exemptions help ensure that the Commission may efficiently and effectively perform investigations and other authorized duties and activities. In this case, the Commission is updating the names and numbering of the exempt Privacy Act systems to conform them to the current system names in the system of records notices (SORNs) previously published for these exempt systems by the FTC.[13] The revised rule also lists certain FTC personnel-related Privacy Act systems that are exempt under Government-wide SORNs published by the Office of Personnel Management and Department of Labor but were inadvertently omitted from the list of exempt systems in the FTC's Privacy Act rule.[14] These amendments to the agency's Privacy Act rules are purely technical and are not intended to expand or modify the substantive coverage or applicability of the Privacy Act exemptions to the FTC's Privacy Act systems or the records they contain.

[13] The current SORNs for all 40 FTC Privacy Act systems of records are posted on the FTC public Web site, at *http://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems.*

[14] These systems are II–3—Worker's Compensation—FTC, II–4—Employment Application-Related Records—FTC, and II–6—Discrimination Complaint System—FTC.

List of Subjects

16 CFR Parts 2 and 3

Administrative practice and procedure.

16 CFR Part 4

Administrative practice and procedure, Freedom of information, Public record.

For the reasons set forth in the preamble, the Federal Trade Commission amends title 16, chapter I, subchapter A of the Code of Federal Regulations as follows:

PART 2—NONADJUDICATIVE PROCEDURES

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 15 U.S.C. 46, unless otherwise noted.

■ 2. Amend § 2.7 by revising paragraph (l) to read as follows:

§ 2.7 Compulsory process in investigations.

* * * * *

(l) *Delegations.* The Directors of the Bureaus of Competition, Consumer Protection, and Economics and the Office of Policy Planning, their Deputy Directors, the Assistant Directors of the Bureaus of Competition and Economics, the Associate Directors of the Bureau of Consumer Protection, the Regional Directors, and the Assistant Regional Directors are all authorized to modify and, in writing, approve the terms of compliance with all compulsory process, including subpoenas, CIDs, reporting programs, orders requiring reports, answers to questions, and orders requiring access. If a recipient of compulsory process has demonstrated satisfactory progress toward compliance, a Commission official identified in this paragraph may, at his or her discretion, extend the time for compliance with Commission compulsory process. The subpoena power conferred by section 329 of the Energy Policy and Conservation Act (42 U.S.C. 6299) and section 5 of the Webb-Pomerene (Export Trade) Act (15 U.S.C. 65) are specifically included within this delegation of authority.

■ 3. Amend § 2.10 by revising paragraphs (a)(5) and (c) to read as follows:

§ 2.10 Petitions to limit or quash Commission compulsory process.

(a) * * *

(5) *Extensions of time.* The Directors of the Bureaus of Competition, Consumer Protection, and Economics and the Office of Policy Planning, their Deputy Directors, the Assistant Directors of the Bureaus of Competition and Economics, the Associate Directors of the Bureau of Consumer Protection, the Regional Directors, and the Assistant Regional Directors are delegated, without power of redelegation, the authority to rule upon requests for extensions of time within which to file petitions to limit or quash Commission compulsory process.

* * * * *

(c) *Disposition and review.* The Commission will issue an order ruling on a petition to limit or quash within 40 days after the petition is filed with the Secretary. The order may be served on the petitioner via email, facsimile, or any other method reasonably calculated to provide notice to the petitioner of the order.

* * * * *

PART 3—RULES OF PRACTICE FOR ADJUDICATIVE PROCEEDINGS

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

Authority: 15 U.S.C. 46, unless otherwise noted.

■ 5. Amend § 3.22 by revising the first three sentences of paragraph (a) and paragraph (b) to read as follows:

§ 3.22 Motions.

(a) *Presentation and disposition.* Motions filed under § 4.17 of this chapter shall be directly referred to and ruled on by the Commission. Motions to dismiss filed before the evidentiary hearing (other than motions to dismiss under § 3.26(d)), motions to strike, and motions for summary decision shall be directly referred to the Commission and shall be ruled on by the Commission unless the Commission in its discretion refers the motion to the Administrative Law Judge. Except as otherwise provided by an applicable rule, motions not referred to the Administrative Law Judge shall be ruled on by the Commission within 45 days of the filing of the last-filed answer or reply to the motion, if any, unless the Commission determines there is good cause to extend the deadline. * * *

(b) *Proceedings not stayed.* A motion under consideration by the Commission shall not stay proceedings before the Administrative Law Judge unless the Commission so orders or unless otherwise provided by an applicable rule.

* * * * *

■ 6. Amend § 3.23 by revising paragraph (b) to read as follows:

§ 3.23 Interlocutory appeals.

* * * * *

(b) *Other interlocutory appeals.* A party may request the Administrative Law Judge to determine that a ruling involves a controlling question of law or policy as to which there is substantial ground for difference of opinion and that an immediate appeal from the ruling may materially advance the ultimate termination of the litigation or subsequent review will be an inadequate remedy. An answer may be filed within 3 days after the request for determination is filed. The Administrative Law Judge shall issue a ruling on the request for determination within 3 days of the deadline for filing an answer. The party may file an application for review with the Commission within 1 day after notice that the Administrative Law Judge has issued the requested determination or 1 day after the deadline has passed for the Administrative Law Judge to issue a ruling on the request for determination and the Administrative Law Judge has not issued his or her ruling. An answer may be filed within 3 days after the application for review is filed.

* * * * *

■ 7. Revise § 3.26 to read as follows:

§ 3.26 Motions following denial of preliminary injunctive relief.

(a) This section sets forth two procedures by which respondents may obtain consideration of whether continuation of an adjudicative proceeding is in the public interest after a court has denied preliminary injunctive relief in a separate proceeding brought under section 13(b) of the Federal Trade Commission Act, 15 U.S.C. 53(b), in aid of the adjudicative proceeding.

(b) A motion under this section shall be addressed to the Commission and must be filed within 14 days after, but no earlier than:

(1) A district court has denied the Commission's request for a preliminary injunction, if the Commission has not filed a motion for relief pending appeal with the court of appeals within 7 days following the district court's denial of a preliminary injunction; or

(2) A court of appeals has denied a Commission motion for relief pending appeal.

(c) *Withdrawal from adjudication.* Following denial of court relief as specified in paragraph (b) of this section, respondents may move that the adjudicative proceeding be withdrawn from adjudication in order to consider whether the public interest warrants further litigation. Although all respondents must consent to the filing of such a motion, a motion under this paragraph (c) may be filed jointly or separately by each of the respondents in the adjudicative proceeding. At the time respondents file a motion under this paragraph (c), respondents must also electronically transmit a copy to complaint counsel. The Secretary shall issue an order withdrawing the matter from adjudication 2 days after such a motion is filed, except that, if complaint counsel file an objection asserting that the conditions of paragraph (b) of this section have not been met, the Commission shall decide the motion within 10 days after the objection is filed.

(d) *Consideration on the record of a motion to dismiss.* (1) In lieu of a motion to withdraw the adjudicative proceeding from adjudication under paragraph (c) of this section, any respondent may file a motion under this paragraph to dismiss the administrative complaint on the basis that the public interest does not warrant further litigation after a court has denied preliminary injunctive relief to the Commission.

(2) *Stay.* The filing of a motion under this paragraph (d) shall stay the proceeding until 7 days following the disposition of the motion by the Commission, and all deadlines established by these rules shall be tolled for the amount of time the proceeding is so stayed.

(3) *Answer.* Complaint counsel may file a response within 7 days after such motion is filed.

(4) *Ruling by Commission.* Within 30 days after the deadline for filing a response, the Commission shall rule on any motion under this paragraph (d).

(e) *Form.* Memoranda in support of or in opposition to motions authorized by this section shall not exceed 10,000 words. This word count limitation includes headings, footnotes, and quotations, but does not include the cover, table of contents, table of citations or authorities, glossaries, statements with respect to oral argument, any addendums containing statutes, rules or regulations, any certificates of counsel, proposed form of order, and any attachment required by § 3.45(e).

(f) *In camera materials.* If any filing includes materials that are subject to confidentiality protections pursuant to an order entered in either the proceeding under section 13(b) or the adjudicative proceeding, such materials shall be treated as *in camera* materials for purposes of this paragraph and the party shall file 2 versions of the document in accordance with the procedures set forth in § 3.45(e). The time within which complaint counsel may file an objection or response under this section will begin to run upon service of the *in camera* version of the motion (including any supporting briefs and memoranda).

■ 8. Amend § 3.32 by revising paragraphs (a) and (b) to read as follows:

§ 3.32 Admissions.

(a) At any time after 30 days after issuance of a complaint, or after publication of notice of an adjudicative hearing in a rulemaking proceeding under § 3.13, any party may serve on any other party a written request for admission of the truth of any matters relevant to the pending proceeding set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or are known to be, and in the request are stated as being, in the possession of the other party. Each matter of which an admission is requested shall be separately set forth.

(b) The matter is admitted unless, within 10 days after service of the request, or within such shorter or longer time as the Administrative Law Judge may allow, the party to whom the request is directed serves upon the party requesting the admission a sworn written answer or objection addressed to the matter. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify its answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that it has made reasonable inquiry and that the information known to or readily obtainable by the party is insufficient to enable it to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; the party may deny the matter or set forth reasons why the party cannot admit or deny it.

* * * * *

■ 9. Amend § 3.33 by revising paragraph (c)(2) to read as follows:

§ 3.33 Depositions.

* * * * *

(c) * * *

(2) *Restriction on filings.* Except as provided in § 3.31(h), notices of depositions shall not be filed with the Office of the Secretary or with the Administrative Law Judge, or otherwise provided to the Commission.

* * * * *

■ 10. Amend § 3.35 by revising paragraph (b)(2) to read as follows:

§ 3.35 Interrogatories to parties.

* * * * *

(b) * * *

(2) An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but such an interrogatory need not be answered until after designated discovery has been completed, but in no case later than 3 days before the final prehearing conference.

* * * * *

■ 11. Amend § 3.41 by revising paragraph (f) to read as follows:

§ 3.41 General hearing rules.

* * * * *

(f) *Collateral federal court actions.* (1) The pendency of a collateral federal court action that relates to the administrative adjudication shall not stay the proceeding:

(i) Unless a court of competent jurisdiction, or the Commission for good cause, so directs; or

(ii) Except as provided in § 3.26.

(2) A stay shall toll any deadlines set by the rules.

■ 12. Amend § 3.42 by revising paragraph (c)(2) to read as follows:

§ 3.42 Presiding officials.

* * * * *

(c) * * *

(2) To issue subpoenas and orders requiring answers to questions;

* * * * *

■ 13. Amend § 3.45 by revising the first two sentences of paragraph (e) and paragraph (f) to read as follows:

§ 3.45 In camera orders.

* * * * *

(e) *When in camera or confidential information is included in briefs and other submissions.* If a party includes specific information that has been granted *in camera* status pursuant to paragraph (b) of this section or is subject to confidentiality protections pursuant to a protective order in any document filed in a proceeding under this part, the party shall file 2 versions of the document. A complete version shall be marked ''*In Camera''* or ''Subject to Protective Order,'' as appropriate, on every page and shall be filed with the Secretary and served by the party on the other parties in accordance with the Commission's rules. * * *

(f) *When in camera or confidential information is included in rulings or recommendations of the Administrative Law Judge.* If the Administrative Law Judge includes in any ruling or recommendation information that has been granted *in camera* status pursuant to paragraph (b) of this section or is subject to confidentiality protections pursuant to a protective order, the Administrative Law Judge shall file 2 versions of the ruling or recommendation. A complete version shall be marked ''*In Camera''* or ''Subject to Protective Order,'' as appropriate, on every page and shall be served upon the parties. The complete version will be placed in the *in camera* record of the proceeding. An expurgated version, to be filed within 5 days after the filing of the complete version, shall omit the *in camera* and confidential information that appears in the complete version, shall be marked ''Public Record'' on every page, shall be served upon the parties, and shall be included in the public record of the proceeding.

* * * * *

■ 14. Amend § 3.46 by revising paragraph (c)(4) to read as follows:

§ 3.46 Proposed findings, conclusions, and order.

* * * * *

(c) * * *

(4) A statement whether the witness testimony has been accorded *in camera* treatment, and a citation to the *in camera* ruling.

* * * * *

■ 15. Amend § 3.52 by revising paragraph (a)(2) to read as follows:

§ 3.52 Appeal from initial decision.

(a) * * *

(2) If no objections to the initial decision are filed, the Commission may in its discretion hold oral argument within 10 days after the deadline for the filing of objection, and will issue its final decision pursuant to § 3.54 within 45 days after oral argument. If no oral argument is scheduled, the Commission will issue its final decision pursuant to § 3.54 within 45 days after the deadline for the filing of objections.

* * * * *

PART 4—MISCELLANEOUS RULES

■ 16. The authority citation for part 4 continues to read as follows:

Authority: 15 U.S.C. 46, unless otherwise noted.

■ 17. Amend § 4.9 by revising paragraphs (a)(1), (2), (3), (4) introductory text, (4)(i) and (a)(10)(viii) to read as follows:

§ 4.9 The public record.

(a) *General.* (1) Materials on the public record of the Commission are available for public inspection and copying either from the Commission's Web site or upon request.

(2) Materials that are exempt from mandatory public disclosure, or are otherwise not available from the Commission's public record, may be made available only upon request under the procedures set forth in § 4.11, or as provided in §§ 4.10(d) through (g), 4.13, and 4.15(b)(3), or by the Commission.

(3) *Electronic access to public records.* The majority of recent Commission public records are available for review electronically on the Commission's Web site on the Internet, *www.ftc.gov*. Copies of records that the Commission is required to make available to the public electronically, pursuant to 5 U.S.C. 552(a)(2), may be obtained in that format from *http://www.ftc.gov/foia/readingroom.shtm*.

(4) *Requesting public records*—(i) *Procedures.* Certain older public records may not be available at the FTC Web site. Any person may request copies of such records by contacting the FTC Reading Room by telephone at (202) 326–2222, extension 2. These requests shall specify as clearly and accurately as reasonably possible the records desired. For records that cannot be specified with complete clarity and particularity, requesters shall provide descriptions sufficient to enable qualified Commission personnel to locate the records sought. The Commission, the Supervisor of the Consumer Response Center, the General Counsel, or the deciding official (as designated by the General Counsel) may decide to provide only one copy of any public record and may refuse to provide copies to the requester if the records have been published or are publicly available at places other than the Commission's offices.

* * * * *

(10) * * *

(viii) The Commission's annual report submitted after the end of each fiscal year, summarizing its work during the year (with copies obtainable from the Superintendent of Documents, U.S.

Government Publishing Office, Washington, DC 20402) and any other annual reports made to Congress on activities of the Commission as required by law;

* * * * *

■ 18. Amend § 4.11 by revising paragraphs (a)(1)(i)(A) and (F) to read as follows:

§ 4.11 Disclosure requests.

(a) *Freedom of Information Act*—(1) *Initial requests*—(i) *Form and contents; time of receipt.* (A) A request under the provisions of the Freedom of Information Act, 5 U.S.C. 552, as amended, for access to Commission records shall be in writing and transmitted by one of the following means: by mail to the following address: Freedom of Information Act Request, Office of the General Counsel, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580; by facsimile transmission to (202) 326–2477; by email message to the FOIA email account at *foia@ftc.gov;* or by the form located on the FTC's FOIA Web site, *https://www.ftc.gov/ftc/foia.htm.*

* * * * *

(F) *Failure to agree to pay fees.* If a request does not include an agreement to pay fees, and if the requester is notified of the estimated costs pursuant to § 4.8(d)(3), the request will be deemed not to have been received until the requester agrees to pay such fees. If a requester declines to pay fees within 20 calendar days and is not granted a fee waiver, the request will be denied.

* * * * *

■ 19. Amend § 4.13 by revising paragraph (m) to read as follows:

§ 4.13 Privacy Act rules.

* * * * *

(m) *Specific exemptions.* (1) Pursuant to 5 U.S.C. 552a(j)(2), investigatory materials maintained by an agency component in connection with any activity relating to criminal law enforcement in the following systems of records are exempt from all subsections of 5 U.S.C. 552a, except (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i), and from the provisions of this section, except as otherwise provided in 5 U.S.C. 552a(j)(2):

(i) I–7—Office of Inspector General Investigative Files—FTC.

(ii) [Reserved]

(2) Pursuant to 5 U.S.C. 552a(k)(2), investigatory materials compiled for law enforcement purposes in the following systems of records are exempt from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) of 5 U.S.C. 552a, and from the provisions of this section, except as otherwise provided in 5 U.S.C. 552a(k)(2):

(i) I–1—Nonpublic Investigational and Other Nonpublic Legal Program Records—FTC.

(ii) I–2—Disciplinary Action Investigatory Files—FTC.

(iii) I–4—Clearance Application and Response Files—FTC.

(iv) I–5—Matter Management System—FTC.

(v) I–7—Office of Inspector General Investigative Files—FTC.

(vi) I–8—Stenographic Reporting Services Request System—FTC.

(vii) II–3—Worker's Compensation—FTC.

(viii) II–6—Discrimination Complaint System—FTC.

(ix) IV–1—Consumer Information System—FTC.

(x) V–1—Freedom of Information Act Requests and Appeals—FTC.

(xi) V–2—Privacy Act Requests and Appeals—FTC.

(xii) VII–6—Document Management and Retrieval System—FTC.

(3) Pursuant to 5 U.S.C. 552a(k)(5), investigatory materials compiled to determine suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only where disclosure would reveal the identity of a confidential source of information, in the following systems of records are exempt from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) of 5 U.S.C. 552a, and from the provisions of this section, except as otherwise provided in 5 U.S.C. 552a(k)(5):

(i) II–4—Employment Application-Related Records—FTC.

(ii) II–11—Personnel Security, Identity Management and Access Control Records System—FTC.

By direction of the Commission.

Janice Podoll Frankle,

Acting Secretary.

[FR Doc. 2015–06406 Filed 3–20–15; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 882

[Docket No. FDA–2015–M–0619]

Medical Devices; Neurological Devices; Classification of the Limited Output Transcutaneous Piezoelectric Stimulator for Skin Reactions Associated With Insect Bites

AGENCY: Food and Drug Administration, HHS.

ACTION: Final order.

SUMMARY: The Food and Drug Administration (FDA) is classifying the limited output transcutaneous piezoelectric stimulator for skin reactions associated with insect bites into class II (special controls). The special controls that will apply to the device are identified in this order and will be part of the codified language for the limited output transcutaneous piezoelectric stimulator for skin reactions associated with insect bites' classification. The Agency is classifying the device into class II (special controls) in order to provide a reasonable assurance of safety and effectiveness of the device.

DATES: This order is effective March 23, 2015. The classification was applicable on November 7, 2014.

FOR FURTHER INFORMATION CONTACT: Michael Hoffman, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1434, Silver Spring, MD 20993–0002, 301–796–6476, *michael.hoffman@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with section 513(f)(1) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360c(f)(1)), devices that were not in commercial distribution before May 28, 1976 (the date of enactment of the Medical Device Amendments of 1976), generally referred to as postamendments devices, are classified automatically by statute into class III without any FDA rulemaking process. These devices remain in class III and require premarket approval, unless and until the device is classified or reclassified into class I or II, or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the FD&C Act, to a predicate device that does not require premarket approval. The Agency determines

whether new devices are substantially equivalent to predicate devices by means of premarket notification procedures in section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807) of the regulations.

Section 513(f)(2) of the FD&C Act, as amended by section 607 of the Food and Drug Administration Safety and Innovation Act (Pub. L. 112–144), provides two procedures by which a person may request FDA to classify a device under the criteria set forth in section 513(a)(1). Under the first procedure, the person submits a premarket notification under section 510(k) of the FD&C Act for a device that has not previously been classified and, within 30 days of receiving an order classifying the device into class III under section 513(f)(1) of the FD&C Act, the person requests a classification under section 513(f)(2). Under the second procedure, rather than first submitting a premarket notification under section 510(k) of the FD&C Act and then a request for classification under the first procedure, the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence and requests a classification under section 513(f)(2) of the FD&C Act. If the person submits a request to classify the device under this second procedure, FDA may decline to undertake the classification request if FDA identifies a legally marketed device that could provide a reasonable basis for review of substantial equivalence with the device or if FDA determines that the device submitted is not of ''low-moderate risk'' or that general controls would be inadequate to control the risks and special controls to mitigate the risks cannot be developed.

In response to a request to classify a device under either procedure provided by section 513(f)(2) of the FD&C Act, FDA will classify the device by written order within 120 days. This classification will be the initial classification of the device.

On September 8, 2010, Ecobrands, Ltd., submitted a request for classification of the Zap-It! under section 513(f)(2) of the FD&C Act. Subsequently, on February 14, 2013, Tecnimed S.r.l., submitted a similar request for classification of the Zanza-Click, Mini-Click, and Disc-o-Click under section 513(f)(2) of the FD&C Act. Both manufacturers recommended that the devices be classified into class II (Refs. 1 and 2).

In accordance with section 513(f)(2) of the FD&C Act, FDA reviewed the requests in order to classify the devices under the criteria for classification set forth in section 513(a)(1). FDA classifies devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use. After review of the information submitted in the requests, FDA determined that the devices can be classified into class II with the establishment of special controls. FDA believes these special controls, in addition to general controls, will provide reasonable assurance of the safety and effectiveness of the devices.

Therefore, on November 7, 2014, FDA issued orders to both requestors classifying the devices into class II. FDA is codifying the classification of the devices by adding 21 CFR 882.5894.

Following the effective date of this final classification order, any firm submitting a premarket notification (510(k)) for a limited output transcutaneous piezoelectric stimulator for skin reactions associated with insect bites will need to comply with the special controls named in this final order. The device is assigned the generic name limited output transcutaneous piezoelectric stimulator for skin reactions associated with insect bites, and it is identified as a device intended to alleviate skin reactions associated with insect bites via cutaneous, piezoelectric stimulation at the local site of the bite.

FDA has identified the following risks to health associated specifically with this type of device, as well as the mitigation measures required to mitigate these risks in table 1.

TABLE 1—LIMITED OUTPUT TRANSCUTANEOUS PIEZOELECTRIC STIMULATOR FOR SKIN REACTIONS ASSOCIATED WITH INSECT BITES RISKS AND MITIGATION MEASURES

Identified risk	Mitigation measure
Cutaneous burns	Characterization of Electrical Output Labeling.
Adverse skin reactions	Biocompatibility Assessment.
Damage to sensitive tissue (*e.g.*, eyes, lips, inside mouth, open wounds)	Labeling.
Infection	Labeling.
Burns and other injuries due to ignition of flammable substances which may be used in the same intended use environment (*e.g.*, insect repellent).	Labeling.
Interference with implanted devices and other patient care devices	Labeling.
Failure to identify correct population and condition	Labeling.
Device failure	Non-clinical (Bench) Testing Labeling.

FDA believes that the following special controls, in combination with the general controls, address these risks to health and provide reasonable assurance of the safety and effectiveness:

- Appropriate testing to characterize the electrical output specifications of the device (*i.e.,* total charge delivered, maximum instantaneous output current, maximum instantaneous output voltage, pulse duration, charge density) must be conducted.
- Mechanical bench testing must demonstrate that the device will withstand the labeled number duration of uses.
- All elements of the device that may contact the patient must be assessed to be biocompatible.
- Labeling must include:
  - Validated instructions which addresses the following:
    - Identification of areas of the body which are appropriate and not appropriate for contact with the device;
    - whether use of the device in conjunction with flammable materials (*e.g.,* insect repellent) is appropriate;
    - use of the device on or near implanted devices; and
    - how to identify the correct type of skin condition.
  - Technical parameters of the device (maximum output voltage (instantaneous), maximum output current (instantaneous), and pulse duration).
  - Language to direct end users to contact the device manufacturer and

MedWatch if they experience any adverse events with this device.

○ The anticipated number of device uses prior to failure.

Section 510(m) of the FD&C Act provides that FDA may exempt a class II device from the premarket notification requirements under section 510(k) of the FD&C Act, if FDA determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. For this type of device, FDA has determined that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. Therefore, this device type is exempt from premarket notification requirements. Persons who intend to market this type of device need not submit to FDA a premarket notification, prior to marketing the device, which contains information about the limited output transcutaneous piezoelectric stimulator for skin reactions associated with insect bites they intend to market.

II. Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

III. Paperwork Reduction Act of 1995

This final order establishes special controls that refer to previously approved collections of information found in other FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in part 807, subpart E, regarding premarket notification submissions have been approved under OMB control number 0910–0120, and the collections of information in 21 CFR part 801, regarding labeling have been approved under OMB control number 0910–0485.

IV. References

The following references have been placed on display in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday, and are available electronically at *http://www.regulations.gov.*

1. DEN100024: De Novo Request per 513(f)(2) from Ecobrands, Ltd., dated September 8, 2010.
2. DEN130019: De Novo Request per 513(f)(2) from Tecnimed S.r.l., dated February 14, 2013.

List of Subjects in 21 CFR Part 882

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 882 is amended as follows:

PART 882—NEUROLOGICAL DEVICES

■ 1. The authority citation for 21 CFR part 882 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 2. Add § 882.5894 to subpart F to read as follows:

§ 882.5894 Limited output transcutaneous piezoelectric stimulator for skin reactions associated with insect bites.

(a) *Identification.* A limited output transcutaneous piezoelectric stimulator for skin reactions associated with insect bites is a device intended to alleviate skin reactions associated with insect bites via cutaneous, piezoelectric stimulation at the local site of the bite.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) Appropriate testing to characterize the electrical output specifications of the device (*i.e.,* total charge delivered, maximum instantaneous output current, maximum instantaneous output voltage, pulse duration, charge density) must be conducted.

(2) Mechanical bench testing must demonstrate that the device will withstand the labeled number duration of uses.

(3) All elements of the device that may contact the patient must be assessed to be biocompatible.

(4) Labeling must include:

(i) Validated instructions which addresses the following:

(A) Identification of areas of the body which are appropriate and not appropriate for contact with the device.

(B) Whether use of the device in conjunction with flammable materials (*e.g.,* insect repellent) is appropriate.

(C) Use of the device on or near implanted devices.

(D) How to identify the correct type of skin condition.

(ii) Technical parameters of the device (maximum output voltage (instantaneous), maximum output current (instantaneous), and pulse duration).

(iii) Language to direct end users to contact the device manufacturer and MedWatch if they experience any adverse events with this device.

(iv) The anticipated number of device uses prior to failure.

Dated: March 17, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–06499 Filed 3–20–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy (DoN) is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972, as amended (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (DAJAG)(Admiralty and Maritime Law) has determined that USS JOHN WARNER (SSN 785) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

DATES: This rule is effective March 23, 2015 and is applicable beginning January 28, 2015.

FOR FURTHER INFORMATION CONTACT: Commander Theron R. Korsak, (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave. SE., Suite 3000, Washington Navy Yard, DC 20374–5066, telephone 202–685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the DoN amends 32 CFR part 706.

This amendment provides notice that the DAJAG (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS JOHN WARNER (SSN 785) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I,

paragraph 2(a)(i), pertaining to the vertical placement of the masthead light; Annex I, paragraph 2(f)(i), pertaining to Virginia class submarine masthead light location below the submarine identification lights; Annex I, paragraph 2(k), pertaining to the vertical separation of the anchor lights and vertical placement of the forward anchor light above the hull; Rule 30(a) and Rule 21(e), pertaining to arc of visibility of the forward and after anchor lights; Annex I, paragraph 3(b), pertaining to the location of the sidelights; and Rule 21(c), pertaining to the location and arc of visibility of the sternlight. The DAJAG (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), Vessels.

For the reasons set forth in the preamble, the DoN amends part 706 of title 32 of the Code of Federal Regulations as follows:

PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972

■ 1. The authority citation for part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

■ 2. Section 706.2 is amended by:

■ a. In Table One, adding, in alpha numerical order, by vessel number, an entry for USS JOHN WARNER (SSN 785);

■ b. In Table Three, adding, in alpha numerical order, by vessel number, an entry for USS JOHN WARNER (SSN 785);

■ c. In Table Four, under paragraph 25, adding, in alpha numerical order, by vessel number, an entry for USS JOHN WARNER (SSN 785); and

■ d. In Table Four, paragraph 26, adding, in alpha numerical order, by vessel number, an entry for USS JOHN WARNER (SSN 785).

The additions read as follows:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE ONE

Vessel	Number	Distance in meters of forward masthead light below minimum required height. § 2(a)(i), Annex I
*	*	*
USS JOHN WARNER	SSN 785	2.76
*	*	*

* * * * *

TABLE THREE

Vessel	Number	Masthead lights arc of visibility; rule 21(a)	Side lights arc of visibility; rule 21(b)	Stern light arc of visibility; rule 21(c)	Side lights distance inboard of ship's sides in meters 3(b) annex 1	Stern light, distance forward of stern in meters; rule 21(c)	Forward anchor light, height above hull in meters; 2(K) annex 1	Anchor lights relation-ship of aft light to forward light in meters 2(K) annex 1
*	*	*	*	*	*	*	*	*
USS JOHN WARNER.	SSN 785	.....	.....	206.4°	4.37	11.05	2.8	0.30 below.
*	*	*	*	*	*	*	*	*

* * * * * 25. * * *

TABLE FOUR

Vessel	Number	Distance in meters of masthead light below the submarine identification lights
* * *	* * *	*
USS JOHN WARNER	SSN 785	0.81

26. * * *

Vessel	Number	Obstruction angle relative to ship's heading	
		Forward Anchor Light	Aft Anchor Light
* * *	* * *	*	*
USS JOHN WARNER	SSN 785	172° to 188°	359° to 1°

* * * * *

Approved: January 28, 2015.

A.B. Fischer,

Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate, General (Admiralty and Maritime Law).

Dated: March 11, 2015.

N.A. Hagerty-Ford,

Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2015–06298 Filed 3–20–15; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2015–0062]

Special Local Regulation; Annual Marine Events on the Colorado River, Between Davis Dam (Bullhead City, Arizona) and Headgate Dam (Parker, Arizona) Within the San Diego Captain of the Port Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the 2015 Lake Havasu Desert Storm marine event special local regulations from 8 a.m. through 3 p.m. on April 25, 2015. This annual marine event occurs on the navigable waters of the Colorado River in Lake Havasu, Arizona. This action is necessary to provide for the safety of the participants, crew, spectators, safety vessels, and general users of the waterway. During the enforcement period, persons and vessels are prohibited from entering into, transiting through, or anchoring within this regulated area unless authorized by the Captain of the Port, or his designated representative.

DATES: The regulations in 33 CFR 100.1102, Table 1, Item 4 will be enforced from 8 a.m. through 3 p.m. on April 25, 2015. If the event is delayed by inclement weather, these regulations will also be enforced from 8 a.m. through 3 p.m. on April 26, 2015.

FOR FURTHER INFORMATION CONTACT: If you have questions on this document, call or email Petty Officer Nick Bateman, Waterways Management, U.S. Coast Guard Sector San Diego, CA; telephone 619–278–7656, *D11-PF-MarineEventsSanDiego@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the Special Local Regulations in Lake Havasu for the 2015 Desert Storm Shootout in 33 CFR 100.1102, Table 1, Item 4 from 8 a.m. through 3 p.m. on April 25, 2015. If the event is delayed by inclement weather, these regulations will also be enforced from 8 a.m. through 3 p.m. on April 26, 2015.

Under provisions of 33 CFR 100.1102, persons and vessels are prohibited from entering into, transiting through, or anchoring within the regulated area, unless authorized by the Coast Guard Captain of the Port or his designated representative. Persons or vessels desiring to enter into or pass through the special local regulations may request permission from the Captain of the Port or a designated representative. If permission is granted, all persons and vessels shall comply with the instructions of the Captain of the Port or his designated representative. Spectator vessels may safely transit outside the regulated area but may not anchor, block, loiter, or impede the transit of participants or official patrol vessels. The Coast Guard may be assisted by other Federal, State, or Local law enforcement agencies in enforcing this regulation.

This document is issued under authority of 33 CFR 100.1102 and 5 U.S.C. 552(a). In addition to this document in the **Federal Register**, the Coast Guard will provide the maritime community with extensive advance notification of this enforcement period via the Local Notice to Mariners, Broadcast Notice to Mariners, and local advertising by the event sponsor.

If the Captain of the Port Sector San Diego or his designated representative determines that the regulated area need not be enforced for the full duration stated on this document, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the regulated area.

Dated: March 6, 2015.

J.A. Janszen,

Commander, U.S. Coast Guard, Acting, Captain of the Port San Diego.

[FR Doc. 2015–06603 Filed 3–20–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2015–0129]

RIN 1625–AA00

Safety Zone, Delaware River; Marcus Hook, PA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters of Delaware River in the vicinity of Marcus Hook, Pennsylvania. The safety zone will temporarily restrict vessel traffic from transiting or anchoring in a portion of Marcus Hook anchorage in order to protect the safety of life and property on the waters while underwater impulsive sound testing is conducted.

DATES: This rule is effective without actual notice from March 23, 2015 until 6 p.m. on May 12, 2015. For the purposes of enforcement, actual notice will be used from 5 a.m. on March 10, 2015, until March 23, 2015.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2015–0129]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email. If you have questions on this temporary rule, call or email Lieutenant Brennan Dougherty, U.S. Coast Guard, Sector Delaware Bay, Chief Waterways Management Division, Coast Guard; telephone (215) 271–4851, email *Brennan.P.Dougherty@uscg.mil*. If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

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

A. Regulatory History and Information

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule as publishing an NPRM is impracticable because immediate action is necessary to protect the maritime public. The Coast Guard was notified on February 24, 2015, of the Philadelphia Regional Port Authority's final intentions to conduct these tests in the upper portion of Marcus Hook anchorage. Because of the inherent threat to navigation, providing a notice and comment period would be impractical. Furthermore, allowing this situation to exist without a safety zone in place would expose mariners and the public to unnecessary dangers contrary to the public interest. Vessels transiting or attempting to transit through the area may be at risk, and therefore a safety zone is needed to protect the public from the hazards associated with underwater impulsive sound testing. Therefore, delay in taking action is both impracticable and contrary to public interest. For the reasons stated above, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

B. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish regulated navigation areas and other limited access areas: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

The Philadelphia Regional Port Authority (PRPA), in cooperation with the U.S. Army Corps of Engineers (USACE), Philadelphia District, will conduct tests to determine the feasibility of using loud impulsive sound to behaviorally exclude two species of endangered sturgeon from the areas where blasting will be performed for the Delaware River Main Channel Deepening Project starting in December 2015. These tests will be conducted in the upper portion of the Marcus Hook Anchorage, where sturgeon are known to commonly occur, and as far north within the anchorage as possible to minimize potential impacts to commercial vessel traffic. The tests will require anchoring a barge with the sound-producing equipment (using spuds) on the edge of, but not within, the anchorage. The barge, 40′ wide by 100′ long, will be equipped with anchor lighting meeting U.S. Coast Guard requirements. Nine acoustic telemetry receivers will be deployed within the test area. The telemetry receivers will be deployed on bottom-set moorings with no surface marker floats or buoys. To reduce the possibility of vessel interference with the tests, and to prevent damage to, or displacement of, the telemetry receivers a safety zone is necessary.

C. Discussion of the Final Rule

To mitigate the risks associated with the underwater impulsive sound testing in Marcus Hook anchorage, the Captain of the Port, Delaware Bay will enforce a temporary safety zone in the upper portion of Anchorage 7 off Marcus Hook, as described in § 110.157(a)(8) of this chapter. The safety zone will be effective and enforced from 5 a.m. on March 10, 2015, to 6 p.m. on May 12, 2015. If this safety zone should be cancelled earlier the Captain of the Port, Delaware Bay will notify mariners via broadcast on VHF Ch.16.

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Delaware Bay, or her on-scene representative. The Captain of the Port, Delaware Bay, or her on-scene representative may be contacted via VHF channel 16 or at 215–271–4807.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. Although this regulation will restrict access to the regulated area, the effect of this rule will not be significant because: (i) The Coast Guard will make extensive notification of the Safety Zone to the maritime public via maritime advisories so mariners can alter their plans accordingly; (ii) this rule will be enforced for a limited duration.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small

entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to anchor or transit along a portion or Marcus Hook anchorage on the Delaware River in the vicinity of Marcus Hook, Pennsylvania, from 5 a.m. on March 10, 2015 to 6 p.m. on May 12, 2015, unless cancelled earlier by the Captain of the Port once all operations are completed.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reason: Vessel traffic will be allowed to pass through the zone with permission of the Coast Guard Captain of the Port Delaware Bay or her designated representative and the zone is limited in duration. Sector Delaware Bay will issue maritime advisories widely available to users of the Salem River.

3. Assistance for Small Entities

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

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

4. Collection of Information

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

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves implementation of regulations within 33 CFR part 165, applicable to safety zones on the navigable waterways. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T05–0129, to read as follows:

§ 165.T05–0129 Safety Zone, Delaware River; Marcus Hook, PA.

(a) Regulated area. The following area is a safety zone: All waters of the Delaware River in Anchorage 7 off Marcus Hook described in § 110.157(a)(8) of this chapter inside a boundary described as originating from 39°48′38″ N., 075°23′17″ W.; then Northwest to 39°48′55″ N., 075°23′35″ W.; then Northeast to 39°49′12″ N., 075°23′01″ W.; then Southeast to 39°49′07″ N., 075°22′57″ W.; and then Southwest to 39°48′38″ N., 075°23′17″ W. Mariners will be advised of this safety zone by broadcast on VHF channel 16.

(b) Enforcement period. From 5 a.m. on March 10, 2015, to 6 p.m. on May 12, 2015, unless cancelled earlier by the Captain of the Port once all operations are completed. If this safety zone should be cancelled earlier the Captain of the Port, Delaware Bay will notify mariners via broadcast on VHF Ch. 16.

(c) *Regulations.* All persons are required to comply with the general regulations governing safety zones in 33 CFR 165.23 of this part.

(1) All persons or vessels wishing to transit through the Safety Zone described in paragraph (a) of this section must request authorization to do so from the Captain of the Port or her designated representative 30 minutes prior to the intended time of transit.

(2) Vessels granted permission to transit must do so in accordance with the directions provided by the Captain of the Port or her designated representative.

(3) To seek permission to transit the Safety Zone, the Captain of the Port's representative can be contacted via marine radio VHF Channel 16 or at 215–271–4807.

(4) This section applies to all vessels wishing to transit through the Safety Zone except vessels that are engaged in the following operations:

(i) Enforcing laws;

(ii) Servicing aids to navigation; and

(iii) Emergency response vessels.

(5) No person or vessel may enter or remain in a safety zone without the permission of the Captain of the Port;

(6) Each person and vessel in a safety zone shall obey any direction or order of the Captain of the Port;

(7) No person may board, or take, or place any article or thing on board, any vessel in a safety zone without the permission of the Captain of the Port; and

(8) No person may take or place any article or thing upon any waterfront facility in a safety zone without the permission of the Captain of the Port.

(d) *Definitions. The Captain of the Port* means the Commander of Sector Delaware Bay or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to act on her behalf.

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

Dated: March 5, 2015.

Stephen P. Metruck,

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

[FR Doc. 2015–06578 Filed 3–20–15; 8:45 am]

BILLING CODE 9110–04–P

Proposed Rules

Federal Register
Vol. 80, No. 55
Monday, March 23, 2015

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–0627; Directorate Identifier 2015–CE–002–AD]

RIN 2120–AA64

Airworthiness Directives; Piper Aircraft, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Piper Aircraft, Inc. Models PA–23–250, PA–24–250, PA–24–260, PA–24–400, PA–30, PA–31, PA–31–300, PA–31P, PA–39, and PA–E23–250 airplanes. This proposed AD was prompted by an accident caused by fuel starvation where the shape of the wing fuel tanks and fuel below a certain level in that tank may have allowed the fuel to move away from the tank outlet during certain maneuvers. This proposed AD would require installing a fuel system management placard on the aircraft instrument panel and adding text to the Limitations section of the pilot's operating handbook (POH)/airplane flight manual (AFM). We are proposing this AD to correct the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by May 7, 2015.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Fax: 202–493–2251.
- Mail: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- Hand Delivery: Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Piper Aircraft, Inc., Customer Service, 2926 Piper Drive, Vero Beach, Florida 32960; telephone: (877) 879–0275; fax: none; email: *customer.service@piper.com*; Internet: *www.piper.com*. You may review the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–0627; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Ansel James, Aerospace Engineer, Atlanta Aircraft Certification Office, FAA, 1701 Columbia Avenue, College Park, Georgia 30337; telephone: (404) 474–5576; fax: (404) 474–5606; email: *ansel.james@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2015–0627; Directorate Identifier 2015–CE–002–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We received a report of an accident where the shape of the wing fuel tanks on Piper Aircraft, Inc. Models PA–23–250, PA–24–250, PA–24–260, PA–24–400, PA–30, PA–31, PA–31–300, PA–31P, PA–39, and PA–E23–250 airplanes, combined with fuel below a certain level in the selected tank, may have allowed the fuel to move away from the tank outlet during certain maneuvers causing fuel starvation. These airplanes do not have baffles in the fuel tanks. Baffles in the fuel tanks slow the movement of fuel in the tank during certain maneuvers and prevent the unsafe condition. Certain maneuvers, such as prolonged turns during taxi prior to takeoff and inflight maneuvers like prolonged slips and skids at any pitch attitude, can cause the fuel in the tanks to temporarily move away from the tank outlet. This could result in an interruption in the flow of the fuel to the engine. It was also noted, the manufacturer insufficiently defined procedures for low fuel operation. This condition, if not corrected, could lead to loss of engine power or engine shutdown, which may result in loss of control.

Relevant Service Information Under 1 CFR Part 51

We reviewed Piper Aircraft, Inc. Service Bulletin No. 1266, dated December 16, 2014. Piper Aircraft, Inc. Service Bulletin No. 1266, dated December 16, 2014, calls for/describes actions for, when necessary, installing the correct fuel warning placard on the instrument panel and adding correct text of that fuel warning placard in the Limitations section of the POH/AFM. This service information is reasonably available; see **ADDRESSES** for ways to access this service information.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

We estimate that this proposed AD affects 3,000 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection to determine if placard, if installed, and Limitations section of the POH/AFM are compliant with Piper Aircraft, Inc. Service Bulletin No. 1266, dated December 16, 2014.	.5 work-hour × $85 per hour = $42.50.	Not Applicable	$42.50	$127,500

We estimate the following costs to do any necessary placard/POH/AFM order and installation that would be required based on the results of the proposed inspection. We have no way of determining the number of aircraft that might need any necessary placard/POH/AFM order and installation:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Order and install replacement placard	1 work-hour × $85 per hour = $85	$40	$125
Order updated POH/AFM and install updated pages	.5 work-hour × $85 per hour = $42.50	300	342.50

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Piper Aircraft, Inc. Airplanes: Docket No. FAA–2015–0627; Directorate Identifier 2015–CE–002–AD.

(a) Comments Due Date

We must receive comments by May 7, 2015.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Piper Aircraft, Inc. Models PA–23–250, PA–24–250, PA–24–260, PA–24–400, PA–30, PA–31, PA–31–300, PA–31P, PA–39, and PA–E23–250 airplanes, certificated in any category, as identified in Piper Aircraft, Inc. Mandatory Service Bulletin No. 1266, dated December 16, 2014.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 1130, PLACARDS AND MARKINGS; Interior Placards.

(e) Unsafe Condition

This AD was prompted by an accident caused by fuel starvation where the shape of the wing fuel tanks and fuel below a certain level in that tank may have allowed the fuel to move away from the tank outlet during certain maneuvers. We are issuing this AD to prevent loss of engine power due to fuel starvation. This condition, if not corrected, could lead to loss of engine power or engine shutdown, which may result in loss of control.

(f) Compliance

Unless already done, within the next 50 hours time-in-service (TIS) after the effective date of this AD, do the actions in paragraphs (g) and (h), as applicable, including all subparagraphs:

(g) Fuel Warning Placard Inspection

(1) Inspect the fuel warning placard, if existing, following the Instructions section, of Piper Aircraft, Inc. Mandatory Service Bulletin No. 1266, dated December 16, 2014. If the placard is present and compliant with the Instructions section of Piper Aircraft, Inc. Mandatory Service Bulletin No. 1266, dated December 16, 2014, then no further action regarding the placard is required.

(2) If the fuel warning placard is not present or not compliant with the Instructions section of Piper Aircraft, Inc. Mandatory Service Bulletin No. 1266, dated December 16, 2014, then order or, as applicable, fabricate, and install the applicable fuel warning placard following the Instructions section of Piper Aircraft, Inc. Mandatory Service Bulletin No. 1266, dated December 16, 2014. You may order the applicable placard from Piper Aircraft, Inc. at the address identified in paragraph (j)(2) of this AD.

(h) Pilot's Operating Handbook (POH)/ Airplane Flight Manual (AFM) Inspection

(1) Inspect the Limitations section of the applicable POH/AFM following the Instructions section of Piper Aircraft, Inc. Mandatory Service Bulletin No. 1266, dated December 16, 2014.

(2) If the Limitations section of the applicable POH/AFM contains the exact text found in table 2 of Piper Aircraft, Inc. Mandatory Service Bulletin No. 1266, dated December 16, 2014, there is no need for a POH/AFM revision.

(3) If the Limitations section of the applicable POH/AFM does not contain the exact text found in table 2, a POH/AFM revision is required. Contact Piper Aircraft, Inc. at the address identified in paragraph (j)(2) of this AD and request the applicable POH/AFM revision.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Atlanta Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (j)(1) of this AD.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/ certificate holding district office.

(j) Related Information

(1) For more information about this AD, contact Ansel James, Aerospace Engineer, Atlanta Aircraft Certification Office, FAA, 1701 Columbia Avenue, College Park, Georgia 30337; telephone: (404) 474–5576; fax: (404) 474–5606; email: *ansel.james@faa.gov*.

(2) For service information identified in this AD, contact Piper Aircraft, Inc., Customer Service, 2926 Piper Drive, Vero Beach, Florida 32960; telephone: (877) 879–0275; fax: none; email: *customer.service@piper.com*; Internet: *www.piper.com*. You may view this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued in Kansas City, Missouri, on March 12, 2015.

Robert Busto,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–06414 Filed 3–20–15; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part Chapter II

[CPSC Docket No. CPSC–2013–0028]

Corded Window Coverings: Notice of Extension of Comment Period

AGENCY: U.S. Consumer Product Safety Commission.

ACTION: Advance notice of proposed rulemaking; extension of comment period.

SUMMARY: The Consumer Product Safety Commission (Commission or CPSC) published an advance notice of proposed rulemaking (ANPR) in the **Federal Register** on January 16, 2015, concerning corded window coverings. The ANPR invited the public to submit written comments; the comment period as set in the ANPR ended on Tuesday, March 17, 2015. In response to a request for extension, the Commission is extending the comment period to Monday, June 1, 2015.

DATES: The comment period for the ANPR published on January 16, 2015 (80 FR 2327), is extended. Comments must be received by Monday, June 1, 2015.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2013–0028, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: *http://www.regulations.gov.* Follow the instructions for submitting comments. The Commission does not accept comments submitted by electronic mail (email), except through *www.regulations.gov*. The Commission encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Written Submissions: Submit written submissions by mail/hand delivery/ courier to: Office of the Secretary, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to: *http://www.regulations.gov.* Do not submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If furnished at all, such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to: *http://www.regulations.gov,* and insert the docket number CPSC–2013–0028, into the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Rana Balci-Sinha, Office of Hazard Identification and Reduction, 5 Research Place, Rockville, MD 20850, telephone 301–987–2584, email *windowcoveringtechnologies@cpsc.gov.*

SUPPLEMENTARY INFORMATION: On October 8, 2014, the Commission granted a petition to initiate a rulemaking to develop a mandatory safety standard for window coverings. The petition sought to prohibit window covering cords when a feasible cordless alternative exists. The petition requested that all window covering cords be made inaccessible by using passive guarding devices when a feasible cordless alternative does not exist. On January 16, 2015, the Commission published an advance notice of proposed rulemaking (ANPR) initiating rulemaking and seeking information and comment on regulatory options for a mandatory rule to address the risk of strangulation to young children on window covering cords. 80 FR 2327. The comment period on the ANPR was scheduled to end on March 17, 2015.

In a letter dated February 2, 2015, the Window Covering Manufacturers Association (WCMA) requested a 75-day extension of the comment period to complete multiple studies that WCMA commissioned. WCMA states that the request is ''based on the need for sufficient opportunity to develop and present a more factual record for CPSC's consideration to permit a well-informed analysis before considering whether the agency can move to the next stage of promulgating such a significant rule.''

The Commission has considered WCMA's request. The Commission will grant WCMA's request to extend the comment period for the ANPR until June 1, 2015. The extension will allow WCMA and any other party additional time to complete studies related to questions asked in the ANPR.

Alberta E. Mills,

Acting Secretary, Consumer Product Safety Commission.

[FR Doc. 2015–06354 Filed 3–20–15; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2015–0048]

RIN 1625–AA00

Safety Zone, Chesapeake Bay; Cape Charles, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a safety zone on the navigable waters of the Chesapeake Bay in Cape Charles, VA. This proposed safety zone would restrict vessel movement in the specified area during the Cape Charles Clam Slam fireworks display between 9:30 p.m. and 10 p.m. on August 1, 2015. This action is necessary to provide for the safety of life and property on the surrounding navigable waters during the fireworks displays.

DATES: Comments and related material must be received by the Coast Guard on or before April 22, 2015.

ADDRESSES: You may submit comments identified by docket number using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail or Delivery:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202–366–9329.

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LCDR Gregory Knoll, Waterways Management Division Chief, Sector Hampton Roads, Coast Guard; telephone (757) 668–5580, email *HamptonRoadsWaterway@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

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

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at *http://www.regulations.gov,* or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission. To submit your comment online, go to *www.regulations.gov,* type the docket number [USCG–2015–0048] in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number [USCG–2015–0048] in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

4. Public Meeting

We do not plan to hold a public meeting, but you may submit a request for one, using one of the methods specified under **ADDRESSES** 15 days prior to the close of the comment period. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

B. Regulatory History and Information

The town of Cape Charles has not held a Clam Slam fireworks display in the past. However, this same location is used for other fireworks displays throughout the year as published in 33 CFR 165.506.

C. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish safety zones: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

The purpose of this safety zone is to protect mariners and spectators from the

hazards associated with the fireworks display, such as accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris.

D. Discussion of the Proposed Rule

The Captain of the Port of Hampton Roads proposes to establish a safety zone on specified waters of the Chesapeake Bay within a 700 foot radius of the approximate position: 37°15′47″ N/076°01′29″ W (NAD 1983), at the end of Bayshore Road located in the vicinity of Cape Charles Harbor, Cape Charles, Virginia. This safety zone will be enforced on August 1, 2015 between the hours of 9:30 p.m. and 10 p.m. Access to the safety zone will be restricted during the specified date and time.

Spectator vessels may gather nearby to view the fireworks display. Due to the need for vessel control during the fireworks display, vessel traffic will be temporarily restricted to provide for the safety of participants, spectators and transiting vessels. Except for vessels authorized by the Captain of the Port or his designated representative, no person or vessel may enter or remain in the safety zone. The Captain of the Port will provide advance notice of the safety zone by all appropriate means to provide the widest dissemination of notice among the affected segments of the public. This will include publication in the Local Notice to Mariners and Marine Information Broadcasts.

E. Regulatory Analyses

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

1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. The primary impact of these regulations will be on vessels wishing to transit the affected waterways during the safety zone on the Chesapeake Bay in the vicinity of Cape Charles, VA from 9:30 p.m. until 10 p.m. on August 1, 2015. Although this safety zone temporarily restricts traffic from transiting a portion of the Chesapeake Bay during this event, this safety zone is limited in duration, affects only a limited area, and will be well publicized in advance to allow mariners to make alternative plans for transiting the affected area.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities.

This proposed rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the waters of the Chesapeake Bay near Cape Charles Harbor during the outlined timeframe.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: (i) The safety zone is limited in size and duration, and (ii) before the enforcement period, maritime advisories will be issued allowing mariners to adjust their plans accordingly.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT,** above. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

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

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

This 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.

10. Protection of Children From Environmental Health Risks

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 create an environmental risk to health or risk to

safety that may disproportionately affect children.

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves the establishment of a safety zone. This proposed rule is categorically excluded from further review under paragraph 34–g of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T05–0048 to read as follows:

§ 165.T05–0048 Safety Zone, Chesapeake Bay; Cape Charles, VA.

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

(b) *Location.* The following area is a proposed safety zone: Specified waters of the Captain of the Port Sector Hampton Roads zone, as defined in 33 CFR 3.25–10, in the vicinity of the Chesapeake Bay near Cape Charles, VA all waters within a 700 foot radius of approximate location 37°15′47″ N/ 076°01′29″ W (NAD 1983) which is located at the end of Bayshore Road in Cape Charles Harbor.

(c) *Regulations.* (1) In accordance with the general regulations in 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Hampton Roads or his designated representatives.

(2) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Contact on scene contracting vessels via VHF channel 13 and 16 for passage instructions.

(ii) If on scene proceed as directed by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(3) The Captain of the Port, Hampton Roads can be reached through the Sector Duty Officer at Sector Hampton Roads in Portsmouth, Virginia at telephone number (757) 668–5555.

(4) The Coast Guard Representatives enforcing the safety zone may be contacted on VHF–FM marine band radio channel 13 (165.65Mhz) and channel 16 (156.8 Mhz).

(d) *Enforcement period.* This section will be enforced from 9:30 p.m. until 10 p.m. on August 1, 2015.

Dated: March 9, 2015.

Christopher S. Keane,

Captain, U.S. Coast Guard, Captain of the Port Hampton Roads.

[FR Doc. 2015–06582 Filed 3–20–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2014–1079]

RIN 1625–AA00

Safety Zone, Daytona Beach Grand Prix of the Seas; Atlantic Ocean; Daytona Beach, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a safety zone on the waters of the Atlantic Ocean east of Daytona Beach, Florida during the Daytona Beach Grand Prix of the Seas, a series of high-speed personal watercraft boat races. This proposed safety zone would be enforced from 7 a.m. on Friday until 7 p.m. on Sunday during the last weekend in April. Approximately 50 high-speed personal watercrafts are anticipated to participate in the races, and approximately 20 spectator vessels are expected to attend the event. This safety zone is necessary to ensure the safety of life on navigable waters of the United States during the races. The regulated area would consist of the following location: All waters of the Atlantic Ocean encompassed within the following points: starting at Point 1 in position 29°14.601′ N, 81°00.767′ W; thence south to Point 2 in position 29°13.677′ N, 81°00.283′ W; thence east to Point 3 in position 29°13.860′ N, 080°59.763′ W; thence north to Point 4 in position 29°14.781′ N, 80°59.802′ W; thence west back to origin. All persons and vessels, except those persons and vessels participating in the high-speed personal watercraft event, are prohibited from entering, transiting, anchoring, or remaining in the regulated area unless authorized by the Captain of the Port Jacksonville or a designated representative.

DATES: Comments and related material must be received by the Coast Guard by April 22, 2015. Requests for public meetings must be received by the Coast Guard on or before March 24, 2015.

ADDRESSES: You may submit comments identified by docket number USCG–2014–1079 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov*.

(2) *Fax:* 202–493–2251.

Mail or delivery: Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey

Avenue SE., Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202–366–9329. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: Lieutenant Allan Storm, Coast Guard Sector Jacksonville, Chief of Waterways Management, telephone (904) 564–7563, email *Allan.H.Storm@uscg.mil*. If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

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

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at *http://www.regulations.gov,* or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online it will be considered received by the Coast Guard when you successfully transmit the comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* type the docket number [USCG–2014–1079] in the ''SEARCH'' box and click ''SEARCH.'' Click on the ''Submit a Comment'' on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number (USCG–2014–1079) in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

4. Public Meeting

We do not now plan to hold a public meeting, but you may submit a request for one on or before March 24, 2015 using one of the methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

B. Basis and Purpose

The legal basis for the proposed rule is the Coast Guard's authority to establish safety zones: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.

The purpose of the proposed rule is to ensure safety of life and property on navigable waters of the United States during the Daytona Beach Grand Prix of the Seas.

C. Discussion of Proposed Rule

Powerboat P1–USA hosts the Daytona Beach Grand Prix of the Sea, a series of high-speed personal watercraft boat races, every year on the last weekend of April.

The proposed rule would establish a safety zone that encompasses certain waters of the Atlantic Ocean east of Daytona Beach, Florida. Approximately 50 high-speed personal watercrafts are anticipated to participate in the races, and approximately 20 spectator vessels are expected to attend the event.

This proposed safety zone would be enforced from 7 a.m. on Friday until 7 p.m. on Sunday during the last weekend in April. The regulated area would consist of the following location: (1) All waters of the Atlantic Ocean encompassed within the following points: starting at Point 1 in position 29°14.601′ N, 81°00.767′ W; thence south to Point 2 in position 29°13.677′ N, 81°00.283′ W; thence east to Point 3 in position 29°13.860′ N, 080°59.763′ W; thence north to Point 4 in position 29°14.781′ N, 80°59.802′ W; thence west back to origin. Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port Jacksonville via telephone at (904) 564–7513, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain in the regulated area is granted by the Captain of the Port Jacksonville or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Jacksonville or a designated representative. The Coast Guard will provide notice to the maritime community when this safety zone will be in effect via Broadcast Notice to Mariners or by on-scene designated representatives.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented

by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The economic impact of this proposed rule is not significant for the following reasons: (1) The safety zone would be enforced for a total of only 36 hours over the course of three days; (2) although persons and vessels would not be able to enter, transit through, anchor in, or remain within the safety zone without authorization from the Captain of the Port Jacksonville or a designated representative, they would be able to operate in the surrounding area during the enforcement period; (3) persons and vessels would still be able to enter, transit through, anchor in, or remain within the safety zone if authorized by the Captain of the Port Jacksonville or a designated representative; and (4) the Coast Guard would provide advance notification of the safety zone to the local maritime community via Broadcast Notice to Mariners or by on-scene designated representative.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to enter, transit through, anchor in, or remain within the portion of the Atlantic Ocean encompassed within the safety zone from 7 a.m. on Friday until 7:00 p.m. on Sunday during the last weekend in April. For the reasons discussed in the Regulatory Planning and Review section above, this proposed rule would not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this proposed rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

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

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

This 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.

10. Protection of Children From Environmental Health Risks

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 would not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on

the human environment. This proposed rule involves a safety zone issued in conjunction with a regatta or marine parade. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. Add § 165.725 to read as follows:

§ 165.725 Safety Zone; Daytona Beach Grand Prix of the Seas; Atlantic Ocean; Daytona Beach, FL.

(a) *Regulated Area.* The following regulated area is established as a safety zone. All coordinates are North American Datum 1983.

(1) *Safety Zone.* All waters of the Atlantic Ocean encompassed within the following points: Starting at Point 1 in position 29°14.601′ N, 81°00.767′ W; thence south to Point 2 in position 29°13.677′ N, 81°00.283′ W; thence east to Point 3 in position 29°13.860′ N, 080°59.763′ W; thence north to Point 4 in position 29°14.781′ N, 80°59.802′ W; thence west back to origin.

(b) *Definition.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Jacksonville in the enforcement of the regulated areas.

(c) *Regulations.*

(1) All persons and vessels are prohibited from:

(A) Entering, transiting through, anchoring in, or remaining within the regulated area unless participating in the event.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port Jacksonville via telephone at (904) 564–7513, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain in the regulated area is granted by the Captain of the Port Jacksonville or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Jacksonville or a designated representative.

(3) The Coast Guard will provide notice to the maritime community when this safety zone will be in effect via Broadcast Notice to Mariners or by on-scene designated representatives.

(d) *Enforcement Period.* This rule will be enforced daily from 7 a.m. on Friday until 7 p.m. on Sunday during the last weekend in April.

Dated: March 4, 2015.

T.G. Allan, Jr.,

Captain, U.S. Coast Guard, Captain of the Port Jacksonville.

[FR Doc. 2015–06149 Filed 3–20–15; 8:45 am]

BILLING CODE 9110–04–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1192

[Docket No. ATBCB–2013–0001]

RIN 3014–AA42

Rail Vehicles Access Advisory Committee

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of advisory committee meeting.

SUMMARY: On May 23, 2013, we, the Architectural and Transportation Barriers Compliance Board (Access Board), established the Rail Vehicles Access Advisory Committee (Committee) to advise us on revising and updating our accessibility guidelines issued pursuant to the Americans with Disabilities Act for transportation vehicles that operate on fixed guideway systems (*e.g.,* rapid rail, light rail, commuter rail, intercity rail, and high speed rail). The Committee will hold its sixth meeting on the following dates and times.

DATES: The Committee will meet on April 23, 2015, from 10:00 a.m. to 5:00 p.m. and on April 24, 2015, from 9:30 a.m. to 3:00 p.m.

ADDRESSES: The meeting will be held at the Access Board Conference Room, 1331 F Street NW., Suite 800, Washington, DC 20004–1111. Call-in information and a communication access real-time translation (CART) web streaming link will be posted on the Access Board's Rail Vehicles Access Advisory Committee Web site page at *www.access-board.gov/rvaac.*

FOR FURTHER INFORMATION CONTACT: Paul Beatty, Office of Technical and Information Services, Access Board, 1331 F Street NW., Suite 1000, Washington, DC 20004–1111. Telephone number (202) 272–0012 (Voice); (202) 272–0072 (TTY). Electronic mail address: *rvaac@access-board.gov.*

SUPPLEMENTARY INFORMATION: On May 23, 2013, we published a notice announcing that we were establishing a Rail Vehicles Access Advisory Committee (Committee) to make recommendations to us on matters associated with revising and updating our accessibility guidelines issued pursuant to the Americans with Disabilities Act for transportation vehicles that operate on fixed guideway systems (*e.g.,* rapid rail, light rail, commuter rail, intercity rail, and high speed rail). See 78 FR 30828 (May 23, 2013).

The Committee will hold its sixth meeting on April 23, 2015, from 10:00 a.m. to 5:00 p.m. and on April 24, 2015, from 9:30 a.m. to 3:00 p.m. The preliminary agenda for the April meeting includes deliberation of committee member concerns pertaining to the accessibility of rail vehicles and consideration of process-related matters. The preliminary meeting agenda, along with information about the Committee, is available on our Web site at *www.access-board.gov/rvaac.*

The Committee meeting will be open to the public and interested persons can attend the meetings and communicate their views. Members of the public will have opportunities to address the Committee on issues of interest to them during a public comment period scheduled each day. The meetings will be accessible to persons with disabilities. An assistive listening system, communication access real-time translation (CART), and sign language interpreters will be provided. Persons attending the meetings are requested to refrain from using perfume, cologne, and other fragrances for the comfort of other participants (see *www.access-board.gov/the-board/policies/fragrance-free-environment* for more information).

Persons wishing to provide handouts or other written information to the Committee are requested to provide electronic formats to Paul Beatty via email at least five business days prior to

the meetings so that alternate formats can be distributed to Committee members.

David M. Capozzi,

Executive Director.

[FR Doc. 2015–06505 Filed 3–20–15; 8:45 am]

BILLING CODE 8150–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–HQ–OAR–2010–0505; FRL–9924–29–OAR]

RIN 2060–AS49

Oil and Natural Gas Sector: Definitions of Low Pressure Gas Well and Storage Vessel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On July 17, 2014, the Environmental Protection Agency (EPA) published proposed amendments to the new source performance standards (NSPS) for the Oil and Natural Gas Sector. One of the issues addressed in the proposed amendments was the EPA's proposed definition of ''low pressure gas well.'' A petitioner's timely submitted comment on the proposed amendments concerning the definition was, inadvertently, not made part of the record in the rulemaking docket and was, therefore, not available to be considered by the EPA when the agency finalized the definition of ''low pressure gas well'' in its December 19, 2014, final amendments to the NSPS. To correct the above mentioned procedural defect, the EPA is re-proposing its definition of ''low pressure gas well'' for notice and comment. The EPA is also soliciting comment on certain issues raised in the missed comment.

We are also proposing to amend the NSPS to remove provisions concerning storage vessels connected or installed in parallel and to revise the definition of ''storage vessel''. The EPA is granting reconsideration of the issue.

DATES: *Comments.* Comments must be received on or before April 22, 2015.

Public Hearing. If the EPA holds a public hearing, the EPA will keep the record of the hearing open for 30 days after completion of the hearing to provide an opportunity for submission of rebuttal and supplementary information. If requested by March 30, 2015, we will hold a public hearing on April 7, 2015, from 1:00 p.m. (Eastern Standard Time) to 5:00 p.m. (Eastern Standard Time) at the U.S. Environmental Protection Agency building located at 109 T.W. Alexander Drive, Research Triangle Park, NC 27711. Please contact Ms. Virginia Hunt of the Sector Policies and Programs Division (E143–01), Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: (919) 541–0832; to request a hearing, register to speak at the hearing or to inquire as to whether or not a hearing will be held. The last day to pre-register in advance to speak at the hearing will be April 6, 2015. Additionally, requests to speak will be taken the day of the hearing at the hearing registration desk, although preferences on speaking times may not be able to be fulfilled. If you require the service of a translator or special accommodations such as audio description, we ask that you pre-register for the hearing, as we may not be able to arrange such accommodations without advance notice. The hearing will provide interested parties the opportunity to present data, views or arguments concerning the proposed action. The EPA will make every effort to accommodate all speakers who arrive and register. Because this hearing is being held at a U.S. government facility, individuals planning to attend the hearing should be prepared to show valid picture identification to the security staff in order to gain access to the meeting room. Please note that the REAL ID Act, passed by Congress in 2005, established new requirements for entering federal facilities. If your driver's license is issued by Alaska, American Samoa, Arizona, Kentucky, Louisiana, Maine, Massachusetts, Minnesota, Montana, New York, Oklahoma or the state of Washington, you must present an additional form of identification to enter the federal building. Acceptable alternative forms of identification include: Federal employee badges, passports, enhanced driver's licenses and military identification cards. In addition, you will need to obtain a property pass for any personal belongings you bring with you. Upon leaving the building, you will be required to return this property pass to the security desk. No large signs will be allowed in the building, cameras may only be used outside of the building and demonstrations will not be allowed on federal property for security reasons. The EPA may ask clarifying questions during the oral presentations, but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the public hearing. Verbatim transcripts of the hearing and written statements will be included in the docket for the rulemaking. The EPA will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearing to run either ahead of schedule or behind schedule. Again, a hearing will not be held on this rulemaking unless requested. A hearing needs to be requested by March 30, 2015. Please contact Ms. Virginia Hunt of the Sector Policies and Programs Division (E143–01), Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: (919) 541–0832.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2010–0505, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov.* Include Docket ID No. EPA HQ–OAR–2010–0505 in the subject line of the message.
- *Fax:* (202) 566–9744. Attention Docket ID No. EPA HQ–OAR 2010–0505.
- *Mail:* Environmental Protection Agency, EPA Docket Center (EPA/DC), Mailcode 28221T, Attention Docket ID No. OAR–2010–0505, 1200 Pennsylvania Ave. NW., Washington, DC 20460.
- *Hand/Courier Delivery:* EPA Docket Center, Room 3334, EPA WJC West Building, 1301 Constitution Avenue NW., Washington, DC 20004. 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 Number EPA–HQ–OAR–2010–0505. 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 *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. (See section I.C. below for instructions on submitting information claimed as CBI.) The *www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you submit an electronic comment through *www.regulations.gov,* the 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 the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. If you send an email comment directly to the EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. Electronic files should avoid the use of special characters or any form of encryption and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at: *www.epa.gov/epahome/dockets.htm.* The petitioners need not resubmit their previous comment, which will be considered before the EPA takes final action on today's re-proposal. However, the EPA welcomes additional comments and/or information the petitioners may wish to provide.

Docket. The EPA has established a docket for this rulemaking under Docket ID No. EPA–HQ–OAR–2010–0505. All documents in the docket are listed in the *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, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the EPA Docket Center, EPA WJC West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Moore, Sector Policies and Programs Division (E143–05), Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number: (919) 541–5460; facsimile number: (919) 685–3200; email address: *moore.bruce@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this reconsideration action apply to me?

Categories and entities potentially affected by today's action include:

Category	NAICS code [1]	Examples of regulated entities
Industry	211111	Crude Petroleum and Natural Gas Extraction.
	211112	Natural Gas Extraction.
	221210	Natural Gas Distribution.
	486110	Pipeline Distribution of Crude Oil.
	486210	Pipeline Transportation of Natural Gas.
Federal government		Not affected.
State/local/tribal government		Not affected.

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult either the air permitting authority for the entity or your EPA regional representative as listed in 40 CFR 60.4 (General Provisions).

B. How do I obtain a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this action is available on the World Wide Web (WWW). Following signature by the EPA Administrator, a copy of this proposed action will be posted at the following address: *http://www.epa.gov/airquality/oilandgas/actions.html.*

C. What should I consider as I prepare my comments for the EPA?

We seek comment only on the aspects of the final NSPS for the Oil and Natural Gas Sector specifically identified in this proposed rule. We are not opening for reconsideration any other provisions of the NSPS at this time.

Do not submit CBI to the EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI contained on a disk or CD–ROM that you mail to the 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 comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI for inclusion in the public docket. If you submit a CD–ROM or disk that does not contain CBI, clearly mark the outside of the disk or CD–ROM as not containing CBI. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with the procedures set forth in 40 CFR part 2. Send or deliver information identified as CBI only to the following address: OAQPS Document Control Officer (C404–02), OAQPS, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina,

27711, Attention Docket ID No. EPA–HQ–OAR–2010–0505.

II. Background

A. Low Pressure Gas Wells

On August 23, 2011 (76 FR 52758), the EPA proposed the Oil and Natural Gas Sector NSPS (40 CFR part 60, subpart OOOO). Among the elements of the proposed rule were provisions for reduced emission completion (REC), also known as ''green completion'' of hydraulically fractured gas wells. In the proposal, the EPA solicited comment on situations where conducting an REC would be infeasible. Several commenters highlighted technical issues that prevent the implementation of an REC on what they referred to as ''low pressure'' gas wells because of the lack of the necessary reservoir pressure to flow at rates appropriate for the transportation of solids and liquids from a hydraulically fractured gas well completion against additional back-pressure which would be caused by the REC equipment. Based on our analysis of the public comments received, we determined that there are certain wells where an REC is infeasible because of the characteristics of the reservoir and the well depth that will not allow the flowback to overcome the gathering system pressure due to the additional back pressure imposed by the REC surface equipment. On August 16, 2012, the EPA published the final NSPS (see 77 FR 49490). Based on comments received in response to our solicitation at proposal, we provided at § 60.5375(f) of the 2012 final NSPS that ''low pressure gas wells'' (*i.e.,* those wells for which an REC would not be feasible because of a combination of well depth, reservoir pressure and flow line pressure) would not be required to meet the requirements for recovery of gases and liquids required under § 60.5375(a), except as provided in § 60.5375(f)(2) which subjects wildcat, delineation and low pressure gas wells to requirements for combustion of flowback emissions and to the general duty to safely maximize resource recovery and minimize releases to the atmosphere required under § 60.5375(a)(4). Under the NSPS, low pressure wells are treated the same as exploratory and delineation wells (*i.e.,* they are not required to perform an REC). We also added a definition of ''low pressure gas well'' in the final rule that is based on a mathematical formula that takes into account a well's depth, reservoir pressure and flow line pressure. Section 60.5430 defines low pressure gas well as ''a well with reservoir pressure and vertical well depth such that 0.445 times the reservoir pressure (in psia) minus 0.038 times the vertical well depth (in feet) minus 67.578 psia is less than the flow line pressure at the sales meter.''

Following publication of the 2012 final NSPS, a group of petitioners, led by the Independent Petroleum Association of America (IPAA), representing independent oil and natural gas owners and operators, submitted a joint petition for administrative reconsideration of the 2012 NSPS. The petitioners questioned the technical merits of the low pressure well definition and asserted that the public had not had an opportunity to comment on the definition because it was added in the final rule. The petitioners expressed concern that the formula adopted in the 2012 NSPS was based on ''questionable assumptions'' and ''sparse data'' and will ''exclude from its scope many gas wells drilled in formations that historically have been recognized as 'low pressure.''' In the view of the petitioners, ''the 2012 definition has the potential to directly affect many smaller producers, who are less likely to be able to bear the costs of implementing costly RECs.'' [1] However, the administrative petition did not identify which assumptions were questionable and why, or what additional data the petitioners consider necessary to support the EPA's ''low pressure gas well'' definition.

On March 24, 2014, the petitioners submitted to the EPA a suggested alternative definition [2] for consideration. The petitioners' definition is based on the fresh water hydrostatic gradient of 0.433 pounds per square inch per foot (psi/ft). The petitioners assert that this approach is straightforward and has been recognized for many years in the oil and natural gas industry and by governmental agencies and professional organizations. As expressed in the paper submitted by the petitioners, the alternative definition for consideration by the EPA, as stated by the petitioners, would be ''a well where the field pressure is less than 0.433 times the vertical depth of the deepest target reservoir and the flow-back period will be less than three days in duration.''

On July 17, 2014, the EPA proposed clarifying amendments to the gas well completion provisions of the NSPS. In the July proposal, we expressed concern that the IPAA alternative definition is too simplistic and may not adequately account for the parameters that must be considered when determining whether an REC would be feasible for a given hydraulically fractured gas well. We expressed disagreement with the petitioners' assertion that the EPA definition is too complicated and that it would pose difficulty or hardship for smaller operators. However, we agreed with the petitioners that the public should have been provided an opportunity to comment on the 2012 definition of ''low pressure gas well,'' and we re-proposed the 2012 definition for notice and comment in the July 17, 2014, proposal. In addition, we solicited comment on the alternative definition suggested by the petitioners.

On August 18, 2014, prior to the close of the public comment period for the July 17, 2014, proposal, the IPAA, on behalf of the independent oil and natural gas owner and operator petitioners, submitted a comment to the EPA via the email address to the Air and Radiation Docket provided in the proposed rule. This timely submitted comment addressed the following: (1) Clarification that the petitioners' primary concern is that the EPA's definition would require REC to be performed on marginally cost-effective wells, and not that the calculation required by the EPA's definition would impose a hardship; (2) whether it was the petitioners' burden to justify the assumptions on which the EPA's definition was based; (3) accuracy of the Turner equation used in the development of the EPA's definition; (4) technical derivation of the petitioners' definition; and (5) relationship between low pressure gas wells and EPA's stages of flowback as proposed in the July 17, 2014, proposal.

The EPA published final amendments in the **Federal Register** at 79 FR 79018 on December 31, 2014, which finalized the definition of ''low pressure gas well'' unchanged from the 2012 definition. Subsequent to the December 31, 2014, publication of the final amendments, the EPA became aware that the comment submitted by the IPAA was not made part of the record in the docket and, thus, was not available to be considered by the EPA in its decision-making process prior to finalizing the amendments.

B. Storage Vessels Connected in Parallel

In the December 31, 2014, final rule, the EPA had finalized amendments to

[1] Letter from James D. Elliott, Spilman, Thomas & Battle PLLC, to Lisa P. Jackson, EPA Administrator, October 15, 2012; Petition for Administrative Reconsideration of Final Rule ''Oil and Gas Sector: New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants Reviews,'' 77 FR 49490 (August 16, 2012).

[2] Email from James D. Elliott, Spilman, Thomas & Battle PLLC, to Bruce Moore, EPA, March 24, 2014.

the NSPS to address, among other issues, the affected facility status of storage vessel affected facilities that are removed from service and storage vessels being returned to service. The final action included amendments related to storage vessels ''connected in parallel'' or ''installed in parallel.'' As we explained in the final rule preamble (see 79 FR 79027, December 31, 2014), ''Although we believe it is an unlikely occurrence, we note that, when two or more storage vessels receive liquids in parallel, the total throughput is shared between or among the parallel vessels and, in turn, this causes the PTE of each vessel to be a fraction of the total PTE.'' To address such isolated occurrences where storage vessels are installed or connected to reduce PTE and, therefore, avoid being subject to subpart OOOO, we amended the NSPS to address situations in which two or more storage vessels could be installed or connected in parallel which could, in some cases, lower the PTE of the individual storage vessels to levels below the 6 tons per year (tpy) applicability threshold provided in § 60.5365(e). Specifically, we amended § 60.5365(e)(4) to provide that a storage vessel that is being placed into service, and is connected in parallel with a storage vessel affected facility, is immediately subject to the same requirements as the affected facility with which it is being connected in parallel. We also amended the definitions for ''returned to service'' and ''storage vessel'' in § 60.5430 to provide that two or more storage vessels connected in parallel are considered equivalent to a single storage vessel with throughput equal to the total throughput of the storage vessels connected in parallel.

Following publication of the December 2014 final rule, we became aware that the terms ''connected in parallel'' and ''installed in parallel'' inadvertently include in storage vessels beyond those we attempted to address as described above. On February 19, 2015, the Gas Processors Association (GPA) submitted a petition for administrative reconsideration of the December 31, 2014, amendments. The GPA asserted that ''it is quite common for multiple storage vessels to be situated next to each other and connected in parallel. Sometimes the storage vessels are operated in parallel, sometimes they are operated in series, and sometimes they are operated one-at-a-time with the connecting valves closed.'' The GPA further asserted that this configuration has existed for decades and that ''this language potentially has large impacts to how our members evaluate affected facility status.''

For the reasons discussed above, we are proposing to remove the regulatory provisions relative to storage vessels ''installed in parallel'' or ''connected in parallel.'' Instead, we solicit comment on other approaches to help avoid or discourage installation or operation of storage vessels that would unnecessarily reduce the potential to emit (PTE) of a single storage vessel.

III. Today's Action

In this action, the EPA is re-proposing for notice and comment the same definition of ''low pressure gas well'' that was finalized in 2012 and re-proposed in the July 17, 2014, proposal. In addition, as in the 2014 proposal, we are soliciting comment on the petitioners' alternative definition as presented above. We note that the EPA has now made the comment submitted by the IPAA on August 18, 2014, part of the record in the docket; therefore, it is not necessary for the IPAA to resubmit this comment in response to this proposed rule. However, the EPA welcomes the submittal of any additional comments by the petitioners and other interested parties. We are in the process of evaluating the IPAA comments. In this proposal, we solicit further comments on both the EPA proposed definition and on the IPAA alternative definition. We seek comment on (1) gas wells that are not considered ''low pressure gas wells'' based on the re-proposed EPA definition, but for which RECs are technically infeasible, and the specific well characteristics or other technical factors that make RECs technically infeasible; (2) gas wells that are considered ''low pressure gas wells'' based on the IPAA alternative definition, but for which RECs could be performed; and (3) specific well parameters or drilling techniques that should be considered in determining whether an REC would be technically feasible and how these factors could be used to define ''low pressure gas well.''

With regard to storage vessels, in response to the GPA petition and in light of the considerations discussed above, we are proposing to amend the NSPS provisions relative to storage vessels ''installed in parallel'' or ''connected in parallel.'' Specifically, we are proposing to amend § 60.5365(e) to remove language related to storage vessels ''installed in parallel'' or ''connected in parallel.'' We are also proposing to amend the definitions of ''returned to service'' and ''storage vessel'' in § 60.5430 to remove language pertaining to storage vessels connected in parallel. We solicit comment on other approaches to help avoid or discourage installations or operations of storage vessels that would unnecessarily reduce the PTE of a single storage vessel.

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *http://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was, therefore, not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060–0673. This action does not change the information collection requirements previously finalized and, as a result, does not impose any additional burden on industry.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This action is a reconsideration of an existing rule and imposes no new impacts or costs.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have tribal implications as specified in Executive

Order 13175. This action is a reconsideration of an existing rule and imposes no new impacts or costs. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

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

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

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

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations because it does not affect the level of protection provided to human health or the environment. This action is a reconsideration of an existing rule and imposes no new impacts or costs.

List of Subjects in 40 CFR Part 60

Administrative practice and procedure, Air pollution control, Environmental protection, Intergovernmental relations, Reporting and recordkeeping.

Dated: March 17, 2015.

Gina McCarthy,

Administrator.

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

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

■ 1. The authority citation for part 60 continues to read as follows:

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

Subpart OOOO—Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution

■ 2. Section 60.5365 is amended by revising paragraph (e) to read as follows:

§ 60.5365 Am I subject to this subpart?

* * * * *

(e) Each storage vessel affected facility, which is a single storage vessel located in the oil and natural gas production segment, natural gas processing segment or natural gas transmission and storage segment, and has the potential for VOC emissions equal to or greater than 6 tpy as determined according to this section by October 15, 2013 for Group 1 storage vessels and by April 15, 2014, or 30 days after startup (whichever is later) for Group 2 storage vessels, except as provided in paragraphs (e)(1) through (4) of this section. The potential for VOC emissions must be calculated using a generally accepted model or calculation methodology, based on the maximum average daily throughput determined for a 30-day period of production prior to the applicable emission determination deadline specified in this section. The determination may take into account requirements under a legally and practically enforceable limit in an operating permit or other requirement established under a Federal, State, local or tribal authority.

(1) For each new, modified or reconstructed storage vessel receiving liquids pursuant to the standards for gas well affected facilities in § 60.5375, including wells subject to § 60.5375(f), you must determine the potential for VOC emissions within 30 days after startup of production.

(2) A storage vessel affected facility that subsequently has its potential for VOC emissions decrease to less than 6 tpy shall remain an affected facility under this subpart.

(3) For storage vessels not subject to a legally and practically enforceable limit in an operating permit or other requirement established under Federal, state, local or tribal authority, any vapor from the storage vessel that is recovered and routed to a process through a VRU designed and operated as specified in this section is not required to be included in the determination of VOC potential to emit for purposes of determining affected facility status, provided you comply with the requirements in paragraphs (e)(3)(i) through (iv) of this section.

(i) You meet the cover requirements specified in § 60.5411(b).

(ii) You meet the closed vent system requirements specified in § 60.5411(c).

(iii) You maintain records that document compliance with paragraphs (e)(3)(i) and (ii) of this section.

(iv) In the event of removal of apparatus that recovers and routes vapor to a process, or operation that is inconsistent with the conditions specified in paragraphs (e)(3)(i) and (ii) of this section, you must determine the storage vessel's potential for VOC emissions according to this section within 30 days of such removal or operation.

(4) For each new, reconstructed, or modified storage vessel with startup, startup of production, or which is returned to service, affected facility status is determined as follows: If a storage vessel is reconnected to the original source of liquids or is used to replace any storage vessel affected facility, it is a storage vessel affected facility subject to the same requirements as before being removed from service, or applicable to the storage vessel affected facility being replaced immediately upon startup, startup of production, or return to service.

* * * * *

■ 3. Section 60.5430 is amended by revising the definitions of ''Returned to Service'' and ''Storage Vessel'' to read as follows:

§ 60.5430 What definitions apply to this subpart?

* * * * *

Returned to service means that a Group 1 or Group 2 storage vessel affected facility that was *removed from service* has been:

(1) Reconnected to the original source of liquids or has been used to replace any storage vessel affected facility; or

(2) Installed in any location covered by this subpart and introduced with crude oil, condensate, intermediate hydrocarbon liquids or produced water.

* * * * *

Storage vessel means a tank or other vessel that contains an accumulation of crude oil, condensate, intermediate hydrocarbon liquids, or produced water, and that is constructed primarily of nonearthen materials (such as wood, concrete, steel, fiberglass, or plastic) which provide structural support. A well completion vessel that receives recovered liquids from a well after startup of production following

flowback for a period which exceeds 60 days is considered a storage vessel under this subpart. A tank or other vessel shall not be considered a storage vessel if it has been removed from service in accordance with the requirements of § 60.5395(f) until such time as such tank or other vessel has been returned to service. For the purposes of this subpart, the following are not considered storage vessels:

(1) Vessels that are skid-mounted or permanently attached to something that is mobile (such as trucks, railcars, barges or ships), and are intended to be located at a site for less than 180 consecutive days. If you do not keep or are not able to produce records, as required by § 60.5420(c)(5)(iv), showing that the vessel has been located at a site for less than 180 consecutive days, the vessel described herein is considered to be a storage vessel from the date the original vessel was first located at the site. This exclusion does not apply to a *well completion vessel* as defined in this section.

(2) Process vessels such as surge control vessels, bottoms receivers or knockout vessels.

(3) Pressure vessels designed to operate in excess of 204.9 kilopascals and without emissions to the atmosphere.

* * * * *

[FR Doc. 2015–06593 Filed 3–20–15; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 80, No. 55
Monday, March 23, 2015

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

March 18, 2015.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: Supplementation Nutrition Assistance Program (SNAP) Employment & Training Study.

OMB Control Number: 0584–NEW.

Summary of Collection: The Supplemental Nutrition Assistance Program (SNAP) serves as a safety net for families who are having difficulty obtaining adequate nutrition. The U.S. Department of Agriculture's (USDA), Food and Nutrition Service (FNS), which administers SNAP, also administers the SNAP Employment and Training (E&T) Program to assist members of households participating in SNAP in gaining skills, training or experience to ''increase their ability to obtain regular employment''. The Food and Nutrition Act of 2008 authorizes the USDA to conduct program research and evaluation activities to ''implement an employment and training program designed by the State agency and approved by the Secretary for the purpose of assisting members of households participating in the Supplemental Nutrition Assistance Program in gaining skills, training, work, or experience that will increase their ability to obtain regular employment (H.R. 2642, Pub. L. 113–128, Sec. 6(d)(4), p. 34).''

Need and Use of the Information: The study is needed to provide Food and Nutrition Service with information about the characteristics of work registrants, E&T participants, and the providers that serve them. This nationally representative study will identify the characteristics of registrants and participants, the challenges they face and the E&T services available to SNAP participants. The information generated will help FNS understand how these programs serve clients, what participants need to develop their skills, and whether current programs meet clients' needs. This study has three objectives: (1) To provide FNS with a detailed description of the characteristics of SNAP work registrants and SNAP E&T participants; (2) to describe the needs and challenges faced by registrants and participants in finding and retaining employment in the changing economy; and (3) to describe the characteristics of the E&T service providers and the types of services available to participants.

Description of Respondents: Not-for-profit institutions; Individual or households; Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 5,261.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 2,238.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2015–06590 Filed 3–20–15; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Study on Nutrition and Wellness Quality in Childcare Settings (SNAQCS)

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Food and Nutrition Service (FNS) invites the general public and other public agencies to comment on this proposed information collection. This collection is a new collection for the Study on Nutrition and Wellness Quality in Childcare Settings (SNAQCS).

DATES: Written comments on this notice must be received on or before May 22, 2015.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to: Joseph F. Robare, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 1004, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Joseph F. Robare at 703–305–2128 or via email to *joseph.robare@fns.usda.gov.* Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m. Monday through Friday) at 3101 Park Center Drive, Room 1004, Alexandria, Virginia 22302.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Joseph F. Robare at 703–305–2128.

SUPPLEMENTARY INFORMATION:

Title: Study on Nutrition and Wellness Quality in Childcare Settings (SNAQCS).

Form Number: N/A.

OMB Number: Not Yet Assigned.

Expiration Date: Not Yet Determined.

Type of Request: New Collection.

Abstract: Good nutrition is a key to proper childhood development, but not enough is known about the food children are eating in childcare and related programs. In 2011, 32.7 million children were in a regular childcare arrangement while their parents worked or pursued other activities outside of the home, according to the U.S. Census Bureau. In recognition of the importance of nutrition and physical activity in childcare, Congress directed the USDA to conduct a Study on Nutrition and Wellness Quality in Childcare Settings (SNAQCS) in Section 223 of the Healthy Hunger Free Kids Act (HHFKA) of 2010. The objectives set out by Congress encompass four broad topics: (1) Nutritional quality of foods offered, (2) physical activity, (3) sedentary activity, and (4) barriers to and facilitators of nutritional quality, physical activity, and participation by childcare centers and family day care homes in the Child and Adult Care Food Program (CACFP). For efficiency, USDA is coordinating the collection of other important variables with the section 223 data collection. The intent of the study is to document the quality of meals and snacks offered in childcare facilities, relative to the current *Dietary Guidelines for Americans* (DGA) which are prepared by USDA and the U.S. Department of Health and Human Services, and the types of activities that might promote or inhibit healthy weight and development. The study will also provide insights into how nutritional quality and physical activity in childcare might be improved. Lastly, the study will collect data on the costs of childcare meals and snacks in relationship to CACFP reimbursements, other funding, and meal quality.

The study will take place in the context of heightened concern about adequate nutrition, diet quality and obesity in young children. These concerns and developing knowledge about nutritional requirements for appropriate childhood growth, as reflected in the updated 2010 DGA, led the Institute of Medicine (IOM) Food and Nutrition Board to recommend new meal requirements for the CACFP in its 2010 report *Child and Adult Care Food Program: Aligning Dietary Guidance for All.* USDA recently published a proposed rule in the **Federal Register** to update the CACFP meal requirements based on these recommendations (January 15, 2015; 80 FR 2037). While USDA has not yet implemented new CACFP meal requirements, the IOM recommendations provide significant benchmarks for assessing current meal quality in the CACFP. Moreover, a comparison between current meal characteristics and the IOM recommendations suggests the extent of change that would be required to implement the IOM recommendations. The need for research to establish a baseline of current meal characteristics and quality in childcare settings is acknowledged in the IOM report, as are the challenges of technical assistance, monitoring, and cost that would come with the implementation of new meal requirements. The proposed study will directly address key research recommendations from the IOM report.

The study seeks to collect a broad range of data from a nationally representative sample which would include: (1) Sponsors, directors, food preparers and/or provider staff of childcare centers, family day care homes, and after-school programs that participate in the CACFP and those that do not participate in CACFP; and (2) children and parents of children receiving care from CACFP childcare centers, family day care homes, and after-school programs during 2015–2016. The sample is designed to provide required levels of statistical precision and data quality while minimizing data collection costs and respondent burden.

To address the study's three broad categories of research questions, the data collection activities to be undertaken subject to this notice will include the following surveys, forms, and interviews:

- Nutrition and wellness policies and practices in childcare settings:
  - Provider Web Survey
  - Menu Survey
  - Reference Portion Measurement Form
  - Table Waste Observation Form
- Child intake and weight status:
  - Child Food Diary (completed by parents)
  - Standing Height and Weight Form (collected by study staff)
  - Infant Food Intake Form
  - Parent Interview
- Cost of meals provided in CACFP childcare setting:
  - Sponsor Pre-visit Cost Survey
  - Sponsor Pre-visit Cost Form
  - Center Director Pre-visit Cost Survey
  - Sponsor Cost Interview
  - Center Director Cost Interview
  - Food Preparer Cost Interview
  - Overhead and Equipment Cost Worksheet

In addition, the study will include an Environmental Observation Form and a Meal Observation Form that will be completed by study staff and do not have any associated burden for study participants.

Affected Public: Respondent categories of affected public and the corresponding study participants will include: (a) Businesses (sample of childcare providers); and (b) individual/households (sample of children and their parents/guardians).

Estimated Number of Respondents: 12,472. The total proposed final number of unique respondents will include: (a) 3,753 sponsors, directors, food preparers and/or provider staff of childcare centers, family day care homes, and after-school childcare providers childcare that participate in the USDA Child and Adult Care Food Program (CACFP), and non-participating providers; (b) 3,000 children receiving care from CACFP childcare centers, family day care homes, and after-school programs; (c) 4,175 parents of children receiving care from CACFP childcare centers, family day care homes, and after-school childcare programs; and (d) 1,544 non-respondents.

Estimated Frequency of Responses per Respondent: 1.91 annually. All respondents will be asked to respond to or complete instruments as follows: (a)

Sponsors will be asked to complete the Sponsor Pre-visit Cost Survey, the Sponsor Pre-visit Cost Form, and the Sponsor Cost Interview; (b) directors will be asked to complete the Provider Web Survey, the Center Director Pre-visit Cost Survey, the Center Director Cost Interview, and the Overhead & Equipment Cost Worksheet; (c) food preparers will be asked to complete the Menu Survey, the Reference Portion Measurement Form, the Table Waste Observation Form, and the Food Preparer Cost Interview; (d) provider staff will be asked to complete the Infant Food Intake Form; (e) children will be asked to cooperate with study staff who will weigh and measure them for the Standing Height and Weight Form; and (f) parents will be asked to complete a Parent Interview and the Child Food Diary for a childcare day, a non-childcare day, and a subsample will be asked to complete a third diary which could be either a childcare day or a non-childcare day. All respondents will be asked to respond to or complete each instrument only once with the exception of parents who will be asked to complete a Child Food Diary on 2–3 days.

Estimated Total Annual Responses: 23,767.

Estimated Time per Response: 35 minutes (0.59 hours). The estimated time of response varies from 4 minutes (0.07 hours) to 195 minutes (3.25 hours) depending on the respondent group, as shown in the table below. These estimates include time to read the initial materials as well as follow-up activities.

Estimated Total Annual Burden on Respondents: 13,945.99 hours. See the table below for estimated total annual burden for each type of respondent.

Affected public	Data collection activity	Respondents [a]	Estimated number of respondents	Frequency of response	Total annual responses	Average burden hours per response	Total annual burden hours estimate (hours)
Businesses [b]	Provider Web Survey.	Non-respondents	352	1	352	0.07	24.64
		Directors	1,539	1	1,539	1.00	1,539.00
Businesses [b]	Menu Survey (online).	Non-respondents	352	1	352	0.07	24.64
		Food preparers	1,539	1	1,539	2.93	4,509.27
Businesses [b]	Reference Portion Measurement Form.	Non-respondents	44	1	44	0.07	3.08
		Food preparers	532	1	532	0.25	133.00
Businesses [b]	Table Waste Observation Form.	Non-respondents	20	1	20	0.07	1.40
		Food preparers	372	1	372	0.08	29.76
Businesses [b]	Infant Food Intake Form.	Non-respondents	2	1	2	0.07	0.14
		Provider staff	75	1	75	0.75	56.25
Businesses [b]	Sponsor Pre-visit Cost Survey.	Non-respondents	143	1	143	0.07	10.01
		Sponsors	600	1	600	0.17	102.00
Businesses [b]	Sponsor Pre-visit Cost Form.	Non-respondents	143	1	143	0.07	10.01
		Sponsors	600	1	600	0.17	102.00
Businesses [b]	Center Director Pre-visit Cost Survey.	Non-respondents	143	1	143	0.07	10.01
		Directors	600	1	600	0.25	150.00
Businesses [b]	Sponsor Cost Interview (inperson).	Non-respondents	143	1	143	0.07	10.01
		Sponsors	600	1	600	3.25	1,950.00
Businesses [b]	Center Director Cost Interview (inperson).	Non-respondents	143	1	143	0.07	10.01
		Directors	600	1	600	0.75	450.00
Businesses [b]	Food Preparer Cost Interview (inperson).	Non-respondents	143	1	143	0.07	10.01
		Food preparers	600	1	600	0.5	300.00
Businesses [b]	Overhead & Equipment Cost Worksheet.	Non-respondents	143	1	143	0.07	10.01
		Directors	600	1	600	0.17	102.00
Subtotal Businesses			*4,602*	*2.18*	*10,028*	*0.95*	*9,547.25*
Individuals/Households	Standing Height and Weight Form.	Non-respondents	158	1	158	0.07	11.06
		Children (collected by on-site study staff).	3,000	1	3,000	0.08	240.00
Individuals/Households	Child Food Diary (Childcare day).	Non-respondents	315	1	315	0.07	22.05
		Parents (reporting on children).	2,685	1	2,685	0.50	1,342.50
Individuals/Households	Child Food Diary (Non-childcare day).	Non-respondents	537	1	537	0.07	37.59
		Parents (reporting on children).	2,148	1	2,148	0.67	1,439.16
Individuals/Households	Child Food Diary (Third day).	Non-respondents	85	1	85	0.07	5.95
		Parents (reporting on children).	416	1	416	0.58	241.28
Individuals/Households	Parent interview	Non-respondents	220	1	220	0.07	15.40
		Parents	4,175	1	4,175	0.25	1,043.75
Subtotal Individuals/Households.			*7,870*	*1.75*	*13,739*	*0.32*	*4,398.74*
Grand Total			12,472	1.91	23,767	0.59	13,945.99

Notes:

[a] In some cases, an alternate respondent may be called upon by the respondent to provide specific information to complete the data collection activity. For example, the director may need specific information from a staff person involved in food preparation in order to complete the section of the form asking about meal and snacks policies if he/she does not have this information.

[b] Most of the childcare providers that will be included in the study will be businesses, though some will be operated by school districts and thus are public. No data are currently available to allow us to determine the percent that are businesses and the percent that are public. Similar to our procedures for determining burden in other studies of this population, we have classified all providers as businesses.

Dated: March 17, 2015.

Audrey Rowe,

Administrator, Food and Nutrition Service.

[FR Doc. 2015–06592 Filed 3–20–15; 8:45 am]

BILLING CODE 3410–30–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

[Docket No. ATBCB–2013–0001]

RIN 3014–AA42

Rail Vehicles Access Advisory Committee

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of charter renewal.

SUMMARY: Notice is hereby given that the Rail Vehicles Access Advisory Committee's (RVAAC) charter is being renewed.

FOR FURTHER INFORMATION CONTACT: Paul Beatty, Designated Federal Officer at (202) 272–0012 (Voice); (202) 272–0072 (TTY). Electronic mail address: *rvaac@access-board.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to Section 14(a)(2)(A) of the Federal Advisory Committee Act (Pub. L. 92–463), and in accordance with Title 41 of the Code of Federal Regulations, section 102–3.65(a), and following consultation with the Committee Management Secretariat, General Services Administration, the RVAAC charter is renewed. The Committee will provide advice to the Access Board on revising and updating our accessibility guidelines issued pursuant to the Americans with Disabilities Act for transportation vehicles that operate on fixed guideway systems (*e.g.,* rapid rail, light rail, commuter rail, intercity rail, and high speed rail). Additionally, the renewal of the RVAAC has been determined to be essential to the work of the Access Board and to be in the public interest in connection with the performance of duties required by law. The Committee will continue to operate in accordance with the provisions of the Federal Advisory Committee Act and the rules and regulations that implement that Act.

David M. Capozzi,

Executive Director.

[FR Doc. 2015–06543 Filed 3–20–15; 8:45 am]

BILLING CODE 8150–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Mid-Atlantic Fishery Management Council (MAFMC); Fisheries of the Northeastern United States; Scoping Process

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

ACTION: Notice of public scoping meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council will hold six scoping hearings in April 2015 for an Amendment to the Fishery Management Plan (FMP) for Atlantic Mackerel, Squid, and Butterfish (MSB). The current focus of the amendment is to consider alternatives to reduce the capacities of the longfin squid and *Illex* squid fleets as defined by vessels with limited access permits. At the scoping hearings the Council will also take any general comments on MSB fishery management, which could inform future Council actions besides this Amendment. There will also be a separate written comment period for Amendment scoping, which will be described in an upcoming **Federal Register** announcement as a ''Notice of Intent (NOI)'' to potentially develop an EIS that accompanies the Amendment. That NOI will also contain information regarding these scoping hearings, but to provide the public with sufficient advance notice of the hearings, this notice is being published now since the NOI will likely publish shortly before the scoping hearings.

DATES: The meetings will be held over several weeks between April 6, 2015 and April 21, 2015. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for specific locations of the hearings.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State St., Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

Comments: Comments will be taken at all scoping hearings. A separate **Federal Register** announcement will be published soon that provides additional information on how to make written comments.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D. Executive Director, Mid-Atlantic Fishery Management Council; telephone: (302) 526–5255. The Council's Web site, *www.mafmc.org* also has details on the meeting locations, webinar access, and background materials. A scoping document will be posted to the Council Web site no later than March 24, 2015.

SUPPLEMENTARY INFORMATION: There will be six scoping meetings (each lasting approximately 1–2 hours depending on attendance) with the following dates/times/locations:

1. Monday, April 6, 2015, 4 p.m., Superior Trawl, 55 State Street, Narragansett, RI 02882; telephone: (401) 782–1171.

2. Tuesday, April 7, 2015, 5 p.m., Montauk Library, 871 Montauk Highway, Montauk, NY 11954; telephone: (631) 668–3377.

3. Wednesday, April 8, 2015, 5 p.m., Fairfield Inn, 185 MacArthur Dr., New Bedford, MA 02740; telephone: (774) 634–2000.

4. Monday, April 13, 2015, 6 p.m., Congress Hall Hotel. 251 Beach Ave, Cape May, NJ 08204, telephone: (888) 944–1816.

5. Wednesday, April 15, 2015, 5 p.m., Ocean Place Resort. 1 Ocean Blvd., Long Branch, NJ, 07740; telephone: 732–571–4000.

6. Tuesday, April 21, 2015, 6 p.m., This April 21, 2015 meeting will be conducted via webinar accessible via the internet from the Council's Web site, *www.mafmc.org.* The Virginia Marine Resources Commission will also provide in-person access to the webinar at its office at: 2600 Washington Avenue, 4th Floor, Newport News, VA 23607; telephone: (757) 247–2200. Members of the public may also attend in-person at the Council office address (see **ADDRESSES**) for this webinar meeting, if they contact the Council by April 19, 2015. Please contact Jason Didden by April 19, 2015 at *jdidden@mafmc.org* or (302) 526–5254 if you would like to test/confirm that your computer is set up to access the webinar.

In the Council's 2015 Implementation Plan (available at *http://www.mafmc.org/strategic-plan/*), the Council decided to initiate an action on a ''Squid Capacity Amendment.'' There is considerable latent capacity in both the longfin squid and *Illex* squid fisheries—a small portion of vessels with limited access squid permits account for most landings in most years. The Council is concerned that activation of this latent capacity could cause problems in the fishery such as racing to fish and increased incidental catch of non-target species. Accordingly, the Amendment is likely to consider a variety of approaches for reducing capacity in the squid fisheries. Such approaches could

include, but would not be limited to, a requalification of limited access permits, a tiered limited access system, and/or a limited access privilege program (LAPP), which is more commonly referred to as an ''individual quota'' or ''catch share system.'' The Council has recently updated control dates for both squid fisheries—May 16, 2013 for longfin squid (*http://www.greateratlantic.fisheries.noaa.gov/nr/2013/May/13smblongfinbutterfishcontroldatephl.pdf*) and August 2, 2013 for *Illex* squid (*http://www.greateratlantic.fisheries.noaa.gov/nr/2013/August/13smbillexcontroldatephl.pdf*). The Council may (or may not) use the current or previous control dates as reference points as it considers whether, and/or how, to further limit the number of participants in the squid fisheries (see preceding links for additional details on the control dates).

The Council will first gather information during the scoping period. This is the first and best opportunity for members of the public to raise concerns related to the scope of issues that will be considered in the Amendment. The Council needs your input both to identify management issues and develop effective alternatives. Your comments early in the amendment development process will help us address issues of public concern in a thorough and appropriate manner. Comment topics could include the scope of issues in the amendment, concerns and potential alternatives related to capacity in the squid fisheries, and the appropriate level of environmental analysis. If the Council decides to move forward with the Amendment, the Council will develop a range of management alternatives to be considered and prepare a draft Environmental Impact Statement (DEIS) and/or other appropriate environmental analyses. These analyses will consider the impacts of the management alternatives being considered, as required by the National Environmental Policy Act (NEPA). Following a review of any comments on the draft analyses, the Council will then choose preferred management measures for submission with a Final EIS or Environmental Assessment to the Secretary of Commerce for publishing of a proposed and then final rule, both of which have additional comment periods. While the Council is conducting these scoping hearings, the Council will also accept general comments on the MSB fisheries. These general comments could inform Council decision making for upcoming annual specifications or other actions.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: March 17, 2015.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2015–06438 Filed 3–20–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD837

Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meeting

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

ACTION: Design workshop for monitoring deep water snapper-grouper species in the South Atlantic.

SUMMARY: The South Atlantic Fishery Management Council (SAFMC) and Southeast Fisheries Science Center (SEFSC) will host a workshop where fishermen and scientists will discuss approaches for monitoring the deep water stocks component of the South Atlantic Snapper-Grouper complex. See **SUPPLEMENTARY INFORMATION.**

DATES: The workshop will be held from 8:30 a.m. to 5 p.m., Tuesday, April 7, 2015; 8:30 a.m. to 5:30 p.m., Wednesday, April 8, 2015; and 8:30 a.m. to 3 p.m., Thursday, April 9, 2015.

ADDRESSES:

Meeting address: The Workshop will be held at SEFSC Laboratory in Beaufort NC, located at 101 Piver's Island Road, Beaufort, NC 28516.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; telephone: (843) 571–4366 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: The goal of the Workshop is to identify optimal approaches and associated costs for surveying the South Atlantic deep-water species complex. Survey goals are expected to include providing abundance information and biological samples to support stock assessments of deep water species.

Workshop Agenda, Tuesday, April 7–Thursday, April 9, 2015

1. Identify focal species
2. Provide species details
3. Recommend survey gears
4. Recommend gear configurations
5. Recommend survey data to collect
6. Recommend a sampling universe
7. Provide survey design guidance
8. Compare and contrast survey platforms, including cooperative research opportunities
9. Provide cost estimates
10. Identify long-term and short-term needs and cooperative research opportunities

Special Accommodations

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the SAFMC office (see **ADDRESSES**) at least 5 business days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 17, 2015.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2015–06437 Filed 3–20–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD826

Marine Mammals; File No. 17967

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that the Minnesota Zoological Gardens, 13000 Zoo Boulevard, Apple Valley, MN 55124, has applied in due form for a permit to conduct research on and enhancement of Hawaiian monk seals (*Neomonachus schauinslandi*) in captivity.

DATES: Written, telefaxed, or email comments must be received on or before April 22, 2015.

ADDRESSES: The application and related documents are available for review by

selecting ''Records Open for Public Comment'' from the ''Features'' box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 17967 from the list of available applications.

These documents are also available upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. 17967 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Jennifer Skidmore, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The Minnesota Zoological Gardens (MZG) proposes to maintain up to eight non-releasable Hawaiian monk seals for research and enhancement purposes. This would include five female monk seals (currently being held at Sea World San Antonio) and any other captive or future non-releasable female monk seals taken under separate permit. The five seals currently at Sea World were collected from the wild for rehabilitation under an enhancement permit and deemed non-releasable due to an eye disease of unknown etiology; maintaining these seals in captivity would prevent the potential transmission of disease to the wild population. Proposed research on the captive seals includes the following: (1) Annually, blood samples and nasal swabs taken during routine health assessments will be analyzed for presence of West Nile virus, canine distemper virus, and phocine distemper virus in seals previously vaccinated; (2) various sedatives will be tested on the seals during routine health assessments to inform use in the wild population; and (3) seals may be used in research projects authorized under separate permits (*e.g.,* vaccination testing, remotely administrating sedatives, new capture techniques). MZG proposes to maintain the seals for the duration of their lives and will continue public awareness on the status of the species through education and public observation of the seals. The permit is requested for the maximum 5-year period.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: March 17, 2015.

Julia Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2015–06449 Filed 3–20–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD835

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Groundfish Management Team (GMT) will hold a conference call that is open to the public. To attend the GMT teleconference, participants need to dial the following toll-free phone number: (888) 283–0166; Passcode: 4432591.

DATES: The GMT meeting will be held Tuesday, April 7, 2015, from 1 p.m. until business for the day is completed.

ADDRESSES: The meeting will be held via conference call with a listening station provided at the Pacific Council Office, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384; telephone: (503) 820–2280.

FOR FURTHER INFORMATION CONTACT: Ms. Kelly Ames, Pacific Council; telephone: (503) 820–2426.

SUPPLEMENTARY INFORMATION: The primary purpose of the GMT working meeting is to prepare for the April 2015 Council meeting. Specific agenda topics include NOAA's proposed revisions to National Standards 1, 3, and 7; a review of the latest West Coast Groundfish Observer Program data; inseason adjustments to groundfish fisheries including carryover for the shorebased individual fishing quota program; further consideration for flexible management of annual catch limit set-asides; and comments on a Council Operating Procedure for methodology reviews. The GMT may also address other assignments relating to groundfish management. No management actions will be decided by the GMT. Public comment will be accommodated if time allows, at the discretion of the GMT Chair. The GMT's task will be to develop recommendations for consideration by the Pacific Council at its April 10–16, 2015 meeting in Rohnert Park, CA.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt at (503) 820–2425 at least 5 days prior to the meeting date.

Dated: March 17, 2015.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2015–06435 Filed 3–20–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic From the People's Republic of China: Preliminary Results of the Changed Circumstances Review of Lanling Qingshui Vegetable Foods Co., Ltd.

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On October 23, 2014, the Department of Commerce (Department) initiated a changed circumstance review (CCR) of the antidumping duty (AD) order on fresh garlic from the People's Republic of China (PRC) in response to a request from Lanling Qingshui Vegetable Foods Co., Ltd. (Qingshui), a producer/exporter of fresh and peeled garlic from the People's Republic of China (PRC).[1] Pursuant to section 751(b) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.216, the Department preliminarily determines that Qingshui is the successor-in-interest to Cangshan Qingshui Vegetable Foods Co., Ltd. (Cangshan Qingshui). We invite interested parties to comment on these preliminary results.

DATES: *Effective* March 23, 2015.

FOR FURTHER INFORMATION CONTACT: Hilary E. Sadler, Esq., AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4340.

SUPPLEMENTARY INFORMATION:

Background

On November 16, 1994, the Department published the AD order on fresh garlic from the PRC in the **Federal Register**.[2] On September 4, 2014, Qingshui requested that the Department conduct a CCR pursuant to section 751(b)(1) of the Act and 19 CFR 351.216(b) to determine that it is the successor-in-interest to Cangshan Qingshui for purposes of the *Order*.[3] We received comments from no other parties.

Based on this information, the Department initiated this CCR on October 16, 2014, explaining that while there was sufficient evidence to initiate a changed circumstances review, the Department needed to request additional information for this review as provided by 19 CFR 351.221(b)(2).[4] On October 29, 2014, the Department issued its initial CCR questionnaire to Qingshui, and Qingshui timely responded to the Department's questionnaire.[5] The Department did not receive comments from other interested parties concerning Qingshui's questionnaire response.

Scope of the Order

The merchandise covered by this order is all grades of garlic, whether whole or separated into constituent cloves. The subject merchandise is currently classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 0703.20.0000, 0703.20.0010, 0703.20.0020, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, 0711.90.6500, 2005.90.9500, 2005.90.9700, 0703.20.0005, 2005.99.9700 and 0703.20.0015. Although the HTSUS subheadings are provided for convenience and customs purposes, the written product description is dispositive.

A complete description of the scope of the order is contained in the Preliminary Decision Memorandum.[6] The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and ACCESS is available to all parties in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Methodology

In accordance with section 751(b)(1) of the Act, we are conducting this changed circumstances review based upon the information contained in Qingshui's submissions.[7] In making a successor-in-interest determination, the Department typically examines several factors including, but not limited to, changes in: (1) Management; (2) production facilities; (3) supplier relationships; and (4) customer base.[8] While no single factor or combination of factors will necessarily be dispositive, the Department generally will consider the new company to be the successor to the predecessor if the resulting operations of the successor are not materially dissimilar to that of its predecessor.[9] Thus, if the record demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the predecessor company, the Department may assign the new company the cash deposit rate of its predecessor.[10] For a full description of the methodology underlying our conclusions, see the Preliminary Decision Memorandum.

Preliminary Results of the Changed Circumstances Review

Based on the evidence reviewed, we preliminarily determine that Qingshui is the successor-in-interest to Cangshan Qingshui. Specifically, we find that any changes that may have occurred after ''Cangshan Qingshui Vegetable Foods Co., Ltd'' became ''Lanling Qingshui Vegetable Foods Co., Ltd.'' did not constitute material changes to management, production facilities, supplier relationships, customer relationships, or ownership/legal

[1] *See Fresh Garlic from the People's Republic of China: Initiation of Changed Circumstances Review,* 79 FR 63381 (October 23, 2014) (CCR Initiation Notice).

[2] *See Antidumping Duty Order: Fresh Garlic from the People's Republic of China,* 59 FR 59209 (November 16, 1994) (*Order*).

[3] *See* Letter from Qingshui to the Secretary of Commerce, ''Request for Request for Expedited Changed Circumstances Determination—Fresh Garlic from the People's Republic of China (Case No. A–570–831),'' September 4, 2014 (Qingshui CCR Request).

[4] CCR Initiation Notice.

[5] *See* Letter to Qingshui from Mark E. Hoadley, AD/CVD Operations, Program Manager, Office VII, Enforcement and Compliance, ''Fresh Garlic from the People's Republic of China: Changed Circumstances Review—Lanling Qingshui/Cangshan Qingshui,'' October 29, 2014 (Qingshui CCR Questionnaire); *see also* Letter from Qingshui to the Secretary of Commerce, ''Changed Circumstances Determination—Fresh Garlic from the People's Republic of China (Case No. A–570–831)—Response to Questionnaire,'' November 18, 2014 (Qingshui CCR Questionnaire Response).

[6] *See* Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, ''Decision Memorandum for the Preliminary Results of the Antidumping Duty Changed Circumstances Review of Fresh Garlic from the People's Republic of China: Lanling Qingshui Vegetable Foods Co., Ltd.,'' dated concurrently and hereby adopted in this notice.

[7] *See* Qingshui CCR Request and Qingshui CCR Questionnaire Response.

[8] *See, e.g., Certain Activated Carbon From the People's Republic of China: Notice of Initiation of Changed Circumstances Review,* 74 FR 19934, 19935 (April 30, 2009).

[9] *See, e.g., Notice of Initiation of Antidumping Duty Changed Circumstances Review: Certain Forged Stainless Steel Flanges from India,* 71 FR 327, 327 (January 4, 2006).

[10] *See, e.g., Fresh and Chilled Atlantic Salmon From Norway; Final Results of Changed Circumstances Antidumping Duty Administrative Review,* 64 FR 9979, 9980 (March 1, 1999).

structure with respect to the production and sale of the subject merchandise. Thus, we preliminarily determine that Qingshui operates as the same business entity as Cangshan Qingshui with respect to the subject merchandise. A list of topics discussed in the Preliminary Decision Memorandum appears in the Appendix to this notice.

If the Department upholds these preliminary results in the final results, Qingshui will be assigned the cash deposit rate currently assigned to Cangshan Qingshui with respect to the subject merchandise (*i.e.,* the $3.06 per kilogram cash deposit rate currently assigned to Cangshan Qingshui).[11] If these preliminary results are adopted in the final results of this changed circumstances review, we will instruct U.S. Customs and Border Protection to suspend liquidation of entries of fresh garlic made and exported by Qingshui, effective on the publication date of the final results, at the cash deposit rate assigned to Cangshan Qingshui.

Public Comment

Interested parties may submit written comments by no later than 30 days after the date of publication of these preliminary results of review in the **Federal Register.**[12] Rebuttals, limited to issues raised in the written comments, may be filed by no later than five days after the written comments are filed.[13] Parties that submit written comments or rebuttals are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[14] All briefs are to be filed electronically using ACCESS.[15] An electronically filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time on the day on which it is due.[16]

Any interested party may request a hearing to the Assistant Secretary of Enforcement and Compliance using ACCESS within 30 days of publication of this notice in the **Federal Register.**[17] Hearing requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed.[18] Oral presentations will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.[19]

Final Results of the Review

In accordance with 19 CFR 351.216(e), the Department intends to issue the final results of this changed circumstances review, not later than 270 days after the date on which the review is initiated.

Notification to Parties

The Department issues and publishes these results in accordance with sections 751(b)(1) and 777(i)(1) of the Act and 19 CFR 351.216 and 351.221.

Dated: March 17, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Preliminary Results of Changed Circumstances Review
V. Recommendation

[FR Doc. 2015–06558 Filed 3–20–15; 8:45 am]

BILLING CODE 3510–DS–P

[11] *See Fresh Garlic From the People's Republic of China: Final Results of the Semiannual Antidumping Duty New Shipper Review of Jinxiang Merry Vegetable Co., Ltd. and Cangshan Qingshui Vegetable Foods Co., Ltd.; 2012–2013,* 79 FR 62103, (October 16, 2014).

[12] *See* 19 CFR 351.309(c)(1)(ii).

[13] *See* 19 CFR 351.309(d)(1).

[14] *See* 19 CFR 351.309(c)(2) & (d)(2).

[15] *See* 19 CFR 351.303(b) and (f).

[16] *See* 19 CFR 351.303(b)

[17] *See* 19 CFR 351.310(c).

[18] *See id.*

[19] *See* 19 CFR 351.310(d).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD844

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

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

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Greater Atlantic Region, NMFS, has made a preliminary determination that an Exempted Fishing Permit application contains all of the required information and warrants further consideration. This Exempted Fishing Permit would allow one commercial fishing vessel to fish outside of the limited access scallop days-at-sea program in support of research conducted by the National Fisheries Institute that is investigating scallop incidental mortality in the scallop dredge fishery. Additionally, the Exempted Fishing Permit would exempt participating vessels from the crew size restriction; mesh size restrictions; obstruction in gear restrictions; and possession limits and minimum size requirements for sampling purposes only.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed Exempted Fishing Permits.

DATES: Comments must be received on or before April 7, 2015.

ADDRESSES: You may submit written comments by any of the following methods:

- *Email: nmfs.gar.efp@noaa.gov.* Include in the subject line ''Comments on NFI 2014 Incidental Discard Mortality EFP.''
- *Mail:* John K. Bullard, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on NFI 2014 Incidental Discard Mortality EFP.''
- *Fax:* (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Shannah Jaburek, Fisheries Management Specialist, 978–282–8456.

SUPPLEMENTARY INFORMATION: NOAA awarded the National Fisheries Institute (NFI) a grant through the 2014 Atlantic sea scallop research set-aside program in support of a project titled, ''Determining Incidental Discard Mortality of Atlantic Sea Scallops, *Placopecten magellanicus,* in the Scallop Dredge Fishery in the Mid-Atlantic Bight.'' NFI submitted a complete Exempted Fishing Permit (EFP) application on May 13, 2014, but delayed work on the project until spring of 2015. NFI is requesting exemptions that would allow one commercial fishing vessel to fish outside of the limited access Atlantic sea scallop days-at-sea (DAS) regulations found at 50 CFR 648.53(b); mesh size restrictions at § 648.51(a)(2); obstruction in dredge gear restrictions at § 648.51(b)(4)(iii); and the crew size regulations at § 648.51(c). In addition, the EFP would temporarily exempt the participating vessel from possession limits and minimum size requirements specified in 50 CFR part 648, subsections B and D through O, for sampling purposes only. Any fishing activity conducted outside

the scope of the exempted fishing activity would be prohibited.

The project would conduct dredging activities to assess the incidental mortality of scallops passing through the 4-inch (10.16-cm) rings of a 12-foot (4.57-meter) Turtle Deflector Dredge on sandy and hard (gravel) substrates. Dredging would be conducted over approximately 5 DAS during the proposed period of May 2015 through June 2015. All dredging would occur in open access scallop fishing areas off the coast of New Jersey. A total of 20 scallop tows would be conducted (10 tows per substrate). Each tow would be made at depths of 18 to 25 fathoms for a duration of 40 minutes. The scallop vessel would fish two dredges simultaneously. One dredge would use an experimental net bag cover and the other would fish with the industry standard 12-foot (4.57-meter) turtle excluder dredge. The experimental cover is constructed of 1⅞-inch (4.76-cm) mesh and sewn into the top of the dredge apron. The bag can be dumped independently of the 4-inch (10.16-cm) ring bag to collect the scallops and other organisms that pass through the 4-inch (10.16-cm) rings. The dredge configurations would be switched to the opposite side after five tows for each substrate.

All scallops that filter through the 4-inch (10.16-cm) rings and into the mesh bag would be measured for shell height and assessed for damage to the shell in one of three categories: Not injured; sub–lethal (repairable); or lethal (non-repairable). After shell condition is assessed, shells would be spray painted with tow number in the corresponding spray paint color and placed in a whelk pot, which would be attached to the sea floor near the fishing grounds. Two additional DAS would be utilized, one each at 1 week and 2 weeks after initial survey, to assess mortality based on initial damage. The whelk pots would be removed from the ocean bottom after week-two sampling is complete. The weight of scallop catch retained in the 4-inch (10.16-cm) ring bags of both dredges would be estimated by the captain. Researchers would take shell measurements of a subsample of 50 scallops per tow per dredge to determine size selectivity within each dredge. All other bycatch in the experimental net bag would be sorted, the captain would estimate the weights, and researchers would measure a minimum of 25 lengths per individual species. No catch would be landed for sale.

If approved, the applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 18, 2015.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2015–06550 Filed 3–20–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD822

Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The South Atlantic Fishery Management Council will hold a meeting of its Habitat and Environmental Protection (Habitat) Advisory Panel (AP) in N. Charleston, SC. The meeting is open to the public.

DATES: The meeting will be held from 9 a.m. until 4:30 p.m. on Tuesday, April 7, 2015, and from 9 a.m. until 4:30 p.m. Wednesday, April 8, 2015.

ADDRESSES:

Meeting address: The meeting will be held at the Crowne Plaza Hotel, 4381 Tanger Outlet Blvd., North Charleston, SC 29418; telephone: (843) 744–4422; fax: (843) 744–4472.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405; telephone: (843) 571–4366 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: The Habitat AP will work on updating existing and developing new Council Essential Fish Habitat (EFH) Policy Statements and providing guidance on continued development of Fishery Ecosystem Plan II. The AP will receive presentations from Bureau of Ocean Energy Management (BOEM) Office of Renewable Energy Programs and BOEM Outer Continental Shelf/Geological and Geophysical Programs on mapping, characterization, impact analyses and planning efforts in the South Atlantic Region.

The AP will subsequently discuss redrafting the EFH Policy Statement on Energy Exploration, Development and Transportation. The AP will provide recommendations to the Council for consideration.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 3 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Dated: March 17, 2015.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2015–06436 Filed 3–20–15; 8:45 am]

BILLING CODE 3510–22–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No: CFPB–2015–0012]

Agency Information Collection Activities: Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Consumer Financial Protection Bureau (Bureau) is requesting a new generic information collection plan, titled, ''Generic Information Collection Plan for Surveys Using the Consumer Credit Panel''.

DATES: Written comments are encouraged and must be received on or before May 22, 2015 to be assured of consideration.

ADDRESSES: You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Consumer Financial Protection Bureau (Attention: PRA

Office), 1700 G Street NW., Washington, DC 20552.

• *Hand Delivery/Courier:* Consumer Financial Protection Bureau (Attention: PRA Office), 1275 First Street NE., Washington, DC 20002.

Please note that comments submitted after the comment period will not be accepted. In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or social security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is available at *www.regulations.gov.* Requests for additional information should be directed to the Consumer Financial Protection Bureau, (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552, (202) 435–9575, or email: *PRA@cfpb.gov. Please do not submit comments to this mailbox.*

SUPPLEMENTARY INFORMATION:

Title of Collection: Generic Information Collection Plan for Surveys Using the Consumer Credit Panel.

OMB Control Number: 3170–XXXX.

Type of Review: Request for a new OMB Control Number.

Affected Public: Individuals and Households.

Estimated Number of Respondents: 8,500.

Estimated Total Annual Burden Hours: 4,250.

Abstract: Under the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Consumer Financial Protection Bureau is charged with researching, analyzing, and reporting on topics relating to the Bureau's mission, including consumer behavior, consumer awareness, and developments in markets for consumer financial products and services. In order to improve its understanding of how consumers engage with financial markets, the CFPB uses the Consumer Credit Panel, a proprietary sample dataset from one of the national credit reporting agencies, as a frame to survey people about their experiences in consumer credit markets. The Bureau seeks to obtain approval for a generic information collection plan for these types of surveys. Survey responses will be used for general, formative, and informational research on consumer financial markets and consumers' use of financial products and will not directly provide the basis for specific policymaking at the Bureau.

Request for Comments: Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record.

Dated: March 12, 2015.

Ashwin Vasan,

Chief Information Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2015–06569 Filed 3–20–15; 8:45 am]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2015–0009]

Agency Information Collection Activities: Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Consumer Financial Protection Bureau (Bureau) is requesting approval for a new generic information collection plan titled, ''Generic Information Collection Plan to Conduct Cognitive Research and Pilot Testing.''

DATES: Written comments are encouraged and must be received on or before May 22, 2015 to be assured of consideration.

ADDRESSES: You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

• *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Mail:* Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552.

• *Hand Delivery/Courier:* Consumer Financial Protection Bureau (Attention: PRA Office), 1275 First Street NE., Washington, DC 20002.

Please note that comments submitted after the comment period will not be accepted. In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or social security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is available at *www.regulations.gov.* Requests for additional information should be directed to the Consumer Financial Protection Bureau, (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552, (202) 435–9575, or email: *PRA@cfpb.gov. Please do not submit comments to this mailbox.*

SUPPLEMENTARY INFORMATION:

Title of Collection: Generic Information Collection Plan to Conduct Cognitive Research and Pilot Testing.

OMB Control Number: 3170–XXXX.

Type of Review: Request for New OMB Control Number.

Affected Public: Individuals and Households.

Estimated Number of Respondents: 7,890.

Estimated Total Annual Burden Hours: 8,235.

Abstract: Under the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Consumer Financial Protection Bureau is charged with researching, analyzing, and reporting on topics relating to the Bureau's mission, including developments in markets for consumer financial products and services, consumer awareness, and consumer behavior. In order to improve its understanding of how consumers engage with financial markets, the CFPB seeks to obtain approval for a generic information collection plan to conduct research to improve the quality of data collection by examining the effectiveness of data-collection procedures and processes, including potential psychological and cognitive issues.

Request for Comments: Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the

use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record.

Dated: March 10, 2015.

Ashwin Vasan,

Chief Information Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2015–06566 Filed 3–20–15; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF DEFENSE

Department of the Air Force

United States Air Force Academy Board of Visitors; Notice of Federal Advisory Committee Meeting; Cancellation

AGENCY: Office of the Secretary, United States Air Force Academy Board of Visitors (USAFA BoV), Department of the Air Force, DoD.

ACTION: Quarterly meeting notice; cancellation.

SUMMARY: On Thursday, February 26, 2015 (38 FR 10462), the Department of Defense published in the **Federal Register**, a notice to announce the quarterly meeting of the United States Air Force Academy Board of Visitors on Monday, March 16, 2015, beginning at 10:15 a.m. The meeting was cancelled due to last-minute circumstances indicating there would not be a quorum for the meeting.

FOR FURTHER INFORMATION CONTACT: The next scheduled USAFA BoV meeting has not been established, but will be published in the **Federal Register** at least 15 days prior to the meeting.

SUPPLEMENTARY INFORMATION:

Meeting Announcement: The Designated Federal Officer (DFO) for the Board of Visitors of the U.S. Air Force Academy has cancelled the previously scheduled meeting for March 16, 2015. Due to the timing of this decision, which was beyond the control of the Department of Defense or the DFO, the DFO was unable to ensure compliance with the requirements of 41 CFR 102–3.150(a). Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

Henry Williams Jr.,

Acting Air Force Federal Register Liaison Officer, DAF.

[FR Doc. 2015–06466 Filed 3–20–15; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2015–0003]

Privacy Act of 1974; System of Records

AGENCY: United States Marine Corps, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The U.S. Marine Corps proposes to alter the system of records, M05100–6, entitled ''MCB Camp Lejeune Historic Drinking Water Notification Registry'' in its inventory of record systems subject to the Privacy Act of 1974, as amended.

This system is used to obtain and maintain contact information of people who may have been exposed to contaminated drinking water at Marine Corps Base Camp Lejeune or persons interested in the issue. Information is used to notify, update, or correspond with registrants.

DATES: Comments will be accepted on or before April 22, 2015. This proposed action will be effective the day following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

• *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Sally A. Hughes, Head, FOIA/PA Programs (ARSF), Headquarters, U.S. Marine Corps, 3000 Marine Corps Pentagon, Washington, DC 20350–3000, telephone (703) 614–3685.

SUPPLEMENTARY INFORMATION: The U.S. Marine Corps' notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or from the Defense Privacy and Civil Liberties Office Web site at *http://dpcld.defense.gov/.*

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on December 16, 2014, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: March 17, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

M05100–6

SYSTEM NAME:

MCB Camp Lejeune Historic Drinking Water Notification Registry (December 14, 2009, 74 FR 66111).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Marine Corps Installations East G6, Bldg. 24, McHugh Blvd., Camp Lejeune, NC 28542–0004.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Active duty, Reserve, retired, and separated service members; military dependents, Federal government employees and civilian personnel who were stationed, lived, or were employed aboard Marine Corps Base Camp Lejeune, North Carolina, in 1987 or before; and individuals interested in the Camp Lejeune historic drinking water issue.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Full name, current address, phone number, and email address.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 5041, Headquarters, U.S. Marine

Corps: Function; composition, and PL 110–181, Sec. 315, Notification of Certain Residents and Civilian Employees at Camp Lejeune, North Carolina, of Exposure to Drinking Water Contamination.''

PURPOSE(S):

Delete entry and replace with ''The purpose of this system is to obtain and maintain the contact information of people who may have been exposed to contaminated drinking water at Marine Corps Base Camp Lejeune or persons interested in the issue. Information is used to notify, update, or correspond with registrants.''

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with ''In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, the records contained in the system may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Pursuant to 5 U.S.C. 522a(b)(8) to federal and state public health and environmental agencies in the performance of their official duties related to the protection and study of human health and the environment as affected by potential exposure to toxic contamination.

To the Department of Veterans Affairs (DVA) for the purpose of providing medical care to former service members and retirees, to determine the eligibility for or entitlement to benefits, to coordinate cost sharing activities, and to facilitate collaborative research activities between the DoD and DVA.

To officials and employees of the Agency for Toxic Substances and Diseases Registry (ATSDR) to facilitate ATSDR research activities.

The DoD Blanket Routine Uses that appear at the beginning of the Marine Corps' systems of records notices may apply to this system.''

* * * * *

RETRIEVABILITY:

Delete entry and replace with ''Records may be retrieved by name, current address, phone number, or email address.''

SAFEGUARDS:

Delete entry and replace with ''The database servers are located in a secure area at Marine Corps Base Camp Lejeune. Access to records is limited to person(s) responsible for servicing the record in the performance of their official duties and who are properly screened and cleared for need-to-know. System software uses Primary Key Infrastructure (PKI)/Common Access Card (CAC) authentication to lock out unauthorized access.''

RETENTION AND DISPOSAL:

Delete entry and replace with ''Destroy 50 years after Camp Lejeune is deleted from the National Priorities List.''

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Marine Corps Installations East G6, Bldg. 24, McHugh Blvd., Camp Lejeune, NC 28542–0004.''

NOTIFICATION PROCEDURES:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to Marine Corps Installations Command, 3000 Marine Corps Pentagon, Room 2D153A, Washington, DC 20350–3000.

Written requests should contain full name and must be signed and notarized.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system should address written inquiries to Marine Corps Installations Command, 3000 Marine Corps Pentagon, Room 2D153A, Washington, DC 20350–3000.

Written requests should contain full name and must be signed and notarized.''

* * * * *

[FR Doc. 2015–06507 Filed 3–20–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2015–ICCD–0032]

Agency Information Collection Activities; Comment Request; Pell Grant Reporting Under the Common Origination and Disbursement (COD) System

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before May 22, 2015.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2015–ICCD–0032 or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted; ED will ONLY accept comments during the comment period in this mailbox when the regulations.gov site is not available.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Mailstop L–OM–2–2E319, Room 2E103, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Pell Grant Reporting under the Common

Origination and Disbursement (COD) System.

OMB Control Number: 1845–0039.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: Private Sector, State, Local and Tribal Governments.

Total Estimated Number of Annual Responses: 8,488,842.

Total Estimated Number of Annual Burden Hours: 594,219.

Abstract: The Federal Pell Grant program is a student financial assistance program authorized under the Higher Education Act of 1965, as amended. The program provides grant assistance to an eligible student attending an institution of higher education. The institution determines the student's award and disburses program funds on behalf of the Department of Education (ED).

Institutions are required to report student Pell Grant payment information to ED electronically. Electronic reporting is conducted through the Common Origination and Disbursement (COD) system. The COD system is used by institutions to request, report and reconcile grant funds received from the Pell Grant program.

Dated: March 17, 2015.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2015–06467 Filed 3–20–15; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–185–D]

Application To Export Electric Energy; Morgan Stanley Capital Group Inc.

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of Application.

SUMMARY: Morgan Stanley Capital Group Inc. (Applicant or MSCG) has applied to renew its authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before April 22, 2015.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed to: Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–0350. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail, by electronic mail to *Electricity.Exports@hq.doe.gov,* or by facsimile to 202–586–8008.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the Federal Power Act (16 U.S.C. 824a(e)).

On June 9, 2010, DOE issued Order No. EA–185–C to the applicant, which authorized MSCG to transmit electric energy from the United States to Canada as a power marketer for a five-year term using existing international transmission facilities. That authority expires on August 21, 2015. On March 2, 2015, the Applicant filed an application with DOE for renewal of the export authority contained in Order No. EA–185–C for an additional five-year term.

In its application, the Applicant states that it does not own or operate any electric generation or transmission facilities, and it does not have a franchised service area. The electric energy that the Applicant proposes to export to Canada would be surplus energy purchased from third parties such as electric utilities and Federal power marketing agencies pursuant to voluntary agreements. The existing international transmission facilities to be utilized by the Applicant have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the application at the address provided above. Protests should be filed in accordance with Rule 211 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedures (18 CFR 385.211). Any person desiring to become a party to these proceedings should file a motion to intervene at the above address in accordance with FERC Rule 214 (18 CFR 385.214). Five copies of such comments, protests, or motions to intervene should be sent to the address provided above on or before the date listed above.

Comments and other filings concerning the MSCG's application to export electric energy to Canada should be clearly marked with OE Docket No. EA–185–D. An additional copy is to be provided directly to both Edward J. Zabrocki, Morgan Stanley & Co. LLC, 2000 Westchester Ave., 1st Floor, Purchase, NY 10577 and Daniel E. Frank, Sutherland Asbill & Brennan LLP, 700 Sixth Street NW., Suite 700, Washington, DC 20001.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after a determination is made by DOE that the proposed action will not have an adverse impact on the sufficiency of supply or reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://energy.gov/node/11845,* or by emailing Angela Troy at *Angela.Troy@hq.doe.gov.*

Issued in Washington, DC, on March 17, 2015.

Brian Mills,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2015–06562 Filed 3–20–15; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 9403–008]

New Hampshire Hydro Associates; Rivermill Hydroelectric, Inc.; Notice of Transfer of Exemption

1. By letter filed March 10, 2015, New Hampshire Hydro Associates informed the Commission that the exemption from licensing for the HDI Mascoma Dam Project, FERC No. 9403, originally issued September 21, 1988,[1] has been transferred to Rivermill Hydroelectric, Inc. The project is located on the Mascoma River in Grafton County, New Hampshire. The transfer of an exemption does not require Commission approval.

2. Rivermill Hydroelectric, Inc. is now the exemptee of the HDI Mascoma Dam Project, FERC No. 9403. All correspondence should be forwarded to: Michael Hansen, Rivermill Hydroelectric, Inc., 44 Deer Ridge Drive, Barrington, NH 03825.

[1] 44 FERC ¶ 62,273, Order Granting Exemption from Licensing (5 MW or Less) (1988).

Dated: March 16, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–06531 Filed 3–20–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP15–645–000.

Applicants: Rockies Express Pipeline LLC.

Description: Compliance filing per 154.203: Order No. 801 (maps on interactive Web site) to be effective 4/1/2015.

Filed Date: 3/13/15.

Accession Number: 20150313–5171.

Comments Due: 5 p.m. ET 3/25/15.

Docket Numbers: RP15–646–000.

Applicants: Guardian Pipeline, L.L.C.

Description: § 4(d) rate filing per 154.204: PAL Negotiated Rate Agreement—Koch Energy Services, LLC to be effective 3/13/2015.

Filed Date: 3/13/15.

Accession Number: 20150313–5172.

Comments Due: 5 p.m. ET 3/25/15.

Docket Numbers: RP15–647–000.

Applicants: Trailblazer Pipeline Company LLC.

Description: Compliance filing per 154.203: Order No. 801 (Maps on the Interactive Web site) to be effective 4/1/2015.

Filed Date: 3/13/15.

Accession Number: 20150313–5174.

Comments Due: 5 p.m. ET 3/25/15.

Docket Numbers: RP15–648–000.

Applicants: Tallgrass Interstate Gas Transmission, L.

Description: Compliance filing per 154.203: Order No. 801 (Maps on the Interactive Web site) to be effective 4/1/2015.

Filed Date: 3/13/15.

Accession Number: 20150313–5175.

Comments Due: 5 p.m. ET 3/25/15.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 16, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–06555 Filed 3–20–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DI15–03–000]

Kenneth & Susan Egnaczak; Notice of Declaration of Intention and Soliciting Comments, Protests, and Motions To Intervene

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Declaration of Intention.

b. *Docket No:* DI15–03–000.

c. *Date Filed:* February 23, 2015.

d. *Applicant:* Kenneth & Susan Egnaczak.

e. *Name of Project:* Egnaczak Net Zero Hydropower Project.

f. *Location:* The proposed Net Zero Hydropower Project will be located on the Hoosic River, in the town of Cheshire, Berkshire County, Massachusetts.

g. *Filed Pursuant to:* section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b) (2012).

h. *Applicant Contact:* Kenneth & Susan Egnaczak, 1211 Windsor Road, Cheshire, MA 01225; telephone: (413) 743–9497, email address: *ksegnaczak@msn.com.*

i. *FERC Contact:* Any questions on this notice should be addressed to Jennifer Polardino, (202) 502–6437, or email address: *Jennifer.Polardino@ferc.gov.*

j. Deadline for filing comments, protests, and/or motions is: 30 days from the issuance date of this notice by the Commission.

The Commission strongly encourages electronic filing. Please file comments, protests, and motions to intervene using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number DI15–03–000.

k. *Description of Project:* The proposed run-of-river Egnaczak Net Zero Hydropower Project would consist of existing and new facilities that would provide electricity to the applicant's home and workshop. The existing facilities consist of: (1) An 8-foot-high, 60-foot-wide stone dam at the outlet of the Hoosic River; (2) an existing 600-foot-long headrace; and (3) two manually operated headgates adjacent to the dam. The new facilities would consist of: (1) Two 50-foot-long penstocks between the headrace and two separate powerhouses; (2) a powerhouse containing a 3.4-kilowatt (kW) generating unit with a rated head of 12 feet and a hydraulic capacity of 5.2 cubic feet per second (cfs); (3) a second powerhouse containing a 7.3-kW generating unit with a rated head of 20 feet and a hydraulic capacity of 6.7 cfs; and (4) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the project would affect the interests of interstate or foreign commerce. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) would be located on a non-navigable stream over which Congress has Commerce Clause jurisdiction and would be constructed or enlarged after 1935.

l. *Locations of the Application:* This filing may be viewed on the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances

related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* All filings must bear in all capital letters the title ''COMMENTS'', ''PROTESTS'', AND ''MOTIONS TO INTERVENE'', as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any Motion to Intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: March 16, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–06528 Filed 3–20–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13704–002]

FFP Missouri 2, LLC; Notice of Application Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original Major License—Existing Dam.

b. *Project No.:* 13704–002.

c. *Date filed:* November 13, 2013.

d. *Applicant:* FFP Missouri 2, LLC.

e. *Name of Project:* Arkabutla Lake Hydroelectric Project.

f. *Location:* The proposed project would be located at the U.S. Army Corps of Engineers' (Corps) existing Arkabutla Lake Dam, on the Coldwater River, near the town of Hernando, in Tate and DeSoto Counties, Mississippi. The proposed project would occupy approximately 48.2 acres of federal land administered by the Corps.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Ramya Swaminathan, Rye Development, 745 Atlantic Avenue, 8th Floor, Boston, MA 02111; telephone (617) 804–1326.

i. *FERC Contact:* Jeanne Edwards, telephone (202) 502–6181 and email *jeanne.edwards@ferc.gov,* or Patti Leppert, telephone (202) 502–6034 and email *patricia.leppert@ferc.gov.*

j. Deadline for filing comments, recommendations, terms and conditions, and prescriptions: 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file comments, recommendations, terms and conditions, and prescriptions using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–13704–002.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing and is now ready for environmental analysis.

l. The proposed Arkabutla Lake Project would utilize the following existing Corps' Arkabutla Lake Dam facilities: (1) A 10,000-foot-long, 65-foot-high earth fill embankment dam; (2) a reservoir; and (3) outlet works consisting of a concrete intake tower, three gated inlets that combine to direct flow through a 355-foot-long, 16.0-foot by 18.25-foot ovoid concrete outlet conduit, and a stilling basin.

The proposed Arkabutla Lake Project would consist of the following new facilities: (1) A 325-foot-long, 15.5-foot-diameter steel liner installed within the existing outlet conduit; (2) a 50-foot-long, varying width steel-lined, concrete bifurcation chamber containing two hydraulically-operated gates used to control the amount of flow diverted from the existing stilling basin to the powerhouse; (3) a 272-foot-long, 12-foot-diameter steel penstock; (4) a 60-foot wide, 50-foot-long, 83-foot-high steel and reinforced-concrete forebay housing trashracks and a fish bypass gate; (5) an 80-foot-long, 46-foot-wide concrete powerhouse containing two vertical Kaplan turbine-generator units having a combined installed capacity of 5.1 megawatts; (6) a 200-foot long, 85-foot-wide tailrace; (7) a 1,574-foot-long, 4.16-kilovolt (kV) buried cable; (8) a substation; and (9) a 2,712-foot-long, 12.5-kV overhead transmission line extending from the substation to a utility-owned distribution line. The average annual generation would be 19,000 megawatt-hours.

m. A copy of the application is available for review at the Commission in the Public Reference Room, or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. For assistance, contact FERC Online Support. A copy is available for inspection and reproduction at the address in item h above.

Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

All filings must: (1) Bear in all capital letters the title ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS''; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

n. Procedural Schedule:

The application will be processed according to the following revised hydro licensing schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Filing of recommendations, terms and conditions, and prescriptions.	May 2015.
Commission issues Draft EA	December 2015.
Comments on Draft EA Due	January 2016.
Commission Issues Final EA	May 2016.

o. Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

Dated: March 16, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–06526 Filed 3–20–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER15–402–001; Docket No. ER15–817–000; Docket No. ER15–861–000]

California Independent System Operator Corporation; Notice of FERC Staff Attendance

The Federal Energy Regulatory Commission (Commission) hereby gives notice that on March 18, 2015 members of its staff will attend the California Independent System Operator's (CAISO) Market Performance and Planning Forum. The agenda and other documents for the meeting are available on CAISO's Web site, *www.caiso.com.*

Sponsored by CAISO, the meeting is open to all market participants and staff's attendance is part of the Commission's ongoing outreach efforts. The meeting may discuss matters at issue in the above captioned dockets.

For further information, contact Saeed Farrokhpay at *saeed.farrokhpay@ferc.gov* (916) 294–0322.

Dated: March 16, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–06529 Filed 3–20–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF15–9–000]

UGI Sunbury, LLC; Notice of Intent To Prepare an Environmental Assessment for the Planned Sunbury Pipeline Project and Request for Comments on Environmental Issues, and Notice of Public Scoping Meeting

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Sunbury Pipeline Project (Project) involving the construction and operation of approximately 34.5 miles of 20-inch diameter pipeline and related facilities by UGI Sunbury, LLC (Sunbury) in Snyder, Union, Northumberland, Montour, and Lycoming Counties, Pennsylvania. The Commission will use this EA in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine what issues they need to evaluate in the EA. Please note that the scoping period will close on April 17, 2015.

You may submit comments in written form or verbally. Further details on how to submit written comments are in the Public Participation section of this notice. If you sent comments on this project to the Commission before the opening of this docket on December 30, 2014, you will need to file those comments in Docket No. PF15–9–000 to ensure they are considered as part of this proceeding. In lieu of or in addition to sending written comments, the Commission invites you to attend the public scoping meeting scheduled as follows:

Date and time	Location
April 7, 2015, 6:00 p.m. (Eastern Time).	James F. Baugher Elementary School, All Purpose Room, 60 Brenda Rovenolt Circle, Milton, PA 17847.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this planned project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the planned facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' is available for viewing on the FERC Web site (*www.ferc.gov*). This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings.

Summary of the Planned Project

Sunbury plans to construct, own, and operate a new natural gas pipeline extending from Lycoming County, Pennsylvania to a gas-fired power plant,

Hummel Station LLC (Hummel), at the existing site of coal-fired Sunbury Generation LP facility near Shamokin Dam, in Snyder County, Pennsylvania. Hummel is planning to construct the power plant at the existing site of the coal-fired facility near Shamokin Dam. The project has a planned capacity to transport approximately 200,000 dekatherms of natural gas per day.

The Sunbury Pipeline Project would consist of the following facilities:

- One new 34.5-mile, 20-inch-diameter pipeline; and
- associated aboveground facilities consisting of two new mainline vales, four meter stations, and two launcher and receivers.

The general location of the project facilities is shown in appendix 1.[1]

Land Requirements for Construction

Construction of the planned pipeline would disturb about 488 acres of land. Land disturbance for the planned above ground facilities would encompass an area of 3.7 acres, which would be reduced to 2.1 acres for operation of these facilities. Following construction, Sunbury would maintain about 209 acres for permanent operation of the project's pipeline facilities, and 2.1 acres for the above ground facilities. The remaining 279 acres would be used for temporary construction workspace and be restored and to former uses.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [2] to discover and address concerns the public may have about proposals. This process is referred to as scoping. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. We will consider all filed comments during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the planned project under these general headings:

- Geology and soils;
- land use;
- water resources, fisheries, and wetlands;
- cultural resources;
- vegetation and wildlife, including migratory birds;
- air quality and noise;
- endangered and threatened species;
- socioeconomics;
- public safety; and
- cumulative impacts.

We will also evaluate possible alternatives to the planned project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Although no formal application has been filed, we have already initiated our NEPA review under the Commission's pre-filing process. The purpose of the pre-filing process is to encourage early involvement of interested stakeholders and to identify and resolve issues before the FERC receives an application. As part of our pre-filing review, we participated in public Open House meetings sponsored by Sunbury in the project area on February 24th and February 25th to explain the environmental review process to interested stakeholders. Also, we have begun to contact some federal and state agencies to discuss their involvement in the scoping process and the preparation of the EA.

The EA will present our independent analysis of the issues. The EA will be available in the public record through eLibrary. Depending on the comments received during the scoping process, we may also publish and distribute the EA to the public for an allotted comment period. We will consider all comments on the EA before we make our recommendations to the Commission. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues related to this project to formally cooperate with us in the preparation of the EA.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with the Pennsylvania State Historic Preservation Office, and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[4] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO as the project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before April 17, 2015.

For your convenience, there are three methods you can use to submit your comments to the Commission. In all instances, please reference the project docket number (PF15–9–000) with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.*

(1) You can file your comments electronically using the *eComment* feature located on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* This is an easy method for interested persons to

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[2] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at title 40, Code of Federal Regulations, part 1501.6.

[4] The Advisory Council on Historic Preservation regulations are at title 36, Code of Federal Regulations, part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

submit brief, text-only comments on a project;

(2) You can file your comments electronically using the *eFiling* feature located on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.''* You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address:

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the planned project.

If we publish and distribute the EA, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (appendix 2).

Becoming an Intervenor

Once Sunbury files its application with the Commission, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are in the User's Guide under the ''e-filing'' link on the Commission's Web site. Please note that the Commission will not accept requests for intervenor status at this time. You must wait until the Commission receives a formal application for the project.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits in the Docket Number field (*i.e.,* PF15–9). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: March 16, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–06530 Filed 3–20–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

[Certification Notice—232]

Notice of Filing of Self-Certification of Coal Capability Under the Powerplant and Industrial Fuel Use Act

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of Filing.

SUMMARY: On March 2, 2015, NTE Ohio, LLC, as owner and operator of a new base load electric powerplant, submitted a coal capability self-certification to the Department of Energy (DOE) pursuant to § 201(d) of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended, and DOE regulations in 10 CFR 501.60, 61. FUA and regulations thereunder require DOE to publish a notice of filing of self-certification in the **Federal Register**. 42 U.S.C. 8311(d) and 10 CFR 501.61(c).

ADDRESSES: Copies of coal capability self-certification filings are available for public inspection, upon request, in the Office of Electricity Delivery and Energy Reliability, Mail Code OE–20, Room 8G–024, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Christopher Lawrence at (202) 586–5260.

SUPPLEMENTARY INFORMATION: Title II of FUA, as amended (42 U.S.C. 8301 *et seq.*), provides that no new base load electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. Pursuant to FUA in order to meet the requirement of coal capability, the owner or operator of such a facility proposing to use natural gas or petroleum as its primary energy source shall certify to the Secretary of Energy (Secretary) prior to construction, or prior to operation as a base load electric powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with FUA section 201(a) as of the date it is filed with the Secretary. 42 U.S.C. 8311.

The following owner of a proposed new base load electric powerplant has filed a self-certification of coal-capability with DOE pursuant to FUA section 201(d) and in accordance with DOE regulations in 10 CFR 501.60, 61:

Owner: NTE Ohio, LLC.

Capacity: 525 megawatts (MW).

Plant Location: Cincinnati Dayton Road, Middletown, Ohio.

In-Service Date: As early as January 2018.

Issued in Washington, DC, on March 17, 2015.

Brian Mills,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2015–06559 Filed 3–20–15; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11243–075]

Cordova Electric Cooperative, Inc.; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Request for two year temporary variance of license Article 404.

b. *Project No:* 11243–075.

c. *Date Filed:* February 17, 2015.

d. *Applicant:* Cordova Electric Cooperative, INC (licensee).

e. *Name of Project:* Power Creek Project.

f. *Location:* The Power Creek Project is located on Power Creek near the town of Cordova, Alaska. The project is located entirely on Eyak Corporation lands and is adjacent to Chugach National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Clay Koplin, CEO—Cordova Electric Cooperative, INC, 705 Second Street, P.O. Box 20 Cordova, AK 99574, (907) 424–5555.

i. *FERC Contact:* Mr. Michael T. Calloway, (202) 502–8041, *michael.calloway@ferc.gov.*

j. Deadline for filing comments, motions to intervene, and protests is 30 days from the issuance date of this notice by the Commission.

All documents may be filed electronically via the Internet. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be mailed to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments.

Please include the project number (P–11243–075) on any comments, motions, or recommendations filed.

k. *Description of Request:* The licensee is requesting to suspend the Article 404 requirement to continuously release 5 cubic feet per second (cfs) into the bypassed reach of Power Creek in order to study accretion flow, the environmental effects to fish, and to potentially develop a proposal to permanently suspend the requirements of Article 404 in order to generate additional power at a reduced cost with less emissions compared to the alternative of diesel power generation during the low flow period. The licensee states that preliminary studies have indicated that the bypassed reach has an average accretion flow 20 cfs during low flow periods with a minimum measured flow of 7.79 cfs in March as measured just upstream of the powerhouse. Therefore, the licensee's request is not expected to dewater the bypass reach, as it should still receive the intended 5 cfs from accretion flow.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling 202–502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call 202–502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS''; ''PROTESTS'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: March 16, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–06522 Filed 3–20–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13702–002]

FFP Missouri 2, LLC; Notice of Application Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original Major License—Existing Dam.

b. *Project No.:* 13702–002.

c. *Date filed:* November 13, 2013.

d. *Applicant:* FFP Missouri 2, LLC.

e. *Name of Project:* Grenada Lake Hydroelectric Project.

f. *Location:* The proposed project would be located at the U.S. Army Corps of Engineers' (Corps) existing Grenada Lake Dam, on the Yalobusha River, near the Town of Grenada,

Grenada County, Mississippi. The proposed project would occupy approximately 35.5 acres of federal land administered by the Corps.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Ramya Swaminathan, Rye Development, 745 Atlantic Avenue, 8th Floor, Boston, MA 02111; telephone (617) 804–1326.

i. *FERC Contact:* Jeanne Edwards, telephone (202) 502–6181 and email *jeanne.edwards@ferc.gov;* or Patti Leppert, telephone (202) 502–6034 and email *patricia.leppert@ferc.gov.*

j. Deadline for filing comments, recommendations, terms and conditions, and prescriptions: 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file comments, recommendations, terms and conditions, and prescriptions using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–13702–002.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing and is now ready for environmental analysis.

l. The proposed Grenada Lake Project would utilize the following existing Corps' Grenada Lake Dam facilities: (1) A 13,900-foot-long, 80-foot-high earth fill embankment dam; (2) a reservoir; and (3) outlet works consisting of a concrete intake tower, three gated inlets that combine to direct flow through a 377.5-foot-long, 17-foot-diameter concrete outlet conduit, and a stilling basin.

The proposed Grenada Lake Project would consist of the following new facilities: (1) A 327.5-foot-long, 16-foot-diameter steel liner installed within the existing outlet conduit; (2) a 50-foot-long, variable width steel-lined, concrete bifurcation chamber containing two hydraulically-operated gates used to control the amount of flow diverted from the existing stilling basin to the powerhouse; (3) a 260-foot-long, 14-foot-diameter steel penstock; (4) a 78-foot wide, 50-foot-long, 86-foot-high steel and reinforced concrete forebay housing trashracks and a fish bypass outlet gate; (5) a 120-foot-long, 60-foot-wide concrete powerhouse containing two vertical Kaplan turbine-generator units having a combined installed capacity of 9.0 megawatts; (6) a 150-foot-long, 70-foot-wide tailrace; (7) a 670-foot-long, 4.16-kilovolt (kV) buried cable; (8) a substation; and (9) a 1,980-foot-long, 12.5–kV overhead transmission line extending from the substation to a utility-owned distribution line. The average annual generation would be 31,000 megawatt-hours.

m. A copy of the application is available for review at the Commission in the Public Reference Room, or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. For assistance, contact FERC Online Support. A copy is available for inspection and reproduction at the address in item h above.

Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

All filings must: (1) Bear in all capital letters the title ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS''; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

n. Procedural Schedule:

The application will be processed according to the following revised hydro licensing schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Filing of recommendations, terms and conditions, and prescriptions.	May 2015.
Commission issues Draft EA	December 2015.
Comments on Draft EA Due	January 2016.
Commission Issues Final EA	May 2016.

o. Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

Dated: March 16, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–06524 Filed 3–20–15; 8:45 am]

BILLING CODE 6717–01P

DEPARTMENT OF ENERGY

[Certification Notice—233]

Notice of Filing of Self-Certification of Coal Capability Under the Powerplant and Industrial Fuel Use Act

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of Filing.

SUMMARY: On March 2, 2015, NTE Carolinas, LLC, as owner and operator of a new base load electric powerplant, submitted a coal capability self-certification to the Department of Energy (DOE) pursuant to § 201(d) of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended, and DOE regulations in 10 CFR 501.60, 61. FUA and regulations thereunder require DOE to publish a notice of filing of self-certification in the **Federal Register**. 42 U.S.C. 8311(d) and 10 CFR 501.61(c).

ADDRESSES: Copies of coal capability self-certification filings are available for public inspection, upon request, in the Office of Electricity Delivery and Energy Reliability, Mail Code OE–20, Room

8G–024, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Christopher Lawrence at (202) 586–5260.

SUPPLEMENTARY INFORMATION: Title II of FUA, as amended (42 U.S.C. 8301 *et seq.*), provides that no new base load electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. Pursuant to FUA in order to meet the requirement of coal capability, the owner or operator of such a facility proposing to use natural gas or petroleum as its primary energy source shall certify to the Secretary of Energy (Secretary) prior to construction, or prior to operation as a base load electric powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with FUA section 201(a) as of the date it is filed with the Secretary. 42 U. S. C. 8311.

The following owner of a proposed new base load electric powerplant has filed a self-certification of coal-capability with DOE pursuant to FUA section 201(d) and in accordance with DOE regulations in 10 CFR 501.60, 61:

Owner: NTE Carolinas, LLC.

Capacity: 475 megawatts (MW).

Plant Location: Gage Road, Kings Mountain, NC 28086.

In-Service Date: As early as January 2018.

Issued in Washington, DC on March 17, 2015.

Brian Mills,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2015–06552 Filed 3–20–15; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13701–002]

FFP Missouri 2, LLC; Notice of Application Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original Major License—Existing Dam.

b. *Project No.:* 13701–002.

c. *Date filed:* November 13, 2013.

d. *Applicant:* FFP Missouri 2, LLC.

e. *Name of Project:* Sardis Lake Hydroelectric Project.

f. *Location:* The proposed project would be located at the U.S. Army Corps of Engineers' (Corps) existing Sardis Lake Dam, on the Little Tallahatchie River, near the Town of Sardis, Panola County, Mississippi. The proposed project would occupy approximately 59 acres of federal land administered by the Corps.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Ramya Swaminathan, Rye Development, 745 Atlantic Avenue, 8th Floor, Boston, MA 02111; telephone (617) 804–1326.

i. *FERC Contact:* Jeanne Edwards, telephone (202) 502–6181 and email *jeanne.edwards@ferc.gov;* or Patti Leppert, telephone (202) 502–6034 and email *patricia.leppert@ferc.gov.*

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file comments, recommendations, terms and conditions, and prescriptions using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–13701–002.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing and is now ready for environmental analysis.

l. *The proposed Sardis Lake Project would utilize the following existing Corps' Sardis Lake Dam facilities:* (1) A 15,300-foot-long, 97-foot-high earth fill embankment dam; (2) a reservoir; and (3) outlet works consisting of a concrete intake tower, four gated inlets that combine to direct flow through a 560-foot-long, 16.0-foot by 18.25-foot ovoid concrete outlet conduit, and a stilling basin.

The proposed Sardis Lake Project would consist of the following new facilities: (1) A 510-foot-long, 15.5-foot-diameter steel liner installed within the existing outlet conduit; (2) a 50-foot-long, 30-foot-wide (varies) steel-lined, concrete bifurcation chamber containing two hydraulically-operated gates used to control the amount of flow diverted from the existing stilling basin to the powerhouse; (3) a 250-foot-long, 15.5-foot-diameter steel penstock; (4) a 78-foot-wide, 50-foot-long, 102.6-foot-high steel and reinforced concrete forebay housing trashracks and a fish bypass gate; (5) a 120-foot-long, 85-foot-wide concrete powerhouse containing two vertical Kaplan turbine-generator units having a combined installed capacity of 14.6 megawatts; (6) a 200-foot-long, 100-foot-wide tailrace; (7) an 887-foot-long, 4.16-kilovolt (kV) buried cable; (8) a substation; and (9) a 6,210-foot-long, 161-kV overhead transmission line extending from the substation to a utility-owned distribution line. The average annual generation would be 52,000 megawatt-hours.

m. A copy of the application is available for review at the Commission in the Public Reference Room, or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. For assistance, contact FERC Online Support. A copy is available for inspection and reproduction at the address in item h above.

Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

All filings must: (1) Bear in all capital letters the title ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS''; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions

or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

n. *Procedural Schedule:*

The application will be processed according to the following revised hydro licensing schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Filing of recommendations, terms and conditions, and prescriptions.	May 2015.
Commission issues Draft EA	December 2015.
Comments on Draft EA Due	January 2016.
Commission Issues Final EA	May 2016.

o. Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

Dated: March 16, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–06523 Filed 3–20–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER15–929–002.

Applicants: Southwest Power Pool, Inc.

Description: Tariff Amendment per 35.17(b): Motion for Deferral in OMPA Revised Stated Rate—ER15–929 to be effective 12/31/9998.

Filed Date: 3/13/15.

Accession Number: 20150313–5176.

Comments Due: 5 p.m. ET 4/3/15.

Docket Numbers: ER15–1282–000.

Applicants: NorthWestern Corporation.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): SA 28–SD First Revised—LGIA with Beethoven Wind LLC to be effective 3/17/2015.

Filed Date: 3/16/15.

Accession Number: 20150316–5077.

Comments Due: 5 p.m. ET 4/6/15.

Docket Numbers: ER15–1283–000.

Applicants: Southwestern Electric Power Company.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): SWEPCO-Hope PSA Amendment to be effective 1/1/2015.

Filed Date: 3/16/15.

Accession Number: 20150316–5143.

Comments Due: 5 p.m. ET 4/6/15.

Docket Numbers: ER15–1287–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): First Revised Service Agreement No. 3669; Queue Nos. Y3–046, Y3–051, Z1–058 . . . to be effective 2/13/2015.

Filed Date: 3/16/15.

Accession Number: 20150316–5159.

Comments Due: 5 p.m. ET 4/6/15.

Docket Numbers: ER15–1289–000.

Applicants: Midcontinent Independent System Operator, Inc., Great River Energy.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): 2015–03–16_GRE RTO Adder Filing to be effective 1/6/2015.

Filed Date: 3/16/15.

Accession Number: 20150316–5163.

Comments Due: 5 p.m. ET 4/6/15.

Docket Numbers: ER15–1290–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): First Revised Service Agreement No. 2775; Queue Nos. Y3–045, Y3–052, Y3–107 to be effective 2/13/2015.

Filed Date: 3/16/15.

Accession Number: 20150316–5168.

Comments Due: 5 p.m. ET 4/6/15.

Docket Numbers: ER15–1291–000.

Applicants: Public Service Company of Colorado.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): 2015–3–16_PSC–PLND–A&R ISA 110–0.0.0-Agrmt to be effective 3/17/2015.

Filed Date: 3/16/15.

Accession Number: 20150316–5173.

Comments Due: 5 p.m. ET 4/6/15.

Docket Numbers: ER15–1292–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): First Revised Service Agreement No. 2181; Queue No. V4–045 to be effective 2/12/2015.

Filed Date: 3/16/15.

Accession Number: 20150316–5176.

Comments Due: 5 p.m. ET 4/6/15.

Docket Numbers: ER15–1293–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): Revisions to Attachment AE Sections 4.5.2 and 4.5.3 to be effective 5/15/2015.

Filed Date: 3/16/15.

Accession Number: 20150316–5187.

Comments Due: 5 p.m. ET 4/6/15.

Docket Numbers: ER15–1294–000.

Applicants: Pacific Gas and Electric Company.

Description: Pacific Gas and Electric Company submits Notice of Termination of Agreement with the City of Los Angeles Department of Water and Power, Rate Schedule No. 131.

Filed Date: 3/16/15.

Accession Number: 20150316–5188.

Comments Due: 5 p.m. ET 4/6/15.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 16, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–06554 Filed 3–20–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DI15–02–000]

Southern Energy, Inc.; Notice of Declaration of Intention and Soliciting Comments, Protests, and Motions To Intervene

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Declaration of Intention.

b. *Docket No:* DI15–02–000.

c. *Date Filed:* January 16, 2015.

d. *Applicant:* Southern Energy, Inc.

e. *Name of Project:* Walker Lake Hydroelectric Project.

f. *Location:* The proposed Walker Lake Hydroelectric Project would be located on Wilson Lake, near the City of Haines, in Haines Borough, Alaska.

g. *Filed Pursuant to:* section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b) (2012).

h. *Applicant Contact:* John Floreske, Jr., President, Southern Energy, Inc., P.O. Box 489, Mile 1.5 Haines Highway, Haines, AK 99827; telephone: (909) 766–2899; email: *northern@aptalaska.net.*

i. *FERC Contact:* Any questions on this notice should be addressed to Jennifer Polardino, (202) 502–6437, or email: *Jennifer.Polardino@ferc.gov.*

j. Deadline for filing comments, protests, and motions to intervene is: 30 days from the issuance date of this notice by the Commission.

The Commission strongly encourages electronic filing. Please file comments, protests, and motions to intervene using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number DI15–02–000.

k. *Description of Project:* The proposed Walker Lake Hydroelectric Project would consist of: (1) Two rockfilled 15-foot-wide dams, creating 4,300 acre-feet of usable storage capacity in Walker Lake at a normal maximum operating elevation of 1,195 feet mean sea level (msl); (2) a concrete spillway and diversion channel for controlled releases to Walker Creek; (3) a freestanding concrete intake and reservoir outlet works at elevation 1,170 feet msl diverting flow from the southeast dam into the penstock; (4) a 24-inch-diameter, 12,000-foot-long penstock, of which approximately 10,000 feet would be buried and 2,000 feet would be aboveground; (5) a powerhouse containing one generating unit rated at 1 megawatt at 780 feet of net head; (6) a 50-foot-long tailrace connecting the powerhouse with the Little Salmon River; (7) an underground, 4-mile-long, 12.5 kilovolt transmission line extending from the project to a point of interconnection with Inside Passage Electric Cooperative's power grid; and (8) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the project would affect the interests of interstate or foreign commerce. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) would be located on a non-navigable stream over which Congress has Commerce Clause jurisdiction and would be constructed or enlarged after 1935.

l. Locations of the Application: This filing may be viewed on the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above and in the Commission's Public Reference Room located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene: Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents: All filings must bear in all capital letters the title ''COMMENTS'', ''PROTESTS'', and ''MOTIONS TO INTERVENE'', as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any Motion to Intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments: Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: March 16, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–06527 Filed 3–20–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC15–92–000.

Applicants: American Transmission Company LLC (ATC),Consolidated Water Power Company.

Description: Joint Application for Authority to Acquire Transmission Facilities Under Section 203 of the FPA of American Transmission Company LLC, et al.

Filed Date: 3/13/15.

Accession Number: 20150313–5211.

Comments Due: 5 p.m. ET 4/3/15.

Docket Numbers: EC15–93–000.

Applicants: American Transmission Company LLC (ATC).

Description: Application for Authority to Acquire Transmission Facilities Under Section 203 of the FPA of American Transmission Company LLC.

Filed Date: 3/13/15.

Accession Number: 20150313–5212.

Comments Due: 5 p.m. ET 4/3/15.

Docket Numbers: EC15–94–000.

Applicants: American Transmission Company LLC (ATC).

Description: Application for Authority to Acquire Transmission Facilities Under Section 203 of the FPA of American Transmission Company LLC.

Filed Date: 3/13/15.
Accession Number: 20150313–5213.
Comments Due: 5 p.m. ET 4/3/15.
Docket Numbers: EC15–95–000.
Applicants: American Transmission Company LLC (ATC).
Description: Application for Authority to Acquire Transmission Facilities Under Section 203 of the FPA of American Transmission Company LLC.
Filed Date: 3/13/15.
Accession Number: 20150313–5214.
Comments Due: 5 p.m. ET 4/3/15.
Docket Numbers: EC15–96–000.
Applicants: Osprey Energy Center, LLC, Duke Energy Florida, Inc.
Description: Joint Application for Approval Under Section 203 of the Federal Power Act and Request for Shortened Comment Period of Osprey Energy Center, LLC and Duke Energy Florida, Inc.
Filed Date: 3/13/15.
Accession Number: 20150313–5217.
Comments Due: 5 p.m. ET 4/3/15.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2543–003; ER14–1153–002; ER11–2159–004; ER10–2609–010; ER10–2606–010; ER10–2604–008; ER10–2602–011.
Applicants: Verso Androscoggin LLC, Verso Androscoggin Power LLC, Verso Maine Energy LLC, Luke Paper Company, New Page Energy Services, Inc., Consolidated Water Power Company, Escanaba Paper Company.
Description: Supplement to February 2, 2015 Notice of Non-Material Change in Status of the Verso MBR and NewPage MBR Entities.
Filed Date: 3/13/15.
Accession Number: 20150313–5206.
Comments Due: 5 p.m. ET 4/3/15.
Docket Numbers: ER15–1046–005.
Applicants: Kansas City Power & Light Company.
Description: Tariff Amendment per 35.17(b): KCP&L Supplemental Rate Schedule 140 Filing to be effective 12/31/9998.
Filed Date: 3/13/15.
Accession Number: 20150313–5185.
Comments Due: 5 p.m. ET 4/3/15.
Docket Numbers: ER15–1048–004.
Applicants: KCP&L Greater Missouri Operations Company.
Description: Tariff Amendment per 35.17(b): KCP&L–GMO Supplemental Rate Schedule 136 Filing to be effective 12/31/9998.
Filed Date: 3/13/15.
Accession Number: 20150313–5177.
Comments Due: 5 p.m. ET 4/3/15.
Docket Numbers: ER15–1052–001.
Applicants: Transource Missouri, LLC.
Description: Tariff Amendment per 35.17(b): TMO Facilities Sharing Agreement Concurrence Amendment to be effective 12/31/9998.
Filed Date: 3/13/15.
Accession Number: 20150313–5180.
Comments Due: 5 p.m. ET 4/3/15.
Docket Numbers: ER15–1185–000.
Applicants: Midcontinent Independent System Operator, Inc., American Transmission Systems, Incorporated.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): 2015–03–06_SA 766 Amended ATC–WPSC Bills of Sale to be effective 5/6/2015.
Filed Date: 3/6/15.
Accession Number: 20150306–5392.
Comments Due: 5 p.m. ET 3/27/15.
Docket Numbers: ER15–1275–000.
Applicants: New York State Electric & Gas Corporation.
Description: Informational Filing Detailing Refunds Paid in connection with Engineering and Procurement Agreements of New York State Electric & Gas Corporation.
Filed Date: 3/12/15.
Accession Number: 20150312–5156.
Comments Due: 5 p.m. ET 4/2/15.
Docket Numbers: ER15–1279–000.
Applicants: PJM Interconnection, L.L.C., Monongahela Power Company.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Monongahela Power submits Service Agreement Nos. 4090 and 4098—HREA/Mon Power to be effective 5/12/2015.
Filed Date: 3/13/15.
Accession Number: 20150313–5181.
Comments Due: 5 p.m. ET 4/3/15.
Docket Numbers: ER15–1280–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): 2015–03–13_SA 2696 ITC–IPL Amended E&P (J233) to be effective 3/5/2015.
Filed Date: 3/13/15.
Accession Number: 20150313–5182.
Comments Due: 5 p.m. ET 4/3/15.
Docket Numbers: ER15–1281–000.
Applicants: New York Independent System Operator, Inc.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): NYISO 205 filing re: additional capacity resource interconnection service to be effective 5/12/2015.
Filed Date: 3/13/15.
Accession Number: 20150313–5184.
Comments Due: 5 p.m. ET 4/3/15.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 16, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–06553 Filed 3–20–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13703–002]

FFP Missouri 2, LLC; Notice of Application Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original Major License—Existing Dam.

b. *Project No.:* 13703–002.

c. *Date filed:* November 13, 2013.

d. *Applicant:* FFP Missouri 2, LLC.

e. *Name of Project:* Enid Lake Hydroelectric Project.

f. *Location:* The proposed project would be located at the U.S. Army Corps of Engineers' (Corps) existing Enid Lake Dam, on the Yocona River, near the town of Oakland, in Yalobusha County, Mississippi. The proposed project would occupy approximately 30 acres of federal land administered by the Corps.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)—825(r).

h. *Applicant Contact:* Ramya Swaminathan, Rye Development, 745 Atlantic Avenue, 8th Floor, Boston, MA 02111; telephone (617) 804–1326.

i. *FERC Contact:* Jeanne Edwards, telephone (202) 502–6181 and email *jeanne.edwards@ferc.gov;* or Patti Leppert, telephone (202) 502–6034 and email *patricia.leppert@ferc.gov.*

j. *Deadline for filing comments, recommendations, preliminary terms and conditions, and prescriptions:* 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file comments, recommendations, terms and conditions, and prescriptions using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–13703–002.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing and is now ready for environmental analysis.

l. *The proposed Enid Lake Project would utilize the following existing Corps' Enid Lake Dam facilities:* (1) An 8,400-foot-long, 85-foot-high earth fill embankment dam; (2) a reservoir; and (3) outlet works consisting of a concrete intake tower, two gated inlets that combine to direct flow through two 370-foot-long, 11-foot-diameter concrete outlet conduits, and a stilling basin.

The proposed Enid Lake Project would consist of the following new facilities: (1) A 320-foot-long, 10.25-foot-diameter steel liner installed within one of the two existing outlet conduits; (2) a 50-foot-long, 20-foot-wide (varies) steel-lined, concrete bifurcation chamber containing two hydraulically-operated gates used to control the amount of flow diverted from the existing stilling basin to the powerhouse; (3) a 240-foot-long, 10-foot-diameter steel penstock; (4) a 55-foot wide, 50-foot-long, 100-foot-high steel and reinforced concrete forebay housing trashracks and a fish bypass gate; (5) an 80-foot-long, 50-foot-wide concrete powerhouse containing two vertical Kaplan turbine-generator units having a combined installed capacity of 4.6 megawatts; (6) a 150-foot-long, 75-foot-wide tailrace; (7) a 181-foot-long, 4.16-kilovolt (kV) buried cable; (8) a substation; and (9) a 2,036-foot-long, 12.5-kV overhead transmission line extending from the substation to a utility-owned distribution line. The average annual generation would be 17,700 megawatt-hours.

m. A copy of the application is available for review at the Commission in the Public Reference Room, or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. For assistance, contact FERC Online Support. A copy is available for inspection and reproduction at the address in item h above.

Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

All filings must: (1) Bear in all capital letters the title ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS''; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

n. Procedural Schedule:

The application will be processed according to the following revised hydro licensing schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Filing of recommendations, terms and conditions, and prescriptions.	May 2015.
Commission issues Draft EA	December 2015.
Comments on Draft EA Due	January 2016.
Commission Issues Final EA	May 2016.

o. Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

Dated: March 16, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–06525 Filed 3–20–15; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OARM–2015–0210; FRL 9924–95–OARM]

National and Governmental Advisory Committees to the U.S. Representative to the Commission for Environmental Cooperation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Advisory Committee meeting.

SUMMARY: Under the Federal Advisory Committee Act, Public Law 92–463, the Environmental Protection Agency (EPA) gives notice of a meeting of the National Advisory Committee (NAC) and Governmental Advisory Committee (GAC) to the U.S. Representative to the North American Commission for Environmental Cooperation (CEC). The National and Governmental Advisory Committees advise the EPA Administrator in her capacity as the U.S. Representative to the CEC Council. The committees are authorized under Articles 17 and 18 of the North American Agreement on Environmental Cooperation (NAAEC), North American Free Trade Agreement Implementation Act, Public Law 103–182, and as directed by Executive Order 12915, entitled ''Federal Implementation of the North American Agreement on Environmental Cooperation.'' The NAC is composed of 15 members

representing academia, environmental non-governmental organizations, and private industry. The GAC consists of 14 members representing state, local, and tribal governments. The committees are responsible for providing advice to the U.S. Representative on a wide range of strategic, scientific, technological, regulatory, and economic issues related to implementation and further elaboration of the NAAEC.

The purpose of the meeting is to provide advice on issues related to the CEC's draft Operational Plan and Budget for 2015–16, the CEC's draft Strategic Plan for 2015–2020, and to discuss additional trade and environment issues. The meeting will also include a public comment session. The agenda, meeting materials, and general information about the NAC and GAC will be available at *http://www2.epa.gov/faca/nac-gac.*

DATES: The National and Governmental Advisory Committees will hold an open meeting on Thursday, April 16, 2015 from 9:00 a.m. to 5:00 p.m., and Friday, April 17, 2014 from 9:00 a.m. until 3:00 p.m.

ADDRESSES: The meeting will be held at the U.S. EPA, Conference Room B–305, located in the William Jefferson Clinton North Building, 1200 Pennsylvania Ave. NW., Washington, DC 20004. Telephone: 202–564–2294. The meeting is open to the public, with limited seating on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Oscar Carrillo, Designated Federal Officer, *carrillo.oscar@epa.gov,* 202–564–0347, U.S. EPA, Office of Diversity, Advisory Committee Management and Outreach (1601–M), 1200 Pennsylvania Avenue NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: Requests to make oral comments, or provide written comments to the committees, should be sent to Oscar Carrillo, Designated Federal Officer, at the contact information above. If you plan to attend, please register with Ms. Stephanie McCoy, by April 9th by calling 202–564–7297 or via email at *mccoy.stephanie@epa.gov.* Please provide your name, organization, address and telephone number.

Meeting Access: For information on access or services for individuals with disabilities, or to request accommodation of a disability, please contact Oscar Carrillo, at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

Dated: March 12, 2015.

Oscar Carrillo,

Designated Federal Officer.

[FR Doc. 2015–06591 Filed 3–20–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL 9925–07–OA]

National Environmental Education Advisory Council; Notice of Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act, the Environmental Protection Agency (EPA) gives notice of a series of teleconference meetings of the National Environmental Education Advisory Council (NEEAC). The NEEAC was created by Congress to advise, consult with, and make recommendations to the Administrator of the Environmental Protection Agency (EPA) on matters related to activities, functions and policies of EPA under the National Environmental Education Act (the Act). 20 U.S.C. 5508(b).The purpose of this teleconference(s) is to discuss specific topics of relevance for consideration by the council in order to provide advice and insights to the Agency on environmental education.

DATES: The National Environmental Education Advisory Council will hold a public teleconference on Friday, April 17, 2015, from 1:00 p.m. until 3:00 p.m. Eastern Daylight Time.

FOR FURTHER INFORMATION CONTACT: Javier Araujo, Designated Federal Officer, *araujo.javier@epa.gov,* 202–564–2642, U.S. EPA, Office of Environmental Education, William Jefferson Clinton North Room, 1426, 1200 Pennsylvania Avenue NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: Members of the public wishing to gain access to the teleconference, make brief oral comments, or provide a written statement to the NEEAC must contact Javier Araujo, Designated Federal Officer, at *araujo.javier@epa.gov* or 202–564–2642 by 10 business days prior to each regularly scheduled meeting. Meeting Access: For information on access or services for individuals with disabilities or to request accommodations, please contact Javier Araujo at *araujo.javier@epa.gov* or 202–564–2642, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: March 17, 2015.

Sarah Sowell,

Acting Deputy Director, Office of Environmental Education.

Dated: March 17, 2015.

Javier Araujo,

(NEEAC) Designated Federal Officer.

[FR Doc. 2015–06581 Filed 3–20–15; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[3060–0636]

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before April 22, 2015. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should

advise the contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via Internet at *Nicholas_A._Fraser@omb.eop.gov* and to Benish Shah, Federal Communications Commission, via the Internet at *Benish.Shah@fcc.gov.* To submit your PRA comments by email send them to: *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Benish Shah, Office of Managing Director, (202) 418–7866.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0636.

Title: Sections 2.906, 2.909, 2.1071, 2.1075, 2.1077 and 15.37, Equipment Authorizations—Declaration of Conformity.

Form No.: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 6,000 respondents; 12,000 responses.

Estimated Time per Response: 9.5 hours (average).

Frequency of Response: One-time reporting requirement, recordkeeping requirement and third party disclosure requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 154(i), 301, 302, 303(e), 303(r), 304 and 307.

Total Annual Burden: 114,000 hours.

Total Annual Cost: $24,000,000.

Privacy Act Impact Assessment: No impact.

Nature and Extent of Confidentiality: No assurances of confidentiality are provided to respondents.

Needs and Uses: The Commission will submit this information collection to Office of Management and Budget (OMB) after this 60 day comment period in order to obtain the full three year clearance from them. The Commission is requesting an extension, there is no change in the reporting, recordkeeping and/or third party disclosure requirements. The Commission is reporting an adjustment to reflect an increase to the total number of respondents/responses, the total annual hourly burden, and the total annual cost to respondents from the previous estimates, in order to reflect an increase in the number of devices authorized under the DOC program.

In 1996, the Declaration of Conformity (DoC) procedure was established in a Report and Order, FCC 96–208, *In the Matter of Amendment of Parts 2 and 15 of the Commission's Rules to Deregulate the Equipment Authorization Requirements for Digital Devices.*

(a) The Declaration of Conformity equipment authorization procedure, 47 CFR 2.1071, requires that a manufacturers or equipment supplier test a product to ensure compliance with technical standards that limit radio frequency emissions.

(b) Additionally, the manufacturer or supplier must also include a DoC (with the standards) in the literature furnished with the equipment, and the equipment manufacturer or supplier must also make this statement of conformity and supporting technical data available to the FCC, at the Commission's request.

(c) The DoC procedure represents a simplified filing and reporting procedure for authorizing equipment for marketing.

(d) Finally, testing and documentation of compliance are needed to control potential interference to radio communications. The data gathering are necessary for investigating complaints of harmful interference or for verifying the manufacturer's compliance with the Commission's rules.

Federal Communications Commission.

Sheryl D. Todd,

Deputy Secretary, Office of the Secretary, Office of the Managing Director.

[FR Doc. 2015–06510 Filed 3–20–15; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0790]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before May 22, 2015. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele at (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0790.

Title: Section 68.110 (c), Availability of Inside Wiring Information.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 200 respondents; 1,200 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: Recordkeeping requirement and third party disclosure requirement.

Obligation to Respond: Mandatory. Statutory authority for this collection of information is contained in 47 U.S.C. 151, 154, 201–205, 218, 220 and 405 of the Communications Act of 1934, as amended.

Total Annual Burden: 1,200 hours.

Annual Cost Burden: $5,000.

Privacy Act Impact Assessment: No impact.

Nature and Extent of Confidentiality: The Commission is not requesting that respondents submit any confidential trade secrets or proprietary information to the FCC.

Needs and Uses: Section 68.110(c) requires that any available technical

information concerning carrier-installed wiring on the customer's side of the demarcation point, including copies of existing schematic diagrams and service records, shall be provided by the telephone company upon request of the building owner or agent thereof. The provider of wireline telecommunications services may charge the building owner a reasonable fee for this service, which shall not exceed the cost involved in locating and copying the documents. In the alternative, the provider may make these documents available for review and copying by the building owner or his agent. In this case, the wireline telecommunications carrier may charge a reasonable fee, which shall not exceed the cost involved in making the documents available, and may also require the building owner or his agent to pay a deposit to guarantee the documents' return. The information is needed so that building owners may choose to contract with an installer of their choice on inside wiring maintenance and installation services to modify existing wiring or assist with the installation of additional inside wiring.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of the Managing Director.

[FR Doc. 2015–06509 Filed 3–20–15; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 17, 2015.

A. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street NE., Atlanta, Georgia 30309:

1. *Sunshine Bancorp, Inc.,* Plant City, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Community Southern Holdings, Inc., and its subsidiary, Community Southern Bank, both of Lakeland, Florida.

Board of Governors of the Federal Reserve System, March 18, 2015.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2015–06560 Filed 3–20–15; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 7, 2015.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *John E. Boyer, individually and as trustee of the Merlyn Boyer Irrevocable GST Trust, the John E. Boyer Grandchildren's Trust, the Emily Ryan Boyer Irrevocable Trust, and the Jack Eric Boyer Irrevocable Trust, all of Kingman, Kansas; and Emily Boyer, Kingman, Kansas, as a member of The Boyer Family Group;* to retain voting shares of KANZA Financial Corporation, parent of KANZA Bank, both in Kingman, Kansas.

Board of Governors of the Federal Reserve System, March 18, 2015.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2015–06561 Filed 3–20–15; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Special Emphasis Panel, March 26, 2015 6:30 p.m. to March 27, 2015, 4 p.m., Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852 which was published in the **Federal Register** on February 17, 2015, 80FR8331.

The meeting notice is amended to change the date and start time to be held on March 27, 2015 at 7:30 a.m. The meeting is closed to the public.

Dated: March 17, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–06478 Filed 3–20–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Patient Safety Organizations: Voluntary Relinquishment From PSO Services Group

AGENCY: Agency for Healthcare Research and Quality (AHRQ), Department of Health and Human Services (HHS).

ACTION: Notice of Delisting.

SUMMARY: The Patient Safety and Quality Improvement Act of 2005, 42 U.S.C. 299b–21 to b–26, (Patient Safety Act) and the related Patient Safety and Quality Improvement Final Rule, 42 CFR part 3 (Patient Safety Rule), published in the **Federal Register** on November 21, 2008 (73 FR 70732–70814), provide for the formation of Patient Safety Organizations (PSOs), which collect, aggregate, and analyze confidential information regarding the quality and safety of healthcare

delivery. The Patient Safety Rule authorizes AHRQ, on behalf of the Secretary of HHS, to list as a PSO an entity that attests that it meets the statutory and regulatory requirements for listing. A PSO can be ''delisted'' by the Secretary if it is found to no longer meet the requirements of the Patient Safety Act and Patient Safety Rule, when a PSO chooses to voluntarily relinquish its status as a PSO for any reason, or when a PSO's listing expires. AHRQ has accepted a notification of voluntary relinquishment from PSO Services Group of its status as a PSO, and has delisted the PSO accordingly.

DATES: The directories for both listed and delisted PSOs are ongoing and reviewed weekly by AHRQ. The delisting was effective at 12:00 Midnight ET (2400) on January 5, 2015.

ADDRESSES: Both directories can be accessed electronically at the following HHS Web site: *http://www.pso.AHRQ.gov/index.html.*

FOR FURTHER INFORMATION CONTACT: Eileen Hogan, Center for Quality Improvement and Patient Safety, AHRQ, 540 Gaither Road, Rockville, MD 20850; Telephone (toll free): (866) 403–3697; Telephone (local): (301) 427–1111; TTY (toll free): (866) 438–7231; TTY (local): (301) 427–1130; Email: *PSO@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Patient Safety Act authorizes the listing of PSOs, which are entities or component organizations whose mission and primary activity are to conduct activities to improve patient safety and the quality of health care delivery.

HHS issued the Patient Safety Rule to implement the Patient Safety Act. AHRQ administers the provisions of the Patient Safety Act and Patient Safety Rule relating to the listing and operation of PSOs. The Patient Safety Rule authorizes AHRQ to list as a PSO an entity that attests that it meets the statutory and regulatory requirements for listing. A PSO can be ''delisted'' if it is found to no longer meet the requirements of the Patient Safety Act and Patient Safety Rule, when a PSO chooses to voluntarily relinquish its status as a PSO for any reason, or when a PSO's listing expires. Section 3.108(d) of the Patient Safety Rule requires AHRQ to provide public notice when it removes an organization from the list of federally approved PSOs.

AHRQ has accepted a notification from PSO Services Group, PSO number P0028, to voluntarily relinquish its status as a PSO. Accordingly, PSO Services Group was delisted effective at 12:00 Midnight ET (2400) on January 5, 2015.

PSO Services Group has patient safety work product (PSWP) in its possession. The PSO will meet the requirements of section 3.108(c)(2)(i) of the Patient Safety Rule regarding notification to providers that have reported to the PSO. In addition, according to sections 3.108(c)(2)(ii) and 3.108(b)(3) of the Patient Safety Rule regarding disposition of PSWP, the PSO has 90 days from the effective date of delisting and revocation to complete the disposition of PSWP that is currently in the PSO's possession.

More information on PSOs can be obtained through AHRQ's PSO Web site at *http://www.pso.AHRQ.gov/index.html.*

Dated: March 17, 2015.

Sharon B. Arnold,

Deputy Director, AHRQ.

[FR Doc. 2015–06455 Filed 3–20–15; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0742]

Agency Information Collection Activities; Proposed Collection; Comment Request; Registration of Producers of Drugs and Listing of Drugs in Commercial Distribution

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the requirements for drug establishment registration and drug listing.

DATES: Submit either electronic or written comments on the collection of information by *May 22, 2015.*

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA 305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002; *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Registration of Producers of Drugs and Listing of Drugs in Commercial Distribution—21 CFR Part 207 (OMB Control Number 0910–0045)—Extension

Requirements for drug establishment registration and drug listing are set forth in section 510 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360), section 351 of the Public Health Service Act (42 U.S.C.

262), and part 207 (21 CFR part 207). Fundamental to FDA's mission to protect the public health is the collection of this information, which is used for important activities such as postmarket surveillance for serious adverse drug reactions, inspection of drug manufacturing and processing facilities, and monitoring of drug products imported into the United States. Comprehensive, accurate, and up to date information is critical to conducting these activities with efficiency and effectiveness.

Under section 510 of the FD&C Act, FDA is authorized to establish a system for registration of producers of drugs and for listing of drugs in commercial distribution. To implement section 510 of the FD&C Act, FDA issued part 207. Under current § 207.20, manufacturers, repackers, and relabelers that engage in the manufacture, preparation, propagation, compounding, or processing of human or veterinary drugs and biological products, including bulk drug substances and bulk drug substances for prescription compounding, and drug premixes as well as finished dosage forms, whether prescription or over-the-counter, are required to register their establishment. In addition, manufacturers, repackers, and relabelers are required to submit a listing of every drug or biological product in commercial distribution. Owners or operators of establishments that distribute under their own label or trade name a drug product manufactured by a registered establishment are not required either to register or list. However, distributors may elect to submit drug listing information in lieu of the registered establishment that manufactures the drug product. Foreign drug establishments must also comply with the establishment registration and product listing requirements if they import or offer for import their products into the United States.

Under current § 207.21, establishments, both domestic and foreign, must register with FDA within 5 days after beginning the manufacture of drugs or biologicals, or within 5 days after the submission of a drug application or biological license application. In addition, establishments must register annually. Changes in individual ownership, corporate or partnership structure, location, or drug handling activity must be submitted as amendments to registration under current § 207.26 within 5 days of such changes. Under § 207.20(b), private label distributors may request their own labeler code and elect to submit drug listing information to FDA. In such instances, at the time of submitting or updating drug listing information, private label distributors must certify to the registered establishment that manufactured, prepared, propagated, compounded, or processed (which includes, among other things, repackaging and relabeling) the listed drug that the drug listing submission was made. Establishments must, within 5 days of beginning the manufacture of drugs or biologicals, submit to FDA a listing for every drug or biological product in commercial distribution at that time. Private label distributors may elect to submit to FDA a listing of every drug product they place in commercial distribution. Registered establishments must submit to FDA drug product listing for those private label distributors who do not elect to submit listing information.

Under § 207.25, product listing information submitted to FDA by domestic and foreign manufacturers must, depending on the type of product being listed, include any new drug application number or biological establishment license number, copies of current labeling and a sampling of advertisements, a quantitative listing of the active ingredient for each drug or biological product not subject to an approved application or license, the NDC number, and any drug imprinting information.

In addition to the product listing information required, FDA may also require, under § 207.31, a copy of all advertisements and a quantitative listing of all ingredients for each listed drug or biological product not subject to an approved application or license; the basis for a determination, by the establishment, that a listed drug or biological product is not subject to marketing or licensing approval requirements; and a list of certain drugs or biological products containing a particular ingredient. FDA may also request, but not require, the submission of a qualitative listing of the inactive ingredients for all listed drugs or biological products, and a quantitative listing of the active ingredients for all listed drugs or biological products subject to an approved application or license.

Under § 207.30, establishments must update their product listing information every June and December or, at the discretion of the establishment, when any change occurs. These updates must include the following information: (1) A listing of all drug or biological products introduced for commercial distribution that have not been included in any previously submitted list; (2) all drug or biological products formerly listed for which commercial distribution has been discontinued; (3) all drug or biological products for which a notice of discontinuance was submitted and for which commercial distribution has been resumed; and (4) any material change in any information previously submitted. No update is required if no changes have occurred since the previously submitted list.

Historically, drug establishment registration and drug listing information have been submitted in paper form using Form FDA 2656 (Registration of Drug Establishment/Labeler Code Assignment), Form FDA 2657 (Drug Product Listing), and Form FDA 2658 (Registered Establishments' Report of Private Label Distributors) (collectively referred to as FDA Forms). Changes in the FD&C Act resulting from enactment of the Food and Drug Administration Amendments Act of 2007 (Pub. L. 110–85) (FDAAA) require that drug establishment registration and drug listing information be submitted electronically unless a waiver is granted. Before the enactment of FDAAA, section 510(p) of the FD&C Act expressly provided for electronic submission of drug establishment registration information upon a finding that electronic receipt was feasible, and section 510(j) of the FD&C Act provided that drug listing information be submitted in the form and manner prescribed by FDA. Section 224 of FDAAA, which amends section 510(p) of the FD&C Act, now expressly, requires electronic drug listing in addition to drug establishment registration. In certain cases, if it is unreasonable to expect a person to submit registration and listing information electronically, FDA may grant a waiver from the electronic format requirement.

In the **Federal Register** of June 1, 2009 (74 FR 26248), FDA announced the availability of a guidance for industry entitled ''Providing Regulatory Submissions in Electronic Format—Drug Establishment Registration and Drug Listing'' (the 2009 guidance). The document provides guidance to industry on the statutory requirement to submit electronically drug establishment registration and drug listing information. The guidance describes the types of information to include for purposes of drug establishment registration and drug listing and how to prepare and submit the information in an electronic format (Structured Product Labeling (SPL) files) that FDA can process, review, and archive. In addition to the information that previously was collected on the FDA Forms, the guidance addresses

electronic submission of other required information as follows:

- For registered foreign drug establishments, the name, address, and telephone number of its U.S. agent (§ 207.40(c));
- the name of each importer that is known to the establishment (the U.S. company or individual in the United States that is an owner, consignee, or recipient of the foreign establishment's drug that is imported into the United States. An importer does not include the consumer or patient who ultimately purchases, receives, or is administered the drug, unless the foreign establishment ships the drug directly to the consumer or the patient) (section 510(i)(1)(A) of the FD&C Act); and
- the name of each person who imports or offers for import (the name of each agent, broker, or other entity, other than a carrier, that the foreign drug establishment uses to facilitate the import of their drug into the United States) (section 510(i)(1)(A) of the FD&C Act).

FDA also recommends the voluntary submission of the following additional information, when applicable:

- To facilitate correspondence between foreign establishments and FDA, the email address for the U.S. agent, and the telephone number(s) and email address for the importer and person who imports or offers for import their drug;
- a site-specific Data Universal Numbering System number for each entity (*e.g.,* the registrant, establishments, U.S. agent, importer);
- the NDC product code for the source drug that is repacked or relabeled;
- distinctive characteristics of certain listed drugs, *i.e.,* the flavor, the color, and image of the actual solid dosage form; and
- registrants may indicate that they view as confidential the registrant's business relationship with an establishment, or an inactive ingredient.

In addition to this collection of information, there is an additional burden for the following activities:

- preparing a standard operating procedure (SOP) for the electronic submission of drug establishment registration and drug listing information;
- creating the SPL file, including accessing and reviewing the technical specifications and instructional documents provided by FDA (accessible at *http://www.fda.gov/oc/datacouncil/spl.html*);
- reviewing and selecting appropriate terms and codes used to create the SPL file (accessible at *http://www.fda.gov/oc/datacouncil/spl.html*);
- obtaining the digital certificate used with FDA's electronic submission gateway and uploading the SPL file for submission (accessible at *http://www.fda.gov/esg/default.htm*); and
- requests for waivers from the electronic submission process as described in the draft guidance.

When FDA published the 2009 guidance on submitting establishment registration and drug listing information in electronic format, the Agency also amended its burden estimates for OMB control number 0910–0045 to include the additional burden for the collection of information that had not been submitted using the FDA forms, and to create and upload the SPL file. The amended burden estimates included the one-time preparation of an SOP for creating and uploading the SPL file. Although most firms will already have prepared an SOP for the electronic submission of drug establishment registration and drug listing information, each year additional firms will need to create an SOP. As provided in Table 2 of this document, FDA estimates that approximately 1,000 firms will have to expend a one-time burden to prepare, review, and approve an SOP, and the Agency estimates that it will take 40 hours per recordkeeper to create 1,000 new SOPs for a total of 40,000 hours.

In Tables 1 and 2, the information collection requirements of the drug establishment registration and drug listing requirements have been grouped according to the information collection areas of the requirements.

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
New registrations, including new labeler codes requests	1,400	2	2,800	4.5	12,600
Annual updates of registration information	10,000	1	10,000	4.5	45,000
New drug listings	1,567	7	11,000	4.5	49,500
New listings for private label distributor	146	10.06	1,469	4.5	6,611
June and December updates of all drug listing information	5,300	20	106,000	4.5	477,000
Waiver requests	1	1	1	1	1
Total					590,712

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

Activity resulting from section 510(p) of the FD&C Act as amended by FDAAA	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
One-time preparation of SOP	1,000	1	1,000	40	40,000
SOP maintenance	3,295	1	3,295	1	3,295
Total					43,295

[1] There are no capital costs or operating and maintenance costs associated with the collection of information.

Dated: March 17, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–06497 Filed 3–20–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–D–1288]

Electronic Submission of Lot Distribution Reports; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled ''Electronic Submission of Lot Distribution Reports; Guidance for Industry.'' The guidance document provides information and recommendations pertaining to the electronic submission of lot distribution reports for applicants with approved biologics license applications (BLAs). FDA recently published in the **Federal Register** a final rule requiring that, among other things, lot distribution reports be submitted to FDA in an electronic format that the Agency can process, review, and archive. The guidance announced in this notice finalizes the draft guidance entitled ''Guidance for Industry: Electronic Submission of Lot Distribution Reports'' dated August 2014, and is intended to help licensed manufacturers of products distributed under an approved BLA (henceforth referred to as applicants) comply with the final rule.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002 or Division of Drug Information, Center for Drug Evaluation and Research (CDER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 2201, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist the office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 240–402–7800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit electronic comments on the guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Lori J. Churchyard, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911; or Jared Lantzy, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 1116, Silver Spring, MD 20993, email: *esub@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled ''Electronic Submission of Lot Distribution Reports; Guidance for Industry.'' The guidance provides information and recommendations pertaining to the electronic submission of lot distribution reports. The guidance provides information on how to electronically submit lot distribution reports for biological products under approved BLAs for which CBER or CDER has regulatory responsibility. The guidance does not apply to any other biological product.

FDA published in the **Federal Register** of June 10, 2014 (79 FR 33072), a final rule requiring electronic submission of certain postmarketing submissions. Among other things, under this rule applicants are required to submit biological lot distribution reports to FDA in an electronic format that the Agency can process, review, and archive. The guidance is intended to help applicants subject to lot distribution reporting comply with the final rule. Along with other information, the guidance provides updated information about the following: (1) Structured Product Labeling standard and vocabulary for electronic submission of lot distribution reporting; (2) additional resources such as implementation guide, validation procedures and links with further information; and (3) procedures for requesting temporary waivers from the electronic submission requirement.

In the **Federal Register** of August 29, 2014 (79 FR 51576), FDA announced the availability of the draft guidance entitled '' Guidance for Industry: Electronic Submission of Lot Distribution Reports'' dated August 2014. FDA published a correction notice to correct the docket number in the **Federal Register** of September 16, 2014 (79 FR 55497). FDA received a few comments on the draft guidance and those comments were considered as the guidance was finalized. FDA is finalizing the draft guidance with only editorial changes. The guidance announced in this notice finalizes the draft guidance dated August 2014.

The guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents FDA's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR 600.81 and 600.90 have been approved under 0910–0308.

III. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

IV. Electronic Access

Persons with access to the Internet may obtain the guidance at either *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm,* or *http://www.regulations.gov.*

Dated: March 17, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–06498 Filed 3–20–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: The Development of Theranostic Kits for mTOR Analog-based Chemotherapy

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209 and 37 CFR part 404, that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant to ProVivoX, Inc., of an exclusive evaluation option license to practice the inventions embodied in the following US Patent, US Patent Application, and International Patent Application (and all foreign counterparts): US Provisional Patent Application Serial No. 61/144,501, filed 14 January 2009, entitled: ''Ratio-based Biomarker of Survival Utilizing PTEN and Phospho-AKT'' [HHS Reference No. E–025–2009/0–US–01]; International Application No. PCT/US2010/020944, filed on 13 January 2010, entitled: ''Ratio-based Biomarkers and Methods of Use Thereof'' [HHS Reference No. E–025–2009/0–PCT–02]; US Patent Application Serial No. 13/144,474, filed 13 July 2011 [HHS Reference No. E–025–2009/0–US–02]; and Canadian Patent Application No. 2,749,601, filed on 13 January 2010 [HHS Reference No. E–025–2009/0–CA–05]. The patent rights in this invention have been assigned to the Government of the United States of America.

The prospective exclusive evaluation option license territory may be United States and Canada, and the field of use may be limited to:

a. ''Exclusive use of the Licensed Patent Rights to develop an immunohistochemistry (IHC)- or tissue microarray-based test kit for use with human tissue samples and approved in the United States and Canada as a Class III medical device, such test kit to be distributed in commerce for the for the purpose of predicting survival, response to therapy, or cancer recurrence in breast cancer patients.''

b. ''Non-exclusive use of the Licensed Patent Rights to develop an immunohistochemistry (IHC)- or tissue microarray-based test kit for use with human tissue samples and for which the United States FDA issues an order, in the form of a letter, which finds Licensee's kit to be a medical device substantially equivalent to one or more similar legally marketed devices, and states that the Licensee's device can be marketed in the U.S. (*i.e.,* 510(k) cleared), such test kit to be distributed in commerce for the purpose of predicting survival, response to therapy, or cancer recurrence in breast cancer patients.''

Upon the expiration or termination of the exclusive evaluation option license, ProVivoX, Inc., will have the exclusive right to execute an exclusive commercialization license which will supersede and replace the exclusive evaluation option license with no greater field of use and territory than granted in the exclusive evaluation option license.

DATES: Only written comments or applications for a license (or both) which are received by the NIH Office of Technology Transfer on or before April 7, 2015 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, comments, and other materials relating to the contemplated exclusive evaluation option license should be directed to: Patrick McCue, Ph.D., Licensing and Patenting Manager, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–5560; Facsimile: (301) 402–0220; Email: *mccuepat@mail.nih.gov.*

SUPPLEMENTARY INFORMATION: The technology describes a method of identifying cancer patients that may benefit from mTOR analog-based chemotherapy or agents directed against the AKT pathway.

The prospective exclusive evaluation license is being considered under the small business initiative launched on 1 October 2011, and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR part 404. The prospective exclusive evaluation option license, and a subsequent exclusive commercialization license, may be granted unless the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404 within fifteen (15) days from the date of this published notice.

Complete applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive evaluation option license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: March 17, 2015.

Richard U. Rodriguez,

Acting Director, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2015–06487 Filed 3–20–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request Prevalence, Incidence, Epidemiology and Molecular Variants of HIV in Blood Donors in Brazil (NHLBI)

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Heart, Lung, and Blood Institute (NHLBI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the FR in Volume 79 on December 31, 2014 on page 78876 and allowed 60-days for public comment. One public comment was received that was a personal opinion regarding conducting research about the Brazil blood donation system. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Direct Comments To Omb: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: Desk Officer for NIH.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments or request more information on the proposed project contact: Simone Glynn, MD, Project Officer/ICD Contact, Two Rockledge

Center, Suite 9142, 6701 Rockledge Drive, Bethesda, MD 20892, or call 301–435–0065, or Email your request, including your address to: *glynnsa@nhlbi.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

Proposed Collection: Prevalence, Incidence, Epidemiology and Molecular Variants of HIV, in Blood Donors in Brazil 0925–0597, Expiration Date, July 31, 2015, Extension, the National Heart, Lung, and Blood Institute (NHLBI), the National Institutes of Health (NIH)

Need and Use of Information Collection: Establishing and monitoring viral prevalence and incidence rates, and identifying behavioral risk behaviors for HIV infection among donors are critical steps to assessing and reducing risk of HIV transmission through blood transfusion. Detecting donors with recently acquired HIV infection is particularly critical as it enables characterization of the viral subtypes currently transmitted within the screened population. In addition to characterizing genotypes of recently infected donors for purposes of blood safety, molecular surveillance of incident HIV infections in blood donors serves important public health roles by identifying new HIV infections for anti-retroviral treatment, and enabling documentation of the rates of primary transmission of anti-viral drug resistant strains in the community. This study is a continuation of the current protocol that is approved by OMB, which expires on July 31, 2015, includes both a prospective surveillance and a case study designed to enroll eligible HIV seropositives detected at four participating blood centers in Brazil. This project is being conducted at the same four blood centers in Brazil, located in the cities of Sao Paulo, Recife, Rio de Janeiro and Belo Horizonte, but this time restricted to the study of HIV-positive subjects.

The primary study aims are to continue monitoring HIV molecular variants and risk behaviors in blood donors in Brazil, and to evaluate HIV subtype and drug resistance profiles among HIV-positive donors according to HIV infection status (recent versus long-standing infection), year of donation, and site of collection. Additional study objectives include determining trends in HIV molecular variants and risk factors associated with HIV infection by combining data collected in the previous REDS–II project with that which will be obtained in the planned research activities.

Given the initiation of NAT testing for HIV (and HCV) in Brazil, it will be important to continue to collect molecular surveillance and risk factor data on HIV infections. especially now that infections that might not have been identified by serology testing alone could be recognized through the use of NAT. NAT-only infections represent very recently acquired infections. The NAT assay will continue to be used at the four REDS–III blood centers in Brazil during the research activities. In addition, in order to distinguish between recent seroconversion and long-standing infection, samples from all HIV antibody dual reactive donations and/or NAT positive donations will continue to be tested by the Recent Infection Testing Algorithm (RITA) which is based on use of a sensitive/less-sensitive enzyme immunoassay (''detuned'' Enzyme Immunoassay). RITA testing will continue to be performed by the Blood Systems Research Institute, San Francisco, California, USA, which is the REDS–III Central Laboratory.

Since Dec 2012, the study has enrolled 223 HIV-positive donors (51 at Hemorio-Rio de Janeiro, 38 at Hemominas-Minas Gerais, 67 at Hemope-Pernambuco and 67 at Fundacao Pro-Sangue-Sao Paulo) with a target enrollment of 500 by 2017. It is important to continue the study and enroll more HIV infected donors to inform trend analyses. Preliminary evaluation of data has shown that respondent donors are completing the entire questionnaire including information about their risk behaviors. According to the Brazilian guidelines, blood donors are requested to return to the blood bank for HIV confirmatory testing and HIV counseling. Donors are invited to participate in the study through administration of informed consent when they return for HIV counseling. Once informed consent has been administered and enrollment has occurred, participants are asked to complete a confidential self-administered risk factor questionnaire by computer. In addition, a small blood sample is collected from each HIV-positive participant to be used for the genotyping and drug resistance testing. The results of the drug resistance testing are communicated back to the HIV-positive participants during an in-person counseling session at the blood center. For those individuals who do not return for confirmatory testing, the samples will be anonymized and sent to the REDS–III Central Laboratory to perform the recent infection testing algorithm (RITA).

This research effort will allow for an evaluation of trends in the trafficking of non-B HIV subtypes and rates of transmission of drug resistant viral strains in low risk blood donors. These data could also be compared with data from similar studies in higher risk populations. Monitoring drug resistance strains is extremely important in a country that provides free anti-retroviral therapy for HIV infected individuals, many of whom have low level education and modest resources, thus making compliance with drug regimens and hence the risk of drug resistant HIV a serious problem. It is worth noting that Brazil is the first developing country to implement early treatment initiation for all individuals living with HIV/AIDS irrespective of CD4 count; this new universal treatment policy went into effect in 2014.

Findings from this study will be compared to trends in prevalence, incidence, and molecular variants from studies of the general population and high risk populations in Brazil, thus allowing for broader and more effective monitoring of the HIV epidemic in Brazil, as well as assessment of the impact of donor selection criteria on these parameters. We also propose to continue to examine trends in risk behaviors by comparing the data previously collected to the data we plan to collect for the next three year period. This will allow for extended trend analyses over a 10-year period that complements similar monitoring of HIV prevalence, incidence, transfusion risk and molecular variants in the USA and other funded international REDS–III sites in South Africa and China, thus allowing direct comparisons of these parameters on a global level.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 40.

Form name	Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hour
Risk Factor Informed Consent	Adult Donors	100	1	5/60	8

Form name	Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hour
Risk Factor Assessment	Adult Donors	100	1	19/60	40

Dated: March 11, 2015.

Lynn Susulske,

NHLBI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 2015–06565 Filed 3–20–15; 8:45 am]

BILLING CODE 4141–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Patient Safety Organizations: Expired Listing From Premerus PSO, LLC

AGENCY: Agency for Healthcare Research and Quality (AHRQ), Department of Health and Human Services (HHS).

ACTION: Notice of delisting.

SUMMARY: The Patient Safety and Quality Improvement Act of 2005, 42 U.S.C. 299b–21 to b–26, (Patient Safety Act) and the related Patient Safety and Quality Improvement Final Rule, 42 CFR part 3 (Patient Safety Rule), published in the **Federal Register** on November 21, 2008, (73 FR 70732–70814), provide for the formation of Patient Safety Organizations (PSOs), which collect, aggregate, and analyze confidential information regarding the quality and safety of healthcare delivery. The Patient Safety Rule authorizes AHRQ, on behalf of the Secretary of HHS, to list as a PSO an entity that attests that it meets the statutory and regulatory requirements for listing. A PSO can be ''delisted'' by the Secretary if it is found to no longer meet the requirements of the Patient Safety Act and Patient Safety Rule, when a PSO chooses to voluntarily relinquish its status as a PSO for any reason, or when a PSO's listing expires. The listing from the Premerus PSO, LLC has expired and AHRQ has delisted the PSO accordingly.

DATES: The directories for both listed and delisted PSOs are ongoing and reviewed weekly by AHRQ. The delisting was effective at 12:00 Midnight ET (2400) on January 10, 2015.

ADDRESSES: Both directories can be accessed electronically at the following HHS Web site: *http://www.pso.AHRQ.gov/index.html.*

FOR FURTHER INFORMATION CONTACT: Eileen Hogan, Center for Quality Improvement and Patient Safety, AHRQ, 540 Gaither Road, Rockville, MD 20850; Telephone (toll free): (866) 403–3697; Telephone (local): (301) 427–1111; TTY (toll free): (866) 438–7231; TTY (local): (301) 427–1130; Email: *PSO@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Patient Safety Act authorizes the listing of PSOs, which are entities or component organizations whose mission and primary activity are to conduct activities to improve patient safety and the quality of health care delivery.

HHS issued the Patient Safety Rule to implement the Patient Safety Act. AHRQ administers the provisions of the Patient Safety Act and Patient Safety Rule relating to the listing and operation of PSOs. The Patient Safety Rule authorizes AHRQ to list as a PSO an entity that attests that it meets the statutory and regulatory requirements for listing. A PSO can be ''delisted'' if it is found to no longer meet the requirements of the Patient Safety Act and Patient Safety Rule, when a PSO chooses to voluntarily relinquish its status as a PSO for any reason, or when the PSO's listing expires. Section 3.108(d) of the Patient Safety Rule requires AHRQ to provide public notice when it removes an organization from the list of federally approved PSOs. Premerus PSO, LLC, PSO number P0120, a component entity of Premerus, Inc., chose to let its listing expire by not seeking continued listing. Accordingly, Premerus PSO, LLC was delisted effective at 12:00 Midnight ET (2400) on January 10, 2015.

More information on PSOs can be obtained through AHRQ's PSO Web site at *http://www.pso.AHRQ.gov/index.html.*

Dated: March 17, 2015.

Sharon B. Arnold,

Deputy Director, AHRQ.

[FR Doc. 2015–06454 Filed 3–20–15; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of an Exclusive Commercial License Agreement: Development of 5T4 Antibody-Drug Conjugates for the Treatment of Human Cancers

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209 and 37 CFR part 404, that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an start-up exclusive commercial license to practice the inventions embodied in U.S. Patent Application No. 62/034,995 entitled ''Human Monoclonal Antibodies Specific for 5T4 and Methods of Their Use'' filed August 8, 20014 [HHS Ref. E–158–2014/0–US–01] and all related continuing and foreign patents/patent applications for the technology family to Concortis, Inc. The patent rights in these inventions have been assigned to the Government of the United States of America. The prospective start-up exclusive commercial license territory may be worldwide and the field of use may be limited to the development of 5T4 antibody drug conjugate therapeutics for the treatment of human cancers using Concortis' proprietary conjugation technologies.

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before April 7, 2015 will be considered.

ADDRESSES: Requests for copies of the patent applications, inquiries, comments, and other materials relating to the contemplated exclusive evaluation option license should be directed to: Whitney Hastings, Ph.D., Senior Licensing and Patenting Manager, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 451–7337; Facsimile: (301) 402–0220; Email: *hastingw@mail.nih.gov.*

SUPPLEMENTARY INFORMATION: 5T4 is an antigen expressed in a number of

carcinomas. Its expression is limited in normal tissue, but is prevalent in malignant tumors throughout their development. This confined expression makes it an attractive target for cancer immunotherapy. 5T4 is often found in colorectal, ovarian, and gastric tumors and thus has been used as a prognostic aid for these cancers. In addition, its role in antibody-directed immunotherapy for delivering response modifiers to tumors has been studied using murine monoclonal antibodies (mAbs) and the cancer vaccine TroVax (currently in clinical trials for multiple solid tumors) targets 5T4. The present invention describes the identification and characterization of two fully human mAbs (m1001 and m1002) that bind to 5T4. Since the mAbs are fully human, they could have less immunogenicity and better safety profiles than the existing mouse and humanized antibodies.

The prospective start-up exclusive commercial license is being considered under the small business initiative launched on October 1, 2011 and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR part 404. The prospective start-up exclusive commercial license may be granted unless within fifteen (15) days from the date of this published notice, the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.

Any additional, properly filed, and complete applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive commercial license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: March 17, 2015.

Richard U. Rodriguez,

Acting Director, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2015–06488 Filed 3–20–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: Grantee Data Technical Assistance (GDTA) Training Needs Assessment Survey for SAMHSA Grantees-NEW

In 2014, the Center for Behavioral Health Statistics and Quality (CBHSQ) funded the GDTA contract to provide training and technical assistance to all grantees receiving funding from the Center for Substance Abuse Treatment (CSAT), the Center for Mental Health Services (CMHS), and some grantees receiving funding from the Center for Substance Abuse Prevention (CSAP) that fall under the GDTA contract. This currently only includes discretionary grants but is expected to include block grants in future years. Training and technical assistance from the GDTA contract will focus on helping grantees use their Government and Performance Results Act of 1993 (GPRA) data for performance management and monitoring, and services improvement. The information being collected in this needs assessment will inform CBHSQ regarding the types of activities SAMHSA's grants use their funding for and what types of training activities they would like to receive in the future.

Description of Forms: Forms will include two questions. The first question asks about the services provided under the grant. Answer options include activities such as behavioral health care services, screening, prevention activities, and services to specific populations. The second question asks respondents to identify topics for training and technical assistance they would like to receive from a pre-populated list. Answer options include items such as data collection, data entry, and using data in creative ways. Both questions have an option for respondents to write-in an answer that is not included in the list.

Description of Respondents: The respondent universe for this data collection effort is one Project Director from each SAMHSA-funded grants being served by the GDTA contract. This currently only includes discretionary grants but is expected to include block grants in future years. There are currently 2,670 SAMHSA-funded discretionary grants served by the GDTA contract, therefore this is the number of respondents expected for this data collection effort.

TABLE 1—ANNUAL BURDEN ESTIMATE

Form name	Number of respondents	Annual responses per respondent	Total annual responses	Hours per response	Total annual hour burden
Grantee Needs Assessment	2,670	1	2,670	0.1	267

Written comments and recommendations concerning the proposed information collection should be sent by April 22, 2015 to the SAMHSA Desk Officer at the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). To ensure timely receipt of comments, and to avoid potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov.* Although commenters are encouraged to send their comments via email, commenters may also fax their comments to: 202–395–7285. Commenters may also mail them to: Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10102, Washington, DC 20503.

Summer King,

Statistician.

[FR Doc. 2015–06532 Filed 3–20–15; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: *''Medical Office Survey on Patient Safety Culture Comparative Database.''* In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3521, AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by May 22, 2015.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by email at *doris.lefkowitz@AHRQ.hhs.gov.*

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Medical Office Survey on Patient Safety Culture Comparative Database

Background on the Medical Office Survey on Patient Safety Culture (Medical Office SOPS). In 1999, the Institute of Medicine called for health care organizations to develop a ''culture of safety'' such that their workforce and processes focus on improving the reliability and safety of care for patients (IOM, 1999; *To Err is Human: Building a Safer Health System*). To respond to the need for tools to assess patient safety culture in health care, AHRQ developed and pilot tested the Medical Office SOPS with OMB approval (OMB NO. 0935–0131; Approved July 5, 2007).

The survey is designed to enable medical offices to assess provider and staff opinions about patient safety issues, medical error, and error reporting. The survey includes 38 items that measure 10 composites of patient safety culture. In addition to the composite items, 14 items measure how often medical offices have problems exchanging information with other settings and other patient safety and quality issues. AHRQ made the survey publicly available along with a Survey User's Guide and other toolkit materials in December 2008 on the AHRQ Web site (located at *http://www.ahrq.gov/professionals/quality-patient-safety/patientsafetyculture/medical-office/index.html*). Since its release, the survey has been voluntarily used by hundreds of medical offices in the U.S.

The Medical Office SOPS Comparative Database consists of data from the AHRQ Medical Office Survey on Patient Safety Culture. Medical offices in the U.S. are asked to voluntarily submit data from the survey to AHRQ, through its contractor Westat. The Medical Office SOPS Database (OMB NO. 0935–0196, last approved on June 12, 2012) was developed by AHRQ in 2011 in response to requests from medical offices interested in knowing how their patient safety culture survey results compare to those of other medical offices in their efforts to improve patient safety.

Rationale for the information collection. The Medical Office SOPS and the Comparative Database support AHRQ's goals of promoting improvements in the quality and safety of health care in medical office settings. The survey, toolkit materials, and comparative database results are all made publicly available on AHRQ's Web site. Technical assistance is provided by AHRQ through its contractor at no charge to medical offices, to facilitate the use of these materials for medical office patient safety and quality improvement.

The goal of this project is to renew the Medical Office SOPS Comparative Database. This Database will:

(1) Allow medical offices to compare their patient safety culture survey results with those of other medical offices,

(2) Provide data to medical offices to facilitate internal assessment and learning in the patient safety improvement process, and

(3) Provide supplemental information to help medical offices identify their strengths and areas with potential for improvement in patient safety culture.

This study is being conducted by AHRQ through its contractor Westat, pursuant to AHRQ's statutory authority to conduct and support research on health care and on systems for the delivery of such care, including activities with respect to: The quality, effectiveness, efficiency, appropriateness and value of health care services; quality measurement and improvement; and database development. 42 U.S.C. 299a(a)(1), (2), and (8).

Method of Collection

To achieve the goal of this project the following activities and data collections will be implemented:

(1) Eligibility and Registration Form—The medical office point-of-contact (POC) completes a number of data submission steps and forms, beginning with the completion of an online eligibility and registration form. The purpose of this form is to determine the eligibility status and initiate the registration process for medical offices seeking to voluntarily submit their Medical Office SOPS data to the Medical Office SOPS Comparative Database.

(2) Data Use Agreement—The purpose of the data use agreement, completed by the medical office POC, is to state how data submitted by medical offices will be used and provides confidentiality assurances.

(3) Medical Office Site Information Form—The purpose of the site information form is to obtain basic information about the characteristics of the medical offices submitting their Medical Office SOPS data to the Medical Office SOPS Comparative Database (*e.g.* number of providers and staff, ownership, and type of specialty). The medical office POC completes the form.

(4) Data Files Submission—The number of submissions to the database is likely to vary each year because medical offices do not administer the survey and submit data every year. Data submission is typically handled by one POC who is either an office manager, nurse manager, or a survey vendor who contracts with a medical office to collect their data. POCs submit data on behalf of 10 medical offices, on average, because many medical offices are part of a health system that includes many medical office sites, or the POC is a vendor that is submitting data for multiple medical offices. After registering, if registrants are deemed eligible to submit data, an automated email is sent to authenticate the account and update the user password. Next the POC enters medical office information and uploads the survey questionnaire and submits a data use agreement. POCs then upload their data file(s), using the medical office data file specifications, to ensure that users submit standardized and consistent data in the way variables are named, coded, and formatted.

Survey data from the AHRQ Medical Office SOPS are used to produce three

types of products: (1) A Medical Office SOPS Comparative Database Report that is produced periodically and made publicly available on the AHRQ Web site (see *http://www.ahrq.gov/professionals/quality-patient-safety/patientsafetyculture/medical-office/2014/index.html*); (2) Individual Medical Office Survey Feedback Reports that are confidential, customized reports produced for each medical office that submits data to the database (the number of reports produced is based on the number of medical offices submitting each year); and (3) Research data sets of individual-level and medical office-level de-identified data to enable researchers to conduct analyses.

Medical offices are asked to voluntarily submit their Medical Office SOPS survey data to the Comparative Database. The data are then cleaned and aggregated and used to produce a Comparative Database Report that displays averages, standard deviations, and percentile scores on the survey's 38 items that measure 10 composites of patient safety culture, and 14 items measuring how often medical offices have problems exchanging information with other settings and other patient safety and quality issues. The report also displays these results by medical office characteristics (size of office, specialty, geographic region, etc.) and respondent characteristics (staff position).

Data submitted by medical offices are used to give each medical office its own customized survey feedback report that presents the medical office's results compared to the latest comparative database results.

Medical offices use the Medical Office SOPS, Comparative Database Reports and Individual Medical Office Survey Feedback Reports for a number of purposes, to

- Raise staff awareness about patient safety.
- Diagnose and assess the current status of patient safety culture in their medical office.
- Identify strengths and areas for improvement in patient safety culture.
- Evaluate the cultural impact of patient safety initiatives and interventions.
- Compare patient safety culture survey results with other medical offices in their efforts to improve patient safety and health care quality.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for the respondents' time to participate in the database. An estimated 150 POCs, each representing an average of 10 individual medical offices each, will complete the database submission steps and forms annually. Completing the registration form will take about 3 minutes. The Medical Office Information Form is completed by all POCs for each of their medical offices ($150 \times 10 = 1{,}500$ forms in total) and is estimated to take 5 minutes to complete. Each POC will complete a data use agreement which takes 3 minutes to complete and submitting the data will take an hour on average. The total burden is estimated to be 291 hours.

Exhibit 2 shows the estimated annualized cost burden based on the respondents' time to submit their data. The cost burden is estimated to be $13,968 annually.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents/ POCs	Number of responses per POC	Hours per response	Total burden hours
Eligibility/Registration Form	150	1	3/60	8
Data Use Agreement	150	1	3/60	8
Medical Office Information Form	150	10	5/60	125
Data Files Submission	150	1	1	150
Total	600	NA	NA	291

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents/ POCs	Total burden hours	Average hourly wage rate *	Total cost burden
Registration Form	150	8	$48.00	$384
Data Use Agreement	150	8	48.00	384
Medical Office Information Form	150	125	48.00	6,000
Data Files Submission	150	150	48.00	7,200
Total	600	816	NA	13,968

* Mean hourly wage rate of $48.00 for Medical and Health Services Managers (SOC code 11–9111) was obtained from the May 2013 National Industry-Specific Occupational Employment and Wage Estimates, NAICS 621100—Offices of Physicians located at *http://www.bls.gov/oes/2013/may/naics4_621100.htm.*

Request for Comments

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: March 17, 2015.

Sharon B. Arnold,

Deputy Director, AHRQ.

[FR Doc. 2015–06450 Filed 3–20–15; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: Supplemental Nutrition Assistance Program (SNAP) Agency Matching Program Performance Reporting Tool.

OMB No.: New Collection.

Description: State agencies administering a Supplemental Nutrition Assistance Program (SNAP) are mandated to participate in a computer matching program with the federal Office of Child Support Enforcement (OCSE). The outcomes of the computerized comparisons with information maintained in the National Directory of New Hires (NDNH) provide the state SNAP agencies with information to help administer their programs and in determining an individual's eligibility. State agencies must enter into a computer matching agreement and adhere to its terms and conditions, including providing OCSE with annual performance outcomes attributable to the use of NDNH information.

The Office of Management and Budget requires OCSE to periodically report performance measurements demonstrating how the use of information in the NDNH supports OCSE's strategic mission, goals, and objectives. OCSE will provide the annual SNAP performance outcomes to the Office of Management and Budget.

The information collection activities for the SNAP reports are authorized by: (1) Subsection 453 (j)(10) of the Social Security Act (42 U.S.C. 653(j)(10)), which allows the Secretary of the U.S. Department of Health and Human Services to disclose information maintained in the NDNH to state agencies administering SNAP under the Nutrition Act of 2008, as amended by the Agriculture Act of 2014; (2) the Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988 (5 U.S.C. 552a), which sets for the terms and conditions of a computer matching program; and (3) the Government Performance and Results Modernization Act of 2010 (Pub. L. 111–352), which requires agencies to report program performance outcomes to the Office of Management and Budget and for the reports to be available to the public.

Respondents: State SNAP agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
SNAP Agency Matching Program Performance Reporting Tool	54	1	1.625	88

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2015–06443 Filed 3–20–15; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Solicitation for Nominations for Members of the U.S. Preventive Services Task Force (USPSTF)

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Solicits nominations for new members of USPSTF.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) invites nominations of individuals qualified to serve as members of the U.S. Preventive Services Task Force (USPSTF).

DATES: All nominations submitted in writing or electronically will be considered for appointment to the USPSTF. Nominations must be received by May 15th of a given year to be considered for appointment to begin in January of the following year.

Arrangement for Public Inspection

Nominations and applications are kept on file at the Center for Evidence and Practice Improvement, AHRQ, and are available for review during business hours. AHRQ does not reply to individual nominations, but considers all nominations in selecting members. Information regarded as private and personal, such as a nominee's social security number, home and email addresses, home telephone and fax numbers, or names of family members will not be disclosed to the public (in accord with the Freedom of Information Act, 5 U.S.C. 552(b)(6); 45 CFR 5.67).

Nomination Submissions

Nominations may be submitted in writing or electronically, but should include:

1. The applicant's current curriculum vitae and contact information, including mailing address, email address, and telephone number, and

2. A letter explaining how this individual meets the qualification requirements and how he/she would contribute to the USPSTF. The letter should also attest to the nominee's

willingness to serve as a member of the USPSTF.

AHRQ will later ask persons under serious consideration for USPSTF membership to provide detailed information that will permit evaluation of possible significant conflicts of interest. Such information will concern matters such as financial holdings, consultancies, and research grants or contracts.

To obtain a diversity of perspectives, AHRQ particularly encourages nominations of women, members of minority populations, and persons with disabilities. Interested individuals can self-nominate. Organizations and individuals may nominate one or more persons qualified for membership on the USPSTF at any time. Individuals nominated prior to May 15, 2014, who continue to have interest in serving on the USPSTF, should be re-nominated.

Qualification Requirements

To qualify for the USPSTF and support its mission, an applicant or nominee should, at a minimum, demonstrate knowledge, expertise and national leadership in the following areas:

1. The critical evaluation of research published in peer reviewed literature and in the methods of evidence review;
2. Clinical prevention, health promotion and primary health care; and
3. Implementation of evidence-based recommendations in clinical practice including at the clinician-patient level, practice level, and health system level.

Additionally, the Task Force benefits from members with expertise in the following areas:

- Public health
- Health equity and the reduction of health disparities
- Application of science to health policy
- Behavioral medicine
- Communication of scientific findings to multiple audiences including health care professionals, policy makers and the general public.

Candidates with experience and skills in any of these areas should highlight them in their nomination materials.

Applicants must have no substantial conflicts of interest, whether financial, professional, or intellectual, that would impair the scientific integrity of the work of the USPSTF and must be willing to complete regular conflict of interest disclosures.

Applicants must have the ability to work collaboratively with a team of diverse professionals who support the mission of the USPSTF. Applicants must have adequate time to contribute substantively to the work products of the USPSTF.

ADDRESSES: Submit your responses either in writing or electronically to: Lydia Hill, ATTN: USPSTF Nominations, Center for Evidence and Practice Improvement, Agency for Healthcare Research and Quality, 540 Gaither Road, Rockville, Maryland 20850, *USPSTFmembernominations@ahrq.hhs.gov*.

Nominee Selection

Nominated individuals will be selected for the USPSTF on the basis of their qualifications (in particular, those that address the required qualifications, as outlined) and the current expertise needs of the USPSTF. It is anticipated that new members will be invited to serve on the USPSTF beginning in January, 2016. All nominated individuals will be considered; however, strongest consideration will be given to individuals with demonstrated training and expertise in the areas of Family Medicine, Internal Medicine, Nursing and Preventive Medicine. AHRQ will retain and may consider nominations received this year and not selected during this cycle for future vacancies.

Some USPSTF members without primary health care clinical experience may be selected based on their expertise in methodological issues such as meta-analysis, analytic modeling or clinical epidemiology. For individuals with clinical expertise in primary health care, additional qualifications in methodology would enhance their candidacy.

FOR FURTHER INFORMATION CONTACT: Lydia Hill at *USPSTFmember nominations@ahrq.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

Under Title IX of the Public Health Service Act, AHRQ is charged with enhancing the quality, appropriateness, and effectiveness of health care services and access to such services 42 U.S.C. 299(b). AHRQ accomplishes these goals through scientific research and promotion of improvements in clinical practice, including clinical prevention of diseases and other health conditions. See 42 U.S.C. 299(b).

The USPSTF, an independent body of experts in prevention and evidence-based medicine, works to improve the health of all Americans by making evidence-based recommendations about the effectiveness of clinical preventive services and health promotion. The recommendations made by the USPSTF address clinical preventive services for adults and children, and include screening tests, counseling services, and preventive medications.

The USPSTF was first established in 1984 under the auspices of the U.S. Public Health Service. Currently, the USPSTF is convened by the Director of AHRQ, and AHRQ provides ongoing scientific, administrative, and dissemination support for the USPSTF's operation. USPSTF members serve four year terms. New members are selected each year to replace those members who are completing their appointments.

The USPSTF is charged with rigorously evaluating the effectiveness, appropriateness and cost-effectiveness of clinical preventive services and formulating or updating recommendations regarding the appropriate provision of preventive services. See 42 U.S.C. 299b–4(a)(1). Current USPSTF recommendations and associated evidence reviews are available on the Internet (*www.us preventiveservicestaskforce.org*).

USPSTF members currently meet three times a year for two days in the Washington, DC area. A significant portion of the USPSTF's work occurs between meetings during conference calls and via email discussions. Member duties include prioritizing topics, designing research plans, reviewing and commenting on systematic evidence reviews of evidence, discussing and making recommendations on preventive services, reviewing stakeholder comments, drafting final recommendation documents, and participating in workgroups on specific topics and methods. Members can expect to receive frequent emails, can expect to participate in multiple conference calls each month, and can expect to have periodic interaction with stakeholders. AHRQ estimates that members devote approximately 200 hours a year outside of in-person meetings to their USPSTF duties. The members are all volunteers and do not receive any compensation beyond support for travel to in person meetings.

Dated: March 17, 2015.

Sharon B. Arnold,

Deputy Director, AHRQ.

[FR Doc. 2015–06452 Filed 3–20–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; New Approaches to Synthetic Lethality for Mutant KRas-Dependent Cancers (U01).

Date: April 13, 2015.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove; 9609 Medical Center Drive; Room 7W032; Rockville, MD 20850; (Telephone Conference Call).

Contact Person: Clifford W. Schweinfest, Ph.D.; Scientific Review Officer; Special Review Branch; Division of Extramural Activities; National Cancer Institute, NIH; 9609 Medical Center Drive, Room 7W108; Bethesda, MD 20892–9750; 240–276–6343; *schweinfestcw@mail.nih.gov*.

Name of Committee: National Cancer Institute Initial Review Group; Subcommittee A—Cancer Centers.

Date: May 7, 2015.

Time: 8:00 a.m. to 4:45 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda; (Formerly Holiday Inn Select); 8120 Wisconsin Avenue; Bethesda, MD 20814.

Contact Person: Shamala K. Srinivas, Ph.D.; Associate Director; Office of Referral, Review, and Program Coordination; Division of Extramural Activities; National Cancer Institute, NIH; 9609 Medical Center Drive, 7W530; Bethesda, MD 20892–9750; 240–276–6442; *ss537t@nih.gov*.

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/sep/sep.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 17, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–06477 Filed 3–20–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Start-up Exclusive Evaluation Option License Agreement: Pre-Clinical Evaluation and Commercial Development of Anti-Tyrosine Kinase-Like Orphan Receptor 1 Antibody-Drug Conjugates for the Treatment of Human Cancers

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209 and 37 CFR part 404, that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of a start-up exclusive evaluation option license agreement to practice the inventions embodied in U.S. Patent Application No. 61/172,099 entitled ''Anti-human ROR1 Antibodies'' filed April 23, 2009 [HHS Ref. E–097–2009/0–US–01], PCT Application No. PCT/US2010/032208 entitled ''Anti-human ROR1 Antibodies'' filed April 23, 2010 [HHS Ref. E–097–2009/0–PCT–02], European Patent Application No. 10715077.3 entitled, ''Anti-human ROR1 Antibodies'' filed October 24, 2011 [HHS Ref. No. E–097–2009/0–EP–03], U.S. Patent Application No. 13/265,582 entitled, ''Anti-human ROR1 Antibodies'' filed October 21, 2011 [HHS Ref. No. E–097–2009/0–US–04], Australian Patent Application No. 2010238723 entitled, ''Anti-human ROR1 Antibodies'' filed October 21, 2011 [HHS Ref. No. E–097–2009/0–AU–04], Canadian Patent Application No. 2,759,733 entitled, ''Anti-human ROR1 Antibodies'' filed October 21, 2011 [HHS Ref. No. E–097–2009/0–CA–05], US Provisional Application No. 61/418,550 entitled, ''Chimeric rabbit/human ROR1 antibodies'' filed December 1, 2010 [HHS Ref. E–039–2011/0–US–01], PCT Application No. PCT/US2011/062670 entitled, ''Chimeric rabbit/human ROR1 antibodies'' filed November 30, 2011 [HHS Ref. E–039–2011/0–PCT–02]; Australian Patent Application No. 2011336650 entitled, ''Chimeric rabbit/human ROR1 antibodies'' filed November 30, 2011 [HHS Ref. E–039–2011/0–AU–03], Canadian Patent Application No. 2818992 entitled, ''Chimeric rabbit/human ROR1 antibodies'' filed November 30, 2011 [HHS Ref. E–039–2011/0–CA–04], European Patent Application No. 11791733.6 entitled, ''Chimeric rabbit/human ROR1 antibodies'' filed November 30, 2011 [HHS Ref. E–039–2011/0–EP–05] and U.S. Patent Application No. 13/990,977 entitled, ''Chimeric rabbit/human ROR1 antibodies'' filed May 31, 2013 [HHS Ref. E–039–2011/0–US–06] and all related continuing and foreign patents/patent applications for the technology family to NBE Therapeutics, Ltd. The patent rights in these inventions have been assigned to the Government of the United States of America.

The prospective start-up exclusive evaluation option license territory may be worldwide and the field of use may be limited to pre-clinical evaluation and commercial development of an antibody-drug conjugate comprising an anti-tyrosine protein kinase transmembrane receptor (ROR1) antibody for the treatment of human ROR1 expressing cancers utilizing enzymatic conjugation methods linking a small molecule to a full-length antibody, wherein the full-length antibody moiety comprises the anti-ROR1 antibodies or CDR3s within the scope of the Licensed Patent Rights. For avoidance of doubt, this Agreement explicitly excludes the following: (a) Antibody-drug conjugates utilizing non-enzymatic conjugation linking small molecules to said antibodies, (b) immunotoxins comprising anti-ROR1 antibodies and *Pseudomonas* exotoxins, and (c) non-full-length bispecific antibodies. Upon expiration or termination of the start-up exclusive evaluation option license, NBE Therapeutics, Ltd. will have the right to execute a start-up exclusive patent commercialization license which will supersede and replace the start-up exclusive evaluation option license with no broader territory than granted in the start-up exclusive evaluation option license and the field of use will be commensurate with the commercial development plan at the time of conversion.

DATED: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before April 6, 2015 will be considered.

ADDRESSES: Requests for copies of the patent applications, inquiries, comments, and other materials relating to the contemplated exclusive evaluation option license should be directed to: Jennifer Wong, M.S., Senior Licensing and Patenting Manager, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–4633; Facsimile: (301) 402–0220; Email: *wongje@od.nih.gov.*

SUPPLEMENTARY INFORMATION: Tyrosine kinase-like orphan receptor 1 (ROR1) is a signature cell surface antigen for B-cell malignancies, most notably, B-cell chronic lymphocytic leukemia (B–CLL) and mantle cell lymphoma (MCL) cells, two incurable diseases. The investigators have developed a portfolio of chimeric anti-ROR1 monoclonal antibodies that selectively target ROR1 malignant B-cells but not normal B-cells. These antibodies may be linked to chemical drugs or biological toxins thus providing targeted cytotoxic delivery to malignant B-cells while sparing normal cells. Moreover, as these antibodies selectively target ROR1, they can also be used to diagnose B-cell malignancies.

The prospective start-up exclusive evaluation option license is being considered under the small business initiative launched on October 1, 2011 and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR part 404. The prospective start-up exclusive evaluation option license, and a subsequent start-up exclusive patent commercialization license, may be granted unless within fifteen (15) days from the date of this published notice, the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.

Any additional, properly filed, and complete applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated start-up exclusive evaluation option license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: March 16, 2015.

Richard U. Rodriguez,

Acting Director, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2015–06486 Filed 3–20–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2); notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The purpose of this meeting is to evaluate requests for preclinical development resources for potential new therapeutics for the treatment of cancer. The outcome of the evaluation will provide information to internal NCI committees that will decide whether NCI should support requests and make available contract resources for development of the potential therapeutic to improve the treatment of various forms of cancer. The research proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the proposed research projects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Feb2015 Cycle 19 NExT SEP Committee Meeting.

Date: April 29, 2015.

Time: 8:30 a.m. to 4:30 p.m.

Agenda: To evaluate the NCI Experimental Therapeutics Program Portfolio.

Place: National Institutes of Health, 9000 Rockville Pike, Campus Building 31, Conference Room 6C10, Bethesda, MD 20892.

Contact Persons: Barbara Mroczkowski, Ph.D., Executive Secretary, Discovery Experimental Therapeutics Program, National Cancer Institute, NIH, 31 Center Drive, Room 3A44, Bethesda, MD 20817, (301) 496–4291, *mroczkoskib@mail.nih.gov*; Joseph Tomaszewski, Ph.D., Executive Secretary, Development Experimental Therapeutics Program, National Cancer Institute, NIH, 31 Center Drive, Room 3A44, Bethesda, MD 20817, (301) 496–6711, *tomaszej@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 17, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–06476 Filed 3–20–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Drug Discovery.

Date: April 2, 2015.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Peter B. Guthrie, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7850, Bethesda, MD 20892, (301) 435–1239, *guthriep@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Exercise in aging, ischemia imaging.

Date: April 2, 2015.

Time: 12:01 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Samuel C. Edwards, Ph.D., IRG CHIEF, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7846, Bethesda, MD 20892, (301) 435–1246, *edwardss@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 18, 2015.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–06596 Filed 3–20–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request; Process and Outcomes Evaluation of NCI Physical Sciences in Oncology Centers (PS–OC) Initiative (NCI)

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI), National Institutes of Health (NIH), will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

To *Submit Comments And For Further Information:* To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Nicole Moore, Division of Cancer Biology, 9609 Medical Center Drive, Room 6W508, Bethesda, MD 20892–9714 or call non-toll-free number 301–325–7534 or Email your request, including your address to: *Nicole.Moore@nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

Comment Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Proposed Collection: Process and Outcomes Evaluation of NCI Physical Sciences in Oncology Centers (PS–OC) Initiative (NCI), 0925–NEW, National Cancer Institute (NCI), National Institutes of Health (NIH)

Need and Use of Information Collection: The NCI launched the Physical Sciences—Oncology Center (PS–OC; *http://physics.cancer.gov/*) program in 2009 as Phase I of the Physical Sciences in Oncology (PSO) Initiative. The PSO Initiative seeks to establish research projects that bring together cancer biologists and oncologists with scientists from the fields of physics, mathematics, chemistry, and engineering to address some of the major questions and barriers in cancer research. As part of this initiative, evaluation plans were developed and consisted of three components, dependent on which year the initiative is in: Prospective for beginning, structured for mid-point, and summative/full outcome evaluation for a decade after the program started. In 2015 the PSO Initiative is transitioning from the beginning to a mid-point phase, which represents a critical time to reflect on the initial outcomes and restructure the process evaluation to account for changes mid-way through the initiative. This proposed request is to conduct on-line surveys with current and former trainees and NCI grantees associated with the program and comparison groups. Additionally, an assessment of publications generated through the PS–OC program will be conducted via a virtual expert review panel. The evaluation will address trainee development and career path post program involvement as well as the impact of the program involvement on program outputs. Results from both the surveys and the expert peer reviewer panel will assess research innovation from the program and inform the future development of the PSO Initiative. This request is to gain OMB approval for the new submission titled, ''Process and Outcomes Evaluation of NCI Physical Sciences in Oncology Centers (PS–OC) Initiative (NCI)'' for 1 year.

OMB approval is requested for 1 year. There are no costs to respondents other than their time. The total estimated annualized burden hours are 955.

ESTIMATED ANNUALIZED BURDEN HOURS

Instrument	Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hour
Survey	Current NCI Trainees	210	1	25/60	88
Survey	Former NCI Trainees	340	1	25/60	142
Survey	NCI Grantees	300	1	25/60	125
Scoring Sheet	Expert Reviewers	75	1	8	600

Dated: March 16, 2015.

Karla Bailey,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 2015–06535 Filed 3–20–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Biomarker.

Date: April 16, 2015.

Time: 10 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health; Neuroscience Center; 6001 Executive Boulevard; Rockville, MD 20852; (Telephone Conference Call).

Contact Person: Joel A. Saydoff, Ph.D.; Scientific Review Officer; Scientific Review Branch; Division of Extramural Research; NINDS/NIH/DHHS/Neuroscience Center; 6001 Executive Boulevard, Suite 3205, MSC 9529; Bethesda, MD 20892–9529; 301–496–9223; *joel.saydoff@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: March 17, 2015.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–06475 Filed 3–20–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: *''Nursing Home Survey on Patient Safety Culture Comparative Database.''* In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3521, AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by May 22, 2015.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by email at *doris.lefkowitz@AHRQ.hhs.gov*.

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRQ.hhs.gov*.

SUPPLEMENTARY INFORMATION:

Proposed Project

Nursing Home Survey on Patient Safety Culture Comparative Database

Background on the Nursing Home Survey on Patient Safety Culture (Nursing Home SOPS). In 1999, the Institute of Medicine called for health care organizations to develop a ''culture of safety'' such that their workforce and processes focus on improving the reliability and safety of care for patients (IOM, 1999; *To Err is Human: Building a Safer Health System*). To respond to the need for tools to assess patient safety culture in health care, AHRQ developed and pilot tested the Nursing Home SOPS with OMB approval (OMB NO. 0935–0132; Approved July 5, 2007).

The survey is designed to enable nursing homes to assess provider and staff opinions about patient safety issues, medical error, and error reporting and includes 42 items that measure 12 dimensions of patient safety culture. AHRQ made the survey publicly available along with a Survey User's Guide and other toolkit materials in November 2008 on the AHRQ Web site (located at *http://www.ahrq.gov/professionals/quality-patient-safety/patientsafetyculture/nursing-home/index.html*).

The AHRQ Nursing Home SOPS Comparative Database consists of data from the AHRQ Nursing Home SOPS. Nursing homes in the U.S. are asked to voluntarily submit data from the survey to AHRQ through its contractor, Westat. The Nursing Home SOPS database (OMB NO. 0935–0195, last approved on June 12, 2012) was developed by AHRQ in 2011 in response to requests from nursing homes interested in knowing how their patient safety culture survey results compare to those of other nursing homes in their efforts to improve patient safety.

Rationale for the information collection. The Nursing Home SOPS and the Comparative Database support AHRQ's goals of promoting improvements in the quality and safety of health care in nursing home settings. The survey, toolkit materials, and comparative database results are all made publicly available on AHRQ's Web site. Technical assistance is provided by AHRQ through its contractor at no charge to nursing homes to facilitate the use of these materials for nursing home patient safety and quality improvement.

The goal of this project is to renew the Nursing Home SOPS Comparative Database. This database will:

(1) Allow nursing homes to compare their patient safety culture survey results with those of other nursing homes,

(2) Provide data to nursing homes to facilitate internal assessment and learning in the patient safety improvement process, and

(3) Provide supplemental information to help nursing homes identify their strengths and areas with potential for improvement in patient safety culture.

This study is being conducted by AHRQ through its contractor, Westat, pursuant to AHRQ's statutory authority to conduct and support research on health care and on systems for the delivery of such care, including activities with respect to: the quality, effectiveness, efficiency, appropriateness and value of health care services; quality measurement and improvement; and database development. 42 U.S.C. 299a(a)(1), (2), and (8).

Method of Collection

To achieve the goal of this project the following activities and data collections will be implemented:

(1) Eligibility and Registration Form—The nursing home (or parent organization) point of contact (POC) completes a number of data submission steps and forms, beginning with the completion of an online eligibility and registration form. The purpose of this form is to determine the eligibility status and initiate the registration process for nursing homes seeking to voluntarily submit their Nursing Home

SOPS data to the Nursing Home SOPS Comparative Database.

(2) Data Use Agreement—The purpose of the data use agreement, completed by the nursing home POC, is to state how data submitted by nursing homes will be used and provides confidentiality assurances.

(3) Nursing Home Site Information Form—The purpose of the site information form is to obtain basic information about the characteristics of the nursing homes submitting their Nursing Home SOPS data to the Nursing Home SOPS Comparative Database (*e.g.,* bed size, urbanicity, ownership, and geographic region). The nursing home POC completes the form.

(4) Data Files Submission—The number of submissions to the database is likely to vary each year because nursing homes do not administer the survey and submit data every year. Data submission is typically handled by one POC who is either a corporate level health care manager for a Quality Improvement Organization (QIO), a survey vendor who contracts with a nursing home to collect their data, or a nursing home Director of Nursing or nurse manager. POCs submit data on behalf of 5 nursing homes, on average, because many nursing homes are part of a QIO or larger nursing home or health system that includes many nursing home sites, or the POC is a vendor that is submitting data for multiple nursing homes. POCs upload their data file(s), using the nursing home data file specifications, to ensure that users submit standardized and consistent data in the way variables are named, coded, and formatted.

Survey data from the AHRQ Nursing Home SOPS are used to produce three types of products: (1) A Nursing Home SOPS Comparative Database Report that is produced periodically and made publicly available on the AHRQ Web site (see *http://www.ahrq.gov/professionals/quality-patient-safety/patientsafetyculture/nursing-home/2014/nhsurv14-ptI.pdf* for the 2014 report); (2) Individual Nursing Home Survey Feedback Reports that are confidential, customized reports produced for each nursing home that submits data to the database (the number of reports produced is based on the number of nursing homes submitting in any given calendar year); and (3) Research data sets of individual-level and nursing home-level de-identified data to enable researchers to conduct analyses.

Nursing homes are asked to voluntarily submit their Nursing Home SOPS survey data to the Comparative Database. The data are then cleaned and aggregated and used to produce a Comparative Database Report that displays averages, standard deviations, and percentile scores on the survey's 42 items and 12 patient safety culture dimensions, as well as displaying these results by nursing home characteristics (bed size, urbanicity, ownership, and Census Bureau Region, etc.) and respondent characteristics (work area/unit, staff position, and interaction with patients).

Data submitted by nursing homes are also used to give each nursing home its own customized survey feedback report that presents the nursing home's results compared to the latest comparative database results. If a nursing home submits data more than once, its survey feedback report also presents trend data, comparing its previous and most recent data.

Nursing homes use the Nursing Home SOPS, Comparative Database Reports and Individual Nursing Home Survey Feedback Reports for a number of purposes, to:

- Raise staff awareness about patient safety.
- Diagnose and assess the current status of patient safety culture in their nursing home.
- Identify strengths and areas for patient safety culture improvement.
- Examine trends in patient safety culture change over time.
- Evaluate the cultural impact of patient safety initiatives and interventions.
- Compare patient safety culture survey results with other nursing homes in their efforts to improve patient safety and health care quality.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for the respondents' time to participate in the database. An estimated 300 POCs, each representing an average of 5 individual nursing homes each, will complete the database submission steps and forms annually. Completing the eligibility and registration form will take about 3 minutes. Each POC will complete a data use agreement which takes about 3 minutes to complete. The Nursing Home Site Information Form is completed by all POCs for each of their nursing homes (300 x 5 = 1,500 forms in total) and is estimated to take 5 minutes to complete. The POC will submit data for all of the nursing homes he/she represents, which will take 1 hour on average. The total annual burden hours are estimated to be 455.

The 300 respondents/POCs shown in Exhibit 1 are based on an estimate of nursing homes submitting data in the coming years, with the following assumptions:

- 105 POCs for QIOs submitting on behalf of 10 nursing homes each
- 18 POCs for vendors outside of QIOs submitting on behalf of 10 nursing homes each
- 177 independent nursing homes submitting on their own behalf

Exhibit 2 shows the estimated annualized cost burden based on the respondents' time to submit their data. The cost burden is estimated to be $20,839 annually.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents/ POCs	Number of responses per POC	Hours per response	Total burden hours
Eligibility/Registration Form	300	1	3/60	15
Data Use Agreement	300	1	3/60	15
Nursing Home Site Information Form	300	5	5/60	125
Data Files Submission	300	1	1	300
Total	1,200	NA	NA	455

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents/ POCs	Total burden hours	Average hourly wage rate *	Total cost burden
Eligibility/Registration Forms	300	15	$45.80	$687
Data Use Agreement	300	15	45.80	687
Nursing Home Site Information Form	300	125	45.80	5,725
Data Files Submission	300	300	45.80	13,740
Total	1,200	455	NA	20,839

* The wage rate in Exhibit 2 is based on May 2013 National Industry-Specific Occupational Employment and Wage Estimates, Bureau of Labor Statistics, U.S. Dept. of Labor. Mean hourly wages for nursing home POCs are located at *http://www.bls.gov/oes/current/naics4_623100.htm* and *http://data.bls.gov/cgi-bin/print.pl/oes/current/naics2_62.htm.* The hourly wage of $45.80 is the weighted mean of $47.97 (General and Operations Managers; N = 88), $40.07 (Medical and Health Services Managers; N = 89), $47.10 (General and Operations Managers; N =105) and $55.94 (Computer and Information Systems Managers; N = 18).

Request for Comments

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: March 17, 2015.

Sharon B. Arnold,

Deputy Director, AHRQ.

[FR Doc. 2015–06451 Filed 3–20–15; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Proposed Healthy Marriage and Responsible Fatherhood Performance Measures and Additional Data Collection (Part of the Fatherhood and Marriage Local Evaluation and Cross-site [FaMLE Cross-site] Project).

OMB No.: New Collection.

Background: For decades various organizations and agencies have been developing and operating programs to strengthen families through healthy marriage and relationship education and responsible fatherhood programming. The Administration for Children and Families (ACF), Office of Family Assistance (OFA), has had administrative responsibility for federal funding of such programs since 2006 through the Healthy Marriage (HM) and Responsible Fatherhood (RF) Grant Programs. The authorizing legislation for the programs may be found in section 403(a)(2) of the Social Security Act [1]. Responsible Fatherhood grantees provide a comprehensive set of services designed to promote responsible fatherhood including activities related to promoting economic stability, fostering responsible parenting, and promoting healthy marriage. Grantees receiving funding for Healthy Marriage offer a broad array of services designed to promote healthy marriage.

The federal government currently collects a set of performance measures from HM and RF grantees. The purpose of this previously approved information collection is to allow OFA and ACF to carry out their responsibilities for program accountability. Descriptions of the information collection may be found at *http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201206-0970-005;* all measures may be found at *http://www.reginfo.gov/public/do/PRAICList?ref_nbr=201206-0970-005.*

The Fatherhood and Marriage Local Evaluation (FaMLE) Cross-Site Project: The Offices of Family Assistance (OFA) and Planning, Research and Evaluation (OPRE) in the Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS) are proposing new data collection activities to replace existing performance measures as part of the Fatherhood and Marriage Local Evaluation and Cross-site (FaMLE Cross-site) Project. The purpose of the FaMLE Cross-site Project is to support high quality data collection, strengthen local evaluations, and conduct cross-site analysis for the Responsible Fatherhood and Healthy Marriage grantees.

The FaMLE Cross-site project will answer three main research questions: (1) What strategies did grantees use to design well-conceived programs? (2) What strategies did grantees use to successfully implement well-conceived programs? (3) What were the reported outcomes for participants in the programs? In order to answer these questions, we are considering a new set of data collection activities.

Current request: ACF is engaged in a learning agenda to increase our understanding of Healthy Marriage and Responsible Fatherhood programs. This means that we incorporate multiple opportunities and options for learning throughout a program's implementation that provide a range of insights and perspectives. These opportunities help programming constantly develop and advance. For example, data provide the opportunity to feed information back to decision-makers and leaders—both those on the ground and those in management—to inform program design, operation, and oversight.

On November 6, 2014, ACF published a **Federal Register** Notice (79 FR 65973) requesting public comment on the following:

Performance measures. ACF is proposing a new set of performance measures to be collected by all grantees, beginning with the next round of HMRF grants. These measures will collect standardized information in the following areas:

- Applicant characteristics;
- Program operations (including program characteristics and service delivery); and
- Participant outcomes (will be measured both at initiation of program

services (pre-test) and completion (post-test)).

These draft measures were developed per extensive review of the research literature and grantees' past measures.

The next set of grantees will be required to submit data on a set of standardized measures covering these areas on a regular basis (*e.g.,* quarterly). In addition to the performance measures mention above, ACF seeks comment on draft instruments for these data submissions:

- Quarterly Performance Report (QPR), and
- Semi-annual Performance Progress Report (PPR).

A new management information system is being developed which will improve efficiency and the quality of data, and make reporting easier.

Standardized measures and reporting in these areas will enable ACF to track programming outputs and outcomes across programs, and will allow grantees to self-monitor progress.

Additional data collection. As an additional component of the learning agenda, the FaMLE Cross-Site contractor will collect information from a sub-set of grantees on how they designed and implemented their programs (information on outcomes associated with programs will also be assessed). This sub-set of grantees will be required to participate in the additional data collection noted below. The following protocols have been developed:

- Staff interview protocol on program design (will be collected from about half of all grantees);
- Staff interview protocols on program implementation (will be collected from about 10 grantees); and
- Program participant focus group protocol (will be conducted with about 10 grantees).

In response to the previous request, ACF received 57 requests for the proposed measures and 28 emails with comments during the 60-day comment period. Comments were received in eight categories:

- Literacy levels
- Length
- Appropriateness of questions
- Youth Survey
- Case management expectations
- Mode of administration
- Quarterly reporting
- Miscellaneous

A summary of the comments received in these areas and ACF's responses is included in the OMB package and is available upon request (see contact information below). Revised versions of the data collection instruments are also included in the OMB package and available upon request.

Respondents: The respondents to the data collection instruments include Responsible Fatherhood and Healthy Marriage Program grantees (*e.g.,* grantee staff) and program participants. In some cases, grantees will conduct evaluations that include a control or comparison group. In those cases, individuals in the control or comparison group will be asked to respond to the data collection instruments as well.

Updated Annual Burden Estimates: The table below is required by law for **Federal Register** notices like this one. The federal government's Office of Management and Budget requires federal agencies, including ACF, to estimate how many hours it will take respondents to complete data collection, and to publish these estimates in the **Federal Register**. The following table provides our estimates.

These estimates are greater than those included in the 60-day **Federal Register** Notice. We have maintained the same number of data collection instruments, but we have increased the number of respondents as priorities and plans have been further developed and refined.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Annual burden hours
DCI (Data collection by contractor)					
DCI 1: Topic Guide on Program Design	60	20	1	1	20
DCI 2: Topic Guide on Program Implementation	300	100	1	1	100
DCI 3: Focus Group Protocol	801	267	1	1.50	400
DCS (Data collection by grantees)					
DCS 1: Applicant Characteristics:					
Program applicants	411,375	137,125	1	0.25	34,281
Program staff	1,080	360	381	0.10	13,716
DCS 2: Grantee Program Operations	260	120	1	0.75	90
DCS 3: Service Receipt in MIS	360	120	931	0.50	55,860
DCS 4: Self-administered Questionnaire Pre-Test and Post-Test					
Program participants (pre-test)	335,025	111,675	1	0.42	46,904
Program participants (post-test)	270,390	90,130	1	0.42	37,855
Program staff (entry from paper)	36	12	1,412	0.30	5,084
DCS 5: Semi-annual Progress Report	360	120	2	3	720
DCS 6: Quarterly Performance Report	360	120	2	1	240

Estimated Total Annual Burden Hours: 195,270.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: OPRE Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *RFHM.FRN.response@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV,* Attn:

Desk Officer for the Administration, for Children and Families.

Karl Koerper,

OPRE Reports Clearance Officer.

[FR Doc. 2015–06534 Filed 3–20–15; 8:45 am]

BILLING CODE 4184–73–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2015–0070; OMB Control Number 1625–0006]

Information Collection Requests to Office of Management and Budget

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit Information Collection Requests (ICRs) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval of a revision to the following collections of information: 1625–0006, Shipping Articles and 1625–0018, Official Logbook. Our ICRs describe the information we seek to collect from the public. Before submitting these ICRs to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before May 22, 2015.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2015–0070] to the Docket Management Facility (DMF) at the U.S. Department of Transportation (DOT). To avoid duplicate submissions, please use only one of the following means:

(1) *Online: http://www.regulations.gov.*

(2) *Mail:* DMF (M–30), DOT, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(3) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251. To ensure your comments are received in a timely manner, mark the fax, to attention Desk Officer for the Coast Guard.

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of the docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find the docket on the Internet at *http://www.regulations.gov.*

Copies of the ICRs are available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from: COMMANDANT (CG–612), ATTN PAPERWORK REDUCTION ACT MANAGER, U.S. COAST GUARD, 2703 MARTIN LUTHER KING JR AVE. SE., STOP 7710, WASHINGTON DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: Contact Mr. Anthony Smith, Office of Information Management, telephone 202–475–3532, or fax 202–475–3929, for questions on these documents. Contact Ms. Cheryl Collins, Program Manager, Docket Operations, 202–366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collections, and other important information describing the Collections. There is one ICR for each Collection.

The Coast Guard invites comments on whether these ICRs should be granted based on the Collections being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collections; (2) the accuracy of the estimated burden of the Collections; (3) ways to enhance the quality, utility, and clarity of information subject to the Collections; and (4) ways to minimize the burden of the Collections on respondents, including the use of automated collection techniques or other forms of information technology. In response to your comments, we may revise these ICRs or decide not to seek approval of revisions of the Collections. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2015–0070], and must be received by May 22, 2015. We will post all comments received, without change, to *http://www.regulations.gov.* They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the ''Privacy Act'' paragraph below.

Submitting Comments

If you submit a comment, please include the docket number [USCG–2015–0070], indicate the specific section of the document to which each comment applies, providing a reason for each comment. You may submit your comments and material online (*via http://www.regulations.gov*), by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the DMF. We recommend you include your name, mailing address, an email address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission.

You may submit your comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**; but please submit them by only one means. To submit your comment online, go to *http://www.regulations.gov,* and type ''USCG–2015–0070'' in the ''Keyword'' box. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and will address them accordingly.

Viewing comments and documents: To view comments, as well as documents mentioned in this Notice as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2015–0070'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the DMF in

Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act

Anyone can search the electronic form of comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act statement regarding Coast Guard public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Information Collection Requests

1. *Title:* Shipping Articles.
OMB Control Number: 1625–0006.
Summary: Title 46 United States Code 10302 and 10502 and Title 46 Code of Federal Regulations (CFR) 14.201 requires applicable owners, charterers, managing operators, masters, or individuals in charge to make a shipping agreement in writing with each seaman before the seaman commences employment. Additionally, 46 CFR 14.313 requires shipping companies to submit to the Coast Guard Shipping Articles three years after the article was generated; or submitted by shipping companies that go out of business or merges with another company; or upon request by the Coast Guard. Upon receipt and acceptance, Shipping Articles are transferred and archived at the Federal Records Center in Suitland, Maryland.
Need: This collection provides verification, identification, location and employment information of U.S. merchant mariners to the following: (1) Federal, state and local law enforcement agencies for use in criminal or civil law enforcement purpose, (2) shipping companies, (3) labor unions, (4) seaman's authorized representatives, (5) seaman's next of kin, (6) whenever the disclosure of such information would be in the best interest of the seaman or his/her family.
Forms: CG–705A.
Respondents: Shipping companies.
Frequency: On occasion.
Burden Estimate: The estimated burden is 18,000 hours a year.
2. *Title:* Official Logbook.
OMB Control Number: 1625–0018.
Summary: The Official Logbook contains information about the voyage, the vessel's crew, drills, watches and operations conducted during the voyage. Official Logbook entries identify particulars of the voyage, including the name of the ship, official number, port of registry, tonnage, names and merchant mariner credential numbers of the master and crew, the nature of the voyage, and class of ship. In addition, it also contains entries for the vessel's drafts, maintenance of watertight integrity of the ship, drills and inspections, crew list and report of character, a summary of laws applicable to Official Logbooks, and miscellaneous entries.
Need: Title 46 United States Code (U.S.C.) 11301, 11302, 11303, and 11304 require applicable merchant vessels to maintain an Official Logbook. The Official Logbook contains information about the vessel, voyage, crew, and watch. Lack of these particulars would make it difficult for a seaman to certify vessel employment and wages, and for the Coast Guard to verify compliance with laws and regulations concerning vessel operations and safety procedures. The Official Logbook serves as an official record of recordable events transpiring at sea such as births, deaths, marriages, disciplinary actions, etc. Absent the Official Logbook, there would be no official civil record of these events. The courts accept log entries as proof that the logged event occurred. If this information was not collected, the Coast Guard's Commercial Vessel Safety Program would be negatively impacted, as there would be no official record of U.S. merchant vessel voyages. Similarly, those seeking to prove that an event required to be logged occurred would not have an official record available.
Forms: CG–706B.
Respondents: Shipping companies.
Frequency: On occasion.
Burden Estimate: The estimated burden is 1,750 hours a year.

Dated: March 17, 2015.

Thomas P. Michelli,

Chief Information Officer, Acting, U.S. Coast Guard.

[FR Doc. 2015–06585 Filed 3–20–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–FEMA–2014–0035]

Assistance to Firefighters Grant Program; Fire Prevention and Safety Grants

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of guidance.

SUMMARY: This Notice provides guidelines that describe the application process for grants and the criteria for awarding Fire Prevention and Safety (FP&S) grants in the fiscal year (FY) 2014 Assistance to Firefighters Grant (AFG) Program year. It explains the differences, if any, between these guidelines and those recommended by representatives of the Nation's fire service leadership during the annual Criteria Development meeting, which was held October 27–28, 2014. The application period for the FY 2014 FP&S Grant Program year will be held March 16–April 17, 2015, and will be announced on the AFG Web site (*www.fema.gov/firegrants*), *www.grants.gov,* and U.S. Fire Administration Web site (*www.usfa.fema.gov*).

Authority: 15 U.S.C. 2229.

DATES: Grant applications for the FP&S Grant Program will be accepted electronically at *https://portal.fema.gov,* from March 16–April 17, 2015.

ADDRESSES: Assistance to Firefighters Grants Branch, Stop 3620, DHS/FEMA, 800 K Street NW., Washington, DC 20472–3620.

FOR FURTHER INFORMATION CONTACT: Catherine Patterson, Chief, Assistance to Firefighters Grants Branch, 1–866–274–0960.

SUPPLEMENTARY INFORMATION: The purpose of the AFG Program is to enhance the safety of the public and firefighters with respect to fire and fire-related hazards. The FEMA Grant Programs Directorate administers the FP&S Grant Program as part of the AFG Program.

FP&S Grants are offered to support projects in two activities:

1. Activities designed to reach high-risk target groups and mitigate the incidence of death and injuries caused by fire and fire-related hazards (''FP&S Activity'').

2. Projects aimed at improving firefighter safety, health and wellness through research and development that reduces firefighter fatalities and injuries (''R&D Activity'').

The grant program's authorizing statute requires that each year DHS publish in the **Federal Register** the guidelines that describe the application process and the criteria for grant awards. Approximately 1,200 applications for FP&S Grant Program funding are anticipated to be submitted electronically, using the application submission form and process available at the AFG e-Grant application portal: *https://portal.fema.gov.* Specific information about the submission of grant applications can be found in the ''FY 2014 Fire Prevention and Safety

Program Funding Opportunity Announcement,'' which will be available for download at *www.fema.gov/firegrants* and at *www.regulations.gov* under Docket ID FEMA–2014–0035.

Appropriations

Congress appropriated $340,000,000 for AFG in FY 2014 pursuant to the Department of Homeland Security Appropriations Act, 2014, Public Law 113–76. From this amount, $34,000,000 will be made available for FP&S Grant awards, pursuant to 15 U.S.C. 2229(h)(5), which states that not less than 10 percent of available grant funds each year are awarded under the FP&S Grant Program. Funds appropriated for all FY 2014 AFG awards, pursuant to Public Law 113–76, will be available for obligation and award until September 30, 2015.

From the approximately 1,200 applications that will be requesting assistance, FEMA anticipates that it will award approximately 150 FP&S Grants from available grant funding.

Background of the AFG Program

DHS awards grants on a competitive basis to the applicants that best address the FP&S Grant Program's priorities and provide the most compelling justification. Applications that best address the Program's priorities will be reviewed by a panel composed of fire service personnel.

Award Criteria

All applications for grants will be prepared and submitted through the AFG e-Grant application portal (*https://portal.fema.gov*).

The FP&S Grant Program panels will review the applications and score them using the following criteria areas:

- Vulnerability
- Implementation
- Evaluation Plan
- Cost Benefit
- Sustainability
- Financial Need
- Funding Priorities
- Experience and Expertise

The applications submitted under the R&D Activity will be reviewed first by a panel of fire service members to identify those applications most relevant to the fire service. The following evaluation criteria will be used for this review:

- Purpose
- Potential Impact
- Implementation by the fire service
- Partners
- Barriers

The applications that are determined most likely to be implemented to enable improvement in firefighter safety, health, or wellness will be deemed to be in the ''competitive range'' and will be forwarded to the second level of application review, which is the scientific panel review process. This panel will be comprised of scientists and technology experts who have expertise pertaining to the subject matter of the proposal.

The Scientific Technical Evaluation Panel for the R&D Activity will review the application and evaluate it using the following criteria:

- Project purpose(s), goals and objectives, and specific aims
- Literature Review
- Project Methods
- Project Measurements
- Project Analysis
- Dissemination and Implementation
- Cost vs. Benefit (additional consideration)
- Financial Need (additional consideration)

Eligible Applicants

The following entities are eligible to apply directly to FEMA under this solicitation:

1. Fire Prevention and Safety (FP&S) Activity: Eligible applicants for this activity include fire departments, national, regional, state, local, Native American tribal, and nonprofit organizations that are recognized for their experience and expertise in fire prevention and safety programs and activities. Both private and public non-profit organizations are eligible to apply for funding in this activity. For-profit organizations, federal agencies, and individuals are not eligible to receive a FP&S Grant Award under the FP&S Activity.

2. Firefighter Safety Research and Development (R&D) Activity: Eligible applicants for this activity include national, state, local, Native American tribal, and nonprofit organizations, such as academic (*e.g.,* universities), public health, occupational health, and injury prevention institutions. Both private and public non-profit organizations are eligible to apply for funding in this activity.

The aforementioned entities are encouraged to apply, especially those that are recognized for their experience and expertise in firefighter safety, health, and wellness research and development activities. Fire departments are not eligible to apply for funding in the R&D activity. Additionally, for-profit organizations, federal agencies, and individuals are not eligible to receive a grant award under the R&D Activity.

Statutory Limits to Funding

Applications and awards are limited to a maximum federal share of $1.5 million dollars, regardless of applicant type.

Cost Sharing

Grantees must share in the costs of the projects funded under this grant program as required by 15 U.S.C. 2229(k)(1) and in accordance with 44 CFR 13.24 and 2 CFR 215.23, but they are not required to have the cost-share at the time of application nor at the time of award. However, before a grant is awarded, FEMA will contact potential awardees to determine whether the grantee has the funding in hand or if the grantee has a viable plan to obtain the funding necessary to fulfill the cost-sharing requirement.

In general, an eligible applicant seeking an FP&S grant to carry out an activity shall agree to make available non-federal funds to carry out such activity in an amount equal to, and not less than, five percent of the grant awarded. Cash match and in-kind matches are both allowable in the FP&S Grant Program. Cash (hard) matches include non-federal cash spent for project-related costs. In-kind (soft) matches include, but are not limited to, the valuation of in-kind services. In-kind is the value of something received or provided that does not have a cost associated with it. For example, where an in-kind match (other than cash payments) is permitted, then the value of donated services could be used to comply with the match requirement. Also, third party in-kind contributions may count toward satisfying match requirements provided the grantee receiving the contributions expends them as allowable costs in compliance with provisions listed above.

Grantees under this grant program must also agree to a maintenance of effort requirement as required by 15 U.S.C. 2229(k)(3) (referred to as a ''maintenance of expenditure'' requirement in that statute). Per this requirement, a grantee shall agree to maintain during the term of the grant the grantee's aggregate expenditures relating to the activities allowable under the FP&S Funding Opportunity Announcement at not less than 80 percent (80%) of the average amount of such expenditures in the two (2) fiscal years preceding the fiscal year in which the grant amounts are received.

In cases of demonstrated economic hardship, and on the application of the grantee, the Administrator of FEMA may waive or reduce certain grantees' cost share or maintenance of

expenditure requirements. This policy applies to FP&S per § 33 of the Federal Fire Prevention and Control Act of 1974 (Pub. L. 93–498, as amended) (15 U.S.C. 2229). For complete requirements concerning these waivers, including a description of how a grantee may demonstrate economic hardship and apply for a waiver, please refer to FEMA Policy FP 207–088–01, dated April 8, 2014, at: *http://www.fema.gov/media-library-data/1398109239435-ec23997d8351382710896fa77d02bc7d/AFG+Economic+/Hardship+Waiver+Policy.pdf.* Per 15 U.S.C. 2229(k)(4)(C), FP&S Grantees that are not fire departments are not eligible to receive a waiver of their cost share or economic hardship requirements.

System for Award Management (SAM)

On July 29, 2010, the Central Contractor Registration (CCR) was moved into the System for Award Management (SAM). The Office of Management and Budget (OMB) issued guidance to federal agencies requiring all prime recipients of federal grants to register in SAM. SAM is the primary vendor database for the Federal Government to collect, validate, store, and disseminate data from a secure centralized system. SAM consolidated the capabilities found in CCR and other federal procurement systems into one new system.

There is no charge to register in *SAM.gov.* Registrations must be completed on-line at *https://www.sam.gov/portal/public/SAM/.* The applicant organization is responsible for having a valid Dun and Bradstreet (DUNS) number at the time of registration. Organizations with an active record in CCR have an active record in SAM, but may need to validate their information. For registration, go to *https://www.sam.gov/portal/public/SAM/.*

Application Process

Applicants may only submit one (1) application, but may submit for up to three (3) projects under each activity (FP&S and R&D). Any applicant that submits more than one (1) application may have *all* applications for any duplicated request(s) deemed ineligible.

Under the FP&S Activity, applicants may apply under the following categories:

- General Education/Awareness
- Fire & Arson Investigation
- Code Enforcement/Awareness
- National/State/Regional Programs and Studies

Under the R&D Activity, applicants may apply under the following categories:

- Clinical Studies
- Technology and Product Development
- Database System Development
- Dissemination and Implementation Research
- Preliminary Studies

Prior to the start of the FY 2014 FP&S Grant Program application period, FEMA will provide applicants with technical assistance tools (available at the AFG Web site: *www.fema.gov/firegrants*) and other online information to help them prepare quality grant applications. AFG will also staff a Help Desk throughout the application period to assist applicants with navigation through the automated application as well as assistance with any questions they have. Applicants can reach the AFG Help Desk through a toll-free telephone number (1–866–274–0960) or electronic mail (*firegrants@dhs.gov*).

Applicants are advised to access the application electronically at *https://portal.fema.gov.* The application also will be accessible from the grants.gov Web site (*http://www.grants.gov*). New applicants are required to register and establish a username and password for secure access to their application. Applicants that applied to any previous AFG or SAFER funding opportunities were required to use their previously established usernames and passwords.

In completing an application under this funding opportunity, applicants will be asked to provide relevant information on their organization's characteristics and existing capabilities. Those applicants are asked to answer questions about their grant request that reflect the funding priorities, described below. In addition, each applicant will complete narratives for each project or grant activity requested.

The following are the funding priorities for each category under the FP&S Activity:

- *General Education/Awareness*—Under the General Education/Awareness category there are two funding priorities:
  - The first priority will be given to programs that target high risk population to conduct both door-to-door smoke alarm installations and provide home safety inspections (including sprinkler awareness), as part of a comprehensive home fire safety campaign.
  - The second priority will be given to programs that include sprinkler awareness that affect the entire community, such as educating the public about residential sprinklers, promoting residential sprinklers, and demonstrating working models of residential sprinklers.
- *Code Enforcement/Awareness*—projects that focus on first time or reinstatement of code adoption and code enforcement.
- *Fire & Arson Investigation*—projects that aim to aggressively investigate every fire.
- *National/State/Regional Programs and Studies*—projects that focus on residential fire issues and/or firefighter behavior and decision-making.

Under the R&D Activity, in order to identify and address the most important elements of firefighter safety, FEMA looked to the fire service for its input and recommendations. In June 2005, the National Fallen Firefighters' Foundation (NFFF) hosted a working group to facilitate the development of an agenda for the nation's fire service, and in particular for firefighter safety. In May 2011, the NFFF again hosted a working group to update the agenda with current priorities. A copy of the research agenda is available on the NFFF Web site at *http://www.everyonegoeshome.com/symposium.html.*

Projects that meet the intent of this research agenda with respect to firefighter health and safety, as identified by the NFFF working group, will be given consideration under the R&D Activity. However, the applicant is not limited to these specific projects. All proposed projects, regardless of whether they have been identified by this working group, will be evaluated on their relevance to firefighter health and safety, and scientific rigor.

The electronic application process will permit the applicant to enter and save the application data. The system does not permit the submission of incomplete applications. Except for the narrative textboxes, the application will use a ''point-and-click'' selection process or require the entry of data (*e.g.,* name and address). Applicants will be encouraged to read the FP&S Funding Opportunity Announcement for more details.

Criteria Development Process

Each year, DHS convenes a panel of fire service professionals to develop the funding priorities and other implementation criteria for AFG. The Criteria Development Panel is comprised of representatives from nine major fire service organizations who are charged with making recommendations to FEMA regarding the creation of new funding priorities, the modification of existing funding priorities, and the development of criteria for awarding grants. The nine major fire service organizations represented on the panel are:

- Congressional Fire Services Institute (CFSI)
- International Association of Arson Investigators (IAAI)
- International Association of Fire Chiefs (IAFC)
- International Association of Fire Fighters (IAFF)
- International Society of Fire Service Instructors (ISFSI)
- National Association of State Fire Marshals (NASFM)
- National Fire Protection Association (NFPA)
- National Volunteer Fire Council (NVFC)
- North American Fire Training Directors (NAFTD)

The FY 2014 criteria development panel meeting occurred January 8–9, 2014. The content of the FY 2014 FP&S Funding Opportunity Announcement reflects the implementation of the Criteria Development Panel's recommendations with respect to the priorities, direction, and criteria for awards. All of the funding priorities for the FY 2014 FP&S Grant Program are designed to address the following:

- First responder safety
- Enhancing national capabilities
- Risk
- Interoperability

Changes for FY 2014

FY 2014 FP&S Funding Opportunity Announcement.

(1) The ''Guidance and Application Kit'' has been reformatted to match the DHS Funding Opportunity Announcement (FOA) template.

(2) Sprinkler awareness was added as a priority under the General Education/Awareness category.

(3) The period of performance for applicants under the FP&S Activity was extended to up to 24 months. Applicants will now have the option to select either a 12 month period of performance or 24 month period of performance, based on the complexity of the project.

Application Review Process and Considerations

The program's authorizing statute requires that each year DHS publish in the **Federal Register** a description of the grant application process and the criteria for grant awards. This information is provided below.

DHS will review and evaluate all FP&S applications submitted using the funding priorities and evaluation criteria described in this document, which are based on recommendations from the AFG Criteria Development Panel.

Peer Review Process

Technical Evaluation Process—Fire Prevention and Safety Activity

All eligible applications will be evaluated by a Technical Evaluation Panel (TEP). The TEP is comprised of a panel of Peer Reviewers. The TEP will assess each application's merits with respect to the detail provided in the Narrative Statement on the activity, including the evaluation elements listed in the Evaluation Criteria identified above.

The panel of Peer Reviewers will independently score each project within the application, discuss the merits and/or shortcomings of the application, and document the findings. A consensus is not required. The highest ranked applications will receive further technical review to assess strengths and weaknesses, how readily weaknesses may be resolved, and the likely impact of the proposed activities on the safety of the target audience.

Technical Evaluation Process—Research and Development Activity

R&D applications will go through a two-phase review process. First, all applications will be reviewed by a panel of fire service experts to assess relevance, meaning the likely impact of the proposed R&D application to enable improvement in firefighter safety, health, or wellness. They will also assess the need for the research results and the likelihood that the results would be implemented by the fire service in the U.S. Applications that are deemed likely to be implemented to enable improvement in firefighter safety, health, or wellness will then receive further consideration by a science review panel. This panel will be comprised of scientists and technology experts who have expertise pertaining to the subject matter of the proposal.

Reviewers will independently score applications and, if necessary, discuss the merits or shortcomings of the application in order to reconcile any major discrepancies identified by the reviewers. A consensus is not required.

With input from these panels, for the highest ranked applications, FEMA will review each application's strengths and weaknesses, how best the strengths fit the priorities of the FP&S Program, and how readily the weaknesses may be resolved to support likely impact of the project to improve firefighter safety, heath, or wellness.

Technical Review Process

Projects receiving the highest scores then will undergo a technical review by a subject matter specialist to assess the technical feasibility of the project and a programmatic review to assess eligibility and other factors.

After the completion of the technical reviews, DHS will select a sufficient number of awardees from this application period to obligate all of the available grant funding. It will evaluate and act on applications within 90 days following the close of the application period. Award announcements will be made on a rolling basis until all available grant funds have been committed. Awards will not be made in any specified order. DHS will notify unsuccessful applicants as soon as it is feasible.

Evaluation Criteria for Projects—Fire Prevention and Safety Activity

Funding decisions will be informed by an assessment of how well the application addresses the criteria and considerations listed below. Applications will be reviewed by the TEP using weighted evaluation criteria to score the project. These scores will impact the ranking of a project for funding.

The relative weight of the evaluation criteria in the determination of the grant award is listed below.

- Vulnerability Statement (20%): The assessment of fire risk is essential in the development of an effective project goal, as well as meeting FEMA's goal to reduce risk by conducting a risk analysis as a basis for action. Vulnerability is a ''weak link'' demonstrating high risk behavior, living conditions or any type of high risk situation or behavior. The Vulnerability Statement should include a description of the steps taken to determine the vulnerability (weak link) and identify the target audience. The methodology for determination of vulnerability (how you found the weak link) should be discussed in-depth in the application's Narrative Statement.
  - The specific vulnerability (weak link) that will be addressed with the proposed project can be established through a formal or informal risk assessment. FEMA encourages the use of local statistics, rather than national statistics, when discussing the vulnerability.
  - The applicant should summarize the vulnerability (weakness) the project will address in a clear, to-the-point statement that addresses who is at risk, what the risks are, where the risks are, and how the risks can be prevented.
  - For the purpose of the FY2014 FP&S FOA, formal risk assessments consist of the use of software

programs or recognized expert analysis that assess risk trends.
  - Informal risk assessments could include an in-house review of available data (*e.g.,* National Fire Incident Reporting System) to determine fire loss, burn injuries or loss of life over a period of time, and the factors that are the cause and origin for each occurrence.
- Implementation Plan (20%): Projects should provide details on the implementation plan which discusses the proposed project's goals and objectives. The following information should be included to support the implementation plan:
  - Goals and objectives.
  - Details regarding the methods and specific steps that will be used to achieve the goals and objectives.
  - Timelines.
  - Where applicable, examples of marketing efforts to promote the project, who will deliver the project (*e.g.,* effective partnerships), and the manner in which materials or deliverables will be distributed.
  - Requests for props (*i.e.,* tools used in educational or awareness demonstrations), including specific goals, measurable results, and details on the frequency for which the prop will be utilized as part of the implementation plan. Applicants should include information describing the efforts that will be used to reach the high risk audience and/or the number of people reached through the proposed project.
- Evaluation Plan (20%): Projects should include an evaluation of effectiveness and should identify measurable goals. Applicants seeking to carry out awareness and educational projects, for example, should identify how they intend to determine that there has been an increase in knowledge about fire hazards, or measure a change in the safety behaviors of the audience. Applicants should demonstrate how they will measure risk at the outset of the project in comparison to how much the risk decreased after the project is finished. There are various ways to measure the knowledge gained including the use of surveys, pre- and post-tests or documented observations.
- Cost-Benefit (10%): Projects will be evaluated based on how well the applicant addresses the fire prevention needs of the department or organization in an economic and efficient manner. It should show how to maximize the level of funding that goes directly into the delivery of the project. The costs associated with the project must also be reasonable for the target audience that will be reached, and a description of how the anticipated benefit(s) of their projects outweighs the cost(s) of the requested item(s) should be included. Providing justification for costs assists the Technical Evaluation Panel with this review.
- Sustainability (15%): Each project will also be evaluated to determine whether the overall activity will be sustained (continued) beyond the grant performance period and whether it has a greater potential for long-term benefits. Examples of sustainable projects can be shown through the long-term benefits derived from the delivery of the project, the number of non-Federal partners likely to continue the effort, or the demonstrated long-term commitment of the applicant.
- Financial Need (10%): Applicants should provide details on the need for financial assistance to carry out the proposed project(s). Included in the description might be other unsuccessful attempts to acquire financial assistance or specific examples of the applicant's operational budget.
- Funding Priorities (5%): Applicants will be evaluated on whether or not the proposed project meets the stated funding priority (listed below) for the applicable category.
  - General Education/Awareness Priority: Comprehensive home fire safety campaign with door-to-door smoke alarm installations or residential sprinkler awareness projects/activities.
  - Fire/Arson Investigation Priority: Projects that aim to aggressively investigate every fire.
  - Code Enforcement/Awareness Priority: Projects that focus on first time or reinstatement of code adoption and code enforcement.
  - National/State/Regional Programs and Studies Priority: Projects that focus on residential fire issues, and/or firefighter safety projects or strategies that are designed to measurably change firefighter behavior and decision-making.
- Experience and Expertise (additional consideration): Applicants that demonstrate their experience and ability to conduct fire prevention and safety activities, and to execute the proposed or similar project(s), will receive additional consideration.

Evaluation Criteria for Projects—Firefighter Safety Research and Development Activity

Funding decisions will be informed by an assessment of how well the application addresses the criteria and considerations listed below.

All applications will reviewed by a fire service expert panel using weighted evaluation criteria, and those applications deemed to be in the ''competitive range'' will then be reviewed by a scientific peer review panel evaluation using weighted evaluation criteria to score the project. Scientific evaluations will impact the ranking of the project for funding.

In addition, other Science Panel considerations are indicated in the list below:

Fire Service Evaluation Criteria

- Purpose (25%): Applicants should clearly identify the benefits of the proposed research project to improve firefighter safety, health, or wellness, and identify specific gaps in knowledge that will be addressed.
- Implementation by Fire Service (25%): Applicants should discuss how the outcomes/products of this research, if successful, are likely to be widely/nationally adopted and accepted by the fire service as changes that enhance firefighter safety, health, or wellness.
- Potential Impact (15%): Applicants should discuss the potential impact of the research outcome/product on firefighter safety by quantifying the possible reduction in the number of fatal or non-fatal injuries, or on wellness by significantly improving the overall health of firefighters.
- Barriers (15%): Applicants should recognize that all research contains some level of risk and that the proposed outcomes may not be realized. The applicant needs to identify and discuss potential fire service and other barriers to successfully complete the study on schedule, including contingencies and strategies to deal with barriers if they materialize. This may include barriers that could inhibit the proposed fire service participation in the study or the adoption of successful results by the fire service when the project is completed.
- Partners (20%): Applicants should recognize that participation of the fire service as a partner in the research, from development to dissemination, is regarded as an essential part of all projects. Applicants should describe the fire service partners and contractors that will support the

project to accomplish the objectives of the study. The specific roles and contributions of the partners should be described. Partnerships may be formed with local and regional fire departments, and also with national fire-related organizations. Letters of support and letters of commitment to actively participate in the project should be included in the appendix of the application. Generally, participants of a diverse population, including both career and volunteer firefighters, are expected to facilitate acceptance of results nationally. In cases where this is not practical, due to the nature of the study or other limitations, these circumstances should clearly be explained.

Science Panel Evaluation Criteria

- Project goals, objectives, and specific aims (15%): Applicants should address how the purpose, goals, objectives, and aims of the proposal will lead to results that will improve firefighter safety, health, or wellness. For multi-year projects, greater detail should be given for the first year.
- Literature Review (10%): Applicants should provide a literature review that is relevant to the project's goals, objectives, and specific aims. The citations should be placed in the text of the narrative statement, with references listed at the end of the Narrative Statement (and not in the Appendix) of the application. The review should be in sufficient depth to make it clear that the proposed project is necessary, adds to an existing body of knowledge, is different from current and previous studies, and offers a unique contribution.
- Project Methods (20%): Applicants should provide a description of how the project will be carried out, including demonstration of the overall scientific and technical rigor and merit of the project. This includes the operations to accomplish the purpose, goals and objectives, and the specific aims of the project. Plans to recruit and retain human subjects, where applicable, should be described. Where human subjects are involved in the project, the applicant should describe plans for submission to the Institutional Review Board (IRB) (for further guidance and requirements, see Appendix A—Application Guidelines and Program Priorities, Section IX. Human Subjects Research).
- Project Measurements (20%): Applicants should provide evidence of the technical rigor and merit of the project, such as data pertaining to validity, reliability, and sensitivity (where established) of the facilities, equipment, instruments, standards, and procedures that will be used to carry out the research. The applicant should discuss the data to be collected to evaluate the performance methods, technologies, and products proposed to enhance firefighter safety, health, or wellness. The applicant should demonstrate that the measurement methods and equipment selected for use are appropriate and sufficient to successfully deliver the proposed project objectives.
- Project Analysis (20%): The applicant should indicate the planned approach for analysis of the data obtained from measurements, questionnaires, or computations. The applicant should specify within the plan what will be analyzed, the statistical methods that will be used, the sequence of steps, and interactions as appropriate. It should be clear that the Principal Investigator (PI) and research team have the expertise to perform the planned analysis and defend the results in a peer review process.
- Dissemination and Implementation (15%): Applicants should indicate dissemination plans for scientific audiences (such as plans for submissions to specific peer review publications) and for firefighter audiences (such as Web sites, magazines, and conferences). Also, assuming positive results, the applicant should indicate future steps that would support dissemination and implementation throughout the fire service, where applicable. These steps are likely to be beyond the current study, so those features of the research activity that will facilitate future dissemination and implementation should be discussed. All applicants should specify how the results of the project, if successful, might be disseminated and implemented in the fire service to improve firefighter safety, health, or wellness. It is expected that successful R&D Activity Projects may give rise to future programs including FP&S Activity Projects.
- Cost vs. Benefit (additional consideration): Cost vs. benefit in this evaluation element refers to the costs of the grant for the research and development project as it relates to the benefits that are projected for firefighters who would have improved safety, health, or wellness. Applicants should demonstrate a high benefit for the cost incurred, and effective utilization of federal funds for research activities.
- Financial Need (additional consideration): In the Applicant Information section of the application, applicants should provide details on the need for federal financial assistance to carry out the proposed project(s). Applicants may include a description of unsuccessful attempts to acquire financial assistance. Applicants should provide detail about the organization's operating budget, including a high-level breakdown of the budget; describe the department's inability to address financial needs without federal assistance; and discuss other actions the department has taken to meet their staffing needs (*e.g.,* state assistance programs, other grant programs, etc.).

Other Selection Information

Awards will be made using the results of peer-reviewed applications as the primary basis for decisions, regardless of activity. However, there are some exceptions to strictly using the peer review results. The applicant's prior AFG, Staffing for Adequate Fire and Emergency Response (SAFER), and FP&S grant management performance will also be taken into consideration when making recommendations for award. All final funding determinations will be made by the Administrator of FEMA, or the Administrator's delegate.

Fire departments and other eligible applicants that have received funding under the FP&S program in previous years are eligible to apply for funding in the current year. However, DHS may take into account an applicant's performance on prior grants when making funding decisions on current applications.

Once every application in the competitive range has been through the technical evaluation phase, the applications will be ranked according to the average score awarded by the panel.

The ranking will be summarized in a Technical Report prepared by the AFG Program Office. A Grants Management Specialist will contact the applicant to discuss and/or negotiate the content of the application and SAM.gov registration before making final award decisions.

Dated: March 3, 2015.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2015–06547 Filed 3–20–15; 8:45 am]

BILLING CODE 9111–12–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2015–0099; OMB Control Number 1625–0069]

Information Collection Request to Office of Management and Budget

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval of an extension of a currently approved collection: 1625–0069, Ballast Water Management for Vessels with Ballast Tanks Entering U.S. Waters. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before May 22, 2015.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2015–0099] to the Docket Management Facility (DMF) at the U.S. Department of Transportation (DOT). To avoid duplicate submissions, please use only one of the following means:

(1) *Online: http://www.regulations.gov.*

(2) *Mail:* DMF (M–30), DOT, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(3) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251. To ensure your comments are received in a timely manner, mark the fax, to attention Desk Officer for the Coast Guard.

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of the docket and will be available for inspection or copying at Room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find the docket on the Internet at *http://www.regulations.gov.*

Copies of the ICR(s) are available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from: COMMANDANT (CG–612), ATTN PAPERWORK REDUCTION ACT MANAGER, U.S. COAST GUARD, 2703 MARTIN LUTHER KING JR AVE SE STOP 7710, WASHINGTON DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: Contact Mr. Anthony Smith, Office of Information Management, telephone 202–475–3532, or fax 202–372–8405, for questions on these documents. Contact Ms. Cheryl Collins, Program Manager, Docket Operations, 202–366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether these ICRs should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. In response to your comments, we may revise these ICRs or decide not to seek approval of revisions of the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2015–0099], and must be received by May 22, 2015. We will post all comments received, without change, to *http://www.regulations.gov.* They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the ''Privacy Act'' paragraph below.

Submitting Comments

If you submit a comment, please include the docket number [USCG–2015–0099], indicate the specific section of the document to which each comment applies, providing a reason for each comment. You may submit your comments and material online (via *http://www.regulations.gov*), by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the DMF. We recommend you include your name, mailing address, an email address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission.

You may submit your comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**; but please submit them by only one means. To submit your comment online, go to *http://www.regulations.gov,* and type ''USCG–2015–0099'' in the ''Search'' box. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and will address them accordingly.

Viewing comments and documents: To view comments, as well as documents mentioned in this Notice as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Search'' box insert ''USCG–2015–0099'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the DMF in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act

Anyone can search the electronic form of comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act statement regarding Coast Guard public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Information Collection Request

1. *Title:* Ballast Water Management for Vessels with Ballast Tanks Entering U.S. Waters.

OMB Control Number: 1625–0069.

Summary: This collection requires the master of a vessel to provide information that details the vessel operator's ballast water management efforts.

Need: The information is needed to ensure compliance with 16 U.S.C. 4711 and the requirements in 33 CFR part 151, subparts C and D regarding the management of ballast water, to prevent the introduction and spread of aquatic nuisance species into U.S. waters. The information is also used for research and periodic reporting to Congress.

Forms: None.

Respondents: Owners and operators of certain vessels.

Frequency: On occasion.

Burden Estimate: The estimated burden remains 60,961 hours a year.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: March 17, 2015.

Thomas P. Michelli,

U.S. Coast Guard, Chief Information Officer, Acting.

[FR Doc. 2015–06584 Filed 3–20–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2015–0006]

Notice of Public Meeting on the Proposed Revised Guidelines for Implementing Executive Order 11988, Floodplain Management, As Revised Through the Federal Flood Risk Management Standard

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice is to announce a public meeting to solicit public input on the proposed ''Revised Guidelines for Implementing Executive Order 11988, Floodplain Management.''

DATES: The public meeting will be held in New York, NY on March 27, 2015, from 2:00 p.m. to 5:00 p.m. Eastern Daylight Time (EDT).

ADDRESSES: The public meeting will be held in New York, NY, at Columbia Law School, Room 104, 435 West 116th Street, New York, NY 10027.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section by March 24.

Due to space constraints of the facility, seating will be limited to 180 participants for the meeting. To reserve a seat in advance for this meeting, please provide a request via email or mail with the contact information of the participant (including name, mailing address, and email address), the meeting to be attended, and include the subject/attention line (or on the envelope if by mail): Reservation Request for FFRMS Meeting. Advance reservations are preferred at least three (3) business days prior to the meeting to ensure processing, but will be accepted until capacity is reached. Unregistered participants will be accepted after all participants with reservations have been accommodated and will be admitted on a first-come, first-serve basis, provided the person capacity is not exceeded. To submit reservations, please email: *FEMA–FFRMS@fema.dhs.gov* or send by mail to the address listed in the **FOR FURTHER INFORMATION CONTACT** caption.

To facilitate public participation, members of the public are invited to provide written comments on the issues to be considered at the public meetings. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Regulatory Affairs Division, Office of Chief Counsel, FEMA, 500 C Street SW., Room 8NE, Washington, DC 20472–3100.

Instructions: All submissions received must include the docket ID FEMA–2015–0006. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read comments received, go to *http://www.regulations.gov,* and search for the Docket ID FEMA–2015–0006.

FOR FURTHER INFORMATION CONTACT: Bradley Garner, 202–646–3901 or *FEMA–FFRMS@fema.dhs.gov. Mailing Address:* FFRMS, 1800 South Bell Street, Room 627, Arlington, VA 20598–3030. The Web site is *https://www.fema.gov/federal-flood-risk-management-standard-ffrms.*

SUPPLEMENTARY INFORMATION: On January 30, 2015, the President signed Executive Order 13690, directing FEMA, on behalf of the Mitigation Framework Leadership Group, to publish for public comment draft revised Floodplain Management Guidelines to provide guidance to agencies on the implementation of Executive Order 11988, as amended, consistent with a new Federal Flood Risk Management Standard. These draft revised Guidelines were developed by the Mitigation Framework Leadership Group in consultation with the Federal Interagency Floodplain Management Task Force. FEMA is publishing this Notice on behalf of the Mitigation Framework Leadership Group, which is chaired by FEMA, to solicit and consider public input on the draft revised Guidelines at a public meeting.

Background information about these topics is available on the FFRMS Web site at *https://www.fema.gov/federal-flood-risk-management-standard-ffrms* or in the docket for this Notice at *www.regulations.gov*, Docket ID FEMA–2015–0006.

The meeting is exempt from the Federal Advisory Committee Act (FACA), as the Mitigation Framework Leadership Group is an intergovernmental committee and falls under the intergovernmental committee exception to FACA, 41 CFR 102–3.40(g).

Authority: Executive Order 11988, as amended; Executive Order 13690.

Dated: March 16, 2015.

Roy Wright,

Deputy Associate Administrator for Mitigation, Federal Emergency Management Agency.

[FR Doc. 2015–06551 Filed 3–20–15; 8:45 am]

BILLING CODE 9111–47–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5838–N–02]

60-Day Notice of Proposed Information Collection: Public Housing Agency Executive Compensation Information

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, PIH, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the

Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* May 22, 2015.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Arlette Mussington, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street SW., (L'Enfant Plaza, Room 2206), Washington, DC 20410; telephone 202–402–4109, (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Mussington.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Proposal: Public Housing Agency Executive Compensation Information.

OMB Approval Number: 2577–0272.

Type of Request: Reinstatement, with changes, of a previously approved collection.

Form Number: Form HUD–52725.

Description of the need for the information and proposed use: Pursuant to PIH Notice 2014–01, HUD collects information on the compensation provided by public housing agencies (PHAs) to the top management official, top financial official, and highest compensated employee, similar to the information that non-profit organizations receiving federal tax exemptions are required to report to the IRS annually. Because PHAs receive significant direct federal funds HUD has been collecting compensation information to enhance regulatory oversight by HUD, as well as state and local authorities. HUD provides the information collected to the public. The compensation data collected includes base salary and bonus, and incentive and other compensation, and the extent to which these payments are made with federal funds.

Respondents: Public Housing Agencies.

Estimated Number of Respondents: Approximately 4,000.

Estimated Number of Responses: Approximately 4,000.

Frequency of Response: Annual.

Average Hours per Response: 30 minutes

Total Estimated Burdens: The total burden hours is estimated to be 2,000 hours annually. The total burden cost is estimated to be $44,740.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: March 17, 2015.

Merrie Nichols-Dixon,

Deputy Director, Office of Policy, Programs and Legislative Initiatives.

[FR Doc. 2015–06545 Filed 3–20–15; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2015–N037; FXES11130200000–156–FF02ENEH00]

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications; request for public comment.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered or threatened species. The Endangered Species Act of 1973, as amended (Act), prohibits activities with endangered and threatened species unless a Federal permit allows such activities. Both the Act and the National Environmental Policy Act require that we invite public comment before issuing these permits.

DATES: To ensure consideration, written comments must be received on or before April 22, 2015.

ADDRESSES: Susan Jacobsen, Chief, Division of Classification and Restoration, by U.S. mail at Division of Classification and Recovery, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, NM 87103; or by telephone at 505–248–6920. Please refer to the respective permit number for each application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Susan Jacobsen, Chief, Division of Classification and Restoration, by U.S. mail at P.O. Box 1306, Albuquerque, NM 87103; or by telephone at 505–248–6920.

SUPPLEMENTARY INFORMATION: The Act (16 U.S.C. 1531 *et seq.*) prohibits activities with endangered and threatened species unless a Federal permit allows such activities. Along with our implementing regulations in the Code of Federal Regulations (CFR) at 50 CFR 17, the Act provides for permits, and requires that we invite public comment before issuing these permits.

A permit granted by us under section 10(a)(1)(A) of the Act authorizes applicants to conduct activities with U.S. endangered or threatened species for scientific purposes, enhancement of survival or propagation, or interstate commerce. Our regulations regarding implementation of section 10(a)(1)(A) permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Applications Available for Review and Comment

We invite local, State, Tribal, and Federal agencies and the public to comment on the following applications. Please refer to the appropriate permit number (*e.g.,* Permit No. TE–123456) when requesting application documents and when submitting comments.

Documents and other information the applicants have submitted with these applications are available for review, subject to the requirements of the Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552).

Permit TE–830213

Applicant: EcoPlan Associates, Inc., Mesa, Arizona.

Applicant requests a renewal to a current permit for research and recovery purposes to conduct presence/absence surveys of the following species within Arizona:

- Black-footed ferret (*Mustela nigripes*)
- Colorado pikeminnow (*Ptychocheilus lucius*)
- Gila topminnow (*Poeciliopsis occidentalis*)
- Hualapai Mexican vole (*Microtus mexicanus hualpaiensis*)
- Jaguar (*Panthera onca*)
- Lesser long-nosed bat (Leptonycteris yerbabuenae)
- Mount Graham red squirrel (*Tamiasciurus hudsonicus grahamensis*)
- Razorback sucker (*Xyrauchen texanus*)
- Sonoran pronghorn (*Antilocapra americana sonoriensis*)
- Sonoran tiger salamander (*Ambystoma tigrinum stebbinsi*)
- Southwestern willow flycatcher (*Empidonax traillii extimus*)
- Virgin River chub (*Gila seminuda*)
- Woundfin (*Plagopterus argentissimus*)
- Yuma clapper rail (*Rallus longirostris yumanensis*)

Permit TE–829761

Applicant: U.S. Bureau of Land Management—Phoenix District Office, Phoenix, Arizona.

Applicant requests a renewal to a current permit for research and recovery purposes to conduct presence/absence surveys of the following species within Arizona:

- Desert pupfish (*Cyprinodon macularius*)
- Gila chub (*Gila intermedia*)
- Gila topminnow (*Poeciliopsis occidentalis*)
- Lesser long-nosed bat (Leptonycteris yerbabuenae)
- Sonoran pronghorn (*Antilocapra americana sonoriensis*)
- Southwestern willow flycatcher (*Empidonax traillii extimus*)

Permit TE–797127

Applicant: U.S. Army Corps of Engineers, Albuquerque, New Mexico.

Applicant requests a renewal to a current permit for research and recovery purposes to conduct presence/absence surveys for the following species in New Mexico:

- Interior least tern (*Sterna antillarum*)
- Jemez Mountain salamander (*Plethedon neomexicanus*)
- Northern aplomado falcon (*Falco femoralis*)
- Piping plover (*Charadrius melodus*)
- Rio Grande silvery minnow (*Hybognathus amarus*)
- Whooping crane (*Grus americana*)
- Holy Ghost ipomopsis (*Ipomopsis sancti-spiritus*)
- Knowlton cactus (*Pediocactus knowltonii*)
- Kuenzler's hedgehog cactus (*Echinocereus fendleri* var. *kuenzleri*)
- Mancos milk-vetch (*Astragalus humillimus*)
- Sacramento prickly poppy (*Argemone pleiacantha* spp. *pinnatisecta*)
- Sneed pincushion cactus (*Coryphantha sneedii* var. *sneedii*)
- Todsen's pennyroyal (*Hedeoma todsenii*)
- Gypsum wild-buckwheat (*Eriogonum gypsophilum*)
- Lee pincushion cactus (*Coryphantha sneedii* var. *leei*)
- Mesa Verde cactus (*Sclerocactus mesae-verdae*)
- Pecos sunflower (*Helianthus paradoxus*)
- Sacramento Mountains thistle (*Cirsium vinaceum*)
- Zuni fleabane (*Erigeron rhizomatus*)

Permit TE–42739A

Applicant: Sea Life Arizona, Tempe, Arizona.

Applicant requests a renewal to a current permit for research and recovery purposes to conduct husbandry and holding of the following species at the facility in Arizona:

- Green sea turtle (*Chelonia mydas*)
- Bonytail chub (*Gila elegans*)
- Humpback chub (*Gila cypha*)
- Razorback sucker (*Xyrauchen texanus*)
- Gila topminnow (*Poeciliopsis occidentalis*)
- Gila trout (*Oncorhynchus gilae gilae*)
- Colorado pikeminnow (*Ptychocheilus lucius*)
- Apache trout (*Oncorhynchus apache*)
- Desert pupfish (*Cyprinodon macularius*)
- Loach minnow (*Tiaroga cobitis*)
- Spikedace (*Meda fulgida*)
- Woundfin (*Plagopterus argentissimus*)
- Yaqui beautiful shiner (*Cyprinella formosa*)
- Yaqui chub (*Gila purpurea*)
- Yaqui tominnow (*Poeciliopsis occidentalis sonoriensis*)

Permit TE–064085

Applicant: Iris Rodden, Tucson, Arizona.

Applicant requests a renewal to a current permit for research and recovery purposes to conduct presence/absence surveys for the following species in Arizona:

- Interior least tern (*Sterna antillarum*)
- Lesser long-nosed bat (*Leptonycteris yerbabuenae*)
- Northern aplomado falcon (*Falco femoralis*)
- Southwestern willow flycatcher (*Empidonax traillii extimus*)

Permit TE–053104

Applicant: ACI Group Consulting, Austin, Texas.

Applicant requests a renewal to a current permit for research and recovery purposes to conduct presence/absence surveys of the following species in Texas:

- Austin blind salamander (*Eurycea waterlooensis*)
- Barton Springs salamander (*Eurycea sosorum*)
- Bee Creek Cave harvestman (*Texella reddelli*)
- Black-capped vireo (*Vireo atricapilla*)
- Bone Cave harvestman (*Texella reyesi*)
- Braken Bat Cave meshweaver (*Cicurina venii*)
- Coffin Cave mold beetle (*Batrisodes texanus*)
- Cokendolpher Cave harvestman (*Texella cokendolpheri*)
- Golden-cheeked warbler (*Dendroica chrysoparia*)
- Government Canyon Bat Cave meshweaver (*Cicurina vespera*)
- Government Canyon Bat Cave spider (*Neoleptoneta microps*)
- Ground beetle (Unnamed) (*Rhadine exilis)*
- Ground beetle (Unnamed) (*Rhadine infernalis*)
- Helotes mold beetle (*Batrisodes venyivi*)
- Houston toad (*Bufo houstonensis*)
- Kretschmarr Cave mold beetle (*Texamaurops reddelli*)
- Madla Cave meshweaver (*Cicurina madla*)
- Robber Baron Cave meshweaver (*Cicurina baronia*)
- Southwestern willow flycatcher (*Empidonax traillii extimus*)

- Texas blind salamander (*Eurycea rathbuni*)
- Tooth Cave ground beetle (*Rhadine persephone*)
- Tooth Cave pseudoscorpion (*Tartarocreagris texana*)
- Tooth Cave spider (*Neoleptoneta* (=*Leptoneta*) *myopica*)

Permit TE–48847A

Applicant: Texas A&M University Sea Life Center, Galveston, Texas.

Applicant requests a renewal to a current permit for research and recovery purposes to conduct presence/absence surveys, stranding activities, holding, and rehabilitation for Kemp's ridley (*Lepidochelys kempii*) and hawksbill (*Eretmochelys imbricata*) sea turtles within Texas.

Permit TE–043399

Applicant: Eagle Environmental Consulting, Inc., Vinita, Oklahoma.

Applicant requests a renewal to a current permit for research and recovery purposes to conduct presence/absence surveys for interior least tern (*Sterna antillarum*) within Oklahoma and American burying beetle (*Nicrophorus americanus*) within Arkansas, Kansas, Louisiana, Oklahoma, and Texas.

Permit TE–829995

Applicant: Dallas Zoo and Aquarium, Dallas, Texas.

Applicant requests a renewal to a current permit for research and recovery purposes to conduct husbandry and holding for the following species at the zoo in Texas:

- Austin blind salamander (*Eurycea waterlooensis*)
- Barton Springs salamander (*Eurycea sosorum*)
- Hawksbill sea turtle (*Eretmochelys imbricata*)
- Houston toad (*Bufo houstonensis*)

Permit TE–051819

Applicant: Fort Worth Zoo, Fort Worth, Texas.

Applicant requests an amendment to a current permit for research and recovery purposes to conduct husbandry and holding of Austin blind salamanders (*Eurycea waterlooensis*) at the zoo in Texas.

Permit TE–066229

Applicant: Whitenton Group, San Marcos, Texas.

Applicant requests a renewal to a current permit for research and recovery purposes to conduct presence/absence surveys of the following species in Texas:

- Austin blind salamander (*Eurycea waterlooensis*)
- Barton Springs salamander (*Eurycea sosorum*)
- Black-capped vireo (*Vireo atricapilla*)
- Fountain darter (Etheostoma fonticola)
- Golden-cheeked warbler (*Dendroica chrysoparia*)
- Houston toad (*Bufo houstonensis)*
- Northern aplomado falcon (*Falco femoralis*)
- Ocelot (*Leopardus pardalis*)
- Piping plover (*Charadrius melodus*)
- Red-cockaded woodpecker (*Picoides borealis*)
- San Marcos gambusia (*Gambusia georgei*)

Permit TE–58226B

Applicant: James Hall, Austin, Texas.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for golden-cheeked warbler (*Dendroica chrysoparia*) within Texas.

Permit TE–58243B

Applicant: Austin Hill, Richardson, Texas.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for American burying beetle (*Nicrophorus americanus*) within Texas, Oklahoma, Kansas, and Arkansas.

Permit TE–195191

Applicant: Baer Engineering and Environmental Consulting, Austin, Texas.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for black-capped vireo (*Vireo atricapilla*) and golden-cheeked warbler (*Dendroica chrysoparia*) within Texas.

Permit TE–676811

Applicant: U.S. Fish and Wildlife Service—Region 2, Albuquerque, New Mexico.

Applicant requests an amendment to a current permit for research and recovery purposes to conduct presence/absence surveys of and regular management duties associated with the following species within the southwest region:

- Black-footed ferret (*Mustela nigripes*)
- Canada lynx (*Lynx canadensis*)
- Gray bat (*Myotis grisescens*)
- Gray wolf (*Canis lupus*)
- Hualapai Mexican vole (*Microtus mexicanus hualapaiensis*)
- Indiana bat (*Myotis sodalis*)
- Jaguar (*Panthera onca*)
- Jaguarundi (*Herpailurus (=Felis) yagouaroundi*)
- Lesser long-nosed bat *(Leptonycteris curasoae yerbabuenae*)
- Louisiana black bear (*Ursus americanus luteolus*)
- Mexican gray wolf (*Canis lupus baileyi*)
- Mexican long-nosed bat (*Leptonycteris nivalis*)
- Mount Graham red squirrel (*Tamiasciurus hudsonicus grahamensis*)
- New Mexico meadow jumping mouse (*Zapus husonius lutueus*)
- Ocelot (*Leopardus (=Felis) pardalis*)
- Ozark big-eared bat (*Plecotus townsendii ingens*)
- Red wolf (*Canis rufus*)
- Sonoran pronghorn (*Antilocapra americana sonoriensis*)
- Attwater's greater prairie-chicken (*Tympanuchus cupido attwateri*)
- Black-capped vireo (*Vireo atricapillus*)
- California condor (*Gymnogyps californianus*)
- Eskimo curlew (*Numenius borealis*)
- Golden-cheeked warbler (*Dendroica chrysoparia*)
- Interior least tern (*Sterna antillarum*)
- Ivory-billed woodpecker (*Campephilus principalis*)
- Lesser prairie-chicken (*Tympanuchus pallidicinctus*)
- Masked bobwhite quail (*Colinus virginianus ridgwayi*)
- Mexican spotted owl (*Strix occidentalis lucida*)
- Northern aplomado falcon (*Falco femoralis septentrionalis*)
- Piping plover (*Charadrius melodus*)
- Red-cockaded woodpecker (*Picoides borealis*)
- Southwestern willow flycatcher (*Expidonax traillii extimus*)
- Western yellow-billed cuckoo (*Coccyzus americanus*)
- Whooping crane (*Grus americana*)
- Yuma clapper rail (*Rallus longirostris yumanensis*)
- Desert tortoise (*Gopherus (=Xerobates, =Scaptochelys) agassizii*)
- Narrowheaded gartersnake (*Thamnophis rufipunctatus*)
- New Mexican ridge-nosed rattlesnake (*Crotalus willardi obscurus*)
- Northern Mexico gartersnake (*Thamnophis eques megalops*)
- Kemp's ridley sea turtle (*Lepidochelys kempii*)
- Green sea turtle (*Chelonia mydas*)
- Loggerhead sea turtle (*Caretta caretta*)
- Hawksbill sea turtle (*Eretmochelys imbricata*)
- Leatherback sea turtle (*Dermochelys coriacea*)
- Austin blind salamander (*Eurycea waterlooensis*)
- Barton Springs salamander (*Eurycea sosorum*)
- Chiricahua leopard frog (*Rana chiricahuensis*)

- Georgetown salamander (*Eurycea naufragia*)
- Houston toad (*Bufo houstonensis*)
- Jemez Mountains salamander (*Plethodon neomexicanus*)
- Jollyville Plateau salamander (*Eurycea tonkawae*)
- Salado salamander (*Eurycea chisholmensis*)
- San Marcos salamander (*Eurycea nana*)
- Sonora tiger salamander (*Ambystoma tigrinum stebbinsi*)
- Texas blind salamander (*Typhlomolge rathbuni*)
- Apache (=Arizona) trout (*Oncorhynchus (=Salmo) apache*)
- Arkansas River shiner (*Notropis girardi*)
- Beautiful shiner (*Cyprinella (=Notropis) formosa*)
- Big Bend gambusia (*Gambusia gaigei*)
- Bonytail chub (*Gila elegans*)
- Chihuahua chub (*Gila nigrescens*)
- Clear Creek gambusia (*Gambusia heterochir*)
- Colorado pikeminnow (*Ptychocheilus lucius*)
- Comanche Springs pupfish (*Cyprinodon elegans*)
- Desert pupfish (*Cyprinodon macularius*)
- Devil's Hole pupfish (*Cyprinodon diabolis*)
- Devil's River minnow (*Dionda diaboli*)
- Fountain darter (*Etheostoma fonticola*)
- Gila chub (*Gila intermedia*)
- Gila topminnow (*Poeciliopsis occidentalis*)
- Gila trout (*Oncorhynchus (=Salmo) gilae*)
- Humpback chub (*Gila cypha*)
- Leon Springs pupfish (*Cyprinodon bovinus*)
- Leopard darter (*Percina pantherina*)
- Little Colorado spinedace (*Lepidomeda vittata*)
- Loach minnow (*Rhinichthys (=Tiaroga) cobitis*)
- Neosho madtom (*Noturus placidus*)
- Ozark cavefish (*Amblyopsis rosae*)
- Pecos bluntnose shiner (*Notropis simus pecosensis*)
- Pecos gambusia (*Gambusia nobilis*)
- Razorback sucker (*Xyrauchen texanus*)
- Rio Grande silvery minnow (*Hybognathus amarus*)
- San Marcos gambusia (*Gambusia georgei*)
- Sharpnose shiner (*Notropis oxyrhynchus*)
- Smalleye shiner (*Notropic buccula*)
- Sonora chub (*Gila ditaenia*)
- Spikedace (*Meda fulgida*)
- Virgin River chub (*Gila robusta semidnuda*)
- Woundfin (*Plagopterus argentissimus*)
- Yaqui catfish (*Ictalurus pricei*)
- Yaqui chub (*Gila purpurea*)
- Yaqui topminnow (*Poeciliopsis occidentalis sonoriensis*)
- Zuni bluehead sucker (*Catostomus discobolus yarrowi*)
- Neosho mucket (*Lampsilis rafinesqueana*)
- Ouachita rock-pocketbook (*Arkansia wheeleri*)
- Rabbitsfoot (*Quadrula cylindrica cylindrica*)
- Scaleshell (mussel) (*Leptodea leptodon*)
- Winged mapleleaf (mussel) (*Quadrula fragosa*)
- Alamosa springsnail (*Tryonia alamosae*)
- Chupadera springsnail (*Pyrgulopsis chupaderae*)
- Diamond tryonia (*Pseudotryonia adamantine*)
- Gonzales tryonia (*Tryonia circumstriata*)
- Kanab ambersnail (*Oxyloma haydeni kanabensis*)
- Koster's springsnail (*Juturnia kosteri*)
- Pecos assiminea (*Assiminea pecos*)
- Phantom springsnail (*Pyrgulopsis texana*)
- Phantom tryonia (*Tryonia cheatumi*)
- Roswell springsnail (*Pyrgulopsis roswellensis*)
- San Bernadino springsnail (*Pyrgulopsis bernardina*)
- Socorro springsnail (*Pyrgulopsis neomexicana*)
- Three Forks springsnail (*Pyrgulopsis trivialis*)
- American burying beetle (*Nicrophorus americanus*)
- Coffin Cave mold beetle (*Batrisodes texanus*)
- Comal Springs dryopid beetle (*Stygoparnus comalensis*)
- Comal Springs riffle beetle (*Heterelmis comalensis*)
- Kretschmarr Cave mold beetle (*Texamaurops reddelli*)
- Tooth Cave ground beetle (*Rhadine persephone*)
- Bee Creek Cave harvestman (*Texella reddelli*)
- Bone Cave harvestman (*Texella reyesi*)
- Tooth Cave pseudoscorpion (*Tartarocreagris texana*)
- Tooth Cave spider (*Neoleptoneta myopica*)
- ground beetle, no common name *(Rhadine exilis*)
- ground beetle, no common name *(Rhadine infernalis*)
- Helotes mold beetle *(Batrisodes venyivi*)
- Cokendolpher cave harvestman *(Texella cokendolpheri*)
- Robber Baron cave meshweaver (*Cicurina baronia*)
- Madla's cave meshweaver *(Cicurina madla*)
- Bracken Bat Cave meshweaver *(Cicurina venii*)
- Government Canyon Bat Cave meshweaver *(Cicurina vespera*)
- Government Canyon Bat Cave spider *(Neoleptoneta microps*)
- Diminutive amphipod (Gammarus hyalleloides)
- Peck's Cave amphipod (*Stygobromus (=Stygonectes) pecki*)
- Pecos amphipod (*Gammarus pecos*)
- Socorro isopod (*Thermosphaeroma thermophilus*)
- Noel's amphipod (*Gammarus desperatus*)
- Acuña cactus (*Echinomastus erectocentrus* var. *acunensis*)
- Arizona hedgehog cactus (*Echinocereus triglochidiatus* var. *arizonicus (=E. arizonicus)*)
- Arizona cliffrose (*Purshia (=Cowania) subintegra*)
- Ashy dogwood (*Thymophyla (=Dyssodia) tephroleuca*)
- Black lace cactus (*Echinocereus reichenbachii* var. *albertii (=E. melanocentrus)*)
- Brady pincushion cactus (*Pediocactus (=Toumeya) bradyi*)
- Bunched cory cactus (*Coryphantha ramillosa*)
- Canelo Hills ladies'-tresses (*Spiranthes delitescens*)
- Chisos Mountain hedgehog cactus (*Echinocereus chisosensis* var. *chisosensis)*
- Cochise pincushion cactus (*Coryphantha (=Cochiseia, Escobaria) robbinsorum*)
- Davis' green pitaya (*Echinocereus viridiflorus* var. *Davisii (=E. Davisii)*)
- Eastern prairie fringed orchid (*Platanthera leucophaea*)
- Fickeisen plains cactus (*Pediocactus peeblesianus* var. *fickeiseniae*)
- Gierisch mallow (*Sphaeralcea gierischii*)
- Gypsum wild-buckwheat (*Eriogonum gypsophilum*)
- Hinckley's oak (*Quercus hinckleyi*)
- Holmgren milk-vetch *(Astragalus holmgreniorum)*
- Holy Ghost ipomopsis (*Ipomopsis sancti-spiritus*)
- Huachuca water umbel (*Lilaeopsis schaffneriana* var. *recurva*)
- Johnston's frankenia (*Frankenia johnstonii*)
- Jones cycadenia (*Cycadenia humilis* var. *jonesii*)
- Kearney's blue-star (*Amsonia kearneyana*)
- Knowlton cactus (*Pediocactus (=Toumeya) knowltonii*) (=*P. Bradyi* var. *k.*)
- Kuenzler hedgehog cactus (*Echinocereus fendleri* var. *kuenzleri)*

- Large-fruited sand verbena (*Abronia macrocarpa*)
- Lee pincushion cactus (*Coryphantha (=Escobaria, =Mammillaria) sneedii* var. *leei*)
- Little Aguja pondweed (*Potamogeton clystocarpus*)
- Lloyd's mariposa cactus (*Echinomastus (=Echinocactus, =Sclerocactus, =Neolloydia mariposensis)*)
- Mancos milk-vetch (*Astragalus humillimus*)
- Mesa Verde cactus (*Sclerocactus (=Coloradoa, =Echinocactus, =Pediocactus) mesae- verdae*)
- Navajo sedge (*Carex specuicola*)
- Navasota ladies'-tresses (*Spiranthes parksii*)
- Neches River rose-mallow (*Hibiscus dasycalyx*)
- Nellie cory cactus (*Coryphantha (=Escobaria, =Mammillaria) minima (=nellieae)*)
- Nichol's Turk's head cactus (*Echinocactus horizonthalonius* var. *nicholii*)
- Pecos (=puzzle) sunflower (*Helianthus paradoxus*)
- Peebles Navajo cactus (*Pediocactus (=Echinocactus, =Navajoa, = Toumeya, =Utahia) peeblesianus* var. *peeblesianus*)
- Pima pineapple cactus (*Coryphantha scheeri var. robustispina*)
- Sacramento prickly-poppy (*Argemone pleiacantha ssp. pinnatisecta*)
- Sacramento Mountains thistle (*Cirsium vinaceum*)
- San Francisco Peaks groundsel (*Senecio franciscanus*)
- Sentry milk-vetch (*Astragalus cremnophylax* var. *cremnophylax*)
- Siler pincushion cactus (*Pediocactus (=Echinocactus, =Utahia) sileri*)
- Slender rush-pea (*Hoffmannseggia tenella*)
- Sneed pincushion cactus (*Coryphantha (=Escobaria, =Mammillaria) sneedii var. sneedii*)
- South Texas ambrosia (*Ambrosia cheiranthifolia*)
- Star cactus (*Astrophytum asterias*)
- Terlingua Creek cat's eye (*Cryptantha crassipes*)
- Texas ayenia (*Ayenia limitaris*)
- Texas golden gladecress (*Leavenworthia texana*)
- Texas prairie dawn (=Texas bitterweed) (*Hymenoxys texana*)
- Texas poppy-mallow (*Callirhoe scabriuscula*)
- Texas trailling phlox (*Phlox nivalis* ssp. *texensis*)
- Texas wild-rice (*Zizania texana*)
- Texas snowbells (*Styrax texana*)
- Tobusch fishhook cactus (*Ancistrocactus (=Echinocactus, =Mammillaria) tobuschii*)
- Todsen's pennyroyal (*Hedeoma todsenii*)
- Walker's manioc (*Manihot walkerae*)
- Welsh's milkweed (*Asclepias welshii*)
- Western prairie fringed orchid (*Platanthera praeclara*)
- White bladderpod (*Lesquerella pallida*)
- Zapata bladderpod (*Lesquerella thanmnophila*)
- Zuni (=Rhizome) fleabane (*Erigeron rhizomatus*)

Permit TE–5878A

Applicant: University of Arizona, Tucson, Arizona.

Applicant requests a renewal to a current permit for research and recovery purposes to conduct presence/absence surveys and research activities for ocelot (*Leopardus pardalis*) and jaguar (*Panthera onca*) within Arizona.

National Environmental Policy Act (NEPA)

In compliance with NEPA (42 U.S.C. 4321 *et seq.*), we have made an initial determination that the proposed activities in these permits are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement (516 DM 6 Appendix 1, 1.4C(1)).

Public Availability of Comments

All comments and materials we receive in response to this request will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section of this notice.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*)

Dated: March 11, 2015.

Stephen Robertson,

Acting Regional Director, Southwest Region, U.S. Fish and Wildlife Service.

[FR Doc. 2015–06573 Filed 3–20–15; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R6–ES–2015–N010; FXES11130600000–156–FF06E00000]

Endangered and Threatened Species; Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits.

SUMMARY: We, the U.S. Fish and Wildlife Service, have issued the following permits to conduct certain activities with endangered species under the authority of the Endangered Species Act, as amended (Act).

FOR FURTHER INFORMATION CONTACT: Kathy Konishi, Recovery Permit Coordinator, Ecological Services, (719) 628–2670 (phone); *permitsR6ES@fws.gov* (email).

SUPPLEMENTARY INFORMATION: We have issued the following permits in response to recovery permit applications we received under the authority of section 10 of the Act (16 U.S.C. 1531 *et seq.*). Issuance of each permit occurred only after we determined that it was applied for in good faith, that granting the permit would not be to the disadvantage of the listed species, and that the terms and conditions of the permit were consistent with purposes and policy set forth in the Act.

Applicant name	Permit No.	Date issued	Date expired
BIO–LOGIC INC.	36792A	12/1/2014	12/31/2019
BLAHA RANCH, INC.	40466B	10/10/2014	10/7/2034
BOROFF LAND & LIVESTOCK	40464B	10/10/2014	10/7/2034
BOUSMAN LIVESTOCK, INC.	32286B	10/10/2014	10/7/2034
CITY OF FORT COLLINS NATURAL AREAS DEPARTMENT	42721B	10/21/2014	9/30/2019
DEFENDERS OF WILDLIFE	40145B	12/1/2014	12/31/2019
G&E LIVESTOCK, INC.	32288B	10/10/2014	10/7/2034
HIP INVESTMENTS LLC	40463B	10/10/2014	10/7/2034
LAWRENCE, CINDY	27300B	7/11/2014	6/30/2019

Applicant name	Permit No.	Date issued	Date expired
LONGREACH BUFFALO CO, LLC	42567B	10/10/2014	10/7/2034
MARETTE, BRANDON B.	25496B	12/15/2014	12/31/2019
MERLIN RANCH, INC.	40602B	10/10/2014	10/7/2034
NATIONAL PARK SERVICE	191853	8/20/2014	7/1/2019
PAPE RANCHES, INC.	40467B	10/10/2014	10/7/2034
PETERSON, JOHN F.	34900B	12/5/2014	12/31/2019
ROGERS, DONALD W.	40478B	10/10/2014	10/7/2034
U.S. GEOLOGICAL SURVEY	121914	7/25/2014	5/31/2019
UTAH DIVISION OF WILDLIFE RESOURCES	39634B	6/23/2014	6/16/2050

Availability of Documents

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written requires for a copy of such documents to Kathy Konishi (see **FOR FURTHER INFORMATION CONTACT**).

Authority

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*).

Michael G. Thabault,

Assistant Regional Director, Mountain-Prairie Region.

[FR Doc. 2015–06519 Filed 3–20–15; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R6–ES–2014–N252; FXES11130600000–156–FF06E00000]

Endangered and Threatened Wildlife and Plants; Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered or threatened species. With some exceptions, the Endangered Species Act of 1973, as amended (Act), prohibits activities with endangered and threatened species unless a Federal permit allows such activity. The Act requires that we invite public comment before issuing these permits.

DATES: To ensure consideration, please send your written comments by April 20, 2015.

ADDRESSES: You may submit comments or requests for copies or more information by any of the following methods. Alternatively, you may use one of the following methods to request hard copies or a CD–ROM of the documents. Please specify the permit you are interested in by number (*e.g.,* Permit No. TE–XXXXXX).

- *Email: permitsR6ES@fws.gov.* Please refer to the respective permit number (*e.g.,* Permit No. TE–XXXXXX) in the subject line of the message.
- *U.S. Mail:* Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 25486–DFC, Denver, CO 80225.
- *In-Person Drop-off, Viewing, or Pickup:* Call (719) 628–2670 to make an appointment during regular business hours at 134 Union Blvd., Suite 645, Lakewood, CO 80228.

FOR FURTHER INFORMATION CONTACT: Kathy Konishi, Recovery Permits Coordinator, Ecological Services, (719) 628–2670 (phone); *permitsR6ES@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

Background

The Act (16 U.S.C. 1531 *et seq.*) prohibits activities with endangered and threatened species unless a Federal permit allows such activity. Along with our implementing regulations at 50 CFR 17, the Act provides for permits and requires that we invite public comment before issuing these permits.

A permit granted by us under section 10(a)(1)(A) of the Act authorizes the permittees to conduct activities with U.S. endangered or threatened species for scientific purposes, enhancement of propagation or survival, or interstate commerce (the latter only in the event that it facilitates scientific purposes or enhancement of propagation or survival). Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Applications Available for Review and Comment

We invite local, State, and Federal agencies and the public to comment on the following applications. Documents and other information the applicants have submitted with their applications are available for review, subject to the requirements of the Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552).

Permit Application Number TE704930

Applicants: Michael Thabault and Nicole Alt, U.S. Fish and Wildlife Service, Region 6, Ecological Services, Denver, CO.

The applicants request an amendment to add New Mexico meadow jumping mouse (*Zapus hudsonius luteus*), red knot (*Calidris canutus rufa*), Gunnison sage-grouse (*Centrocercus minimus*), yellow-billed cuckoo (*Coccyzus americanus*), Eskimo curlew (*Numenius borealis*), lesser prairie-chicken (*Tympanuchus pallidicinctus*), white sturgeon (*Acipenser transmontanus*), Gierisch mallow (*Sphaeralcea gierischii*), Leedy's roseroot (*Rhodiola integrifolia* ssp. *leeydi*), Higgins eye (pearlymussel) (*Lampsilis higginsii*), rabbitsfoot (*Quadrula cylindrica cylindrica*), Dakota skipper (*Hesperia dacotae*), and Poweshiek skipperling (*Oarisma poweshiek*) to an existing permit to purposefully take (display, photograph, harass by survey, capture, handle, weigh, measure, mark, obtain biological samples, breed in captivity, reintroduce, relocate, remove from the wild, and kill) in conjunction with surveys and population monitoring for the purpose of enhancing the species' survival. This permit will allow Fish and Wildlife Service (Service) employees, agents of the Service, and Service volunteers to lawfully conduct threatened and endangered species activities, in conjunction with recovery activities throughout the species' range, as outlined in Fish and Wildlife Service employees' and volunteers' position descriptions.

Permit Application Number TE232905

Applicant: City of Saint Paul, Como Zoo, Saint Paul, MN.

The applicant requests a permit to propagate Wyoming toads (*Anaxyrus baxteri*) to preserve genetic diversity and provide individuals for

reintroduction into suitable sites identified by the U.S. Fish and Wildlife Service for the purpose of enhancing the species' survival.

Permit Application Number TE207946

Applicant: Bureau of Reclamation, Denver Federal Center, Denver, CO.

The applicant requests a permit to conduct presence/absence surveys for the New Mexico meadow jumping mouse (*Zapus hudsonius luteus*) in New Mexico to identify and avoid occupied habitat during reclamation activities for the purpose of enhancing the species' survival.

Permit Application Number TE227446

Applicant: Clifton Sanitation District, 3217 D Road, Clifton, CO.

The applicant requests the renewal of a permit for educational display and propagation of bonytail (*Gila elegans*), Colorado pikeminnow (*Ptychocheilus lucius*), humpback chub (*Gila cypha*), and razorback sucker (*Xyrauchen texanus*) at the Clifton Sanitation District facility for the purpose of enhancing the species' survival.

National Environmental Policy Act

In compliance with the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), we have made an initial determination that the proposed activities in these permits are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement (516 DM 6 Appendix 1, 1.4C(1)).

Public Availability of Comments

All comments and materials we receive in response to these requests will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section of this notice.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*).

Michael G. Thabault,

Assistant Regional Director, Mountain-Prairie Region.

[FR Doc. 2015–06520 Filed 3–20–15; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R6–ES–2015–N029]; [FXES11130600000–156–FF06E00000]

Endangered and Threatened Wildlife and Plants; Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on four applications to conduct activities intended enhance the survival of target endangered or threatened species. The Endangered Species Act of 1973, as amended (Act), prohibits certain activities with endangered and threatened species unless authorized by a Federal permit. The Act requires that we invite public comment before issuing these permits.

DATES: To ensure consideration, please send your written comments by April 22, 2015.

ADDRESSES: You may submit comments or requests for copies or more information by any of the following methods. Alternatively, you may use one of the following methods to request hard copies or a CD–ROM of the documents. Please specify the permit you are interested in by number (*e.g.,* Permit No. TE–XXXXXX).

- *Email: permitsR6ES@fws.gov.* Please refer to the respective permit number (*e.g.,* Permit No. TE–XXXXXX) in the subject line of the message.
- *U.S. Mail:* Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 25486–DFC, Denver, CO 80225.
- *In-Person Drop-off, Viewing, or Pickup:* Call (719) 628–2670 to make an appointment during regular business hours at 134 Union Blvd., Suite 645, Lakewood, CO 80228.

FOR FURTHER INFORMATION CONTACT: Kathy Konishi, Recovery Permits Coordinator, Ecological Services, (719) 628–2670 (phone); *permitsR6ES@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

Background

The Act (16 U.S.C. 1531 *et seq.*) prohibits certain activities with endangered and threatened species unless authorized by a Federal permit. Along with our implementing regulations at 50 CFR 17, the Act provides for permits and requires that we invite public comment before issuing these permits.

A permit granted by us under section 10(a)(1)(A) of the Act authorizes the permittees to conduct activities with U.S. endangered or threatened species for scientific purposes, enhancement of propagation or survival, or interstate commerce (the latter only in the event that it facilitates scientific purposes or enhancement of propagation or survival). Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Applications Available for Review and Comment

We invite local, State, and Federal agencies and the public to comment on the following applications. Documents and other information the applicants have submitted with their applications are available for review, subject to the requirements of the Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552).

Permit Application Number TE43046A

Applicant: Kirk Mammoliti, Greenwood, MO.

The applicant requests a permit to conduct presence/absence surveys for Topeka shiner (*Notropis topeka*) in Kansas to identify and avoid occupied habitat during reclamation activities for the purpose of enhancing the species' survival.

Permit Application Number TE060668

Applicants: Bellini Environmental Consulting, Midway, UT.

The applicants request an amendment to expand the geographic survey area for Southwestern willow flycatcher (*Empidonax traillii extimus*) from Utah to range-wide authorization for the purpose of enhancing the species' survival.

Permit Application Number TE207946

Applicant: Bureau of Reclamation, Denver, CO.

The applicant requests a permit to conduct presence/absence surveys for New Mexico meadow jumping mouse

(*Zapus hudsonius luteus*) in Colorado to identify and avoid occupied habitat during land reclamation activities for the purpose of enhancing the species' survival.

Permit Application Number TE56902B

Applicant: Bureau of Reclamation, Denver, CO.

The applicant requests a permit to conduct presence/absence surveys for pallid sturgeon (*Scaphirhynchus albus*) in the Yellowstone River of Montana to develop a baseline analysis of occupied habitat. These data will assist in the evaluation of the effectiveness of a proposed fish bypass structure. The proposed structure will provide passage of pallid sturgeon and other native fishes around current impediments constructed in 1907 for the purpose of enhancing the species' survival.

National Environmental Policy Act

In compliance with the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), we have made an initial determination that the proposed activities in these permits are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement (516 DM 6 Appendix 1, 1.4C(1)).

Public Availability of Comments

All comments and materials we receive in response to these requests will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section of this notice.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*).

Michael G. Thabault,

Assistant Regional Director, Mountain-Prairie Region.

[FR Doc. 2015–06521 Filed 3–20–15; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–R–2015–N032; FXRS1265030000–156–FF03R06000]

Whittlesey Creek National Wildlife Refuge, Bayfield County, Wisconsin; Draft Comprehensive Conservation Plan and Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft comprehensive conservation plan (CCP) and environmental assessment (EA) for the Whittlesey Creek National Wildlife Refuge (Refuge, NWR) for public review and comment. In this draft CCP/EA we describe how we propose to manage the Refuge for the next 15 years.

DATES: To ensure consideration, we must receive your written comments by April 22, 2015. We will hold an open house-style meeting during the comment period to receive comments and provide information on the draft plan. In addition, we will use special mailings, newspaper articles, Internet postings, and other media announcements to inform people of opportunities for input.

ADDRESSES: Send your comments or requests for more information by any of the following methods:

- *Email: r3planning@fws.gov.* Include ''Whittlesey Creek Draft CCP/EA'' in the subject line of the message.
- *Fax:* Attention: Refuge Manager, Whittlesey Creek NWR, 715–685–2680.
- *U.S. Mail:* Attention: Refuge Manager, Whittlesey Creek NWR, Northern Great Lakes Visitor Center, 29270 County Highway G, Ashland, WI 54806.
- *In-Person Drop Off:* You may drop off comments during regular business hours at the above addresses.

You will find the draft CCP/EA, as well as information about the planning process and a summary of the CCP, on the planning Web site at *http://www.fws.gov/midwest/planning/whittleseycreek/index.html.*

FOR FURTHER INFORMATION CONTACT: Tom Kerr, 715–246–7784.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we continue the CCP process for Whittlesey Creek National Wildlife Refuge, which we began by publishing a notice of intent in the **Federal Register** (78 FR 3909) on January 17, 2013. For more about the initial process and the history of this Refuge, see that notice.

Background

The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee) (Administration Act), requires us to develop a CCP for each national wildlife refuge. The purpose in developing a CCP is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System (NWRS), consistent with sound principles of fish and wildlife management, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

Each unit of the NWRS was established for specific purposes. We use these purposes as the foundation for developing and prioritizing the management goals and objectives for each refuge within the NWRS mission, and to determine how the public can use each refuge. The planning process is a way for us and the public to evaluate management goals and objectives that will ensure the best possible approach to wildlife, plant, and habitat conservation, while providing for wildlife-dependent recreation opportunities that are compatible with each refuge's establishing purposes and the mission of the NWRS.

Additional Information

The draft CCP/EA may be found at *http://www.fws.gov/midwest/planning/whittleseycreek/index.html.* That document incorporates an EA, prepared in accordance with the National Environmental Policy Act (NEPA) (43 U.S.C. 4321 *et seq.*). The draft CCP/EA includes detailed information about the planning process, refuge, issues, and management alternatives considered and proposed. The EA includes discussions of four alternative refuge management options. The Service's preferred alternative is reflected in the draft CCP.

The alternatives analyzed in detail include:

• Alternative A: Current Management (No Action)—This alternative reflects the current management direction of Whittlesey Creek NWR. It provides the baseline against which to compare other alternatives. For NEPA purposes, this is referred to as the ''No Action'' alternative.

• Alternative B: Refuge and Watershed Restoration; Maintain Visitor Center Partnership (Preferred Alternative)—Under this alternative, prioritized focus areas for habitat restoration would be developed for the watershed and the Refuge using data from sediment and hydrology models. The quantity and quality of habitat for native brook trout and migratory waterfowl and shorebirds would increase. Stream and floodplain hydrology would better emulate natural seasonal and long-term variability. Current Service participation in the Northern Great Lakes Visitor Center (NGLVC) would continue; Refuge staff would participate in NGLVC programs that align with the NWRS mission and Refuge purposes.

• Alternative C: Watershed Restoration; Expand Visitor Center Partnership—Under this alternative, habitat restoration would focus on reducing sedimentation and flood peaks in the Whittlesey Creek watershed. The quantity and quality of habitat for native brook trout would increase and stream hydrology would better emulate natural seasonal and long-term variability. Service participation in the NGLVC would increase, and Refuge visitor services activities would focus on NGLVC programs and special events.

• Alternative D: Refuge Restoration; Reduce Visitor Center Partnership—Under this alternative, habitat restoration would focus on floodplain forest, wetlands, and streams within the Refuge boundary. The quality of habitat for waterfowl and shorebirds would improve and floodplain hydrology would better emulate seasonal and long-term variability. Service participation in the NGLVC would decrease; Refuge staff and visitor services activities would move off site.

Public Involvement

We will give the public an opportunity to provide input at a public meeting. You can obtain the schedule from the address or Web site listed in this notice (see **ADDRESSES**). You may also submit comments anytime during the comment period.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Charles M. Wooley,

Acting Regional Director.

[FR Doc. 2015–06577 Filed 3–20–15; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO260000.L10600000.PC0000. LXSIADVSBD00]

Notice of Wild Horse and Burro Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) announces that the Wild Horse and Burro Advisory Board will conduct a meeting on matters pertaining to management and protection of wild, free-roaming horses and burros on the Nation's public lands.

DATES: The Advisory Board will meet on Wednesday April 22, 2015, from 8 a.m. to 5 p.m. Eastern Time and Thursday April 23, 2015, from 8:00 a.m. to 5:00 p.m. Eastern Time. This will be a two day meeting.

ADDRESSES: This Advisory Board meeting will take place in Columbus, Ohio at the Hyatt Regency Columbus, 350 North High Street, Columbus, OH 43215, telephone 614–463–1234.

Written comments pertaining to the April 22–23, 2015, Advisory Board meeting can be mailed to National Wild Horse and Burro Program,WO–260, Attention: Ramona DeLorme, 1340 Financial Boulevard, Reno, NV 89502–7147, or sent electronically to *wildhorse@blm.gov.* Please include ''Advisory Board Comment'' in the subject line of the email.

FOR FURTHER INFORMATION CONTACT: Ramona DeLorme, Wild Horse and Burro Administrative Assistant, at 775–861–6583. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Wild Horse and Burro Advisory Board advises the Secretary of the Interior, the BLM Director, the Secretary of Agriculture, and the Chief of the Forest Service on matters pertaining to the management and protection of wild, free-roaming horses and burros on the Nation's public lands. The Wild Horse and Burro Advisory Board operates under the authority of 43 CFR 1784. The tentative agenda for the meeting is:

I. Advisory Board Public Meeting

Wednesday, April 22, 2015 (8:00 a.m.–5:00 p.m.)

8:00 a.m. Welcome, Introductions, and Agenda Review
8:50 a.m. Approval of August 2014 Minutes
9:10 a.m. BLM Response to Advisory Board Recommendations
9:30 a.m. Wild Horse and Burro Program Update
12:00 p.m. Lunch
1:15 p.m. Program Update continued
3:00 p.m. Public Comment Period Begins
4:30 p.m. Public Comment Period Ends
5:00 p.m. Adjourn

Thursday, April 23, 2015 (8:00 a.m.–5:00 p.m.)

8:00 a.m. Program Update continued
12:00 p.m. Lunch
1:15 p.m. Working Group Reports
2:45 p.m. Advisory Board Discussion and Recommendations to the BLM
5:00 p.m. Adjourn

The meeting site is accessible to individuals with disabilities. An individual with a disability needing an auxiliary aid or service to participate in the meeting, such as an interpreting service, assistive listening device, or materials in an alternate format, must notify Ms. DeLorme two weeks before the scheduled meeting date. Although the BLM will attempt to meet a request received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange for it.

The Federal Advisory Committee Management Regulations at 41 CFR 101–6.1015(b), requires BLM to publish in the **Federal Register** notice of a public meeting 15 days prior to the meeting date.

II. Public Comment Procedures

On Wednesday, April 22, 2015 at 3:00 p.m. members of the public will have the opportunity to make comments to the Advisory Board on the Wild Horse and Burro Program. Persons wishing to make comments during the meeting should register in person with the BLM by 2:00 p.m. on April 22, 2015, at the meeting location. Depending on the number of commenters, the Advisory Board may limit the length of comments. At previous meetings, comments have been limited to three minutes in length; however, this time may vary. Commenters should address the specific wild horse and burro-related topics listed on the agenda. Speakers are requested to submit a written copy of their statement to the address listed in the **ADDRESSES** section above or bring a written copy to the meeting. There may be a Webcam present during the entire meeting and individual comments may be recorded.

Participation in the Advisory Board meeting is not a prerequisite for submission of written comments. The BLM invites written comments from all interested parties. Your written comments should be specific and explain the reason for any recommendation. The BLM appreciates any and all comments. The BLM considers comments that are either supported by quantitative information or studies or those that include citations to and analysis of applicable laws and regulations to be the most useful and likely to influence BLM's decisions on the management and protection of wild horses and burros.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 43 CFR 1784.4–1.

Shelley J. Smith,

Deputy Assistant Director (Acting), Resources and Planning.

[FR Doc. 2015–06517 Filed 3–20–15; 8:45 am]

BILLING CODE 4310–84–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–753–754 and 756 (Third Review)]

Cut-to-Length Carbon Steel Plate From China, Russia, and Ukraine; Scheduling of Full Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty order on cut-to-length carbon steel plate from China and/or the suspension agreements on cut-to-length carbon steel plate from Russia and Ukraine would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. § 1675(c)(5)(B). For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* March 16, 2015.

FOR FURTHER INFORMATION CONTACT: Michael Haberstroh (202–205–3390), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background.—On January 5, 2015, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews pursuant to section 751(c)(5) of the Act should proceed (80 FR 2443, January 16, 2015). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's Web site.

Participation in the reviews and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. § 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the reviews will be placed in the nonpublic record on September 3, 2015, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the reviews beginning at 9:30 a.m. on September 29, 2015, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before September 22, 2015. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations

should participate in a prehearing conference to be held on September 28, 2015 (if deemed necessary). Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is September 17, 2015. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is October 8, 2015. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before October 8, 2015. On October 29, 2015, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before November 2, 2015, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's Handbook on E-Filing, available on the Commission's Web site at *http://edis.usitc.gov*, elaborates upon the Commission's rules with respect to electronic filing.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: March 17, 2015.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2015–06439 Filed 3–20–15; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Demonstration and Evaluation of the Short-Time Compensation (STC) Program (STC) Grants Program

AGENCY: Office of the Assistant Secretary for Policy, Chief Evaluation Office, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that required data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. A copy of the proposed Information Collection Request can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before May 22, 2015.

ADDRESSES: You may submit comments by either one of the following methods: *Email: ChiefEvaluationOffice@dol.gov; Mail or Courier:* Christina Yancey, Chief Evaluation Office, U.S. Department of Labor, Room S–2312, 200 Constitution Avenue NW., Washington, DC 20210. *Instructions:* Please submit one copy of your comments by only one method. All submissions received must include the agency name and OMB Control Number identified above for this information collection. Because we continue to experience delays in receiving mail in the Washington, DC area, commenters are strongly encouraged to transmit their comments electronically via email or to submit them by mail early. Comments, including any personal information provided, become a matter of public record. They will also be summarized and/or included in the request for OMB approval of the information collection request.

FOR FURTHER INFORMATION CONTACT: Christina Yancey by email at *ChiefEvaluationOffice@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Middle Class Tax Relief and Job Creation Act of 2012 was signed into law on February 22, 2012. Subtitle D of Title II of the Act contains several provisions concerning the STC program, including Section 2166 requiring the Secretary of Labor to submit a final report to Congress on the implementation of the provisions of Subtitle D no later than four years after the date of enactment.

The STC program is an option within the Unemployment Insurance (UI) system that allows employers to reduce the hours of workers, while permitting workers to receive partial UI benefits for the non-worked hours. The objective of STC is to avoid layoffs during periods of reduced labor demand and thereby allow businesses to maintain their operations, retain valued employees, and prevent company morale from deteriorating. The program was first initiated California in 1978 and a temporary national STC program was adopted in 1982 under the Tax Equity and Fiscal Responsibility Act (TEFRA, P.L. 97–248). The STC program became permanent in Federal law in 1992, when states were permitted to adopt their own STC programs as part of State UI laws. Under Section 303(a)(5) of the Social Security Act and Section 3304(a)(4) of the Federal Unemployment Tax Act, the Unemployment Trust Fund can pay for STC. Each state has an account within the Fund from which its pays UI benefits.

The Employment and Training Administration's Office of Unemployment Insurance has oversight responsibility for the STC program. The Chief Evaluation Office of the Department of Labor (DOL) is conducting a rigorous demonstration and impact evaluation of the STC

programs in two states, Iowa and Oregon, to better understand the reasons for low take-up of STC and to evaluate the effectiveness of strategies to increase employer use. DOL is requesting clearance for two aspects of information collection: (1) To conduct in-depth interviews with state agency officials and employers, and (2) to survey employers on STC program awareness and participation. These data collections are essential elements of the implementation study and the rigorous impact evaluation of the demonstration of the STC program.

II. Desired Focus of Comments

Currently, the Department of Labor is soliciting comments concerning the above data collection for the demonstration and evaluation of the short-term compensation program. Comments are requested to:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* enhance the quality, utility, and clarity of the information to be collected; and

* minimize the burden of the information collection on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. Current Actions

At this time, the Department of Labor is requesting clearance for data collection for the demonstration and evaluation of the short-term compensation program via collection of post-implementation data elements and fieldwork efforts.

Type of review: New information collection request.

OMB Control Number: 1205–0NEW.

Affected Public: Private Sector Employers eligible for enrollment within the Short-Time Compensation Program; and Public Sector State Agency Personnel engaged in the Short-Time Compensation Program.

ESTIMATED BURDEN HOURS

Form/activity	Estimated total respondents	Frequency	Total responses	Average time per response (hours)	Estimated total burden hours
State Agency Personnel interviews	30	Once	30	.67	20
Employer interviews	28	Once	28	.83	23.3
Employer Short-form survey	2,000	Once	2,000	.034	67.7
Employer Long-form survey	800	Once	800	.2	160
Totals	2,858		2,858		271

Comments submitted in response to this request will be summarized and/or included in the request for Office of Management and Budget approval; they will also become a matter of public record.

Mary Beth Maxwell,

Principal Deputy Assistant Secretary for Policy, U.S. Department of Labor.

[FR Doc. 2015–06494 Filed 3–20–15; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2015–0005]

Federal Advisory Council on Occupational Safety and Health (FACOSH)

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for nominations.

SUMMARY: The Assistant Secretary of Labor for Occupational Safety and Health invites interested individuals to submit nominations for membership on FACOSH.

DATES: You must submit (postmarked, sent, transmitted, or received) your nominations by May 15, 2015.

ADDRESSES: You may submit nominations and supporting materials using one of the following methods:

Electronically: You may submit nominations, including attachments, electronically at *http://www.regulations.gov,* the federal eRulemaking portal. Follow the online instructions for submitting nominations;

Facsimile: If your nominations and supporting materials and attachments do not exceed 10 pages, you may FAX them to the OSHA Docket Office at (202) 693–1648;

Mail, express delivery, hand delivery, messenger or courier service: You may send nominations and supporting materials to the OSHA Docket Office, Docket No. OSHA–2015–0005, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2350 (TTY number (877) 889–5627). Deliveries by hand, express mail, messenger, and courier service are accepted during the Department of Labor's and OSHA Docket Office's normal business hours, 8:15 a.m.–4:45 p.m., ET.

Instructions: Your submissions and supporting materials must include the agency name and docket number for this **Federal Register** notice. Due to security-related procedures, submissions by regular mail may experience significant delays. Please contact the OSHA Docket Office for information about special security procedures for submitting materials by mail, express delivery, hand delivery, and messenger or courier service. For additional information on submitting nominations and supporting materials, see the Supplementary Information section of this notice. OSHA will post all submissions, including any personal information you provide, without change on *http://www.regulations.gov.* Therefore, OSHA cautions you about submitting personal information such as Social Security numbers and birthdates.

To read or download submissions in response to this **Federal Register** notice, go to Docket No. OSHA–2015–0005, at *http://www.regulations.gov.* All documents in the docket are listed in the index of that Web site; however, some documents (*e.g.,* copyrighted materials) are not publicly available to read or download there. All submissions, including copyrighted

materials, are available for inspection at the OSHA Docket Office.

FOR FURTHER INFORMATION CONTACT:

For press inquiries: Mr. Francis Meilinger, OSHA, Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–1999; email *meilinger.francis2@dol.gov.*

For general information: Mr. Francis Yebesi, OSHA, Office of Federal Agency Programs, Directorate of Enforcement Programs, Room N–3622, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2122; email *ofap@dol.gov.*

SUPPLEMENTARY INFORMATION: The Assistant Secretary of OSHA invites interested individuals to submit nominations for membership on FACOSH.

Background. FACOSH is authorized to advise the Secretary of Labor (Secretary) on all matters relating to the occupational safety and health of federal employees (5 U.S.C. 7902; 29 U.S.C. 668, Executive Order 12196, as amended). This includes providing advice on how to reduce and keep to a minimum the number of injuries and illnesses in the federal workforce, and how to encourage the establishment and maintenance of effective occupational safety and health programs in each federal agency.

FACOSH membership. FACOSH is comprised of 16 members, 8 management representatives and 8 representatives of labor organizations representing federal employees, whom the Secretary appoints to staggered terms of up to three years. The number of members the Secretary will appoint to three-year terms beginning January 1, 2016, includes:

- Two management representatives; and
- Three labor representatives.

FACOSH members serve at the pleasure of the Secretary and may be appointed to successive terms. FACOSH meets at least twice a year.

The Department of Labor is committed to equal opportunity in the workplace and seeks broad-based and diverse FACOSH membership. Any interested federal agency, labor organization representing federal workers, or individual(s) may nominate one or more qualified persons for membership on FACOSH. Interested individuals also are invited and encouraged to submit statements in support of particular nominees.

Nomination requirements. Submission of nominations must include the following information:

1. The nominee's name, contact information and current employment;
2. The nominee's resume or curriculum vitae, including prior membership on FACOSH and other relevant organizations, associations and committees;
3. Category of membership (management, labor) that the nominee is qualified to represent;
4. A summary of the nominee's background, experience and qualifications that address the nominee's suitability to serve on FACOSH;
5. Articles or other documents the nominee has authored that indicate the nominee's knowledge, experience and expertise in occupational safety and health, particularly as it pertains to the federal workforce;
6. A statement that the nominee is aware of the nomination, is willing to regularly attend and participate in FACOSH meetings, and has no apparent conflicts of interest that would preclude membership on FACOSH; and
7. A self-certification statement that in the past 10 years, the nominee has not been convicted of a felony, or been imprisoned, been on probation, or been on parole, for a felony; or is not currently under charges for a felony.

Member selection. The Secretary appoints FACOSH members based upon criteria that include the nominee's level of responsibility for occupational safety and health matters involving the federal workforce; experience and competence in occupational safety and health; and willingness and ability to regularly and fully participate in FACOSH meetings. Federal agency management nominees who serve as their agency's Designated Agency Safety and Health Official (DASHO), or at an equivalent level of responsibility within their respective federal agencies, are preferred as management members. Labor nominees who have responsibilities for federal employee occupational safety and health matters within their respective labor organizations are preferred as labor members.

The information received through the nomination process, along with other relevant sources of information, will assist the Secretary in making appointments to FACOSH. In selecting FACOSH members, the Secretary will consider individuals nominated in response to this **Federal Register** notice, as well as other qualified individuals. OSHA will publish a list of the new FACOSH members in the **Federal Register**.

OSHA will consider any nomination submitted in response to this notice for the vacancies that occur on January 1, 2016. In addition, OSHA will consider the nominations received by May 1, 2015, for any vacancy that may occur during 2015 and for member positions that open January 1, 2017, provided the information the nominee submitted continues to remain current and accurate. OSHA believes that rolling over nominations for future consideration will make it easier for interested individuals to be considered for membership on FACOSH. This process also will provide OSHA with a broad base of nominations for ensuring that FACOSH membership is fairly balanced as the Federal Advisory Committee Act requires (5 U.S.C. App.2, Section (5)(b)(2); 41 CFR 102–3.30(c)). OSHA will continue to request nominations as vacancies occur, but nominees whose information is current and accurate will not need to resubmit a nomination.

Public Participation

Instructions for submitting nominations. Interested individuals may submit nominations and supplemental materials using one of the methods listed in the **ADDRESSES** section. All nominations, attachments and other materials must identify the agency/labor organization name and the docket number for this **Federal Register** notice. You may supplement electronic nominations by uploading document files electronically. If, instead, you wish to submit additional materials in reference to an electronic or FAX submission, you must submit them to the OSHA Docket Office (see **ADDRESSES** section). The additional material must clearly identify your electronic or FAX submission by name and docket number so that the materials can be attached to your submission.

Because of security-related procedures, the use of regular mail may cause a significant delay in the receipt of nominations. For information about security procedures concerning the submission of materials by mail, hand, express delivery, messenger or courier service, please contact the OSHA Docket Office (see **ADDRESSES** section).

All submissions in response to this **Federal Register** notice are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions interested parties about submitting personal information, such as Social Security numbers and birthdates. Guidance on submitting nominations and materials in response to this **Federal Register** notice is available at *http://www.regulations.gov* and from the OSHA Docket Office.

Access to docket and other materials. To read or download nominations and

additional materials submitted in response to this **Federal Register** notice, go to Docket No. OSHA–2015–0005 at *http://www.regulations.gov.* All submissions are listed in the index of that docket; however, some documents (*e.g.,* copyrighted materials) are not publicly available to read or download through that Web page. All submissions, including copyrighted materials, are available for inspection at the OSHA Docket Office. Contact the OSHA Docket Office for information about materials not available through *http://www.regulations.gov,* and for assistance in using the internet to locate submissions.

Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov.* This document, as well as news releases and other relevant information, also is available at OSHA's Web page at *http://www.osha.gov.*

Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice under the authority granted by 5 U.S.C. 7902, 5 U.S.C. App. 2, 29 U.S.C. 668, Executive Order 12196 as amended, 41 CFR part 102–3, and Secretary of Labor's Order 1–2012 (77 FR 3912 (1/25/2012)).

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2015–06549 Filed 3–20–15; 8:45 am]

BILLING CODE 4510–26–P

MORRIS K. UDALL AND STEWART L. UDALL FOUNDATION

Agency Information Collection Activities: Proposed Collection; New Information Requests; Comment Request; Morris K. Udall and Stewart L. Udall Foundation Application for Udall Scholarship; Application for the Udall Internship

AGENCY: Morris K. Udall and Stewart L. Udall Foundation.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the Udall Foundation will submit for Office of Management and Budget (OMB) review a request for approval of two new information collection requests: Application for the Udall Scholarship and Application for the Udall Native American Internship.

Comments are invited on (1) whether the proposed collection of information is necessary for the performance of the functions of the agency, including whether the information has practical utility; (2) the accuracy of the agency's estimate of the time spent completing the application (''burden of the proposed collection of information''); (3) ways to enhance the quality, utility, and clarity of the information collected; (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of technology.

DATES: Comments must be submitted on or before May 28, 2015.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS, CONTACT: Jane Curlin, Director of Education Programs, Udall Foundation, 130 South Scott Avenue, Tucson, Arizona 85701, Fax: 520–670–5530, Phone: 520–901–8565, Email: *curlin@udall.gov.* When submitting comments, reference this **Federal Register** Notice.

SUPPLEMENTARY INFORMATION:

Abstract: The Udall Foundation is an independent federal agency that was established by Congress in 1992 to provide federally funded scholarships and internships for college and/or graduate students intending to pursue careers related to the environment, as well as to American Indian students pursuing tribal public policy or health care careers. Scholarships are awarded to college sophomores and juniors demonstrating leadership, public service, and commitment to issues related to American Indian nations or to the environment. Internships provide American Indian and Alaska Native university, graduate and law students with the opportunity to gain practical experience with the federal legislative process in order to understand first-hand the government-to-government relationship between tribes and the federal government.

The proposed collections are necessary to accomplish the mandate of the Statute that the Udall Foundation should (1) conduct an annual selection process for the Udall Scholarship program to select scholars and honorable mentions (presently 50 for each); and (2) conduct an annual selection process for the Udall Internship program to select 12 interns. The applications are available from the Udall Foundation's Web site at *http://www.udall.gov/News/NewsAndEvents.aspx?Item=139.*

Burden Statement: Udall Scholarship.

Affected Public: (1) University students applying for the Udall Scholarship.

Frequency of Response: One time for each applicant.

Estimated Average Annual Respondents: 500 applicants.

Total Annual Hours Burden: 4,063 hours (8 hours × 500 applicants).

Estimated Cost per Student: The Udall Foundation has determined to utilize the federal minimum wage of $10.10/hour as set by Executive Order 13658, February 12, 2014. The Foundation estimates that completing the on-line application takes approximately eight (8) hours per student.

Annual Cost Burden: $40,400 annual cost burden for all 500 students.

Affected Public: (2) University faculty representatives nominating students on behalf of their college or university.

Frequency of Response: One time per applicant for each faculty representative.

Estimated Average Annual Respondents: 250 faculty representatives.

Total Annual Hours Burden: 62.5 hours (.25 hours × 250 Faculty Representatives).

Estimated Cost per Faculty Representative per Application: $24/hour based upon annual average salary of $50,000 per faculty representative. The Foundation estimates that each faculty representative needs approximately 15 minutes to endorse and forward each application.

Annual Cost Burden: $1,500 for all faculty representatives.

Total Annual Hours Burden: 4,125.5 hours (8 hours × 500 applicants plus .25 hours × 250 Faculty Representatives).

Total Annual Cost Burden: $41,900 including $40,400 annual cost burden for all 500 students and $1,500 for all faculty representatives.

Burden Statement: Native American Internship.

Affected Public: University, graduate, and law students applying for the Native American Internship.

Frequency of Response: One time for each applicant.

Estimated Average Annual Respondents: 45 applicants.

Total Annual Hours Burden: Applicants: 360 hours (8 hours × 45 applicants).

Estimated Cost per Student: The Udall Foundation has determined to utilize the federal minimum wage of $10.10/hour as set by Executive Order 13658, February 12, 2014. The Udall Foundation estimates that it takes each applicant approximately eight (8) hours to complete the on-line application.

Annual Cost Burden: $3,636.

Authority: 20 U.S.C. 5601–5609.

Dated: March 16, 2015.

Philip J. Lemanski,

Executive Director, Udall Foundation.

[FR Doc. 2015–06604 Filed 3–20–15; 8:45 am]

BILLING CODE 6820–FN–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (15–017)]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council (NAC).

DATES: Thursday, April 9, 2015, 9:00 a.m.–6:00 p.m., Local Time; and Friday, April 10, 2015, 9:00 a.m.–12:00 noon, Local Time.

ADDRESSES: NASA Headquarters, Room 9H40, Program Review Center (PRC), 300 E Street SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Marla King, NAC Administrative Officer, NASA Headquarters, Washington, DC 20546, (202) 358–1148.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. This meeting is also available telephonically and by WebEx. You must use a touch tone phone to participate in this meeting. Any interested person may dial the USA toll free access number 1–844–467–6272 or USA local toll access number 1–720–259–6462, and then the numeric participant passcode: 758485 followed by the # sign. To join via WebEx, the link is *https://nasa.webex.com/,* the meeting number on April 9 is 993 793 736, and the password is NAC0409! ; the meeting number on April 10 is 991 870 158, and the password is NAC0410!. (Password is case sensitive.) NOTE: If dialing in, please ''mute'' your telephone.

The agenda for the meeting will include the following:

—Aeronautics Committee Report
—Human Exploration and Operations Committee Report
—Institutional Committee Report
—Science Committee Report
—Technology, Innovation and Engineering Committee Report

Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID before receiving access to NASA Headquarters. Due to the Real ID Act, Public Law 109–13, any attendees with drivers licenses issued from non-compliant states/territories must present a second form of ID [Federal employee badge; passport; active military identification card; enhanced driver's license; U.S. Coast Guard Merchant Mariner card; Native American tribal document; school identification accompanied by an item from LIST C (documents that establish employment authorization) from the ''List of the Acceptable Documents'' on Form I–9]. Non-compliant states/territories are: American Samoa, Arizona, Idaho, Louisiana, Maine, Minnesota, New Hampshire, and New York. Foreign nationals attending this meeting will be required to provide a copy of their passport and visa in addition to providing the following information no less than 10 working days prior to the meeting: Full name; gender; date/place of birth; citizenship; visa information (number, type, expiration date); passport information (number, country, telephone); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee. To expedite admittance, U.S. citizens and Permanent Residents (green card holders) can provide full name and citizenship status 3 working days in advance by contacting Ms. Marla King, via email at *marla.k.king@nasa.gov.* It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2015–06546 Filed 3–20–15; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501 *et seq.*). This is the second notice for public comment; the first was published in the **Federal Register** at 79 FR 42056, and no comment was received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. The full submission may be found at: *http://www.reginfo.gov/public/do/PRAMain.*

Comments: Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the NSF, including whether the information will have practical utility; (b) the accuracy of the NSF's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected, including through the use of automated collection techniques or other forms of information technology; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725 7th Street NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 1265, Arlington, Virginia 22230 or send email to *splimpto@nsf.gov.*

DATES: Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission may be obtained by calling 703–292–7556. NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title of Collection: 2015 National Survey of College Graduates.

OMB Approval Number: 3145–0141.

Type of Request: Intent to seek approval to renew an information collection for three years.

1. Abstract. The National Survey of College Graduates (NSCG) has been conducted biennially since the 1970s. The 2015 NSCG sample will be selected from the 2013 American Community Survey (ACS) and the 2013 NSCG. By selecting sample from these two sources, the 2015 NSCG will provide

coverage of the college graduate population residing in the United States. The purpose of this longitudinal panel survey is to collect data that will be used to provide national estimates on the science and engineering workforce and changes in their employment, education and demographic characteristics.

The National Science Foundation Act of 1950, as subsequently amended, includes a statutory charge to ''. . . provide a central clearinghouse for the collection, interpretation, and analysis of data on scientific and engineering resources, and to provide a source of information for policy formulation by other agencies of the Federal Government.'' The NSCG is designed to comply with these mandates by providing information on the supply and utilization of the nation's scientists and engineers.

The NSF uses the information from the NSCG to prepare congressionally mandated reports such as *Women, Minorities and Persons with Disabilities in Science and Engineering* and *Science and Engineering Indicators.* A public release file of collected data, designed to protect respondent confidentiality, will be made available to researchers on the Internet.

The U.S. Census Bureau, as in the past, will conduct the NSCG for NSF. The survey data collection will begin in April 2015 using Web and mail questionnaires. Nonrespondents to the Web or mail questionnaire will be followed up by computer-assisted telephone interviewing. The survey will be collected in conformance with the Confidential Information Protection and Statistical Efficiency Act of 2002, and the individual's response to the survey is voluntary. NSF will ensure that all information collected will be kept strictly confidential and will be used only for statistical purposes.

2. Expected Respondents. A statistical sample of approximately 135,000 persons will be contacted in 2015 including 42,000 new sample cases and 93,000 returning sample cases. NSF estimates the response rate to be 70 percent for the new sample cases and 80 percent for the returning sample cases.

3. Estimate of Burden. The amount of time to complete the questionnaire may vary depending on an individual's circumstances; however, on average it will take approximately 30 minutes. NSF estimates that the total burden for the 2015 NSCG will be no more than 51,900 hours.

Dated: March 17, 2015.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2015–06518 Filed 3–20–15; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–0299, NRC–2015–0066]

Umetco Minerals Corporation; Gas Hills East Site

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; opportunity to request a hearing and to petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has received an application from Umetco Minerals Corporation for amendment of Materials License No. SUA–648 to modify the ground water monitoring program at Umetco's Gas Hills East site in Fremont and Natrona counties, Wyoming. The amendment would increase the number of wells in the ground water monitoring program, change the sampling period and parameters, change the reporting period for ground water monitoring reports and establish the ground water monitoring program as a stand-alone document, rather than an appendix in Umetco's Alternate Concentration Limit application.

DATES: A request for a hearing or petition for leave to intervene must be filed by May 22, 2015.

ADDRESSES: Please refer to Docket ID NRC–2015–0066 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0066. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it's available in ADAMS) is provided the first time that a document is referenced.
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Dominick Orlando, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–6749, email: *Dominick.orlando@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC has received, by letter dated January 22, 2015, an application from Umetco Minerals Corporation to amend Materials License No. SUA–648 (ADAMS Accession No. ML15027A095). This license authorizes the possession of natural uranium and uranium waste tailings at the Gas Hills East site in Natrona and Fremont counties, Wyoming, which ceased uranium milling operations in 1984. The license currently requires that Umetco Minerals Corporation implement a ground water compliance monitoring program at the site. If approved, the amendment would modify this ground water monitoring program by increasing the number of wells in the ground water monitoring program, changing the sampling period and parameters, changing the reporting period for ground water monitoring reports, and establishing the ground water monitoring program as a stand-alone document, rather than an appendix in Umetco's Alternate Concentration Limit application.

Prior to approving the license amendment application, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the NRC's regulations. The NRC's findings will be documented in a technical evaluation report.

II. Opportunity to Request a Hearing and Petition for Leave to Intervene

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to Materials License No. SUA–648.

Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located in One White Flint North, Room O1–F21 (first floor), 11555 Rockville Pike, Rockville, Maryland 20852. The NRC's regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel will rule on the request and/or petition. The Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth, with particularity, the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted, with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion that support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with NRC regulations, policies, and procedures. The Atomic Safety and Licensing Board will set the time and place for any prehearing conferences and evidentiary hearings, and the appropriate notices will be provided.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i)–(iii).

A State, local governmental body, Federally-recognized Indian tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by May 22, 2015. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions for leave to intervene set forth in this section. A State, local governmental body, Federally-recognized Indian tribe, or agency thereof may also have the opportunity to participate under 10 CFR 2.315(c).

If a hearing is granted, any person who does not wish, or is not qualified, to become a party to the proceeding may, in the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission by May 22, 2015.

III. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-*

submittals.html. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, a request to intervene will require including information on local residence in order to demonstrate a proximity assertion of interest in the proceeding. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Dated at Rockville, Maryland, this 9th day of March 2015.

For the Nuclear Regulatory Commission.

Andrew Persinko,

Deputy Director, Division of Uranium Recovery and Waste Programs, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2015–06614 Filed 3–20–15; 8:45 am]

BILLING CODE 7590–01–P

PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD

[Notice–PCLOB–2015–01; Docket No. 2015–0001; Sequence No. 1]

Request for Public Comment on Activities Under Executive Order 12333

AGENCY: Privacy and Civil Liberties Oversight Board.

ACTION: Notice; Request for public comment.

SUMMARY: As announced at the Privacy and Civil Liberties Oversight Board's (PCLOB) public meeting on July 23, 2014, the PCLOB is examining counterterrorism activities conducted under the Executive Order pertaining to the United States Intelligence Activities and their implications for privacy and civil liberties. As such, the PCLOB seeks public input to inform the Board's examination of activities conducted under the Executive Order.

DATES: Written comments may be submitted at any time prior to the closing of the comment period at 11:59 p.m. Eastern Standard Time (EST) on June 16, 2015.

ADDRESSES: You may submit comments with the notice number PCLOB–2015–01 by the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching for ''Notice PCLOB–2015–01''. Select the link ''Comment Now'' that corresponds with ''Notice PCLOB–2015–01''. Follow the instructions provided at the ''Comment Now'' screen. Please include your name, company name (if any), and ''Notice PCLOB–2015–01'' on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), ATTN: Ms. Hada Flowers, 1800 F Street N.W., 2nd floor, Washington, DC 20405.
- *Instructions:* Please submit comments only and cite ''Notice PCLOB–2015–01'' in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Sharon Bradford Franklin, Executive Director, 202–331–1986.

SUPPLEMENTARY INFORMATION: The PCLOB seeks public input to inform the Board's examination of activities conducted under Executive Order (E.O.) 12333—United States Intelligence Activities. Although the Board recognizes that much information about activities under E.O. 12333 is classified and/or not publicly available, the Board seeks comments regarding any concerns about counterterrorism activities conducted under E.O. 12333 based on the information that is currently unclassified and publicly available, as well as suggestions for questions the PCLOB should ask as part of its inquiry.

Dated: March 16, 2015.

Lynn Parker Dupree,

Acting General Counsel, Privacy and Civil Liberties Oversight Board.

[FR Doc. 2015–06537 Filed 3–20–15; 8:45 am]

BILLING CODE 6820–B3–P

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–9739; 34–74523; File No. 265–28]

Investor Advisory Committee Meeting

AGENCY: Securities and Exchange Commission.

ACTION: Notice of Meeting of Securities and Exchange Commission Dodd-Frank Investor Advisory Committee.

SUMMARY: The Securities and Exchange Commission Investor Advisory Committee, established pursuant to section 911 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, is providing notice that it will hold a public meeting. The public is invited to submit written statements to the Committee.

DATES: The meeting will be held on Thursday, April 9, 2015 from 9:30 a.m. until 4:00 p.m. (ET). Written statements should be received on or before April 9, 2015.

ADDRESSES: The meeting will be held in Multi-Purpose Room LL–006 at the Commission's headquarters, 100 F Street NE., Washington, DC 20549. The meeting will be webcast on the Commission's Web site at *www.sec.gov.* Written statements may be submitted by any of the following methods:

Electronic Statements

- Use the Commission's Internet submission form (*http://www.sec.gov/rules/other.shtml*); or
- Send an email message to *rules-comments@sec.gov.* Please include File No. 265–28 on the subject line; or

Paper Statements

- Send paper statements to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. 265–28. This file number should be included on the subject line if email is used. To help us process and review your statement more efficiently, please use only one method.

Statements also will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Room 1580, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All statements received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Marc Sharma, Senior Special Counsel, Office of the Investor Advocate, at (202) 551–3302, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public, except during portions of the meeting reserved for meetings of the Committee's subcommittees. Persons needing special accommodations to take part because of a disability should notify the contact person listed in **FOR FURTHER INFORMATION CONTACT**.

The agenda for the meeting includes: Remarks from Commissioners; nomination of candidates for officer positions and election of officers; a discussion of the Commodity Futures Trading Commission's investor behavior survey results; a discussion of background checks as a means to address elder financial abuse (which may include a recommendation); a discussion of proxy access and staff review of Rule 14a–8(i)(9) under the Securities Exchange Act of 1934 (which may include a recommendation); an update on the SEC proxy voting roundtable; an update on the recommendations of the SEC Advisory Committee on Small and Emerging Companies; and nonpublic subcommittee meetings.

Dated: March 18, 2015.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–06533 Filed 3–20–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74518; File No. SR–NASDAQ–2015–022]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Rule 4751(h)(5) Relating to Market Hours IOC Orders

March 17, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 6, 2015, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to simplify processing of Market Hours IOC orders and to make clarifying changes to the rule text of Rule 4751(h)(5).

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to modify the time that Market Hours IOC (''MIOC'') orders are available for entry into the System.[3] MIOC is a Time in Force [4] characteristic of an order that will cause it (or unexecuted portion thereof) to be canceled if, after entry into the System the order (or unexecuted portion thereof) becomes non-marketable during the Regular Market Session, 9:30 a.m. until 4:00 p.m. Eastern Time.[5] Pursuant to Rule 4751(h)(5), MIOC Orders are available for entry from 4:00 a.m. until 4:00 p.m. Eastern Time; however, a MIOC order entered between 4:00 a.m. and 9:30 a.m. Eastern Time is held by the System until 9:30 a.m. at which time the System shall determine whether the order is marketable and either execute or be canceled.

NASDAQ is proposing to simplify the processing of MIOC orders to make it consistent with the meaning of a Time in Force of immediate or cancel [6] and is adding clarifying rule text concerning when such orders are available for entry and potential execution. Specifically, the Exchange is proposing to only accept MIOC orders after completion of the NASDAQ Opening Cross.[7] The Opening Cross is NASDAQ's process for matching orders at the launch of the regular trading hours, and is open to all NASDAQ listed securities and NMS securities listed on other national securities exchanges (collectively, ''System Securities'').[8] Regular Market Session trading begins in an individual System Security at the completion of its opening cross. As a consequence of the proposed change, NASDAQ will not hold MIOC orders entered from 4:00 a.m. up to the completion of the NASDAQ Opening Cross, but rather will not accept the order for execution and return it to the member firm. NASDAQ is not proposing to change how the MIOC order operates, but only the time during which a MIOC order may be entered.

NASDAQ is accordingly deleting text from Rule 4751(h) that discusses MIOC order entry beginning at 4:00 a.m. Eastern Time and that NASDAQ will hold MIOC orders entered prior to 9:30 a.m. Eastern Time until 9:30 a.m. NASDAQ is also consolidating existing rule text and adding new text under the rule to make it clear that MIOC orders may be entered and potentially executed beginning after the completion of the NASDAQ Opening Cross.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with Section 6 of the Act,[9] in general, and further the objectives of Section 6(b)(5) of the Act,[10] in particular, in that they are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Specifically, the proposed changes promote just and equitable principles of trade and perfect the mechanisms of a free and open market and the national market system by simplifying processing of orders that are designated to immediately execute or be canceled during the Regular Market Session. Under the current rule, NASDAQ must hold MIOC orders entered from 4:00 a.m. to 9:30 a.m. Eastern Time, during which member firms may cancel and reenter such orders. By preventing MIOC order entry during this time, NASDAQ is making the processing of orders designated as MIOC consistent with the logic of immediate or cancel functionality, namely to execute immediately or be cancelled back in whole or in part. Moreover, NASDAQ is adding language to the rule to make it clear when MIOC orders are available for both entry and potential execution. As discussed above, completion of the NASDAQ Opening Cross in a security marks the beginning of Regular Market Hours trading. Accordingly, the changes proposed herein both simplify the processing of MIOC orders and clarify the rule text, consistent with the objectives of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Specifically, the changes are designed to promote consistency in the handling of immediate or cancel-designated orders and to provide clarity on when such orders are available for both entry and potential execution. Such changes do not place a burden on competition between market participants as the changes are applied consistently to all participants. Moreover, the proposed changes do not impose a burden on competition among exchanges as they are done in the interest of providing clarity and consistency in its rules, and are therefore irrelevant to competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(ii) [sic] of the Act [11] and subparagraph (f)(6) of Rule 19b–4 thereunder.[12] At any time within 60

[3] As defined by Rule 47151(a). All times noted herein are in Eastern Time, unless otherwise noted.

[4] Time in Force is the period of time that the System will hold an order for potential execution. *See* Rule 4751(h).

[5] As defined by Rule 4120(b)(4)(D).

[6] An order designated as ''immediate or cancel'' represents the entering member firm's desire for the order to either execute immediately after the System determines whether the order is marketable or be canceled.

[7] *See* Rule 4752. Beginning at 9:30 a.m. Eastern Time, the System will execute crosses in each individual security traded on NASDAQ one by one. The order in which each security is processed is random and differs day by day. Upon completion of an individual security's cross, Regular Market Session trading begins. The Opening Cross process is normally completed in less than one second.

[8] NASDAQ notes that it initiates an Opening Cross in all System Securities for which there are orders that will execute against contra-side orders at 9:30 a.m., at which time the opening book and the NASDAQ continuous book are brought together to create single NASDAQ opening prices for System Securities. In certain cases, a System Security will not have any contra-side interest for execution in the Opening Cross, or any orders whatsoever, when the Opening Cross process is initiated. When this occurs, NASDAQ executes a ''null cross'' instead, whereby no securities are matched yet the System receives the necessary precondition to regular hours trading that a ''cross'' in the security has occurred. After completion of the null cross, regular hours trading begins by integrating Market Hours Orders into the book in time priority and executing in accordance with market hours rules.

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(a)(ii) [sic].

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give

Continued

days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2015–022 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2015–022. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2015–022 and should be submitted on or before April 13, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Jill M. Peterson,

Assistant Secretary.

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the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74521; File No. SR–ISE–2014–43]

Self-Regulatory Organizations; International Securities Exchange, LLC; Order Approving Proposed Rule Change, as Modified by Amendment No. 1, Amending its Information Barrier Rules

March 17, 2015.

I. Introduction

On September 15, 2014, International Securities Exchange, LLC (''Exchange'' or ''ISE'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change amending its information barrier rules. The proposed rule change was published for comment in the **Federal Register** on October 6, 2014.[3] The Commission received one comment letter regarding the proposed rule change[4] and one response letter from ISE.[5] On November 17, 2014, the Commission extended the time period in which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to January 2, 2015.[6] On December 31, 2014, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change.[7] On March 9, 2015, the Exchange filed Amendment No. 1 to the proposed rule change.[8] This order approves the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposal

The Exchange proposes to amend ISE Rules 810 (Limitations on Dealings) and 717 (Limitations on Orders) governing information barriers. Specifically, the Exchange proposes to amend Rule 810 to permit information to flow to a member's EAM unit, which handles the customer/agency side of the business, from its affiliated Primary Market Maker (''PMM'') and/or Competitive Market Maker (''CMM'') (jointly, ''market makers'') unit. As amended, ISE Rule 810 will allow EAMs to know where, and at what price, their affiliated market makers are either quoting or have orders on the order book[9] and to use that information to influence routing decisions. The Exchange represents that it currently provides guidance to its members that ISE Rule 810 is to be interpreted as a two-way information barrier between the EAM unit and its affiliated market maker unit.[10]

The Exchange also proposes to amend ISE Rule 717, Supplementary Material .06 to specify that the orders of a EAM

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 73261 (September 30, 2014), 79 FR 60226 (''Notice'').

[4] *See* Letter from John Kinahan, Chief Executive Officer, Group One Trading, L.P., dated October 27, 2014 (''Group One Letter'').

[5] *See* Letter from Michael J. Simon, Secretary and General Counsel, International Securities Exchange, LLC, dated November 14, 2014 (''ISE Response Letter'').

[6] *See* Securities Exchange Act Release No. 73614 (November 17, 2014), 79 FR 69547 (November 21, 2014).

[7] *See* Securities Exchange Act Release No. 73973 (December 31, 2014), 80 FR 583 (January 6, 2015).

[8] In Amendment No. 1 the Exchange clarifies that an Electronic Access Member (''EAM'') would only have access to the publicly available orders and quotes of its affiliated market maker. In addition, the Exchange clarifies that the proposed rule change would not permit a member's EAM unit to access any non-public order or quote information of its affiliated market maker, including any hidden or undisplayed size or price information. The Exchange also clarifies that market makers are not allowed to post hidden or undisplayed orders and quotes on the Exchange. Finally, the Exchange clarifies that its members would not expect to receive any additional order or quote information as a result of this proposed rule change. Amendment No. 1 is not subject to notice and comment because it is a technical amendment that does not materially alter the substance of the proposed rule change or raise any novel regulatory issues.

Amendment No. 1 has been placed in the public comment file for SR–ISE–2014–43 at *http://www.sec.gov/comments/sr-ise-2014-43/ise201443.shtml* (see letter from Michael J. Simon, Secretary and General Counsel, International Securities Exchange, LLC, to Secretary, Commission, dated March 9, 2015) and also is available at the Exchange's Web site at *www.ise.com.*

[9] According to ISE Rule 805(b)(1)(ii), market makers may only have orders on the order book in option classes to which they are not appointed.

[10] *See* Notice, *supra* note 3, 79 FR 60226, 60226.

unit and its affiliated PMM and/or CMM unit may interact within one second without violating the ISE Rule 717(d) and (e) order exposure requirements when the firm can demonstrate that: (1) The customer order was marketable when routed; (2) the EAM was not handling the affiliated market maker quote/order; and (3) the affiliated market maker quote/order was in existence at the time the customer order(s) were entered into the ISE system. In combination, the proposed amendments to ISE Rules 810 and 717 will make it possible for an EAM to route a customer order to the ISE to immediately interact with the quote or an order of an affiliated market maker, but only subject to the conditions stated above.

III. Comment Letter and ISE's Response

As noted above, the Commission received one comment letter [11] opposing the proposed rule change.[12] The commenter asserts that the proposed one-way information barrier would introduce a conflict of interest which could result in EAMs routing orders based on self-interest as opposed to the customer's interest.[13] The commenter disagrees with the Exchange's premise that the proposed rule change would not compromise market integrity or cause customer harm.[14] The commenter also indicates that although other exchanges may interpret their rules to permit the sharing of information between the various units of a firm, such sharing only weakens a customer's chance of best execution.

The commenter believes there are two specific scenarios where a costumer may be harmed under this proposed rule change. First, the commenter states that EAMs could route customer orders to an affiliated market maker's quote at an exchange's best bid or offer rather than to an exchange with a better fill rate or price improvement mechanism.[15] Second, the commenter argues that an EAM holding a large customer order that could influence the price in the underlying could opt to route away from the quote of its affiliated market maker to avoid the potential risk of the trade and deprive the customer of a fill they were otherwise entitled to.[16]

The commenter indicates that these routing scenarios are not ''mere conjecture'' as broker-dealers ''openly admit'' that numerous factors are built into routing decisions that are primarily beneficial to broker-dealers.[17] The commenter also notes that there are litigation and academic studies that suggest that routing decisions are negatively impacted by conflicts of interest. The commenter believes that the erosion of information barriers would increase the likelihood that customer orders are routed based on the firm's best interest as opposed to duty of best execution owed to the customer.[18] The commenter concludes that two-way information barriers are the ''only way to truly guard customer interests and protect against the misuse of material non-public information,'' and a shift to a one-way information barrier would not provide any benefits EAM customers.[19] The commenter also believes that exchange rules should be written and interpreted in a way that prevents conflicts of interest from ever arising, and a two-way information barrier takes the potential conflict of interest out of the equation.[20]

The ISE responds that the commenter did not raise any new issues and its concerns were addressed in the Notice.[21] The ISE states that nothing in the proposed rule change would relieve members of their best execution obligation to obtain the most favorable terms reasonably available for customer orders.[22] The Exchange notes that, as a national securities exchange, it has a comprehensive surveillance program to monitor member compliance with applicable securities and regulations, including best execution.[23] ISE also represents that it would continue to monitor for abnormalities in interaction rates between members, and investigate and take appropriate regulatory action against members that fail to comply with their best execution obligations.[24] ISE believes that its surveillance tools will allow it to fulfill its regulatory responsibilities.[25] ISE also suggests that the filing is a competitive imperative as other options exchanges currently interpret their information barrier rules to be one way barriers that permit members to make routing decisions based on the quotes and orders of affiliated business units.[26]

IV. Discussion and Commission Findings

After careful consideration, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[27] The Commission believes that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) [28] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Amended ISE Rule 810 permits a less restrictive, one-way information barrier between market makers and other business units, as opposed to the prior rule that required a prescriptive, two-way information barrier. Nonetheless, the Commission notes that Exchange members are still required to have policies and procedures that are reasonably designed to prevent the misuse of material, non-public information consistent with Section 15(g) of the Act [29] and ISE Rule 408.[30] The Commission notes that the EAM unit of a member would not, pursuant to the proposed rule change, have access to any non-public quote or order information, including hidden or undisplayed price or size information, of an affiliated market maker.[31] The Commission also notes that the Exchange has represented that its ongoing surveillance for manipulative conduct and the Financial Industry Regulatory Authority's exam program that reviews for member compliance with such policies and procedures should provide a regulatory framework

[11] *See* Group One Letter, *supra* note 5.

[12] *See* ISE Response Letter, *supra* note 6.

[13] *See* Group One Letter at 1, *supra* note 4.

[14] *Id.*

[15] *Id.*

[16] *Id.* at 2.

[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] *See* ISE Response Letter at 1, *supra* note 6.

[22] *Id.*

[23] *Id.*

[24] *Id.*

[25] *Id.*

[26] *Id.* at 2.

[27] In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[28] 15 U.S.C. 78f(b)(5).

[29] *See* 15 U.S.C. 78o(g). Section 15(g) of the Act requires every broker or dealer to ''establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of such broker's or dealer's business, to prevent the misuse. . .of material, nonpublic information by such broker or dealer or any person associated with such broker or dealer.''

[30] Further, Exchange members will continue to be subject to ISE Rules 400 (Just and Equitable Principles of Trade), 401 (Adherence to Law), and 405 (Manipulation).

[31] *See* Amendment No. 1, *supra* note 8.

that guards customer interests and protects against the misuse of material non-public information.[32]

Finally, as noted above, the commenter expressed concern that this proposed rule change would introduce a conflict of interest that would erode the duty of best execution and harm customers. The Exchange believes, and the Commission agrees, that this proposed rule change, as modified by Amendment No. 1, does not alter a broker-dealer's duty of best execution.[33] Although the proposed rule change, as modified by Amendment No. 1, will permit EAMs to know and consider the quotes of its affiliated market makers when making routing decisions, the Commission continues to expect that routing decisions related to the duty of best execution will be premised solely on customer considerations such as the likelihood of execution, the opportunity to obtain price improvement, availability of best price and minimization of market impact.[34] The Commission emphasizes that a broker-dealer's duty of best execution exists whether an EAM determines to route customer order flow toward its affiliated market maker or away from its affiliated market maker. Further, the Commission notes that in response to the commenter's concern that the proposed rule change would negatively impact best execution considerations, ISE stated that it would ''continue to monitor for abnormalities in interaction rates between members, and will investigate and take appropriate regulatory action against members that fail to comply with their best execution obligations . . . [and that] these surveillance tools will allow ISE to comply with its regulatory responsibilities, consistent with treatment across competitor options exchanges.'' [35] Among other things, the Commission's oversight of the ISE program is designed to evaluate the ISE's performance in regard to that representation.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act [36] that the proposed rule change (SR–ISE–2014–43), as modified by Amendment No. 1, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[37]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–06515 Filed 3–20–15; 8:45 am]

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[32] *See* Notice, *supra* note 3, 79 FR 60226, 60227.

[33] *See* Notice, *supra* note 3, 79 FR 60226, 60227; ISE Response Letter at 1, *supra* note 6.

[34] *See e.g.,* FINRA Rule 5310 (Best Execution and Interpositioning); *see also* Securities Exchange Act Release No. 34–51808, 70 FR 37496, 37537–8 (Jun. 29, 2005) (File No. S7–10–04) (Regulation NMS Final Rules); Securities Exchange Act Release No. 37619A, 61 FR 48290, 48322–3 (Sep. 12, 1996) (File No. S7–30–95) (Order Execution Obligations Final Rules).

[35] *See* ISE Response Letter at 1, *supra* note 6.

[36] 15 U.S.C. 78s(b)(2).

[37] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74519; File No. SR–CBOE–2015–026]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change Relating to Rules 6.74A and 6.74B

March 17, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on March 6, 2015, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to amend CBOE Rules 6.74A and 6.74B. The text of the proposed rule change is provided below (additions are *italicized;* deletions are [bracketed]).

* * * * *

Chicago Board Options Exchange, Incorporated Rules

Rule 6.74A. Automated Improvement Mechanism (''AIM'')

* * * * *

. . . Interpretations and Policies:

* * * * *

.04 [Any solicited orders submitted by the Initiating Trading Permit Holder to trade against the Agency Order may not be for the account of a Market-Maker assigned to the option class.] *A Market-Maker submitting a solicited order to execute against a particular Agency Order may not modify its pre-programmed response to Request for Responses based on information regarding the particular Agency Order or solicited order.*

* * * * *

Rule 6.74B. Solicitation Auction Mechanism

* * * * *

. . . Interpretations and Policies:

* * * * *

.03 Under Rule 6.74B, Trading Permit Holders may enter contra orders that are solicited. The Auction provides a facility for Trading Permit Holders that locate liquidity for their customer orders. Trading Permit Holders may not use the Auction to circumvent Rules 6.45A.01, 6.45B.01 or 6.74A limiting principal transactions. This may include, but is not limited to, Trading Permit Holders entering contra orders that are solicited from (a) affiliated broker-dealers, or (b) broker-dealers with which the Trading Permit Holder has an arrangement that allows the Trading Permit Holder to realize similar economic benefits from the solicited transaction as it would achieve by executing the customer order in whole or in part as principal. Additionally, [solicited contra orders entered by Trading Permit Holders to trade against Agency Orders may not be for the account of a CBOE Market-Maker assigned to the options class.] *a Market-Maker submitting a solicited order to execute against a particular Agency Order may not modify its pre-programmed response to Request for Responses based on information regarding the particular Agency Order or solicited order.*

* * * * *

The text of the proposed rule change is also available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its rules regarding the ability of a Market-Maker assigned to an options class to be solicited as the contra party to an Agency Order in that class on the Exchange's Automated Improvement Mechanism (''AIM'') and Solicitation Auction Mechanism [3] (''SAM'' and, together with AIM, the ''Auctions''). Currently, Interpretation and Policy .04 to Rule 6.74A (AIM) states that ''Any solicited orders submitted by the Initiating Trading Permit Holder to trade against the Agency Order may not be for the account of a Market-Maker assigned to the option class.'' Similarly, the last sentence of Interpretation and Policy .03 to Rule 6.74B (SAM) states that ''Additionally, solicited contra orders entered by Trading Permit Holders to trade against Agency Orders may not be for the account of a CBOE Market-Maker assigned to the options class.'' This rule language acts to limit a Trading Permit Holder (''TPH'') initiating Auctions from access to liquidity that should otherwise be available.

On the Exchange, there are a number of large, global Market-Making firms that have market-making and proprietary operations. In addition, there are small market-making firms that only have market-making operations. The current rule neither prohibits the proprietary arm of a global firm from submitting a contra order in these Auctions nor prohibits the global firm's market-making operation from responding to an Auction in which the proprietary desk has submitted a contra order. More importantly, if two Market-Makers are nominees of the same firm—one appointed to a class on CBOE and the other appointed in the same class on another exchange (PHLX for example)—the current rule allows the PHLX Market-Maker to be solicited to participate on an AIM order and the CBOE Market-Maker to respond to the AIM auction. The rule does, however, effectively prohibit the small market-making firms from providing liquidity in the form of contra orders. In preventing a Market-Maker assigned to an options class from being solicited by TPHs to trade against Agency Orders in that class, the small Market-Making firms are effectively prohibited from being solicited by TPHs to trade against nearly all Agency Orders. Because a TPH initiating an auction using AIM or SAM can thusly not solicit contra orders from these Market-Making firms, the TPH is unable to access the greater liquidity that these firms can provide. The Market-Makers, TPHs, and customers are harmed by this rule language, and the Exchange therefore proposes to delete it.[4] The Exchange believes this is a reasonable modification designed to provide additional flexibility for the Exchange's TPHs to obtain executions on behalf of their customers and to provide CBOE Market-Makers assigned to a given option class with the same opportunity as other solicited parties to participate in the auction process through means of solicited orders submitted by the Initiating TPH. Absent this rule change, CBOE Market-Makers assigned to a given option class are not able to achieve solicited contra order priority status when trading against Agency Orders executed through AIM/SAM while all other parties solicited by the Initiating TPH may have such priority status. Additionally, the Exchange does not believe the rule change will deplete the liquidity available through Auctions; rather, the Exchange believes that by allowing more individuals to participate in the Auction process liquidity will increase.

It is important to note that the rule language that the Exchange proposes to delete applies only to AIM and SAM transactions. As such, a Market-Maker assigned to an options class can currently be solicited to trade against an Agency Order in that class for non-AIM/SAM transactions. Therefore, because Market-Makers only face this prohibition for AIM and SAM transactions, the rules for whether a Market-Maker assigned to an options class can currently be solicited to trade against an Agency Order in that class differ depending on the execution mechanism. The proposed change would eliminate this difference.

In addition, the Boston Options Exchange LLC (''BOX'') rules include a ''Directed Order'' process that is functionally equivalent to the solicitation of orders, and also does not prevent Market-Makers from being solicited to trade against an Agency Order in a class in which the Market-Maker is appointed.[5] As such, the Exchange merely proposes to put Market-Makers at CBOE on a similar competitive footing vis-à-vis the directed orders on BOX.

Furthermore, the Exchange does not believe there is a meaningful regulatory purpose behind the prohibition against Market-Makers being solicited to trade against an Agency Order in a class in which the Market-Maker is appointed because for the firms with appointments on multiple exchanges, the solicited order can simply come from a Market-Maker on a different exchange. More importantly, a Market-Maker that is solicited to trade against an Agency Order in a class in which the Market-Maker is appointed would still be required to abide by Exchange Rules 4.1 (Just and Equitable Principles of Trade), 4.18 (Prevention of the Misuse of Material, Nonpublic Information), and 6.9 (Solicited Transactions) (as well as all other Exchange rules, of course). As such, a Market-Maker would still be prohibited from, for example, learning (via solicitation) that a large order is being sent to the Exchange and therefore widening its quotes. Moreover, because upon entry, an AIM/SAM order is ''stopped'' for its full quantity at the contra order's price, if a Market-Maker were to widen his quotes, it would not impact the price of the trade. Also, because many classes on the Exchange have a number of Market-Makers appointed, the widening of quotes by one Market-Maker would likely have limited impact on the NBBO (and indeed, it is possible that the solicited Market-Maker that is widening quotes would not be on the NBBO in the first place). Regardless, the Exchange notes that it does not believe the changes contemplated in this filing will have an adverse effect on Market-Maker quoting because the Exchange believes Market-Makers will continue to seek access to order flow that comes into the Exchange outside of the auction process. In order to access that order flow, Market-Makers will need to continue to quote aggressively.[6] The same is true for Auctions in that the solicited Market-Maker will still need to price aggressively in order to trade with an Agency Order because Auctions are

[3] The Exchange notes that the SAM Auction is currently deactivated. *See CBOE Regulatory Circular* RG14–076—Deactivation of the Solicitation Auction Mechanism (SAM) (May 16, 2014).

[4] The Exchange proposes to delete all of the language currently in Interpretation and Policy .04 to Rule 6.74A and replace it with the word ''Reserved.'' The Exchange also proposes to delete the last sentence of Interpretation and Policy .03 to Rule 6.74B, which states that ''Additionally, solicited contra orders entered by Trading Permit Holders to trade against Agency Orders may not be for the account of a CBOE Market-Maker assigned to the options class.''

[5] *See* BOX Options Exchange LLC Rule 7150—Price Improvement Period (''PIP Auction''). The PIP Auction's Directed Order process allows broker-dealers to route orders to BOX Market-Makers for possible PIP Auction execution. The Market-Maker that receives the Directed Order has three seconds to initiate a PIP Auction or decline.

[6] The Exchange notes that Market-Makers that make markets on multiple exchanges will also have to continue to quote aggressively to access order flow on those other exchanges.

competitive with other Market-Makers actively responding.

The Exchange is also proposing to add language that explicitly states that ''a Market-Maker submitting a solicited order to execute against a particular Agency Order may not modify its pre-programmed response to Request for Responses based on information regarding the particular Agency Order or solicited order.'' This language prohibits a Market-Maker from using any information regarding a particular Agency Order or the Market-Maker's solicited order for purposes of modifying the Market-Maker's Request for Responses. However, this language also recognizes that a Market-Maker's quotes may change for many reasons other than an Agency order or the Market-Maker's solicited order (*e.g.,* a non-exclusive list of reasons that a Market-Maker may choose to adjust the size and/or price of quotes, irrespective of an Agency Order or a Market-Maker's solicited order, is a change in the price of the underlying, the Market-Maker's inventory, or interest rates) and those unrelated changes are not prohibited. Furthermore, this language is not intended to prohibit a Market-Maker from providing multiple responses to Request for Responses. Finally, the CBOE Department of Market Regulation already surveils for market participants seeking to take advantage of non-public information by attempting to terminate Auctions early in an effort to limit the number of Auction Reponses in order to ensure a larger allocation amount.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[7] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[8] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[9] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed change will provide TPHs initiating auctions via AIM and SAM with the ability to access more liquidity by allowing them to solicit Market-Makers assigned to the relevant options class. This will also let Market-Makers assigned to a class benefit from being able to be solicited for trades in that class. As such, the proposed rule change both provides greater access to liquidity and increases the market participants that can participate in a trade (thereby preventing discrimination against Market-Makers assigned to a class). In these ways, the proposed change removes impediments to and perfects the mechanism of a free and open market and a national market system. The Exchange believes that the proposed change is reasonable and should promote price competition by providing CBOE Market-Makers with a more reasonable opportunity to compete for proposed crosses along with other market participants. By providing CBOE Market-Makers with the opportunity to be solicited on AIM/SAM Agency Orders in classes in which the Market-Makers are appointed, the proposed change prevents discrimination by providing such Market-Makers with the same opportunity to participate in the transaction (via solicitation) with which other market participants are provided. Furthermore, the Exchange does not believe the proposed rule change will alter Market-Maker incentives to respond to AIM/SAM Auctions. Market-Makers responding to Auctions are seeking to execute as many contracts as possible with the Agency order. The best way to accomplish that goal—currently and after the proposed rule change—is to aggressively respond to Auctions, regardless of who else may be responding or whether the contra-order is a solicited Market-Maker. An Auction with a solicited Market-Maker as contra should have no bearing on whether a competitive and interested responder will respond, nor should it have any bearing on which price that interested Market-Maker would place on his response. In addition, the Exchange does not believe this proposal will have an adverse effect on quoting because, as previously noted, in order to execute against order flow outside of Auctions or on other exchanges Market-Makers will have to continue to quote aggressively.

The proposed rule change also removes impediments to and perfects the mechanism of a free and open market and a national market system, and prevents unfair discrimination, because a Market-Maker assigned to an options class can currently be solicited to trade against an Agency Order in that class for non-AIM/SAM transactions. Therefore, because Market-Makers only currently face this prohibition for AIM and SAM transactions, the rules for whether a Market-Maker assigned to an options class can currently be solicited to trade against an Agency Order in that class differ depending on the execution mechanism. The proposed change would eliminate this difference.

The proposed rule change also removes impediments to and perfects the mechanism of a free and open market and a national market system, and prevents unfair discrimination, because BOX rules include a ''Directed Order'' process that allows for the solicitation of orders and does not include a prohibition that prevents Market-Makers from being solicited to trade against an Agency Order in a class in which the Market-Maker is appointed. As such, the Exchange merely proposes to put Market-Makers at CBOE on a similar competitive footing vis-à-vis these solicited orders.

The Exchange notes that the proposed rule change would not impact a Market-Maker's requirements to abide by Exchange Rules 4.1 (Just and Equitable Principles of Trade), 4.18 (Prevention of the Misuse of Material, Nonpublic Information), and 6.9 (Solicited Transactions). As such, a Market-Maker would still be prohibited from, for example, learning (via solicitation) that a large order is being sent to the Exchange and therefore widening its quotes. Indeed, while this could theoretically occur regarding non-AIM/SAM solicitation orders, the Exchange currently prohibits this activity. Moreover, because upon entry, an AIM/SAM order is ''stopped'' for its full quantity at the contra order's price, if a Market-Maker were to widen his quotes, it would not impact the price of the trade. Also, because many classes on the Exchange have a number of Market-Makers appointed, the widening of quotes by one Market-Maker would likely have limited impact on the NBBO (and indeed, it is possible that the solicited Market-Maker that is widening quotes would not on the NBBO in the first place). As previously noted, however, the Exchange does not believe the changes in this proposal will adversely effect Market-Maker quoting.

Finally, in addition to the above general prohibitions, the proposed

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] *Id.*

prohibition against a Market-Maker modifying its pre-programmed responses to Request for Responses based on information regarding a particular Agency Order or solicited order serves to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

CBOE does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because it actually provides the opportunity for a market participant to be solicited on an order when such market participant currently does not have that opportunity (the Market-Maker assigned to that option class). Furthermore, the Exchange does not believe soliciting Market-Makers will negatively impact auction responses. As noted above, the Exchange believes that an Auction with a solicited Market-Maker as contra should have no bearing on whether a competitive and interested responder will respond, nor should it have any bearing on which price that interested Market-Maker would place on his response. The Exchange also believes that exposure to an electronic auction following a solicitation encourages competition; thus, expanding the pool of available solicited parties prior to the initiation of an Auction further exposes orders to competitive Auctions and results in a higher level of potential execution quality for customers.

CBOE does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed change applies only to trading on CBOE. However, the opportunity for a Market-Maker to be solicited on an order in a class to which he is assigned may make CBOE a more attractive marketplace by giving more trading opportunities to Market-Makers as well as providing greater volume and liquidity, thereby enhancing competition. As such, to the extent that the proposed change makes CBOE a more attractive marketplace to market participants on other exchanges, such market participants may elect to become CBOE market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2015–026 on the subject line.

Paper comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2015–026. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2015–026, and should be submitted on or before April 13, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–06514 Filed 3–20–15; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

40th Meeting: RTCA Special Committee 206, Aeronautical Information and Meteorological Data Link Services

AGENCY: Federal Aviation Administration (FAA), U.S. Department of Transportation (DOT).

ACTION: Meeting Notice of RTCA Special Committee 206, Aeronautical Information and Meteorological Data Link Services.

SUMMARY: The FAA is issuing this notice to advise the public of the fortieth meeting of the RTCA Special Committee 206, Aeronautical Information and Meteorological Data Link Services.

DATES: The meeting will be held April 13–17, 2015, 9 a.m.–5 p.m. on Monday (EST), 8:30 a.m.–5 p.m. Tuesday to Thursday and 8:30 a.m.–11 a.m. on Friday.

ADDRESSES: The meeting will be held National Institute of Aerospace (NIA), 100 Exploration Way Hampton, VA 23666.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC, 20036, or by telephone at (202) 330–0652/(202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.*

[10] 17 CFR 200.30–3(a)(12).

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of Special Committee 206. The agenda will include the following:

April 13th—Monday

- Opening Plenary and Sub-Groups meetings
- Opening remarks: DFO, RTCA, Chairman, and Hosts
- Review and approval of meeting agenda
- Approval of previous meeting minutes (Washington, DC)
- Industry presentations and coordination with other committees
  - FAA AAtS Status
  - Relevant NASA Research (two presentations)
- Review of revised TOR
  - Start of SG4 MOPS for Eddy Dissipation Rate (EDR)
  - Start of SG7 Guidance for Data Linking Forecast and Real-Time Wind Information to Aircraft
- MASPS (SG1/6) status and week's plan

April 14th–16th—Tuesday–Thursday

- Sub-Group meetings

April 15th—Wednesday

- FAA AAtS Workshop

April 16th—Thursday

- NASA Tour/Lunch (NASA cafeteria)

April 17th—Friday

- Closing Plenary
- Sub-Groups' reports
- SC–206 Action item review
- Future meeting plans and dates
- Other business and adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 17, 2015.

Mohannad Dawoud,

Management Analyst, NextGen, Program Oversight and Administration, Federal Aviation Administration.

[FR Doc. 2015–06504 Filed 3–20–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Nineteenth Meeting: RTCA Special Committee 222, AMS(R)S

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Meeting Notice of RTCA Special Committee 222, AMS(R)S.

SUMMARY: The FAA is issuing this notice to advise the public of the nineteenth meeting of the RTCA Special Committee 222, AMS(R)S. Per RTCA PMC changes to the SC–222 Terms of Reference, this meeting will be a joint meeting with Eurocae WG–82. The SC–222 purpose will be to develop a joint work plan toward the revised Terms of Reference, and harmonize differences in deliverable items and schedule with WG–82.

DATES: The meeting will be held April 14, 2015 from 9:00 a.m.–Noon (EDT).

ADDRESS: This meeting will be held at Eurocontrol Brussels. This meeting is expected to be largely virtual, conducted over Webex with a telephone bridge. Dr. LaBerge and Mr. Robinson will be present at RTCA. Those who plan to attend in person at the Eurocontrol offices should notify should notify the Chair of WG–82, Mr. Armin Schlereth at least seven days in advance. Please contact Armin Schlereth, DFS Deutsche Flugsicherung GmbH, SIS/DM, Am DFS Campus 7 63225 Langen. Phone: +49 6103 707 2433. Mobile: +49 172 5209 369. Fax: +49 6103 707 2490.

Remote instructions: https://rtca.webex.com/rtca/j.php?MTID=mbfc03c2b8dfea13ebe14cbaf2bcb7cd9.

Meeting number: 273 405 827.

Meeting password: April 14.

Audio connection: 1–877–668–4493 Call-in toll-free number (US/Canada).

Access code: 273 405 827.

FOR FURTHER INFORMATION CONTACT: Jennifer Iversen may be contacted directly at email: *jiversen@rtca.org* or by The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 330–0662/(202) 833–9339, fax (202) 833–9434, or Web site at *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of Special Committee 222. The agenda will include the following:

April 14th

- Greetings & Attendance
- Review summary of January meeting (18th Plenary) will be accomplished by email prior to this joint meeting.
- Discussion of joint SC–222/WG–82 work program. Participants should read the information posted on the SC–222 Workspace prior to the meeting.
- Because WG–82 is the host organization, we will largely follow the WG–82 agenda, which will be posted to the workspace.
- Schedule and venue for 20th Plenary.
- Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 17, 2015.

Mohannad Dawoud,

Management Analyst, NextGen, Program Oversight and Administration, Federal Aviation Administration.

[FR Doc. 2015–06496 Filed 3–20–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Complementary Positioning, Navigation, and Timing Capability; Notice; Request for Public Comments

AGENCY: Office of the Assistant Secretary for Research and Technology, Department of Transportation.

ACTION: Notice; request for public comments.

SUMMARY: The purpose of this notice is to seek comment from the public and industry regarding potential plans by the United States Government to implement an enhanced Long Range Navigation (eLoran) system as a complementary positioning, navigation, and timing (PNT) capability to the Global Positioning System (GPS). The positioning, navigation, and timing performance of eLoran will vary widely depending on the number of transmitters and monitor sites for corrections that are implemented.

The Department of Transportation seeks input on: (a) A brief description of your application(s) of positioning, navigation, and timing services; (b) the positioning, navigation, and/or timing performance required for a complementary PNT capability to

support operations during a disruption of GPS that could last for longer than a day, (c) availability and coverage area required for a complementary PNT capability, (d) willingness to equip with an eLoran receiver to reduce or prevent operational and/or economic consequences from a GPS disruption, (e) current and planned availability of e-Loran capable user equipment, (f) other non-eLoran PNT technologies or operational procedures, currently available or planned, that could be used during a disruption of GPS for longer than a day.

DATES: Submit comments on or before May 22, 2015.

ADDRESSES: You may submit comments identified by docket number [DOT–OST–2015–0053] using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

Confidential Business Information: If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the address given below under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit a copy from which you have deleted the claimed confidential business information to the docket. When you send a comment containing information identified as confidential business information, you should include a cover letter setting forth the reasons you believe the information qualifies as ''confidential business information''. (49 CFR 7.17)

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, contact Karen L. Van Dyke, Office of the Assistant Secretary for Research and Technology Administration; Director, Positioning, Navigation, and Timing and Spectrum Management, telephone 202–366–3180 or email *karen.vandyke@dot.gov.* If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The United States Space-Based Positioning, Navigation, and Timing policy requires that the Department of Transportation in coordination with the Department of Homeland Security, develop, acquire, operate, and maintain backup positioning, navigation, and timing capabilities that can support critical transportation, homeland security, and other critical civil and commercial infrastructure applications within the United States, in the event of a disruption of the Global Positioning System or other space-based positioning, navigation, and timing services. The United States Government is currently investigating implementation of an eLoran system to serve as a complementary PNT capability to GPS. The positioning, navigation, and timing performance of eLoran will vary widely depending on the number of transmitters and monitor sites for corrections that are implemented.

The Department of Transportation seeks input on: (a) A brief description of your application(s) of positioning, navigation, and timing services; (b) the positioning, navigation, and/or timing performance required for a complementary PNT capability during a disruption of GPS that could last for longer than a day, (c) availability and coverage area required for a complementary PNT capability, (d) willingness to equip with an eLoran receiver to reduce or prevent operational and/or economic consequences from a GPS disruption, (e) current and planned availability of e-Loran capable user equipment,(f) other non-eLoran PNT technologies or operational procedures, currently available or planned, that could be used during a disruption of GPS for longer than a day.

Public Participation

You may submit comments and related material regarding this notice. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting comments: If you submit a comment, please include the docket number for this notice (DOT–OST–2015–0053) and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and use ''DOT–OST–2015–0053'' as your search term. Locate this notice in the results and click the corresponding ''Comment Now'' box to submit your comment. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the docket, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period.

Viewing the comments: To view comments, as well as documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov* and use ''DOT–OST–2015–0053'' as your search term. Use the filters on the left side of the page to highlight ''Public Submissions'' or other document types. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act system of records notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

Issued in Washington, DC, on March 17, 2015.

Gregory D. Winfree,

Assistant Secretary for Research and Technology.

[FR Doc. 2015–06538 Filed 3–20–15; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). The IRS is soliciting comments concerning third-party disclosure requirements in IRS regulations.

DATES: Written comments should be received on or before May 22, 2015 to be assured of consideration.

ADDRESSES: Direct all written comments to Christie Preston, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Kerry Dennis, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet, at *Kerry.Dennis@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Third-Party Disclosure requirements in IRS Regulations.

OMB Number: 1545–1466.

Abstract: These existing regulations contain third-party disclosure requirements that are subject to the Paperwork Reduction Act of 1995.

Current Actions: There are no changes being made to these regulations at this time.

Type of Review: Extension of currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Responses: 307,064,630.

Estimated Time per Respondent: Varies.

Estimated Total Annual Burden Hours: 68,885,183.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 3, 2015.

Christie Preston,

IRS Reports Clearance Officer.

[FR Doc. 2015–06500 Filed 3–20–15; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

Vol. 80 Monday,
No. 55 March 23, 2015

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

Endangered and Threatened Species; Identification and Proposed Listing of Eleven Distinct Population Segments of Green Sea Turtles (*Chelonia mydas*) as Endangered or Threatened and Revision of Current Listings; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[Docket No. 120425024–5022–02]

RIN 0648–XB089

Endangered and Threatened Species; Identification and Proposed Listing of Eleven Distinct Population Segments of Green Sea Turtles (Chelonia mydas) as Endangered or Threatened and Revision of Current Listings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce; United States Fish and Wildlife Service (USFWS), Interior.

ACTION: Proposed rule; 12-month petition finding; request for comments; notice of public hearing.

SUMMARY: The green sea turtle (*Chelonia mydas;* hereafter referred to as the green turtle) is currently listed under the Endangered Species Act (ESA) as a threatened species, with the exception of the Florida and Mexican Pacific coast breeding populations, which are listed as endangered. We, NMFS and USFWS, find that the green turtle is composed of 11 distinct population segments (DPSs) that qualify as ''species'' for listing under the ESA. We propose to remove the current range-wide listing and, in its place, list eight DPSs as threatened and three as endangered. We also propose to apply existing protective regulations to the DPSs. We solicit comments on these proposed actions.

Although not determinable at this time, designation of critical habitat may be prudent, and we solicit relevant information for those DPSs occurring within U.S. jurisdiction. In the interim, we propose to continue the existing critical habitat designation (*i.e.*, waters surrounding Culebra Island, Puerto Rico) in effect for the North Atlantic DPS.

This proposed rule also constitutes the 12-month finding on a petition to reclassify the Hawaiian green turtle population as a DPS and to delist that DPS. Although we find the Hawaiian green turtle population to constitute a DPS (referred to in this proposed rule as the Central North Pacific DPS), we do not find delisting warranted.

A public hearing will be held in Hawai'i. Interested parties may provide oral or written comments at this hearing.

DATES: Comments and information regarding this proposed rule must be received by close of business on June 22, 2015. A public hearing will be held on April 8, 2015 from 6 to 8 p.m., with an informational open house starting at 5:30 p.m. Requests for additional public hearings must be made in writing and received by May 7, 2015.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2012–0154, by the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal.

1. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2012-0154*.

2. Click the ''Comment Now!'' icon, complete the required fields.

3. Enter or attach your comments.

OR

- *Mail:* Submit written comments to Green Turtle Proposed Listing Rule, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Room 13535, Silver Spring, MD 20910; or Green Turtle Proposed Listing Rule, U.S. Fish and Wildlife Service, North Florida Ecological Services Office, 7915 Baymeadows Way, Suite 200, Jacksonville, FL 32256.

OR

- *Public hearing:* Interested parties may provide oral or written comments at the public hearing to be held at the Japanese Cultural Center, 2454 South Beretania Street, Honolulu, Hawai'i 96826. Parking is available at the Japanese Cultural Center for $5.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by the Services. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. The Services will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). The proposed rule is available electronically at *http://www.nmfs.noaa.gov/pr/species/turtles/green.htm* and *http://www.fws.gov/northflorida/seaturtles/turtle%20factsheets/green-sea-turtle.htm*.

FOR FURTHER INFORMATION CONTACT: Jennifer Schultz, NMFS (ph. 301–427–8443, email *jennifer.schultz@noaa.gov*), or Ann Marie Lauritsen, USFWS (ph. 904–731–3032, email *annmarie_lauritsen@fws.gov*). Persons who use a Telecommunications Device for the Deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, and 7 days a week.

SUPPLEMENTARY INFORMATION:

Public Comments Solicited on the Proposed Listing

We intend that any final action resulting from this proposal be as accurate and effective as possible and informed by the best available scientific and commercial information. Therefore, we request comments or information from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We are seeking information and comments on whether each of the 11 proposed green turtle DPSs qualify as DPSs, whether listing of each DPS is warranted, and, if so, whether they should be classified as threatened or endangered as described in the ''Listing Determinations Under the ESA'' section provided below. Specifically, we are soliciting information on the following subjects relative to green turtles within the 11 proposed DPSs: (1) Historical and current population status and trends, (2) historical and current distribution, (3) migratory movements and behavior, (4) genetic population structure, (5) current or planned activities that may adversely affect green turtles, (6) conservation efforts to protect green turtles, and (7) our extinction risk analysis and findings. We request that all data, information, and comments be accompanied by supporting documentation such as maps, bibliographic references, or reprints of pertinent publications. We will consider comments and new information when making final determinations.

Public Comments Solicited on Critical Habitat

Though we are not proposing to designate critical habitat at this time, we request evaluations describing the quality and extent of existing habitats within U.S. jurisdiction for the proposed North Atlantic, South Atlantic (U.S. Virgin Islands), Central South Pacific (American Samoa), Central West Pacific (Commonwealth of the Northern

Mariana Islands (CNMI) and Guam), Central North Pacific, and East Pacific DPSs, as well as information on other areas that may qualify as critical habitat for these proposed DPSs. Specifically, we are soliciting the identification of particular areas within the geographical area occupied by these species that include physical or biological features that are essential to the conservation of these DPSs and that may require special management considerations or protection (16 U.S.C. 1532(5)(A)(i)). Essential features may include, but are not limited to, features specific to individual species' ranges, habitats, and life history characteristics within the following general categories of habitat features: (1) Space for individual growth and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for breeding, reproduction and development of offspring; and (5) habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of the species (50 CFR 424.12(b)). Areas outside the geographical area occupied by the species at the time of listing should also be identified, if such areas are essential for the conservation of the species (16 U.S.C. 1532(5)(A)(ii)). Unlike for occupied habitat, such areas are not required to contain physical or biological features essential to the conservation of the species. ESA implementing regulations at 50 CFR 424.12(h) specify that critical habitat shall not be designated within foreign countries or in other areas outside of U.S. jurisdiction. Therefore, we request information only on potential areas of critical habitat within locations under U.S. jurisdiction.

Section 4(b)(2) of the ESA requires the Secretary to consider the ''economic impact, impact on national security, and any other relevant impact'' of designating a particular area as critical habitat. Section 4(b)(2) also authorizes the Secretary to conduct a balancing of the benefits of inclusion and the benefits of exclusion from a critical habitat designation of a particular area, and to exclude any particular area where the Secretary finds that the benefits of exclusion outweigh the benefits of designation, unless excluding that area will result in extinction of the species. Therefore, for features and areas potentially qualifying as critical habitat, we also request information describing: (1) Activities or other threats to the essential features that could be affected by designating them as critical habitat (pursuant to section 4(b)(8) of the ESA); and (2) the positive and negative economic, national security and other relevant impacts, including benefits to the recovery of the species, likely to result if these areas are designated as critical habitat. We also seek information regarding the conservation benefits of designating areas within nesting beaches and waters under U.S. jurisdiction as critical habitat. Data sought include, but are not limited to the following: (1) Scientific or commercial publications, (2) administrative reports, maps or other graphic materials, and (3) information from experts or other interested parties. Comments and data particularly are sought concerning the following: (1) Maps and specific information describing the amount, distribution, and type of use (*e.g.*, foraging or migration) by green turtles, as well as any additional information on occupied and unoccupied habitat areas; (2) the reasons why any habitat should or should not be determined to be critical habitat as provided by sections 3(5)(A) and 4(b)(2) of the ESA; (3) information regarding the benefits of designating particular areas as critical habitat; (4) current or planned activities in the areas that might be proposed for designation and their possible impacts; (5) any foreseeable economic or other potential impacts resulting from designation, and in particular any impacts on small entities; and (6) whether specific unoccupied areas may be essential to provide additional habitat areas for the conservation of the proposed DPSs. We seek information regarding critical habitat for the proposed green turtle DPSs as soon as possible, but no later than June 22, 2015.

Public Hearings

The Services will hold a public hearing in Hawai'i. Interested parties may provide oral or written comments at this hearing. A public hearing will be held on April 8, 2015 from 6 to 8 p.m., with an informational open house starting at 5:30 p.m., at the Japanese Cultural Center, 2454 South Beretania Street, Honolulu, Hawai'i 96826. Parking is available at the Japanese Cultural Center for $5. If requested by the public by May 7, 2015, additional hearings will be held regarding the proposed listing of the green turtle DPSs. If additional hearings are requested, details regarding location(s), date(s), and time(s) will be published in a forthcoming **Federal Register** notice.

References

A complete list of all references cited herein is available upon request (see **FOR FURTHER INFORMATION CONTACT**).

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I. Background

On July 28, 1978, NMFS and USFWS, collectively referred to as the Services, listed the green turtle (*Chelonia mydas*) under the ESA (43 FR 32800). Pursuant to the authority that the statute provided, and prior to the current language in the definition of ''species'' regarding DPSs, the Services listed the species as threatened, except for the Florida and Mexican Pacific Coast breeding populations, which were listed as endangered. The Services published recovery plans for U.S. Atlantic (*http://www.nmfs.noaa.gov/pr/recovery/plans.htm*) and U.S. Pacific (including the East Pacific) populations of the green turtle (63 FR 28359, May 22, 1998). NMFS designated critical habitat for the species to include waters surrounding Culebra Island, Commonwealth of Puerto Rico, and its outlying keys (63 FR 46693, September 2, 1998).

On February 16, 2012, the Services received a petition from the Association of Hawaiian Civic Clubs to identify the Hawaiian green turtle population as a DPS and ''delist'' the DPS under the ESA. On August 1, 2012, NMFS, with USFWS concurrence, determined that the petition presented substantial information indicating that the petitioned action may be warranted (77 FR 45571). Initiating a review of new information in accordance with the DPS policy was consistent with the recommendation made in the Services' 2007 Green Sea Turtle 5-year Review. The Services initiated a status review to consider the species across its range, determine whether the petitioned action is warranted, and determine whether other DPSs could be recognized. The Services decided to review the Hawaiian population in the context of green turtles globally with regard to application of the DPS policy and in light of significant new information since the listing of the species in 1978.

The Services appointed a Status Review Team (SRT) in September 2012. SRT members were affiliated with NMFS Science Centers and the Services' field, regional, and headquarters offices, and provided a diverse range of expertise, including green turtle genetics, demography, ecology, and management, as well as risk analysis and ESA policy. The SRT was charged with reviewing and evaluating all relevant scientific information relating to green turtle population structure globally to determine whether any populations may qualify as DPSs and, if so, to assess the extinction risk for each proposed DPS. Findings of the SRT are detailed in the ''Green Turtle (*Chelonia mydas*) Status Review under the U.S. Endangered Species Act'' (hereinafter referred to as the Status Review; NMFS and USFWS, 2014). The Status Review underwent independent peer review by 14 scientists with expertise in green turtle biology, genetics, or related fields, and endangered species listing policy. The Status Review is available electronically at *http://www.nmfs.noaa.gov/pr/species/turtles/green.htm*.

This **Federal Register** document announces the 12-month finding on the petition to identify the Hawaiian green turtle population as a DPS and remove the protections of the ESA from the DPS, and includes a proposed rule to revise the existing listings to identify 11 green turtle DPSs worldwide and list them as threatened or endangered under the ESA in place of the existing listings. Our determinations have been made only after review of the best available scientific and commercial information pertaining to the species throughout its range and within each DPS. This is similar to the action we took for loggerhead sea turtles (76 FR 58868, September 22, 2011).

The ESA gives us clear authority to make these listing determinations and to revise the lists of endangered and threatened species to reflect these determinations. Section 4(a)(1) of the ESA authorizes us to determine by regulation whether ''any species,'' which is expressly defined to include species, subspecies, and DPS, is an endangered species or a threatened species based on certain factors. Review of the status of a species may be commenced at any time, either on the Services' own initiative—through a status review or in connection with a 5-year review under Section 4(c)(2)—or in response to a petition. Because a DPS is not a scientifically recognized entity, but rather one that is created under the language of the ESA and effectuated through our DPS Policy (61 FR 4722, February 7, 1996), we have some discretion to determine whether the species should be reclassified into DPSs and what boundaries should be recognized for each DPS. Section 4(c)(1) gives us authority to update the lists of threatened and endangered species to reflect these determinations. This can include revising the lists to remove a species or reclassify the listed entity.

II. Policies for Delineating Species Under the ESA

Section 3 of the ESA defines ''species'' as including ''any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.'' The term ''distinct population segment'' is not recognized in the scientific literature. Therefore, the Services adopted a joint policy for recognizing DPSs under the ESA (DPS Policy; 61 FR 4722) on February 7, 1996. The DPS Policy requires the consideration of three elements when evaluating the status of possible DPSs: (1) The discreteness of the population segment in relation to the remainder of the species to which it belongs; (2) the significance of the population segment to the species to which it belongs; and (3) the population segment's conservation status in relation to the

ESA's standards for listing. This is discussed further in the Status Review, in the section entitled, ''Overview of Information and Process Used to Identify DPSs.''

III. Listing Determinations Under the ESA

The ESA defines an endangered species as one that is in danger of extinction throughout all or a significant portion of its range (section 3(6)), and a threatened species as one that is likely to become endangered in the foreseeable future throughout all or a significant portion of its range (section 3(20)). Thus, in the context of the ESA, the Services interpret an ''endangered species'' to be one that is presently in danger of extinction. A ''threatened species,'' on the other hand, is not presently in danger of extinction, but is likely to become so in the foreseeable future. In other words, the primary statutory difference between a threatened and endangered species is the timing of when a species may be in danger of extinction, either presently (endangered) or in the foreseeable future (threatened).

When we consider whether a species might qualify as threatened under the ESA, we must consider the meaning of the term ''foreseeable future.'' It is appropriate to interpret ''foreseeable future'' as the horizon over which predictions about the conservation status of the species can be reasonably relied upon. The foreseeable future considers the life history of the species, habitat characteristics, availability of data, particular threats, ability to predict threats, and the reliability to forecast the effects of these threats and future events on the status of the species under consideration. Because a species may be susceptible to a variety of threats for which different data are available, or which operate across different time scales, the foreseeable future is not necessarily reducible to a particular number of years. For the green turtle, the SRT used a horizon of 100 years to evaluate the likelihood that a DPS would reach a critical risk threshold (*i.e.,* quasi-extinction). In making the proposed listing determinations, we applied the horizon of 100 years in our consideration of foreseeable future under the scope of the definitions of endangered and threatened species, pursuant to section 3 of the ESA.

The statute requires us to determine whether any species is endangered or threatened as a result of any one or combination of the following 5-factors: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) the inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence (section 4(a)(1)(A–E) of the ESA). Section 4(b)(1)(A) of the ESA requires us to make this determination based solely on the best available scientific and commercial data available after conducting a review of the status of the species and taking into account any efforts being made by States or foreign governments to protect the species.

IV. Biology and Life History of Green Turtles

A thorough account of green turtle biology and life history may be found in the Status Review, which is incorporated here by reference. The following is a succinct summary of that information.

The green turtle, *C. mydas,* has a circumglobal distribution, occurring throughout tropical, subtropical, and, to a lesser extent, temperate waters. Their movements within the marine environment are not fully understood, but it is believed that green turtles inhabit coastal waters of over 140 countries (Groombridge and Luxmoore, 1989). The Status Review lists 468 known nesting sites worldwide, with 79 having nesting aggregations with greater than 500 females. The largest green turtle nesting aggregation, with an estimated number of nesting females greater than 132,000, is Tortuguero, Costa Rica (Sea Turtle Conservancy, 2013). There are 14 aggregations estimated to have 10,001–100,000 nesting females: Quintana Roo, Mexico (Julio Zurita, pers. comm., 2012); Ascension Island, UK (S. Weber, Ascension Island Government, pers. comm., 2013); Poilão, Guinea-Bissau (Catry *et al.,* 2009); Aldabra Atoll, Seychelles (Mortimer *et al.*, 2011; Mortimer, 2012; J. Mortimer, unpubl. data.); Mohéli, Comoros Islands, France (Bourjea, 2012); Mayotte, Comoros Islands (Bourjea, 2012); Europa, Esparses Islands, France (Lauret-Stepler *et al.,* 2007; Bourjea, 2012); Ras Al Hadd, Oman (AlKindi *et al.,* 2008); Ras Sharma, Yemen (PERSGA/GEF, 2004); Wellesley Group, Australia (Unpubl. data cited in Limpus, 2009); Raine Island, Australia (Chaloupka *et al.,* 2008a; Limpus, 2009); Moulter Cay, Australia (Limpus, 2009); Capricorn Bunker Group of Islands, Australia (Limpus *et al.,* 2003); and Colola, Mexico (Delgado-Trejo and Alvarado-Figueroa, 2012).

Most green turtles spend the majority of their lives in coastal foraging grounds. These areas include fairly shallow waters in open coastline and protected bays and lagoons. While in these areas, green turtles rely on marine algae and seagrass as their primary diet constituents, although some populations also forage heavily on invertebrates. These marine habitats are often highly dynamic and in areas with annual fluctuations in seawater and air temperatures, which can cause the distribution and abundance of potential green turtle food items to vary substantially between seasons and years (Carballo *et al.,* 2002).

At nesting beaches, green turtles rely on beaches characterized by intact dune structures, native vegetation, little to no artificial lighting, and 26 to 35° C beach temperatures for nesting (Limpus, 1971; Salmon *et al.,* 1992; Ackerman, 1997; Witherington, 1997; Lorne and Salmon, 2007). Nests are typically laid at night at the base of the primary dune (Hirth, 1997; Witherington *et al.,* 2006). Complete removal of vegetation, or coastal construction, can affect thermal regimes on beaches and thus affect the incubation and resulting sex ratio of hatchling turtles. Nests laid in these areas are at a higher risk of tidal inundation (Schroeder and Mosier, 2000).

Hatchlings emerge from their nests *en masse* and almost exclusively at night, presumably using decreasing sand temperature as a cue (Hendrickson, 1958; Mrosovsky, 1968). Immediately after hatchlings emerge from the nest, they begin a period of frenzied activity. During this active period, hatchlings crawl to the surf, swim, and are swept through the surf zone (Carr and Ogren, 1960; Carr, 1961; Wyneken and Salmon, 1992). They orient to waves in the nearshore area and to the magnetic field as they proceed further toward open water (Lohmann and Lohmann, 2003).

Upon leaving the nesting beach and entering the marine environment, post-hatchling green turtles begin an oceanic juvenile phase during which they are presumed to primarily inhabit areas where surface waters converge to form local downwellings that result in linear accumulations of floating material, especially *Sargassum* sp. This association with downwellings is well-documented for loggerhead sea turtles (*Caretta caretta*), as well as for some post-hatchling green turtles (Witherington *et al.,* 2006; 2012). The smallest of oceanic green turtles associating with these areas are relatively active, moving both within *Sargassum* sp. mats and in nearby open water, which may limit the ability of

researchers to detect their presence as compared to relatively immobile loggerheads of the same life stage that associate with similar habitat (Smith and Salmon, 2009; Witherington *et al.,* 2012).

Oceanic-stage juvenile green turtles originating from nesting beaches in the Northwest Atlantic appear to use oceanic developmental habitats and move with the predominant ocean gyres for several years before returning to their neritic (shallower water, generally to 200 m depth, including open coastline and protected bays and lagoons) foraging and developmental habitats (Musick and Limpus, 1997; Bolten, 2003). Larger neonate green turtles (at least 15–26 cm straight carapace length; SCL) are known to occupy *Sargassum* sp. habitats and surrounding epipelagic waters, where food items include *Sargassum* sp. and associated invertebrates, fish eggs, and insects (Witherington *et al.,* 2012). Knowledge of the diet and behavior of oceanic stage juveniles, however, is limited.

The neritic juvenile stage begins when green turtles exit the oceanic zone and enter the neritic zone (Bolten, 2003). The age at recruitment to the neritic zone likely varies with individuals leaving the oceanic zone over a wide size range (summarized in Avens and Snover, 2013). After migrating to the neritic zone, juveniles continue maturing until they reach adulthood, and some may periodically move between the neritic and oceanic zones (NMFS and USFWS, 2007; Parker *et al.,* 2011). The neritic zone, including both open coastline and protected bays and lagoons, provides important foraging habitat, inter-nesting habitat, breeding, and migratory habitat for adult green turtles (Plotkin, 2003; NMFS and USFWS, 2007). Some adult females may also periodically move between the neritic and oceanic zones (Plotkin, 2003; Hatase *et al.,* 2006) and, in some instances, adult green turtles may reside in the oceanic zone for foraging (NMFS and USFWS, 2007; Seminoff *et al.,* 2008; Parker *et al.,* 2011). Despite these uses of the oceanic zone by green turtles, much remains unknown about how oceanography affects juvenile and adult survival, adult migration, prey availability, and reproductive output.

Most green turtles exhibit slow growth rates, which has been described as a consequence of their largely herbivorous (*i.e.,* low net energy) diet (Bjorndal, 1982). Consistent with slow growth, age-to-maturity for green turtles appears to be the longest of any sea turtle species (Chaloupka and Musick, 1997; Hirth, 1997). Published age at sexual maturity estimates are as high as 35–50 years, with lower ranges reported for known age turtles from the Cayman Islands (15–19 years; Bell *et al.,* 2005) and Caribbean Mexico (12–20 years; Zurita *et al.,* 2012) and some mark-recapture projects (*e.g.,* 15–25 years in the Eastern Pacific; Seminoff *et al.,* 2002a). Mean adult reproductive lifespan of green turtles from Australia's southern Great Barrier Reef (GBR) has been estimated at 19 years using mark-recapture and survival data (Chaloupka and Limpus, 2005). The maximum nesting lifespan observed in a 27-year tag return dataset from Trindade Island, Brazil was 16 years; however, nesting monitoring was discontinuous over time (Almeida *et al.,* 2011). Tag return data comprising 2,077 females (42,928 nesting events, 1968-partial 2012 season) from continuous monitoring at French Frigate Shoals (FFS), Hawai'i show maximum nesting lifespans of 37–38 years (n=2), with many individuals (n=54) documented nesting over a minimum of 25–35 years (I. Nurzia-Humburg, S. Hargrove, and G. Balazs, NMFS, unpublished data, 2013).

V. Overview of the Policies and Process Used To Identify DPSs

The SRT considered a vast array of information in assessing whether there are any green turtle population segments that satisfy the DPS criteria of being both discrete and significant. In anticipation of conducting a green turtle status review, NMFS contracted two post-doctoral associates in 2011 to collect and synthesize genetic and demographic information on green turtles worldwide. The SRT was presented with, and evaluated, this genetic and demographic information. Demographic information included green turtle nesting information; morphological and behavioral data; movements, as indicated by tagging (flipper and passive integrated transponder (PIT) tags) and satellite telemetry data; and anthropogenic impacts. Also discussed and considered as a part of this analysis were oceanographic features and geographic barriers.

A population may be considered discrete if it satisfies either one of the following conditions: (1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors; or (2) it is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the ESA (61 FR 4722, February 7, 1996). According to the policy, quantitative measures of genetic or morphological discontinuity can be used to provide evidence for item (1). The SRT compiled a list of attributes that suggested various population groups might be considered discrete, identified potentially discrete units, and discussed alternative scenarios for lumping or splitting these potentially discrete units. After arriving at a tentative list of units, each member of the SRT was given 100 points that could be distributed among two categories: (1) The unit under consideration is discrete, and (2) the unit under consideration is not discrete. The spread of points reflects the level of certainty of the SRT surrounding a decision to call the unit discrete. The SRT determined that there are 11 discrete regional populations of green turtles globally. Each of these was then evaluated for significance.

A population may be considered significant if it satisfies any one of the following conditions: (1) Persistence of the discrete segment in an ecological setting unusual or unique for the taxon; (2) evidence that loss of the discrete segment would result in a significant gap in the range of the taxon; (3) evidence that the discrete segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historical range; and (4) evidence that the discrete segment differs markedly from other populations of the species in its genetic characteristics. Because condition (3) is not applicable to green turtles, the SRT addressed conditions (1), (2) and (4). The SRT listed the attributes that would make potential DPSs (those determined to be discrete in the previous step) significant. As in the vote for discreteness, members of the SRT were then given 100 points with which to vote for whether each unit met the significance criterion in the joint policy. All units that had been identified as discrete were also determined to be significant.

For more discussion on the process the SRT used to identify DPSs, see Section 3 of the Status Review document.

A. Discreteness Determination

In evaluating discreteness among the global green turtle population, the SRT began by focusing on the physical separation of ocean basins (*i.e.,* Atlantic, Pacific, and Indian Oceans). The result was an evaluation of data by major ocean basins, although it quickly became clear that the Indian and Pacific

Ocean populations overlapped. The evaluation by ocean basin was not to preclude any larger or smaller DPS delineation, but to aid in data organization and assessment. We organized this section by ocean basin to explain the discreteness determination process and results.

Within each ocean basin, the SRT started by evaluating genetic information. The genetic data consisted of results from studies using maternally inherited mitochondrial DNA (mtDNA), biparentally inherited nuclear DNA (nDNA) microsatellite (a section of DNA consisting of very short nucleotide sequences repeated many times), and single nucleotide polymorphism (a DNA sequence variation occurring commonly within a population) markers. Next, the SRT reviewed tagging, telemetry and demographic data, and additional information such as potential differences in morphology. The SRT also considered whether the available information suggests that green turtle population segments are separated by vicariant barriers, such as oceanographic features (*e.g.,* current systems), or biogeographic boundaries.

Genetic information that was presented to the SRT resulted from a global phylogenetic analysis (analysis based on natural evolutionary relationships) based on sequence data from a total of 129 mtDNA haplotypes (*i.e.,* mtDNA sequences, which are inherited together) identified from approximately 4,400 individuals sampled at 105 green turtle nesting sites around the world (Jensen and Dutton, NMFS, unpublished data; M. Jensen, NRC, pers. comm., 2013). Results indicated that the mtDNA variation present in green turtles throughout the world today occurs within eight major clades (*i.e.,* a group consisting of an ancestor and all its descendants) that are structured geographically within ocean basins. These clades represent similarities between haplotypes on evolutionary timescales as opposed to ecological timescales. See Figure 1 for a visual representation of these clades. There is divergence among individual haplotypes within each green turtle clade (M. Jensen, NRC, pers. comm., 2013) and discrete populations can exist within these clades.

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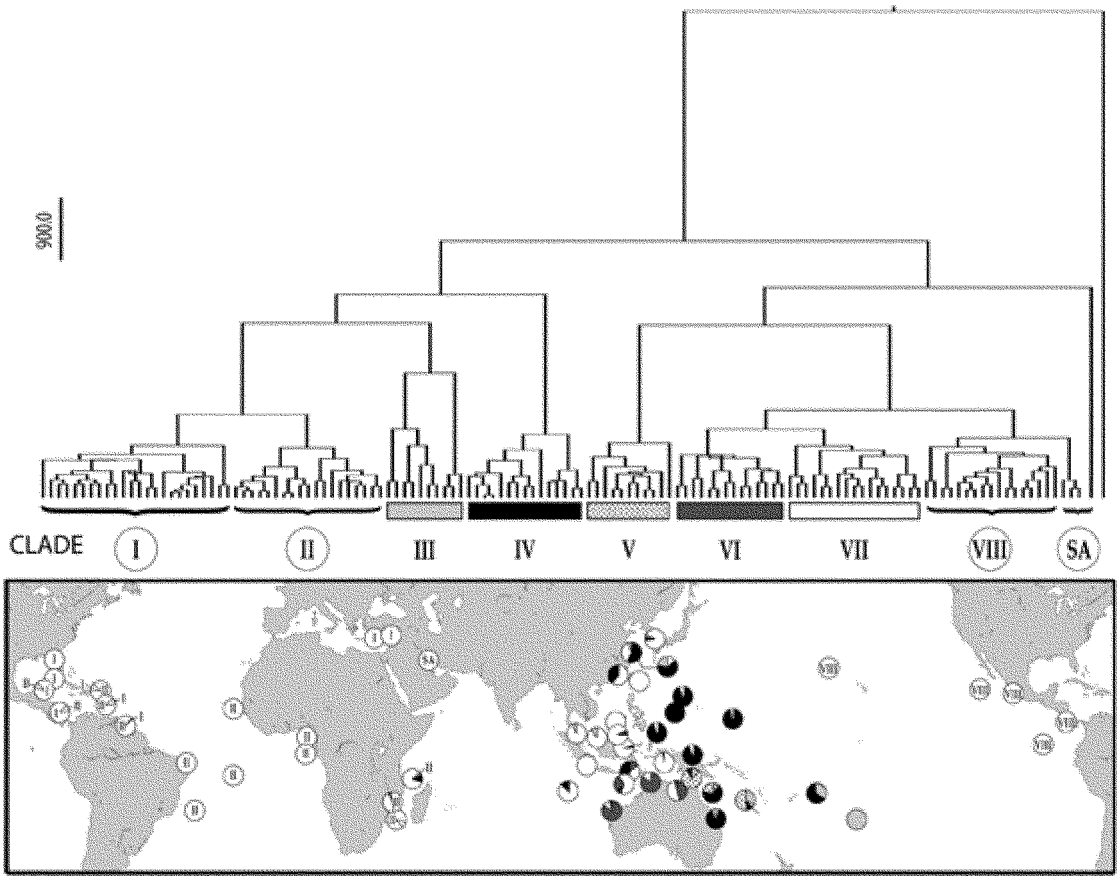
Figure 1. Bayesian phylogenetic tree showing relationships (average number of base substitutions) among 129 mtDNA haplotypes that group into eight major clades (Clade I – VIII), defined by a shaded box or brackets. The geographic distribution of haplotypes is shown by pie charts with corresponding shading or Roman numerals. Each pie chart corresponds to a genetically distinct management unit, which exhibits significant divergence of haplotype frequencies, as described by Moritz (1994; Jensen and Dutton, NMFS, unpublished data). The samples from Saudi Arabia (SA) contain two highly divergent groups of haplotypes. More sampling is needed from this region to assess their placement in the tree.



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1. Atlantic Ocean/Mediterranean Sea

Two of the eight major mtDNA clades, Clades I and II, are found in the Atlantic/Mediterranean region. Clade I includes haplotypes primarily found in turtles from the Mediterranean and the western North Atlantic. Within Clade I, two strongly divergent groups of haplotypes are found, with one group being restricted to the Mediterranean and the other being restricted to the western North Atlantic. Mediterranean and western North Atlantic turtles share only one specific haplotype that has been found in only two individuals, indicating very strong long-term isolation of females. As such, there is strong evidence that these two geographically-separated groups of divergent haplotypes may be considered discrete.

In addition to genetic evidence for discreteness, in the Mediterranean, green turtles are spatially separated from populations in the Atlantic and Indian Oceans, with the nearest known nesting sites outside the Mediterranean being several thousand kilometers away in the Republic of Senegal (Senegal), and the North Atlantic population being more than 8,000 km away. Further, no turtles tagged in the eastern Mediterranean have been recovered farther west than the Tunisian Republic (Tunisia) inside the Mediterranean. Nesting females from Cyprus, Turkey, the Syrian Arab Republic (Syria), and the State of Israel (Israel) have been satellite tracked to the Arab Republic of Egypt (Egypt), Libya, and Turkey—with movements largely restricted to the eastern Mediterranean (Godley *et al.,* 2002; Broderick *et al.,* 2007). Post-nesting turtles from this region migrate primarily along the coast from their nesting beach to their foraging and

overwintering grounds in the Mediterranean (Godley *et al.,* 2002; Broderick *et al.,* 2007).

Demographic evidence of discreteness of Mediterranean green turtles lies in the fact that Mediterranean green turtles are the second smallest green turtles worldwide (the smallest being in the eastern Pacific), with a mean nesting size in Alagadi, Cyprus of 92 cm Curved Carapace Length (CCL; Broderick *et al.,* 2003), compared with 95 cm to 110 cm CCL size range for most other populations.

In the North Atlantic, tag recovery and telemetry data indicate that nesting females primarily reside within the North Atlantic. Some nesting females tagged at Tortuguero, Costa Rica were recaptured in the South Atlantic (Troëng *et al.,* 2005). There is some degree of mixing of immature turtles on foraging pastures between the North and South Atlantic; however, nesting sites in the eastern Caribbean carry mostly mtDNA haplotypes from a different clade (II), indicating strong long-term isolation. Tagging studies have identified juveniles from this population in waters off Brazil and Argentina, but we found no evidence of movement of mature individuals.

The second clade within the Atlantic Ocean basin, Clade II, includes haplotypes found in all South Atlantic nesting sites, some eastern Caribbean turtles, and some turtles in the southwest Indian Ocean. With a few exceptions, green turtles in the South Atlantic carry an mtDNA haplotype that is found nowhere else, indicating strong isolation of matrilines over evolutionary time periods. The exceptions to this pattern are: (1) One nesting site from the eastern Caribbean, which exhibits a low frequency of a haplotype from the North Atlantic/Mediterranean clade (Clade I); (2) nesting sites from the Gulf of Mexico/Central America, which have a low frequency of Clade II haplotypes; and (3) two nesting sites from southeast Africa, which have high frequencies of Clade II haplotypes. The presence of a shared haplotype in South Atlantic and southwest Indian Ocean rookeries demonstrates for the first time a recent matrilineal link between Atlantic and Indian Ocean green turtle populations (Bourjea *et al.,* 2007b). However, the SRT believes all these exceptions reflect historical events rather than contemporary connectivity. This interpretation is supported by satellite telemetry, which reveals extensive movements of turtles within the South Atlantic region but no evidence for migrations into other areas, other than rare instances of movement into foraging areas in the North Atlantic. Long stretches of cold water along the coasts of Patagonia and southwest Africa serve to isolate South Atlantic turtles from populations in the Indian and Pacific Oceans.

Foraging ground studies in the Atlantic have generally shown regional structuring with strong stock contribution from nearby regional nesting sites, but little mixing over long distances (Bolker *et al.,* 2007). Overall, the distribution of the two genetic haplotype lineages (Clade I and Clade II) is very similar to what is seen for the nesting sites and indicates a strong regional structuring with little overlap (Bolker *et al.,* 2007). However, a recent study showed that a large proportion of juvenile green turtles in the Cape Verde Islands in the eastern Atlantic originated from distant nesting sites across the Atlantic, namely Suriname (38 percent), Ascension Island (12 percent) and Guinea Bissau (19 percent), suggesting that, like loggerheads, green turtles in the Atlantic undertake transoceanic developmental migrations (Monzón-Argüello *et al.,* 2010). The fact that long distance dispersal is only seen for juvenile turtles suggests that larger adult-sized turtles return to forage within the region of their natal nesting sites, thereby limiting the potential for gene-flow across larger scales (Monzón-Argüello *et al.,* 2010).

In the South Atlantic, flipper tag recoveries have established movement between feeding grounds and nesting sites in the Caribbean and Brazil (Lima *et al.,* 2003; Lima *et al.,* 2008; Lima *et al.,* 2012), and telemetry data indicate that juvenile green turtles move from Argentina to Uruguay and Brazil, from Uruguay to Brazil, and from the Guianas to Brazil. Telemetry studies indicate that nesting females from the eastern South Atlantic (west coast of Africa) are confined to the eastern South Atlantic, and nesting females from the western South Atlantic are confined to the western South Atlantic. In the eastern South Atlantic, all tracked turtles remained in the general vicinity of their release location. Nesting females from Ascension Island were tracked to foraging grounds along the coast of Brazil.

Finally, demographic evidence for discreteness of South Atlantic green turtles lies in the fact that the South Atlantic is home to the largest green turtles in the world, with a mean nesting size of green turtles at Atol das Rocas, Brazil of 118.6 cm CCL (n=738), compared with 95 cm to 110 cm CCL size range for most other populations.

Based on the information presented above, the SRT concluded, and we concur, that three discrete populations exist in the Atlantic Ocean/Mediterranean: (1) North Atlantic, (2) Mediterranean, and (3) South Atlantic. These three populations are markedly separated from each other and from populations within the Pacific Ocean and Indian Ocean basins as a consequence of physical (including both oceanographic basins and currents), ecological, and behavioral factors. Information supporting this conclusion includes genetic analysis, flipper tag recoveries, and satellite telemetry.

2. Indian Ocean

Green turtles from the Indian Ocean exhibit haplotypes from Clades II, III, IV, VI, and VII. In the southwest Indian Ocean, Bourjea *et al.* (2007b) genetically assessed the population structure among 288 nesting green turtles from 10 nesting sites. Overall, the southwest Indian Ocean appears to have at least two genetic stocks: (1) The South Mozambique Channel (Juan de Nova and Europa); and (2) the North Mozambique Channel. As stated earlier, the authors recorded a high presence of a common and widespread South Atlantic Ocean haplotype (CM–A8) in the South Mozambique Channel. However, the observation that only a single Atlantic haplotype has been observed and that it occurs in high frequency among South Mozambique Channel rookeries suggests that gene flow is not ongoing (Bourjea *et al.,* 2007b). Nesting sites in the North Mozambique Channel share several haplotypes (including CmP47 and CmP49) with nesting sites in the eastern Indian Ocean, Southeast Asia and the Western Pacific, indicating strong-connectivity with the eastern Indian Ocean population. However, tagging and tracking data document movements within the Southwest Indian Ocean but not between it and the eastern Indian and western Pacific Oceans. Although there is some evidence of trans-boundary movement between the southwest Indian Ocean and the population in the North Indian Ocean, evidence from tag returns indicates that most remain in the southwest Indian Ocean. Indeed, some green turtles in Tanzania are probably resident, and others are highly migratory, moving to and from nesting and feeding grounds within the southwest Indian Ocean in Kenya, Seychelles, Comoros, Mayotte, Europa Island and South Africa (Muir, 2005). From 2009 to 2011, 90 satellite transmitters deployed on nesting green turtles at five nesting sites in the southwest Indian Ocean showed that nearly 20 percent of the tracked turtles used Madagascar coastal foraging grounds while more than 80 percent

used the east African coasts, including waters off north Mozambique and south Tanzania. The SRT determined that spatial separation between the southwest Indian Ocean and other Indo-Pacific populations, as well as an apparent nesting gap, the lack of trans-boundary recoveries in tagging, and localized telemetry, indicate discreteness from other populations in the Indo-Pacific.

In the North Indian Ocean, limited information from only a single nesting site (Jana Island, Saudi Arabia, n=27) exists on the genetic structure (M. Jensen, NRC, pers. comm., 2013). Nonetheless, four mtDNA haplotypes never reported from any other nesting site were identified from Jana Island, and are highly divergent from other haplotypes in the Indian Ocean. This population also appears to be isolated from other Indian populations by substantial breaks in nesting habitat along the Horn of Africa and along the entire eastern side of the Indian subcontinent.

Tagging of turtles on nesting beaches of the North Indian Ocean started in the late 1970s and indicates that some turtles in the North Indian Ocean migrate long distances from distant feeding grounds to nesting beaches while others are quite sedentary, but all stay within the North Indian Ocean. Tagging studies have revealed that some turtles nesting on Ras Al Hadd and Masirah, Oman can be found as far away as Somalia, Ethiopia, Yemen, Saudi Arabia, the upper Gulf, and Pakistan (Ross, 1987; Salm, 1991), and a green turtle tagged in Oman was found in the Maldives (Al-Saady *et al.,* 2005). No tagging has been carried out on feeding grounds (Al-Saady *et al.,* 2005).

A few green turtles in the North Indian Ocean have been fitted with satellite transmitters and reported at *www.seaturtle.org*, but no data have been published. One telemetered female green turtle remained in the coastal areas of the Persian Gulf for 49 days (N. Pilcher, Marine Research Foundation, pers. comm., 2013), and two nesting turtles were telemetered at Masirah Island, Oman, both of which moved southward along the Arabian Peninsula and were found in the Red Sea when the transmissions ceased (Rees *et al.* 2012). Telemetry data for captive-hatched and reared green turtles at Republic of Maldives (Vabbinfaru Island, Male Atoll) have indicated wide movement patterns within the Indian Ocean (N. Pilcher, Marine Research Foundation, pers. comm., 2013).

In the eastern Indian Ocean, turtles mix readily with those in the western Pacific. Genetic sampling in the eastern Indian and western Pacific Ocean regions has been fairly extensive with more than 22 nesting sites sampled although, because there are a high number of nesting sites in this region and there is complex structure, there remain gaps in sampling relative to distribution (*e.g.,* Thailand, Vietnam, parts of Indonesia, and the Philippines). Most nesting sites are dominated by haplotypes from Clade VII, but with some overlap of Clades III and IV throughout the Indian Ocean—evidence of a complex colonization history in this region. While one common haplotype is shared across the Indian Ocean, substantial gaps in nesting sites along the east coast of India and in the southern Indian Ocean serve to isolate the eastern Indian-western Pacific population from those in the north and southwest Indian Ocean. The Wallace Line (a boundary drawn in 1859 by the British naturalist Alfred Russel Wallace that separates the highly distinctive faunas of the Asian and Australian biogeographic regions) and its northern extension separate this population from populations to the east, which carry haplotypes primarily from Clade IV. Nesting sites to the northern extreme (Taiwan and Japan) show more complex patterns of higher mixing of divergent haplotypes, and the placement of individual nesting sites within this area is somewhat uncertain and may become better resolved when additional genetic data are available.

Significant population substructuring occurs among nesting sites in this area. Mixed-stock analysis of foraging grounds shows that green turtles from multiple nesting beaches commonly mix at feeding areas across northern Australia (Dethmers *et al.,* 2006) and Malaysia (Jensen, 2010), with higher contributions from nearby large nesting sites. Satellite tracking also shows green turtle movement throughout the eastern Indian and western Pacific (Cheng, 2000; Dermawan, 2002; Charuchinda *et al.,* 2003; Wang, 2006).

Given the information presented above, the SRT concluded, and we concur, that three discrete populations exist in the Indian Ocean, with the third overlapping with the Pacific: (1) Southwest Indian, (2) North Indian, and (3) East Indian-West Pacific. These three populations are markedly separated from each other and from populations within the Atlantic Ocean as a consequence of physical, ecological, and behavioral factors. Information supporting this conclusion includes genetic analysis, flipper tag recoveries, and satellite telemetry.

3. Pacific Ocean

The central west Pacific encompasses most of the area commonly referred to as Micronesia as well as parts of Melanesia. Genetic sampling in the central west Pacific has recently improved, but remains challenging, given the large number of small island and atoll nesting sites. At least five management units have been identified in the region (Palau, Independent State of Papua New Guinea (PNG), Yap, CNMI/Guam, and the Republic of the Marshall Islands (Marshall Islands); Dethmers *et al.,* 2006; M. Jensen, NRC, pers. comm., 2013; Dutton *et al.,* 2014). The central west Pacific carries haplotypes from Clade IV, while the populations to the west carry haplotypes predominantly from Clade VII, so any mixing presumably reflects foraging migrations rather than interbreeding. The boundary between the central west Pacific and the East Indian-West Pacific populations is congruent with the northern portion of the Wallace Line. Wide expanses of open ocean separate the central west Pacific from the central north Pacific, and genetic data provide no evidence of gene flow between the central west Pacific and the central north Pacific over evolutionary time scales. Tagging studies also have not found evidence for migration of breeding adults to or from adjacent populations.

In the southwest Pacific, genetic sampling has been extensive for larger nesting sites along the GBR, the Coral Sea and New Caledonia (Dethmers *et al.,* 2006; Jensen, 2010; Dutton *et al.,* 2014). However, several smaller nesting sites in this region have not been sampled (*e.g.,* Solomon Islands, Republic of Vanuatu (Vanuatu), Tuvalu, PNG, etc.). The southwest Pacific population is characterized by haplotypes from Clade V, which have been found only at nesting sites in this population. It also has a high frequency of haplotypes from Clades III and IV, as well as low frequency of haplotypes from Clades VI and VII, making this area highly diverse (haplotypes from the widespread Clade IV differ from those found in the central west and central south Pacific).

Traditional capture-mark-recapture studies (Limpus, 2009) and genetic mixed-stock analysis (Jensen, 2010) show that turtles from several different southwest Pacific nesting sites overlap on feeding grounds along the east coast of Australia. This mixing in foraging areas might provide mating opportunities between turtles from different stocks as evidenced by the lack of differentiation found between the northern and southern GBR nesting sites

for nuclear DNA (FitzSimmons *et al.,* 1997). However, tagging, telemetry, and genetic studies show movement of breeding adults occurs mainly within the southwest Pacific.

In the central South Pacific, genetic sampling has been limited to two nesting sites (American Samoa and French Polynesia) among the many small isolated nesting sites that characterize this region, but they both contain relatively high frequencies of Clade III haplotypes, which are not found in the central west and southwest Pacific populations. Nesting sites from this area share some haplotypes with surrounding nesting sites, but at low frequency. There are also limited data on mixed-stock foraging areas from this region. Flipper tag returns and satellite tracking studies demonstrate that post-nesting females travel the complete geographic breadth of this population, from French Polynesia in the east to Fiji in the west, and sometimes even slightly beyond (Tuato'o-Bartley *et al.,* 1993; Craig *et al.,* 2004; Maison *et al.,* 2010; White, 2012), as far as the Philippines (Trevor, 2009). The complete extent of migratory movements is unknown. The central South Pacific is isolated by vast expanses of open ocean from turtle populations to the north (Hawai'i) and east (Galapagos), and in both of these areas all turtle haplotypes are from an entirely different clade (Clade VIII), indicating lack of genetic exchange across these barriers.

The central North Pacific, which includes the Hawaiian Archipelago and Johnston Atoll, is inhabited by green turtles that are geographically discrete in their genetic characteristics, range, and movements, as evidenced by genetic studies and mark-recapture studies using flipper tags, microchip tags, and satellite telemetry. The key nesting aggregations within the Hawaiian Archipelago have all been genetically sampled. Mitochondrial DNA studies show no significant differentiation (based on haplotype frequency) between FFS and Laysan Island (P. Dutton, NMFS, pers. comm., 2013). While the Hawaiian Islands do share haplotypes with Revillagigedos Islands (CmP1.1 and CmP3.1) at low frequency, the populations remain highly differentiated, and there is little evidence of significant ongoing gene flow. The Frey *et al.* (2013) analysis of mtDNA and nDNA in scattered nesting sites on the main Hawaiian Islands (MHI; Molokai, Maui, Oahu, Lanai, and Kauai) showed that nesting in the MHI might be attributed to a relatively small number of females that appear to be related to each other and demographically isolated from FFS.

Turtles foraging in the MHI originate from Hawaiian nesting sites, with very rare records of turtles from outside the central North Pacific (Dutton *et al.,* 2008), and there is a general absence of turtles from the Hawaiian breeding population at foraging areas outside the central North Pacific. From 1965–2013, 17,536 green turtles (juvenile through adult stages) were tagged. With only three exceptions, the 7,360 recaptures of these tagged turtles have been within the Hawaiian Archipelago. The three outliers involved recoveries in Japan, the Marshall Islands, and the Philippines (G. Balazs, NMFS, pers. comm., 2013).

Information from tagging at FFS, areas in the MHI, the Northwest Hawaiian Islands (NWHI) to the northwest of FFS, and at Johnston Atoll shows that reproductive females and males periodically migrate to FFS for seasonal breeding from the other locations. At the end of the season they return to their respective foraging areas. The reproductive migrations of 19 satellite tracked green turtles (16 females and 3 males) all involved movements between FFS and the MHI. Conventional tagging using microchips and metal flipper tags has resulted in the documentation of 164 turtles making reproductive movements from or to FFS and foraging pastures in the MHI, and 58 turtles from or to FFS and the foraging pastures in the NWHI (G. Balazs, NMFS, unpubl. data).

Hawaiian green turtles also exhibit morphological features that may make them discrete from other populations, possibly reflecting genetic as well as ecological adaptations. In the Hawai'i population, and in Australian populations, green turtles have a well-developed crop, which has not been found in Caribbean or eastern Pacific populations of green turtles (Balazs *et al.,* 1998; J. Seminoff, NMFS, unpubl. data). In addition, juvenile green turtles in Hawai'i have proportionally larger rear flippers than those in the western Caribbean (Wyneken and Balazs, 1996; Balazs *et al.,* 1998). These anatomical differences may reflect adaptive variation to different environmental conditions. A crop that holds food material in the esophagus would permit more food to be ingested during each foraging event in a more dynamic feeding environment, which is helpful along wind-swept rugged coastlines where large waves crash ashore. Larger flippers would also aid in making them stronger swimmers in this feeding environment, and during reproductive migrations across rough pelagic waters, as opposed to calmer coastal waters (Balazs *et al.,* 1998).

The central North Pacific population and those in the central South Pacific and central west Pacific appear to be separated by large oceanic areas, and the central North Pacific and the eastern Pacific populations are separated by the East Pacific Barrier, an oceanographic barrier that greatly restricts or eliminates gene flow for most marine species from a wide range of taxa (Briggs, 1974).

In the eastern Pacific, genetic sampling has been extensive and the coverage in this region is substantial, considering the relatively small population sizes of most eastern Pacific nesting sites, which include both mainland and insular nesting. This sampling indicates complete isolation of nesting females between the eastern and western Pacific nesting sites. Recent efforts to determine the nesting stock origins of green turtles assembled in foraging areas have found that green turtles from several eastern Pacific nesting stocks commonly mix at feeding areas in the Gulf of California and along the Pacific coast in San Diego Bay, U.S. (Nichols, 2003; P. Dutton, NMFS, unpubl. data). In addition, green turtles of eastern Pacific origin have been found, albeit very rarely, in waters off Hawai'i (LeRoux *et al.,* 2003; Dutton *et al.,* 2008), Japan (Kuroyanagi *et al.,* 1999; Hamabata *et al.,* 2009), and New Zealand (Godoy *et al.,* 2012). A recent study of juvenile green turtles foraging at Gorgona Island in the Republic of Colombia indicated a small number (5 percent) of turtles with the haplotype CmP22, which was recently discovered to be common in nesting green turtles from the Marshall Islands and American Samoa (Dutton *et al.,* 2014). This shows that, despite the isolation of nesting females between the eastern and western Pacific, a small number of immature turtles successfully cross the Pacific during developmental migrations in both directions. However, it is important to point out that there is no evidence of mature turtles inhabiting foraging or nesting habitat across the Pacific from their region of origin.

Recent nDNA studies provide insights that are consistent with patterns of differentiation found with mtDNA in the eastern Pacific. Roden *et al.* (2013) found significant differentiation between FFS and two eastern Pacific populations (the Galápagos Islands, Ecuador and Michoacán, Mexico) and greater connectivity between Galapagos and Michoacán than between FFS and either of the eastern Pacific nesting sites.

Flipper tagging and satellite telemetry data show that dispersal and reproductive migratory movements of

green turtles originating from the eastern Pacific region are generally confined to that region. Long-term flipper tagging programs at Michoacán (Alvarado-Díaz and Figueroa, 1992) and in the Galápagos Islands (Green, 1984; P. Zarate, University of Florida, pers. comm., 2012) produced 94 tag returns from foraging areas throughout the eastern Pacific (*e.g.,* Seminoff *et al.,* 2002b). There were two apparent groupings, with tags attached to turtles nesting in the Galápagos largely recovered along the shores from Costa Rica to Chile in the southeastern Pacific, and long-distance tag returns from the Michoacán nesting site primarily from foraging areas in Mexico to Nicaragua. However, there was a small degree of overlap between these two regions, as at least one Michoacán tag was recovered as far south as Colombia (Alvarado-Díaz and Figueroa, 1992).

Satellite telemetry efforts with green turtles in the region have shown similar results to those for flipper tag recoveries. A total of 23 long-distance satellite tracks were considered for the Status Review (Seminoff, 2000; Nichols, 2003; Seminoff *et al.,* 2008). Satellite data show that turtles tracked in northeastern Mexico (Nichols, 2003; J. Nichols, California Academy of Sciences, unpubl. data) and California (P. Dutton, NMFS, pers. comm., 2010) all stayed within the region, whereas turtles tracked from nesting beaches in the Galápagos Islands all remained in waters off Central America and the broader southeastern Pacific Ocean (Seminoff *et al.,* 2008).

Demographic evidence of discreteness is also found in morphological differences between green turtles in the eastern Pacific and those found elsewhere. The smallest green turtles worldwide are found in the eastern Pacific, where mean nesting size is 82.0 cm CCL in Michoacán, Mexico (n=718, (Alvarado-Díaz and Figueroa, 1992) and 86.7 cm CCL in the Galápagos (n=2708; (Zárate *et al.,* 2003), compared to the 95 cm to 110 cm CCL size range for most green turtles. In addition, Kamezaki and Matsui (1995) found differences in skull morphology among green turtle populations on a broad global scale when analyzing specimens representing west and east Pacific (Japan and Galápagos), Indian Ocean (Comoros and Seychelles), and Caribbean (Costa Rica and Guyana) populations. The eastern Pacific was different from others based on discriminant function analysis (used to discriminate between two or more naturally occurring groups).

Given the information presented above, the SRT concluded, and we concur, that there are five discrete populations entirely within the Pacific Ocean: (1) Central West Pacific, (2) Southwest Pacific, (3) Central South Pacific, (4) Central North Pacific, and (5) East Pacific. These five populations are markedly separated from each other and from populations within the Atlantic Ocean and Indian Oceans as a consequence of physical, ecological, behavioral, and oceanographic factors. Information supporting this conclusion includes genetic analysis, flipper tag recoveries, and satellite telemetry.

Collectively, all observations above led the SRT to propose that green turtles from the following geographic areas might be considered ''discrete'' according to criteria in the joint DPS policy:

(1) North Atlantic Ocean
(2) Mediterranean Sea
(3) South Atlantic Ocean
(4) Southwest Indian Ocean
(5) North Indian Ocean
(6) East Indian Ocean-West Pacific Ocean
(7) Central West Pacific Ocean
(8) Southwest Pacific Ocean
(9) Central South Pacific Ocean
(10) Central North Pacific Ocean
(11) East Pacific Ocean

B. Significance Determination

In accordance with the DPS Policy, the SRT next reviewed whether the population segments identified in the discreteness analysis were biologically and ecologically significant to the taxon to which they belong, which is the taxonomic species *C. mydas.* Data relevant to the significance question include ecological, behavioral, genetic and morphological data. The SRT considered the following factors, listed in the DPS Policy, in determining whether the discrete population segments were significant: (1) Evidence that loss of the discrete segment would result in a significant gap in the range of the taxon; (2) evidence that the discrete segment differs markedly from other populations of the species in its genetic characteristics; and (3) persistence of the discrete segment in an unusual or unique ecological setting. The DPS policy also allows for consideration of other factors if they are appropriate to the biology or ecology of the species, such as unique morphological or demographic characteristics, and unique movement patterns.

1. North Atlantic

Green turtles in the North Atlantic differ markedly in their genetic characteristics from other regional populations. They are strongly divergent from the Mediterranean population (the only other population within Clade I), and turtles from adjacent populations in the eastern Caribbean carry haplotypes from a different clade. The North Atlantic population has globally unique haplotypes. Therefore, the loss of the population would result in significant genetic loss to the species as a whole.

The green turtles within the North Atlantic population occupy a large portion of one of the major ocean basins in the world; therefore, the loss of this segment would represent a significant gap in the global range of green turtles. Green turtles take advantage of the warm waters of the Gulf Stream to nest in North Carolina at 34° N., which is farther from the equator than any other nesting sites outside the Mediterranean Sea. Tagging and telemetry studies show that the North Atlantic green turtle population has minimal mixing with populations in the South Atlantic and Mediterranean regions. The mean size of nesting females in the North Atlantic, which could reflect the ecological setting and/or be genetically based, is larger (average 101.7–109.3 cm CCL; (Guzmán-Hernández, 2001, 2006) than those in the adjacent Mediterranean Sea (average 88–96 cm CCL), and smaller than those at varying locations in the South Atlantic, such as those at Isla Trindade, Brazil (average 115.2 cm CCL; Hirth, 1997; Almeida *et al.,* 2011), Atol das Rocas, Brazil (112.9–118.6 cm CCL; Hirth, 1997; Bellini *et al.,* 2013), and Ascension Island (average 116.8 cm CCL; Hirth, 1997).

Another factor indicating uniqueness of the North Atlantic population is a typical 2-year remigration interval, as compared to 3-year or longer intervals that are more common elsewhere (Witherington *et al.,* 2006).

2. Mediterranean

Mediterranean turtles differ markedly in their genetic characteristics from other regional populations, with globally unique haplotypes and strong divergence from the other population within Clade I (the North Atlantic population). Therefore, the loss of the population would result in significant genetic loss to the species as a whole. Given this genetic distinctiveness and the distinctive environmental conditions, it is likely that turtles from the eastern Mediterranean have developed local adaptations that help them persist in this area. Mediterranean females are smaller than those in any other regional population except the Eastern Pacific, averaging 92.0 cm CCL (Broderick *et al.,* 2003) compared to the global average of 95 cm–110 cm CCL.

The loss of the population would result in a significant gap in the range

of the taxon. The population encompasses a large region, separated from other regional populations by large expanses of ocean, and with an apparent biogeographic boundary formed by the western Mediterranean.

Finally, the Mediterranean Sea appears to be a unique ecological setting for the species. It is the most saline marine water basin in the world (38 parts per thousand (ppt) or higher), is nearly enclosed, and is outside the normal latitudinal range for the species, being the farthest from the equator of any green turtle population. Although similar information is not available for green turtles, it has been postulated that the high salinity of sea water in the Mediterranean acts as a ''barrier'' preventing loggerhead sea turtles from moving among the areas of the Western Mediterranean, explaining why they do not mix between the north and south Mediterranean as juveniles (Revelles *et al.,* 2008). All nesting sites within the Mediterranean are between latitudes 31–40° N., which not only affects temperature but results in more seasonal variation in day length and environmental conditions, which may have fostered local adaptations in green turtles living there.

3. South Atlantic

The South Atlantic population has globally unique haplotypes. Therefore, the loss of the population would result in significant genetic loss to the species as a whole. The South Atlantic population contains the only nesting site in the world associated with a mid-ocean ridge. This unique ecological setting at Ascension Island, one of the largest nesting sites within this population, ensures diverse nesting habitats and promotes resilience for the species. This population spans an entire hemispheric ocean basin, and its loss would result in a gap of at least 12,000 km between populations off southeast Africa and those in Florida, clearly a significant gap in the range of the taxon. Brazil and Guinea Bissau may have acted as a refuge for Atlantic green turtles during the Pleistocene period (Reece *et al.,* 2005). The average size of nesting females is larger here than in any other populations, ranging from 112.9–118.6 cm CCL (Hirth, 1997; Almeida *et al.,* 2011) compared to 95–110 cm CCL worldwide, which could reflect an adaptation to local environmental conditions such as habitat, availability of food, water temperature, and population dynamics.

4. Southwest Indian

Within the Southwest Indian Ocean, strong upwelling in the Mozambique Channel produces distinctive areas of high productivity that support a robust turtle population, and complex current patterns in the area create a distinctive ecological setting for green turtles. Madagascar is one of the largest islands in the world and its proximity to the African coast, along with a proliferation of nearby islands, creates a complex series of habitats suitable for green turtles. Loss of this population would leave a gap of over 10,000 km between populations in southern India and those in west-central Africa. Nesting turtles from this population are the largest within the Indian Ocean, ranging from 103 cm (SCL)–112.3 cm (CCL) (Frazier, 1971; 1985) which could reflect growth due to presence of a network of foraging areas and localize migratory movements.

5. North Indian

The ecological setting for this region is unique for green turtles in that it contains some of the warmest and highly saline waters in the world, indicative of the partially enclosed marine habitats within this system. The salinity in the North Indian Ocean varies from 32 to 37 ppt comparable only to the Mediterranean Sea. Salinity in this region varies with local and seasonal differences particularly in the Arabian Sea (dense, high-salinity) and the Bay of Bengal (low-salinity). Although genetic data are very limited for this population, with the only sample being from the Persian Gulf, it has two groups of highly divergent haplotypes that are not found anywhere else in the world (*i.e.,* markedly different genetic characteristics). The loss of this population, and its globally unique haplotypes, which are not found in any other population, would result in significant genetic loss to the species as a whole. This population is isolated from other Indian Ocean populations which would render its loss a significant gap in the range of the species. Nesting turtles are smaller here than in other Indian Ocean regions, possibly reflecting genetic adaptations to local environmental conditions.

6. East Indian-West Pacific

This area of complex habitats at the confluence of the tropical Indian and Pacific Oceans is a well-known hotspot for speciation and diversification of both terrestrial and marine taxa. It is unique in that it contains the most extensive continental shelf globally, and particularly low salinity waters in the northeastern Indian Ocean. Loss of green turtles from this vast area would create a substantial gap in the global distribution and, because this population is located at the center of the species' range, would strongly affect connectivity within the species as a whole. Connectivity is important for the maintenance of genetic diversity and resilience of the species. Genetic data indicate the presence of ancestral haplotypes with significant mtDNA diversity. The loss of this population, and its ancestral haplotypes, would represent a significant genetic loss to the species. The wide size range of nesting females within this population (82.1 cm–105.6 cm; Charuchinda and Monanunsap, 1998; Cheng, 2000) is also an indication of the high level of diversity within this population.

7. Central West Pacific

The Central West Pacific population is genetically significant in that it has both globally unique haplotypes and ancestral haplotypes. The Central West Pacific has no continental shelf habitats, with all nesting occurring on small islands or atolls that are volcanic or coralline limestone. There is an apparent oceanic boundary between the Central West Pacific and the Central North Pacific population and an apparent biogeographic boundary between the Central West Pacific and the East Indian-West Pacific population. Loss of turtles from this population would create a large gap near the center of the geographic range of the species.

8. Southwest Pacific

Clade V haplotypes have only been found at nesting sites in the Southwest Pacific population. In addition to these globally unique haplotypes, the presence of the ancestral haplotypes and significant mtDNA diversity make this population genetically significant.

Unlike most other populations in the Pacific Ocean, this population includes island nesting sites in close proximity to coastal foraging areas. The Great Barrier Reef (GBR) is the largest coral reef system in the world and was periodically isolated over geological time. It provides expansive, year-round foraging habitat for green turtles and supports one of the largest nesting sites in the world.

9. Central South Pacific

This population has globally unique haplotypes. Therefore, the loss of the population would result in significant genetic loss to the species as a whole. To a greater extent than in any other regional population, nesting sites are widely dispersed among a large number of small habitats on islands and atolls. Foraging areas are mostly coral reef ecosystems, with seagrass beds in Tonga and Fiji being a notable exception.

There is an apparent oceanic boundary with the Central North Pacific population. Although turtles in this area are poorly studied, they may have evolved adaptations to persist with this very diffuse metapopulation structure. If green turtles were lost from this entire area, it would create a significant gap in the range across the southern Pacific Ocean.

10. Central North Pacific

Mitochondrial DNA in this extensively sampled region includes globally unique haplotypes. Although two haplotypes are shared with individuals in the Revillagigedos Islands in the East Pacific, there is little evidence of significant ongoing gene flow. The loss of this population would result in significant genetic loss to the species as a whole.

This population has no continental-shelf habitat and all nesting occurs on mid-basin pinnacles. Turtles in this population are known to bask, a rare behavior for modern-day sea turtles, and have unique morphological traits such as unusually large flippers, possibly reflecting adaptations to their ecological setting. This is the most isolated of all populations, with an apparent biogeographic boundary with the Eastern Pacific population and oceanic boundaries with the Central West and Central South Pacific populations. If all turtles were lost from this vast geographic area, it would create a significant gap in the global range of the species.

11. East Pacific

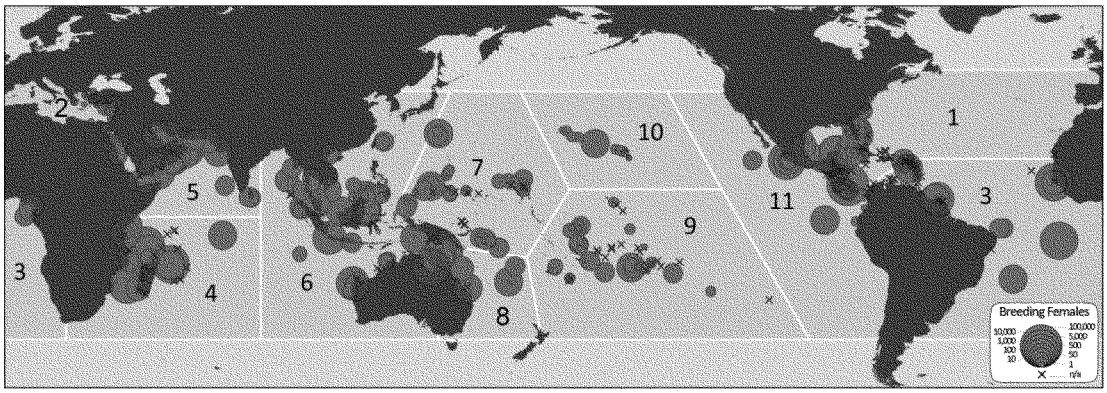
The two cold-water currents on the east side of the Pacific Ocean (the Humboldt Current in the south and the California Current in the north) leave a distinctive region of tropical ocean along the west coasts of Mexico, Central America, and northern South America that is known as the Eastern Pacific Zoogeographic Region (Briggs, 1974). Perhaps as a result, some turtles in this area exhibit a unique overwintering behavior similar to hibernation. This area also has a very narrow continental shelf and low levels of seagrass, resulting in a unique diet for green turtles (*e.g.,* tunicates and red mangrove fruits; Amorocho and Reina, 2007). This population has globally unique haplotypes. Therefore, the loss of the population would result in significant genetic loss to the species as a whole. Mean size of nesting turtles in the East Pacific is smaller, at approximately 82 cm CCL (Pritchard, 1971) than in any other population, which could reflect an adaptation to local ecological conditions, as could the distinctive ''black'' phenotype. The Galapagos Island chain is one of the few areas where green turtles bask (Hawai'i being the other). Loss of all turtles from this population would leave a significant gap in the range of the species as it occurs along much of the eastern boundary of the world's largest ocean.

C. Summary of Discreteness and Significance Determinations

In summary, the 11 discrete populations identified in the Discreteness Determination section were also determined to be significant to the species, *C. mydas.* Each is genetically unique, and many are identified by unique mtDNA haplotypes which could represent adaptive differences. Some populations exist in unique or unusual ecological settings influenced by local ecological and physical factors which may also lead to adaptive differences and represent adaptive potential. Some also possess unique morphological or other demographic characteristics that render them significant. Most populations represent a large portion of the species' range, and their loss would result in a significant gap in the range of the species.

Based on the information provided in the Discreteness Determination and Significance Determination sections above, the SRT identified the following 11 potential green turtle DPSs (Figure 2): (1) North Atlantic, (2) Mediterranean, (3) South Atlantic, (4) Southwest Indian, (5) North Indian, (6) East Indian-West Pacific, (7) Central West Pacific, (8) Southwest Pacific, (9) Central South Pacific, (10) Central North Pacific, and (11) East Pacific. We concur with the findings of the SRT and conclude that the 11 potential DPSs identified by the SRT warrant delineation as DPSs.

Figure 2. Map of all *C. mydas* nesting sites indicating delineation of DPSs: (1) North Atlantic, (2) Mediterranean, (3) South Atlantic, (4) Southwest Indian, (5) North Indian, (6) East Indian-West Pacific, (7) Central West Pacific, (8) Southwest Pacific, (9) Central South Pacific, (10) Central North Pacific, and (11) East Pacific.



VI. Listing Evaluation Process

A. Discussion of Population Parameters for the Eleven Green Turtle DPSs

In these sections, we describe the geographic range of each DPS. We discuss its population parameters, which are derived from population data and influence the persistence of the DPS. These population parameters include: Abundance, growth rates or trends, spatial structure, and diversity or resilience (McElhany *et al.,* 2000). NMFS has used this approach in numerous status reviews. USFWS uses a similar approach, based on Shaffer and Stein (2000), to evaluate a species' status in terms of its representation, resiliency, and redundancy; this methodology has also been a widely accepted approach (Tear *et al.,* 2005). Though expressed differently, these two approaches rely on the same conservation biology principles. Though this information is presented separately from the assessment of threats under section 4(a)(1) of the ESA, population dynamics represent one aspect of the other natural or manmade factors affecting the continued existence of the species that we consider under Factor E.

Complete population abundance and trend estimates do not exist for any of the 11 DPSs. The data used in the Status Review and summarized here represent the best scientific information available. The data are more robust for some areas than for others. For each DPS, the primary data available are collected on nesting beaches, either as counts of nests or counts of nesting females, or a combination of both (either direct or extrapolated). Information on abundance and trends away from the nesting beaches is limited and often non-existent, primarily because these data are, relative to nesting beach studies, logistically difficult and expensive to obtain. Therefore, the primary and best available information source for directly evaluating status and trends of the DPSs is nesting data.

Nesting female abundance estimates for each nesting site or nesting beach are presented in the Status Review for each potential DPS. Accompanying this information is trend information in the form of bar plots and Population Viability Analysis (PVA) models extending 100 years into the future for the 33 sites that met the criteria for depicting the data this way, *i.e.,* recent (<10 year old) data over a given period of time (10 years for bar plots, 15 years for PVA) with consistent protocols and effort during that time.

With regard to spatial structure, the SRT used information from genetic, tagging, telemetry, and demographic data to identify structuring and substructuring within each DPS. This informed the SRT of metapopulation dynamics in order that it might consider these dynamics in considerations about the future of the species, including whether source populations and genetic diversity are being maintained.

With regard to diversity and resilience, the SRT considered the extent of ecological variation, including the overall nesting spatial range, diversity in nesting season, and diversity of nesting site structure and orientation, *e.g.,* whether nesting sites are insular or continental, have a high or low beach face, and whether there are a variety of types of sites. The SRT also considered demographic and genetic diversity of the DPS which may indicate its ability to adapt and thus its resilience. One of the considerations when looking at diversity was the DPS's ability to adapt to climate change including, but not limited to, sea level rise and warming of nesting beaches.

B. Summary of Factors Affecting the Eleven Green Turtle DPSs

Section 4 of the ESA (16 U.S.C. 1533) and implementing regulations at 50 CFR part 424 set forth procedures for adding species to the Federal List of Endangered and Threatened Wildlife Species. Under section 4(a) of the ESA, the Services must determine whether a species is threatened or endangered because of any of the following 5 factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

In this rulemaking, information regarding the status of each of the 11 green turtle DPSs is considered in relation to the five factors provided in section 4(a)(1) of the ESA. That information presented here is a summary of the information in the Status Review. The reader is directed to the subsection within each DPS section of the Status Review titled ''Analysis of Factors Listed Under ESA Section 4(a)(1)'' for a more detailed discussion of the factors.

C. Conservation Efforts

In evaluating the efficacy of protective efforts not yet implemented or not yet proven to be effective, we rely on the Policy on Evaluation of Conservation Efforts When Making Listing Decisions (''PECE''; 68 FR 15100, March 28, 2003), issued jointly by the Services. Information on conservation efforts for each DPS is summarized from the Status Review. For a more detailed description of conservation efforts, please see that document. When assessing conservation efforts, the SRT assumed that all conservation efforts would remain in place at their current levels. In our final determinations, we considered the conservation benefits of continued protections under the ESA.

D. Extinction Risk Assessments and Findings

To analyze the extinction risk of each DPS, the SRT collected and presented information on the six critical assessment elements: (1) Abundance, (2) growth rates/trends, (3) spatial structure, (4) diversity/resilience, (5) five factor analysis/threats, and (6) conservation efforts. Shortly after each presentation, the SRT voted twice: A vote on the contribution of each critical assessment element to extinction risk, and a vote on the overall risk of extinction to the DPS (see section 3.3.4 of the Status Review for a more detailed discussion of this process).

In the first vote, SRT members ranked the importance of each of the four population parameters (Abundance, Trends, Spatial Structure, Diversity/Resilience) by assigning them a value from 1 to 5 for each DPS, with 1 indicating a very low risk and 5 indicating a very high risk. SRT members then ranked the influence of the section 4(a)(1) factors (threats) on the status of each DPS by assigning a value of 0 (neutral effect on status—this could mean that threats are not sufficient to appreciably affect the status of the DPS, or that threats are already reflected in the population parameters), −1 (threats described in the 5-factor analysis suggest that the DPS will experience some decline (<5 percent decline) in abundance within 100 years), or −2 (threats described in the 5-factor analysis suggest that the DPS will experience significant decline (≥5 percent decline) in abundance within 100 years). They then ranked the influence of conservation efforts on the status of each DPS by assigning a value of 0 (neutral effect on status—this could mean that conservation efforts are not sufficient to appreciably affect the status of the DPS, or that conservation efforts are already reflected in the population parameters), +1 (activities described in Conservation Efforts suggest that the DPS will experience <5 percent increase in abundance within 100 years), or +2 (activities described in Conservation Efforts suggest that the DPS will experience ≥5 percent increase in

abundance within 100 years). The SRT did note in discussions that none of these elements is entirely independent. Abundance, growth rates, spatial structure, and diversity/resilience are linked and often dependent on each other. Past threats and conservation efforts affect these four population parameters. To minimize ''double counting,'' the SRT considered only those threats and conservation measures that are unlikely to be reflected in the population parameters.

In the second vote, SRT members provided their expert opinion (via vote) on the likelihood that each DPS would reach a critical risk threshold (quasi-extinction) within 100 years. In the Status Review, the SRT defined the critical risk threshold (quasi-extinction) as follows: ''A DPS that has reached a critical risk threshold has such low abundance, declining trends, limited distribution or diversity, and/or significant threats (untempered by significant conservation efforts) that the DPS would be at very high risk of extinction with little chance for recovery.'' Generally, DPSs were considered to have higher viability if they were composed of a number of relatively large populations, distributed throughout the geographic range of the DPS, and exhibited stable or increasing growth rates. DPSs were considered to be at higher risk if they were composed of fewer robust populations or with robust populations all concentrated in a small geographic area, where they might be susceptible to correlated catastrophes. Any DPS with low phenotypic and/or habitat diversity were also considered to be at higher risk because the entire DPS could be vulnerable to persistent environmental conditions (Limpus and Nicholls, 2000; Saba *et al.,* 2008; Van Houtan and Halley, 2011) or stochastic catastrophic events (Hawkes *et al.,* 2007; Van Houtan and Bass, 2007; Fuentes *et al.,* 2011).

Each member was given 100 points to spread across risk categories, reflecting their interpretation of the information for that DPS; the voting results are available in the Status Review. The spread of points is meant to reflect the amount of uncertainty in the risk threshold bins. Risk categories were <1 percent, 1–5 percent, 6–10 percent, 11–20 percent, 21–50 percent, and >50 percent. We note that, presumably because this species is such a long-lived species and, as such, it is unlikely that it would go extinct within 100 years even if it was lost in many places, every DPS received numerous points in the <1 percent category, including those with the most depressed numbers and that face the highest threats.

As noted above, the SRT estimated the likelihood that a population would fall below a critical risk threshold within 100 years. The SRT did not define the critical risk threshold quantitatively but instead provided the following definition: ''A DPS that has reached a critical risk threshold has such low abundance, declining trends, limited distribution or diversity, and/or significant threats (untempered by significant conservation efforts) that the DPS would be at very high risk of extinction with little chance for recovery.''

While the SRT's review of the DPSs' statuses was rigorous and extensive, the framework used does not allow us to easily or clearly translate a particular critical risk category to an ESA listing status. Structured expert opinion is a valid and commonly used method of evaluating extinction risk and forms a useful starting point for our analysis. However, in our judgment, the critical risk threshold approach used for this status review does not directly correlate with the ESA's definitions of endangered and threatened. The ESA defines an ''endangered species'' as ''any species which is in danger of extinction throughout all or a significant portion of its range.'' The critical risk threshold, as defined by the SRT, is a condition worse than endangered, because it essentially precludes recovery. Thus, while the SRT votes informed our listing determinations, we did not equate a particular critical risk category with an ESA listing status, and therefore the votes were not the basis for those determinations. However, to make our proposed listing determinations, we applied the best available science that was compiled by the SRT in examining the definitions of endangered and threatened species under section 3 of the ESA.

After considering the extinction risk, the Services then reviewed the present threats and threats anticipated in the foreseeable future for each DPS. We examined the significant threats to each DPS, how these threats affected that DPS, and how they were predicted to affect the DPS in the foreseeable future. Our analysis weighed each factor within the scope of the ESA's definitions of threatened and endangered for each DPS.

Among other things, the Services also carefully considered where current conditions or protections are present specifically because green turtles are listed under the ESA, and whether those conditions would likely exist absent such a listing. We note that the latter was not considered by the SRT, meaning the SRT conducted all risk analyses assuming all protections would remain in place.

VII. North Atlantic DPS

A. Discussion of Population Parameters for the North Atlantic DPS

The range of the North Atlantic DPS extends from the boundary of South and Central America north along the coast to the northern extent of the green turtle's range to include Panama, Costa Rica, Nicaragua, Honduras, Belize, Mexico, and the United States. It then extends due east across the Atlantic Ocean at 48° N.; follows the coast south to include the northern portion of the Islamic Republic of Mauritania (Mauritania; to 19° N.) on the African continent; and west along the 19° N. latitude to the Caribbean basin, turning south and west at 63.5° W., 19° N., and due south at 7.5° N., 77° W. to the boundary of South and Central to include Puerto Rico, the Bahamas, Cuba, Turks and Caicos Islands, Republic of Haiti (Haiti), Dominican Republic, Cayman Islands, and Jamaica. The North Atlantic DPS includes the Florida breeding population, which was originally listed as endangered (43 FR 32800, July 28, 1978). Critical habitat was previously designated for areas within the range of this DPS (*i.e.,* coastal waters surrounding Culebra Island, Puerto Rico; 63 FR 46693, September 2, 1998).

Green turtle nesting sites in the North Atlantic are some of the most studied in the world, with time series exceeding 40 years in Costa Rica and 35 years in Florida. Seventy-three nesting sites were identified within the North Atlantic DPS, although some represent numerous individual beaches. For instance, Florida nesting beaches were listed by county with the numerous beaches in each county representing one site and, for other U.S. beaches (from Texas to North Carolina), each state's nesting beaches were represented as one site. There are four regions that support high density nesting concentrations for which data were available: Tortuguero, Costa Rica; Mexico (Campeche, Yucatan, and Quintana Roo); Florida, United States; and Cuba. There is one nesting site with >100,000 nesting females (Tortuguero at 131,751; Chaloupka *et al.,* 2008a; Sea Turtle Conservancy, 2013), one with 10,001–100,000 (Quintana Roo, Mexico at 18,257; Julio Zurita, pers. comm. 2012) and six with 1,001–5,000: Cayo Largo, Cuba; Campeche, Yucatan, and Veracruz, Mexico; and Brevard and Palm Beach Counties, FL, United States. There are four with 501–1,000; Tamaulipas, Mexico; Vieques, Puerto Rico; Martin and Indian River Counties,

FL, United States; nine with 101–500; 26 with <50; and 26 with numbers unquantified. Seventy-nine percent of the nesting turtles in this DPS nest at Tortuguero.

Of the nesting sites with long-term data sets, both Tortuguero and the index beaches in Florida exhibit a strong positive trend in the PVAs that were conducted on them, as does Isla Aguada, Mexico (one beach in the Campeche group). Three beaches in Cuba (total of 489 nesting females) either showed no trend or a modest positive trend. One beach in Mexico (El Cuyo, Yucatan) exhibited no trend.

Genetic sampling in the North Atlantic DPS has been generally extensive with good coverage of large populations in this region; however, some smaller Caribbean nesting sites are absent and coastal nesting sites in the Gulf of Mexico are under-represented. Genetic differentiation based on mtDNA indicated that there are at least four independent nesting subpopulations in the North Atlantic DPS characterized by shallow regional substructuring: (1) Florida (Hutchinson Island; Lahanas *et al.,* 1994), (2) Cuba (Guanahacabibes Península and Cayería San Felipe; Ruiz-Urquiola *et al.*, 2010), (3) Mexico (Quintana Roo; Encalada *et al.,* 1996), and (4) Costa Rica (Tortuguero; Lahanas *et al.,* 1994). These nesting sites are characterized by common and widespread haplotypes dominated by CM–A1 and/or CM–A3. A relatively low level of spatial structure is detected due to shared common haplotypes, although there are some rare/unique haplotypes at some nesting sites. Connectivity may indicate recent shared common ancestry.

Green turtles nest on both continental and island beaches throughout the range of the DPS (Witherington *et al.,* 2006). Major nesting sites are primarily continental with hundreds of lower density sites scattered throughout the Caribbean. Green turtles nesting in Florida seem to prefer barrier island beaches that receive high wave energy and that have coarse sands, steep slopes, and prominent foredunes. The greatest nesting is on sparsely developed beaches that have minimal levels of artificial lighting. A high-low nesting pattern for Florida and Mexico occurs during the same years; however, nesting in Tortuguero, Costa Rica is not always in sync with Florida and Mexico (*e.g.,* 2011 was a high nesting year in Florida, but for Tortuguero the high nesting year was 2010). The nesting season is similar throughout the range of the DPS, with green turtles nesting from June to November in Costa Rica (Bjorndal *et al.,* 1999), and May through September in the United States, Mexico, and Cuba (Witherington *et al.,* 2006).

B. Summary of Factors Affecting the North Atlantic DPS

1. Factor A: The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

a. Terrestrial Zone

Within the range of the North Atlantic DPS, nesting beaches continue to be degraded from a variety of activities. Destruction and modification of green turtle nesting habitat results from coastal development, coastal armoring, beachfront lighting, erosion, sand extraction, and vehicle and pedestrian traffic on nesting beaches (Witherington and Bjorndal, 1991; Witherington, 1992; Witherington *et al.,* 1996; Lutcavage *et al.,* 1997; Bouchard *et al.,* 1998; Mosier, 1998; Witherington and Koeppel, 2000; Mosier and Witherington, 2002; Leong *et al.,* 2003; Roberts and Ehrhart, 2007). In addition, sea level rise resulting from climate change poses a threat to all nesting beaches. Portions of the Southern United States and Caribbean are found be to highly vulnerable to sea level rise (Melillo *et al.,* 2014). For instance, along the southern portion of the Florida coastline, one climate change model predicted one meter of sea level rise by 2060, resulting in the inundation of more than 50 percent of coastal wildlife refuges (Flaxman and Vargas-Moreno, 2011). Most green turtle nesting in the United States is concentrated along the southeastern coast of Florida with more than 90 percent of nesting occurring from Brevard to Broward counties (*http://ocean.floridamarine.org/SeaTurtle/nesting/FlexViewer/*). Loss of nesting habitat as a result of sea level rise poses a threat to the population. Sea level rise is exacerbated by coastal development and armoring, which prevents the beach from migrating and causes nesting green turtles to abandon their nesting attempts more frequently as a result of their encounter with such structures (Mosier, 1998; Mosier and Witherington, 2000; Rizkalla and Savage, 2011). Females might nest in sub-optimal habitats, where nests are more vulnerable to erosion or inundation (Rizkalla and Savage 2011). As a result, nests would be subject to more frequent inundation, exacerbated erosion, and increased moisture from tidal overwash, which can potentially alter thermal regimes, an important factor in determining the sex ratio of hatchlings.

b. Neritic/Oceanic Zones

Green turtles in the post-hatchling and early-juvenile stages are closely associated with *Sargassum* algae in the Atlantic and Gulf of Mexico (Witherington *et al.,* 2012), and vulnerable to ingesting contaminants such as tar balls and plastics that aggregate in convergent zones where *Sargassum* aggregates (Witherington, 2002). Juvenile and adult green turtles and their nearshore foraging habitats are also exposed to high levels of pollutants, such as agricultural and residential runoff, and sewage which result in degraded foraging habitat (Smith *et al.,* 1992). Further, increased nutrient load in these coastal waters causes eutrophication. Eutrophication is linked to harmful algal blooms that result in the loss and degradation of seagrass beds, and possibly fibropapilloma tumors in green turtles (Milton and Lutz, 2003).

In Cuba, Jamaica, Puerto Rico, and Panama, water quality is also affected by sewage and industrial and agricultural runoff. Pollution remains a major threat in the waters of Jamaica. Major sources of pollution are industrial and agricultural effluent, garbage dumps and solid waste, and household sewage (Greenway, 1977; Green and Webber, 2003).

Nearshore foraging habitats such as seagrass beds are affected by propeller scarring, anchor damage, dredging, sand mining, and marina construction throughout the range of the DPS (Smith *et al.,* 1992; Dow *et al.,* 2007; Patrício *et al.,* 2011). Sand placement projects along the Florida coastline affect nearshore reefs as a result of direct burial of portions of the reef habitat and loss of food sources available to green turtles (Lindeman and Snyder, 1999).

The SRT found, and we concur, that the North Atlantic DPS of the green turtle is negatively affected by ongoing changes in both its terrestrial and marine habitats as a result of land and water use practices as considered above in Factor A. The increasing threats to the terrestrial and marine habitats are not reflected in the current trend for the North Atlantic DPS, as it was based on nesting numbers and not on all current life stages. These increasing threats to the population will become apparent when those life stages affected by the threats return to nest, as the trend information is based solely on numbers of nests. This lag time was considered in our analysis. For example, a threat that affects the oceanic juvenile phase would not be detected until those turtles return to nest, approximately 15 to 20 years later. The SRT also found, and we concur, that coastal development, beachfront lighting, erosion, sand extraction, and sea level rise increasingly impact nesting beaches of

this DPS and are increasing threats to the DPS.

2. Factor B: Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

A partial list of the countries within the range of the North Atlantic DPS where ongoing intentional capture of green turtles occurs, includes Costa Rica (Mangel and Troëng, 2001; Gonzalez Prieto and Harrison, 2012), Mexico (Seminoff, 2000; Gardner and Nichols, 2001; Dirado *et al.,* 2002; Guzmán-Hernández and García Alvarado, 2011), Cuba (Fleming, 2001; F. Moncado, Ministerio de la Industria Pesquera, pers. comm., 2013), Nicaragua (Lagueux, 1998; Humber *et al.,* 2014), the Bahamas (Fleming, 2001), Jamaica (Haynes-Sutton *et al.,* 2011), and the Cayman Islands (Fleming, 2001). Harvest remains legal in several of these countries (Humphrey and Salm, 1996; Wamukoya *et al.*, 1996; Fleming, 2001; Fretey, 2001; Bräutigam and Eckert, 2006).

The commercial artisanal green turtle fishery in Nicaragua continues to be a threat to the Tortuguero nesting population, the largest remaining green turtle population in the Atlantic (Campbell and Lagueux, 2005). Local demand for turtle meat in coastal communities continues (Garland and Carthy, 2010). There is a legal turtle fishery on the Caribbean coast that is located in the most important developmental and foraging habitat for Caribbean green turtles (Fleming, 2001; Campbell and Lagueux, 2005). The hunting of juvenile and adult turtles continues both legally and illegally in many foraging areas where green turtles originating from Florida nesting beaches are known to occur (Chacón, 2002; Fleming, 2001).

Direct take of eggs is also an ongoing threat in Panama (Evans and Vargas, 1998). Green turtles nesting on Belize's beaches and foraging along its coast are harvested in the Robinson Point area and sold in markets and restaurants (Searle, 2003). Large numbers of green turtles are captured in the area southeast of Belize, an area which may be an important migratory corridor (Searle, 2004). There are important feeding grounds in the Banc d'Arguin, Mauritania. While the frequency of green turtle nesting in Mauritania is not known, green turtle nests are reported as being harvested there (Fretey, 2001; Fretey and Hama, 2012).

Commercial harvest of green turtles was a factor that contributed to the historic decline of this DPS. Current harvest of green turtles and eggs, in a portion of this DPS, continues to be significant threat to the persistence of this DPS.

3. Factor C: Disease or Predation

Fibropapillomatosis (FP) has been found in green turtle populations in the United States (Hirama, 2001; Ene *et al.,* 2005; Foley *et al.,* 2005; Hirama and Ehrhart, 2007), the Bahamas, the Dominican Republic, Puerto Rico (Dow *et al.*, 2007; Patrício *et al.,* 2011), Cayman Islands (Wood and Wood, 1994; Dow *et al.,* 2007), Costa Rica (Tortuguero; Mangel and Troëng, 2001), Cuba (Moncada and Prieto, 2000), Mexico (Yucatan Peninsula; K. Lopez, pers. comm., as cited in MTSG, 2004), and Nicaragua (Lagueux, 1998).

FP continues to be a major problem in some lagoon systems and along the nearshore reefs of Florida. It is a chronic, often lethal disease occurring predominantly in green turtles (Van Houtan *et al.,* 2014). A correlation appeared to exist between these degraded habitats and the prevalence of FP in the green turtles that forage in these areas but no direct link was established (Aguirre and Lutz, 2004; Foley *et al.,* 2005). Indeed, across green turtle populations, it is widely observed that FP occurs most frequently in eutrophied and otherwise impaired waterways (Herbst, 1994; Van Houtan *et al.,* 2010). A recent study establishes that eutrophication substantially increases the nitrogen content of macroalgae, thereby promoting the latent herpes virus which causes FP tumors in green turtles (Van Houtan *et al.,* 2014) although it is argued that there is no inferential framework to base this conclusion (Work *et al.,* 2014). Despite the high incidence of FP among foraging populations, there is no conclusive evidence on the effect of FP on reproductive success (Chaloupka and Balazs, 2005).

Harmful algal blooms, such as a red tide, also affect green turtles in the North Atlantic DPS. In Florida, the species that causes most red tides is *Karenia brevis,* a dinoflagellate that produces a toxin (Redlow *et al.,* 2002). Since 2007, there were two red tide events, one in 2007 along the east coast of Florida, and one in 2012 along the west coast of Florida. Sea turtle stranding trends indicated that these events were acting as a mortality factor (A. Foley, Florida Fish and Wildlife Conservation Commission, pers. comm., 2013). These events may impact a population's present and future reproductive status.

Predators such as raccoons (*Procyon lotor*), feral hogs (*Sus scrofa*), foxes (*Urocyon cinereoargenteus* and *Vulpes vulpes*), and coyotes (*Canis latrans*) may take significant numbers of turtle eggs (Stancyk, 1982; Allen *et al.,* 2001). Nest protection programs are in place at most of the major nesting beaches in the North Atlantic DPS, although they are managed at varying levels and degrees of effectiveness (Engeman *et al.,* 2005). Predator species that are particularly difficult to manage include red fire ants (*Solenopsis invicta*) and jaguars (*Panthera onca*) (Wetterer, 2006; Prieto and Harrison, 2012).

Although FP disease is of major concern, with increasing levels in some green turtle populations in this DPS, it should be noted there is uncertainty of the long-term survivability and effect on the reproductive effort of the population. Predation is known to occur throughout this DPS, and we find it to be a significant threat to this DPS in the absence of well managed nest protection programs.

4. Factor D: Inadequacy of Existing Regulatory Mechanisms

At least 15 regulatory mechanisms that apply to green turtles regionally (*e.g.,* U.S. Magnuson-Stevens Fishery Conservation and Management Act) or globally (*e.g.,* Convention on International Trade in Endangered Species of Wild Fauna and Flora) apply to green turtles within the North Atlantic Ocean. The analysis of these existing regulatory mechanisms assumed that all would remain in place at their current levels.

In the United States, regulatory mechanisms that protect green turtles are in place and include State, Federal, and international laws. The green turtle was listed under the ESA in 1978, providing relatively comprehensive protection and recovery activities to minimize the threats to green turtles in the United States. Considering the dependence of the species on conservation efforts, significant concerns remain regarding the inadequacy of regulatory mechanisms. The development and implementation of Turtle Excluder Devices (TEDs) in the shrimp trawl fishery was likely the most significant conservation accomplishment for North Atlantic green turtles in the marine environment since their 1978 ESA listing. In the southeast United States and Gulf of Mexico, TEDs have been mandatory in shrimp and flounder trawls for over a decade. These regulations are implemented and enforced to varying degrees throughout the Gulf and U.S. Southeast Atlantic. For example, the State of Louisiana prohibits enforcement of TED regulations and tow time limits. In other States, enforcement of TED regulations depends on available

resources, and illegal or improperly installed TEDs continue to contribute to mortality of green turtles. Further, TEDs are not required in all trawl fisheries, and green turtle mortality continues in the Gulf of Mexico, where shrimp trawling is the highest (Lewison *et al.,* 2014). There are also regulatory mechanisms in place that address the loss of nesting habitat, such as the Florida Administrative Code Rule 62B–33.0155, which addresses threats from armoring structures. However, these regulatory mechanisms allow for variances and armoring permits continue to be issued along nesting beaches.

Other threats, such as light pollution on nesting beaches, marine debris, vessel strikes, and continued direct harvest of green turtles in places like Nicaragua, are being addressed to some extent by regulatory mechanisms, although they remain a problem. In addition, other regional and national legislation to conserve green turtles (often all sea turtles) exists throughout the range of the DPS. The extent to which threats have been reduced as a result of these efforts is difficult to ascertain. When the SRT assessed conservation efforts, it assumed that all conservation efforts would remain in place at their current levels. The following countries have laws to protect green turtles: The Bahamas, Belize, Bermuda, Canary Islands, Cayman Islands, Costa Rica, Cuba, Dominican Republic, Guatemala, Haiti, Honduras, Jamaica, Mauritania, Mexico, Nicaragua, Panama, and the United States (including the commonwealth of Puerto Rico).

With regard to the United States, the key law currently protecting green turtles is the ESA. This law has been instrumental in conserving sea turtles, eliminating directed take of turtles in U.S. waters unless authorized by permit and reducing indirect take. In addition, the Magnuson-Stevens Fishery Management and Conservation Act has been effective at mandating responsible fishing practices and bycatch mitigation within fleets that sell fisheries products to the United States, and the Marine Turtle Conservation Act authorizes a dedicated fund to support marine turtle conservation projects in foreign countries, with emphasis on protecting nesting populations and nesting habitat. In addition, at least 12 international treaties and/or regulatory mechanisms apply to the conservation of green turtles in the North Atlantic DPS.

Outside of the United States, there are some national regulations that address the harvest of green turtles as well as the import and export of turtle parts. These regulations allow for the harvest of green turtles of certain sizes, months, or for ''traditional'' use. Gear restrictions and TED requirements exist in a few countries, although the compliance level is unknown. Our Status Review did not reveal regulatory mechanisms in place to specifically address marine pollution, sea level rise, and other effects of climate change that continue to contribute to the extinction risk of this DPS.

5. Factor E: Other Natural or Manmade Factors Affecting Its Continued Existence

a. Incidental Bycatch in Fishing Gear

Fisheries bycatch in artisanal and industrial fishing gear continues to be a major threat to green turtles in the North Atlantic DPS. The adverse impacts of bycatch on sea turtles has been documented in marine environments throughout the world (National Research Council, 1990b; Epperly, 2003; Lutcavage *et al.,* 1997). The lack of comprehensive and effective monitoring and bycatch reduction efforts in many pelagic and near-shore fisheries operations throughout the range of the North Atlantic DPS still allows substantial direct and indirect mortality (NMFS and USFWS, 2007).

i. Gill Net and Trawl Fisheries

Gill net fisheries may be the most ubiquitous of fisheries operating in the neritic range of the North Atlantic DPS. In the United States, some states (*e.g.,* South Carolina, Georgia, Florida, Louisiana, and Texas) have prohibited gill nets in their waters, but there remain active gill net fisheries in other U.S. states, in U.S. Federal waters, Mexican waters, Central and South America, and the Northeast Atlantic. Finfish fisheries accounted for the greatest proportion of turtle bycatch (53 percent) in Cuba. In Jamaica, fish traps and gill nets are the gear primarily identified in sea turtle bycatch. Purse seine and gill nets are used commonly in the waters of the Dominican Republic (Dow *et al.,* 2007). In Costa Rica, gill nets, hook and line, and trawls are the main gear types deployed (Food and Agriculture Organization of the United Nations, 2004). Shark-netting operations in Panama are known to capture green turtles (Meylan *et al.,* 2013).

The development and implementation of TEDs in the U.S. shrimp trawl fishery was likely the most significant conservation accomplishment for North Atlantic green turtles in the marine environment since their 1978 ESA listing. In the southeast United States and Gulf of Mexico, TEDs have been mandatory in shrimp and flounder trawls for over a decade. However, compliance varies throughout the States, and green turtle mortality continues in the Gulf of Mexico, where shrimp trawling is the highest (Lewison *et al.,* 2014). With the current regulations in place, an estimated 3,000 green turtles are captured (1,400 killed) by shrimp trawls each year in the Gulf and U.S. Southeast Atlantic (*http://sero.nmfs.noaa.gov/protected_resources/section_7/freq_biop/documents/fisheries_bo/shrimp_biop_2014.pdf*). These regulations are implemented and enforced to varying degrees throughout the Gulf and U.S. Southeast Atlantic (see discussion in Factor D).

ii. Dredge Fishing

Dredge fishing gear is the predominant gear used to harvest sea scallops off the mid- and northeastern U.S. Atlantic coast. Sea scallop dredges are composed of a heavy steel frame and cutting bar located on the bottom part of the frame and a bag made of metal rings and mesh twine attached to the frame. Turtles can be struck and injured or killed by the dredge frame and/or captured in the bag, where they may drown or be further injured or killed when the catch and heavy gear are dumped on the vessel deck.

b. Channel Dredging

In addition to the destruction or degradation of habitat as described in Factor A above, periodic dredging of sediments from navigational channels can also result in incidental mortality of sea turtles. Direct injury or mortality of green turtles by dredges has been well documented in the southeastern and mid-Atlantic U.S. (National Research Council, 1990b). From 1980 to 2013, 105 green turtles were impacted as a result of dredging operations in the U.S Atlantic and Gulf of Mexico. Solutions, including modification of dredges, have been successfully implemented to reduce mortalities and injuries to sea turtles in the United States (73 FR 18984, April 8, 2008; 77 FR 20728, April 6, 2012), and NMFS imposes annual take limits based on the expected number of green turtles impacted that will not, directly or indirectly, appreciably reduce the likelihood of survival and recovery of the green turtle in the wild.

c. Vessel Strikes and Boat Traffic

Boat strikes have been shown to be a major mortality source in Florida (Singel *et al.,* 2003). Vessel strikes are a growing concern and, as human populations increase in coastal areas,

vessel strikes are likely to increase (NMFS and FWS, 2008). From 2005 to 2009, 18.2 percent of all stranded green turtles (695 of 3,818) in the U.S. Atlantic (Northeast, Southeast, and Gulf of Mexico) were documented as having sustained some type of propeller or collision injuries (L. Belskis, NMFS, pers. comm., 2013). It is quite likely that this is a chronic, albeit unreported, problem near developed coastlines in other areas as well, such as Panama (*e.g.,* Orós *et al.,* 2005).

d. Effects of Climate Change and Natural Disasters

While sea turtles have survived past eras that have included significant temperature fluctuations, future climate change is expected to happen at unprecedented rates, and if turtles cannot adapt quickly, they may face local to widespread extirpations (Hawkes *et al.,* 2009). Climate change and sea level rise have the potential to affect green turtles significantly in the North Atlantic DPS. North Atlantic turtle populations could be affected by the alteration of thermal sand characteristics of beaches (from warming temperatures), resulting in the reduction or cessation of male hatchling production (Hawkes *et al.,* 2009; Poloczanska *et al.,* 2009). Increased sea surface temperatures may alter the timing of nesting for some stocks (Weishampel *et al.,* 2004), although the implications of changes in nesting timing are unclear. Changes in sea temperatures will also likely alter seagrass, macroalgae, and invertebrate populations in coastal habitats in many regions (Scavia *et al.,* 2002). Further, a significant rise in sea level, as is projected for areas within the range of the North Atlantic DPS (Flaxman and Vargas-Moreno, 2011), could significantly restrict green turtle nesting habitat due to coastal development. Structures on the landward side of the beach can effectively prevent access to nesting habitat and reduce available nesting habitat (Mosier, 1998). The increasing interaction between the structures and the hydrodynamics of tide and current, due to sea level rise, often results in the alteration of the beach profile seaward and in the immediate vicinity of the structure (Pilkey and Wright, 1988; Terchunian, 1988; Tait and Griggs, 1990; Plant and Griggs, 1992), increased longshore currents that move sand away from the area, loss of interaction between the dune and the beach berm, and concentration of wave energy at the ends of the structure (Schroeder and Mosier, 1996). Impacts from global climate change induced by human activities are likely to become more apparent in future years (IPCC, 2007).

Periodic hurricanes and other weather events are generally localized and rarely result in whole-scale losses over multiple nesting seasons. However, storm intensity and frequency are predicted to increase as a result of climate change (Melillo *et al.,* 2014). The negative effects of hurricanes on low-lying and/or developed shorelines may be longer-lasting and a greater threat to the DPS overall when combined with the effects of climate change, and particularly sea level rise.

e. Effects of Cold Stunning

Cold stunning is the hypothermic reaction that occurs when sea turtles are exposed to prolonged cold water temperatures. Cold stunning of green turtles regularly occurs at several locations in the United States, including Cape Cod Bay, Massachusetts (Still *et al.,* 2002); Long Island Sound, New York (Meylan and Sadove, 1986; Morreale *et al.,* 1992); the Indian River Lagoon system and the panhandle of Florida (Mendonça and Ehrhart, 1982; Witherington and Ehrhart, 1989; Foley *et al.,* 2007); and Texas inshore waters (Hildebrand, 1982; Shaver, 1990). Cold-stunning events at these foraging areas (Witherington and Ehrhart, 1989; McMichael *et al.,* 2006) leads to mortality of juvenile and adult green turtles, which may affect the present and future green turtle population trend.

f. Contaminants and Marine Debris

Several activities associated with offshore oil and gas production, including oil spills, operational discharge, seismic surveys, explosive platform removal, platform lighting, and drilling and production activities, are known to affect sea turtles (National Research Council, 1996; Davis *et al.,* 2000; Viada *et al.,* 2008; Conant *et al.,* 2009; G. Gitschlag, NMFS, pers. comm., 2007, as cited in Conant *et al.,* 2009). Oil spills near nesting beaches just prior to or during the nesting season place nesting females, incubating egg clutches, and hatchlings at significant risk from direct exposure to contaminants (Fritts and McGehee, 1982; Lutcavage *et al.,* 1997; Witherington, 1999), and have negative impacts on nesting habitat. The Deepwater Horizon (Mississippi Canyon 252) oil spill, which started April 20, 2010, discharged oil into the Gulf of Mexico through July 15, 2010. Witherington *et al.* (2012) note that the Deepwater Horizon oil spill was particularly harmful to pelagic juvenile green turtles. Due to their size, turtles in these stages are more vulnerable as a result of ingesting contaminants (Witherington, 2002).

Green turtles are affected by anthropogenic marine debris (including discarded fishing gear) and plastics throughout the North Atlantic DPS. Juvenile green turtles in pelagic waters are particularly susceptible to these effects as they feed on Sargassum in which there is a high occurrence of debris (Wabnitz and Nichols, 2010; Witherington *et al.,* 2012). In recent decades, there has been an increase in stranded green turtles reported as affected by discarded fishery gear throughout the southeastern United States (Teas and Witzell, 1996; Adimey *et al.,* 2014).

C. Conservation Efforts for the North Atlantic DPS

In the North Atlantic, nest protection efforts have been implemented on two major green turtle nesting beaches, Tortuguero National Park in Costa Rica and Florida, and progress has been made in reducing mortality from human-related impacts on other nesting beaches. Tortuguero National Park was established in 1976 to protect the nesting turtles and habitat at this nesting beach, which is by far the largest in the DPS and the western hemisphere. Since that time, the harvest of nesting turtles on the beach has been reduced by an order of magnitude (Bjorndal *et al.,* 1999). At Tortuguero, Sea Turtle Conservancy researchers and volunteers regularly monitor green turtle nesting trends, growth rates and reproductive success, and also conduct sea turtle lighting surveys, education, and community outreach.

In Florida, a key effort was the acquisition of the Archie Carr National Wildlife Refuge in Florida in 1991 by Federal, State, Brevard and Indian River counties, and a non-governmental organization, where nesting densities range from 36 nests/km (22 nests/mi) to 262 nests/km (419 nests/mi) (D. Bagley, University of Central Florida, pers. comm., 2014; K. Kneifl, USFWS, pers. comm., 2014). Over 60 percent of the available beachfront acquisitions for the Refuge have been completed as the result of a multi-agency land acquisition effort. In addition, Hobe Sound National Wildlife Refuge, as well as coastal national seashores such as the Dry Tortugas National Park and Canaveral National Seashore, military installations such as Patrick Air Force Base and Canaveral Air Force Station, and State parks where green turtles regularly nest, provide protection for nesting turtles. However, despite these efforts, alteration of the coastline continues and, outside of publicly-owned lands,

coastal development and associated coastal armoring remain serious threats.

Considerable effort has been expended since the 1980s to document and reduce commercial fishing bycatch mortality. In the Atlantic and Gulf of Mexico, measures (such as gear modifications, changes to fishing practices, and time/area closures) are required to reduce sea turtle bycatch in pelagic longline, mid-Atlantic gill net, Virginia pound net, scallop dredge, and southeast shrimp and flounder trawl fisheries. However, enforcement of regulations depends on available resources, and bycatch continues to contribute to mortality. Since 1989, the United States has prohibited the importation of shrimp harvested in a manner that adversely affects sea turtles.

As a result of conservation efforts, many of the intentional impacts directed at sea turtles have been lessened. For example, harvest of eggs and adults has been reduced at several nesting areas, including Tortuguero, and an increasing number of community-based initiatives are in place to reduce the take of turtles in foraging areas. However, despite these advances, human impacts continue throughout the North Atlantic. The lack of effective monitoring in pelagic and near-shore fisheries operations still allows substantial direct and indirect mortality, and the uncontrolled development of coastal and marine habitats threatens to destroy the supporting ecosystems of long-lived green turtles.

D. Extinction Risk Assessment and Findings for the North Atlantic DPS

In the North Atlantic DPS, there are several regions that support high density nesting concentrations, including possibly the largest in the world at Tortuguero, Costa Rica. Green turtle nesting population trends have been encouraging, exhibiting long-term increases at all major nesting sites, including Tortuguero (Troëng, 1998; Campbell and Lagueux, 2005; Troëng and Rankin, 2005) and Florida (Chaloupka *et al.,* 2008; B. Witherington, Florida Fish and Wildlife Conservation Commission, pers. comm., 2013). The North Atlantic DPS is characterized by geographically widespread nesting at a diversity of sites, both mainland and insular. The increasing threats are not reflected in the current trend for the North Atlantic DPS as it was based on nesting numbers and not all current life stages. These increasing threats to the population will become apparent when those life stages affected by the threats return to nest as the trend information is based solely on numbers of nests. This lag time was considered in our analysis. However, the 5-factor (section 4(a)(1) of the ESA) analysis revealed continuing threats to green turtles and their habitat that affect all life stages.

On nesting beaches, many portions of the DPS continue to be exposed to, and are negatively impacted by, coastal development and associated beachfront lighting, coastal armoring, and erosion as described in Factor A above. Impacts from such development are further exacerbated by existing and planned shoreline development and shoreline engineering. The current and anticipated increase in armored shoreline along high density nesting beaches, particularly in Florida, is a substantial unresolved threat to the recovery and stability of this DPS as it will result in the permanent loss of nesting habitat.

Nests and hatchlings are susceptible to predation which is prevalent throughout the beaches within the range of the North Atlantic DPS. Predation would be an increasing threat without nest protection and predatory control programs in place.

Nesting beaches are also extremely susceptible to sea level rise, which will exacerbate some of the issues described above in addition to leading to the potential loss of nesting beaches. Along the southeastern United States, one climate change model predicted a 1-meter sea level rise by 2060, resulting in the inundation of more than 50 percent of coastal wildlife refuges (Flaxman and Vargas-Moreno, 2011). Green turtle nesting in Florida is concentrated along coastal wildlife refuges in southern Florida such as Hobe Sound National Wildlife Refuge and the Archie Carr National Wildlife Refuge, with more than 90 percent of nesting occurring along southeast Florida. This increase in sea level will result in the permanent loss of current green turtle nesting habitat. Loss of beach is expected to be worse as a result of the increase in hurricane frequency and intensity (Flaxman and Vargas-Moreno, 2011). The increasing threat of coastal erosion due to climate change and sea level rise is expected to be exacerbated by increasing human-induced pressures on coastal areas (IPCC, 2007).

In the water, fisheries bycatch, habitat degradation, direct harvest, and FP are major threats to green turtles in the North Atlantic DPS. Artisanal and industrial fishing gear, including drift nets, set nets, pound nets, and trawls, still cause substantial direct and indirect mortality of green turtles (NMFS and USFWS, 2007). In addition, degradation and loss of foraging habitat due to pollution, including agricultural and residential runoff, anchor damage, dredging, channelization, and marina construction remains a threat to both juvenile and adult green turtles. Many green turtles in this DPS remain susceptible to direct harvesting. Current legal and illegal harvest of green turtles and eggs for human consumption continues in the eastern Atlantic and the Caribbean. A remaining threat is the directed harvest of turtles in Nicaragua that nest at Tortuguero and thus belong to the largest and arguably the most important population within the DPS (although this population continues to increase in spite of the harvest). However, potential degradation or loss of other, smaller populations is also of concern, as these contribute to the diversity and resilience of the DPS. Finally, the prevalence of FP has reached epidemic proportions in some parts of the North Atlantic DPS. The extent to which this will affect the long-term outlook for green turtles in the North Atlantic DPS is unknown. Nesting trends across the DPS continue to increase despite the high incidence of the disease.

While the Status Review indicates that the DPS shows strength in many of the critical population parameters (abundance, population trends, spatial structure, and diversity/resilience), as indicated above, numerous threats continue to act on the DPS, including habitat degradation (coastal development and armoring, loss of foraging habitat, and pollution), bycatch in fishing gear, continued turtle and egg harvesting, FP, and climate change. Importantly, the analysis of threats in the Status Review was conducted assuming current management regimes would continue.

Many of the gains made by the species over the past few decades are a direct result of ESA protections in the United States, as well as protections by U.S. States and local jurisdictions and other countries within the DPS range that are influenced by the species' ESA status.

Because the green turtle is currently listed under the ESA, take can only be authorized in the United States through the processes provided in sections 7 and 10 of the ESA and their implementing regulations. In the southeastern United States, threats to nesting beaches and nearshore waters include: Sand placement on nesting beaches and associated impacts to nearshore hardbottom habitat; groin, jetty and dock construction; and other activities. Any such activities that are currently funded, permitted and/or authorized by Federal agencies are subject to consultation with USFWS and NMFS,

and therefore are subject to reasonable and prudent measures to minimize effects of these activities as well as conservation recommendations associated with those consultations. Federally-managed fisheries are also subject to interagency consultation under section 7 of the ESA. During the consultation process NMFS and USFWS have an opportunity to work with the action agency to design practices to minimize effects on green turtles, such as when the activity occurs in areas or habitats used mostly by green turtles (*i.e.,* seagrass beds and nesting beaches). Activities that affect green turtles and do not involve Federal agencies, such as beach driving, some beach armoring, and research, must comply with section 10 of the ESA to avoid violating the statute. Section 10 permits require avoiding, minimizing, and mitigating impacts to green turtles to the extent possible. In addition to the above requirements, the requirement for use of TEDs in fisheries within the United States and in fisheries outside of the United States that export wild-caught shrimp to the United States is tied to listing under the ESA.

This DPS has exhibited increases at major nesting sites, and has several stronghold populations. Green turtles in the U.S. Atlantic have increased steadily since being protected by the ESA (Suckling *et al.,* 2006). ESA driven programs such as land acquisition, nest protection, development of the TEDs, and educational programs provide a conservation benefit to green turtles. The species is conservation dependent or conservation-reliant in that even when biological recovery goals are achieved, maintenance of viable populations will require continuing, species-specific intervention (Scott *et al.,* 2010). Without alternate mechanisms in place to continue certain existing conservation efforts and protections, threats would be expected to increase and population trends may be curtailed or reversed. Considering the conservation dependence of the species, significant concerns remain regarding the inadequacy of regulatory mechanisms (one of the five section 4(a)(1) factors (Factor D), especially when we evaluate the status of the DPS absent the protections of the ESA.

For the above reasons, we propose to list the North Atlantic DPS as threatened. We do not find the DPS to be in danger of extinction presently because of the increasing nesting population trends and geographically widespread nesting at a diversity of sites; however, continued threats are likely to endanger the DPS within the foreseeable future.

VIII. Mediterranean DPS

A. Discussion of Population Parameters for the Mediterranean DPS

The Mediterranean Sea is a virtually enclosed basin occupying an area of approximately 2.5 million square kilometers. The Mediterranean DPS is bounded by the entire coastline of the Mediterranean Sea, excluding the Black Sea. The westernmost border of the range of this DPS is marked by the Strait of Gibraltar (Figure 2).

Nesting in the Mediterranean occurs mostly in the eastern Mediterranean, with three nesting concentrations in Turkey, Cyprus, and Syria. Currently, approximately 452 to 2,051 nests are laid in the Mediterranean each year—about 70 percent in Turkey, 15 percent in Cyprus, and 15 percent in Syria, with trace nesting in Israel, Egypt, the Hellenic Republic (Greece), and Lebanon (Kasparek *et al.,* 2001; Rees *et al.,* 2008; Casale and Margaritoulis, 2010). There are no sites with greater than 500 nesting females. These numbers are depleted from historical levels (Kasparek *et al.,* 2001). In terms of distribution of nesting sites in the Mediterranean, there are 32 sites, with Akyatan, Turkey being the largest nesting site, hosting 25 percent of the total annual nesting (35–245 nesting females; Türkozan and Kaska, 2010).

There are seven sites for which 10 years or more of recent data are available for annual nesting female abundance (a criterion for presenting trends in a bar graph). Of these, only one site—West Coast, Cyprus—met our standards for conducting a PVA. Of the seven sites, five appeared to be increasing, although some only slightly, and two had no apparent trend. However, while the Mediterranean DPS appears to be stable or increasing, it is severely depleted relative to historical levels. This dynamic is particularly apparent along the coast of Palestine/Israel, where 300–350 nests were deposited each year in the 1950s (Sella, 1995) compared to a mean of eight nests each year from 1993 to 2008 (Casale and Margaritoulis, 2010).

With regard to spatial structure, genetic sampling in the Mediterranean has been extensive and the coverage in this region is substantial. Within the Mediterranean, rookeries are characterized by one dominant haplotype CM–A13 and a recent study showed no population substructuring between several rookeries in Cyprus and Turkey (Bagda *et al.,* 2012). However, analysis using unpublished data from additional rookery samples in Cyprus shows evidence for two stocks: Cyprus (Karpaz, North Cyprus and Lara Bay; Bagda *et al.,* 2012; Dutton unpublished data, 2013); and Turkey (Akayatan, Alata, Kazanli, Samandag and Yumurtalık; Bagda *et al.,* 2012). The demography of green turtles in the Mediterranean appears to be consistent among the various nesting assemblages (Broderick and Godley, 1996; Broderick *et al.,* 2002a). This consistency in parameters such as mean nesting size, inter-nesting interval, clutch size, hatching success, nesting season, and clutch frequency suggests a low level of population structuring in the Mediterranean. Mediterranean turtles have not been detected foraging outside the Mediterranean (*e.g.,* Lahanas *et al.,* 1998; Monzón-Argüello *et al.,* 2010). Despite years of flipper tagging (Demetropoulos and Hadjichristophorou, 1995, 2010; Y. Kaska, Pamukkale University, pers. comm., 2013), few tag recoveries have been reported. However, satellite tracking revealed that post-nesting turtles migrate primarily along the coast from their nesting beach to foraging grounds, increasing the likelihood of interacting with fisheries (Broderick *et al.,* 2002a).

With regard to diversity and resilience, the overall spatial range of the DPS is limited. Green turtle nesting is found primarily in the eastern Mediterranean (Turkey, Syria, Cyprus, Lebanon, Israel, and Egypt: Kasparek *et al.,* 2001). The nesting season is consistent throughout the range of this DPS (June to August; Broderick *et al.,* 2002a), thus limiting the temporal buffering against climate change in terms of impacts due to storms and other seasonal events. The fact that turtles nest on both insular and continental sites suggests some degree of nesting diversity, but with the sites so close together, the benefits of this diversity may be minimal.

B. Summary of Factors Affecting the Mediterranean DPS

1. Factor A: The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

a. Terrestrial Zone

In the Mediterranean, destruction and modification of green turtle nesting habitat result from coastal development and construction, beachfront lighting, sand extraction, beach erosion, vehicular and pedestrian traffic, and beach pollution (Kasparek *et al.,* 2001; Casale and Margaritoulis, 2010). These activities may directly affect the amount and suitability of nesting habitat available to nesting females and thus affect the nesting success of green turtles, as well as the survivability of

eggs and hatchlings. In Turkey, coastal construction on Samandağ and Kazanli beaches is of concern, particularly from associated lighting and human activities on the beach (Türkozan and Kaska, 2010). In Cyprus, the increased construction of beachfront hotels and other properties in some areas in recent years, as well as the associated increase in beachfront lighting and human activity on the beach, is decreasing the quality of nesting habitat (Demetropoulos and Hadjichristophorou, 2010; Fuller *et al.,* 2010). In Turkey and Latakia beach in Syria, beach erosion and sand extraction also pose a problem to green turtle nesting habitat (Türkozan and Kaska, 2010; Rees *et al.,* 2010).

Nesting beaches in the eastern Mediterranean are exposed to high levels of pollution and marine debris, in particular the beaches of Cyprus, Turkey, and Egypt (Camiñas, 2004). In Turkey, marine debris washing ashore is a substantial problem and has degraded nesting beaches, especially Akyatan and Samandağ beaches. In Syria, Jony and Rees (2008) reported that beaches contain a large amount of plastic litter that washes ashore or is blown in from dumps located in the beach dunes; this litter has been documented as accumulating in such large amounts that it can hinder nesting females from locating suitable nesting sites and cause emergent hatchlings to have difficulty crawling to the sea (Rees *et al.,* 2010). In Cyprus, marine debris has also been a significant problem on some beaches, although organized beach clean-ups in recent years have greatly reduced the amount of litter on the beach (Demetropoulos and Hadjichristophorou, 2010; Fuller *et al.,* 2010).

b. Neritic/Oceanic Zones

Dynamite fishing and boat anchors affect green turtles and their habitat in the Mediterranean. Khalil *et al.* (2009) reported that dynamite fishing offshore of nesting beaches is a common problem in Lebanon. Illegal dynamite fishing also occurs year round in Libya (Hamza, 2010), and, although illegal, explosions at sea that are likely due to dynamite fishing have been reported off the coast of Syria (Saad, unpubl. data, as cited in Rees *et al.,* 2010). Further, the Mediterranean is a site of intense tourist activity, and corresponding boat anchoring also may affect green turtle foraging habitat in the neritic environment.

Because the Mediterranean is an enclosed sea, organic and inorganic wastes, toxic effluents, and other pollutants rapidly affect the ecosystem (Camiñas, 2004). The Mediterranean has been declared a ''special area'' by the MARPOL Convention (International Convention for the Prevention of Pollution from Ships), in which deliberate petroleum discharges from vessels are banned, but numerous repeated offenses are still thought to occur (Pavlakis *et al.,* 1996).

2. Factor B: Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Overutilization for commercial purposes likely was a factor that contributed to the historical declines of this DPS. Egg collection and turtle harvest for individual consumption still occurs in Egypt (Clarke *et al.,* 2000; Nada and Casale, 2008). A study found that the open selling of sea turtles in Egypt generally has been curtailed due to enforcement efforts, but a high level of intentional killing for the black market or for direct personal consumption still exists (Nada and Casale, 2008). Several hundred turtles are currently estimated to be slaughtered each year in Egypt (Nada and Casale, 2008). In Syria and Egypt, as reported for other countries, green turtles incidentally captured by fishers are sometimes eaten (Nada and Casale, 2008; Rees *et al.,* 2010). Small quantities of stuffed turtles and juvenile turtle carapaces, presumably of Syrian origin, have been observed for sale in Latakia and Damascus (Rees *et al.,* 2010).

3. Factor C: Disease or Predation

Nest and hatchling predation likely was a factor that contributed to the historical decline of the Mediterranean DPS. There have been no records of FP or other diseases in green turtles in this DPS. In this DPS, green turtle eggs and hatchlings are subject to depredation by wild canids (*i.e.,* foxes (*Vulpes vulpes*), golden jackals (*Canis aureus*), feral and domestic dogs (*Canis lupus familiaris*), and ghost crabs (*Ocypode cursor;* van Piggelen and Strijbosch, 1993; Brown and MacDonald, 1995; Aureggi *et al.,* 1999, 2005; Simms *et al.,* 2002; Akcinar *et al.,* 2006; Jony and Rees, 2008; Khalil *et al.,* 2009; Aureggi and Khalil, 2010; Demetropoulos and Hadjichristophorou, 2010; Fuller *et al.,* 2010; Rees *et al.,* 2010).

4. Factor D: Inadequacy of Existing Regulatory Mechanisms

There are at least 13 international treaties and/or regulatory mechanisms that pertain to the Mediterranean, and nearly all countries lining the Mediterranean have some level of national legislation directed at sea turtle protection. The SRT analysis of these existing regulatory mechanisms assumed that all would remain in place at their current levels.

Regulatory mechanisms are in place throughout the range of the DPS that address the direct capture of green turtles for most of the countries within this DPS. Most Mediterranean countries have developed national legislation to protect sea turtles and nesting habitats (Casale and Margaritoulis, 2010). The following countries have laws to protect green turtles: Albania, Croatia, Cyprus, Egypt, Greece, Israel, Italy, Lebanon, Libya, Syria, Tunisia, and Turkey. In addition, at least 13 international treaties and/or regulatory mechanisms apply to the conservation of green turtles in the Mediterranean DPS. National protective legislation generally prohibits intentional killing, harassment, possession, trade, or attempts at these (Margaritoulis *et al.,* 2003). In addition, some countries have site-specific legislation or conservation designation for turtle habitat protection. These are implemented to various degrees throughout the range of the DPS. There are some national regulations, within this DPS, that specially address the harvest of green turtles.

In western Cyprus, Lara-Toxeftra beaches have been afforded protection through the Fisheries Law and Regulations since 1989 (Margaritoulis, 2007). In northern Cyprus, four beaches (Alagadi Beach, Karpaz Peninsular, South Karpaz, and Akdeniz) have been designated as Special Protected Areas (Fuller *et al.,* 2010). These four areas include the third and fifth most important green turtle nesting beaches in the Mediterranean (Kasparek *et al.,* 2001). In Syria, establishment of a protected area at Latakia beach, the most important green turtle nesting beach in the country, is being sought but is facing strong opposition from the tourism sector (Rees *et al.,* 2010). While it is important to recognize the success of these protected areas, we must also note that the protection has been in place for some time and the threats to the species remain (particularly from increasing tourism activities). It is unlikely that the protective measures discussed here are sufficient for the conservation of the species in the Mediterranean.

Regulatory mechanisms are not in place in many countries within this DPS to address the major threat of sea turtle bycatch. Some of the countries in which this DPS is located limit the number and type of fishing licenses issued but sea turtle bycatch is not considered in these authorizations. It is unlikely that bycatch mortality can be sufficiently reduced across the range of the DPS in

the near future because of the diversity and magnitude of the fisheries operating in the DPS, the lack of comprehensive information on fishing distribution and effort, limitations on implementing demonstrated effective conservation measures, geopolitical complexities, limitations on enforcement capacity, and lack of availability of comprehensive bycatch reduction technologies. Our Status Review did not reveal regulatory mechanisms in place to specifically address coastal development, marine pollution, sea level rise, and effects of climate change that continue to contribute to the extinction risk of this DPS.

5. Factor E: Other Natural or Manmade Factors Affecting Its Continued Existence

a. Incidental Bycatch in Fishing Gear

Incidental capture of sea turtles in artisanal and commercial fisheries is a significant threat to the survival of green turtles in the Mediterranean. Fishing practices alone have been estimated to result in over 150,000 sea turtle captures per year, with approximately 50,000 mortalities (Lucchetti and Sala, 2009; Casale, 2011) and sea turtle bycatch in multiple gears in the Mediterranean is considered among the most urgent conservation priorities globally (Wallace *et al.,* 2010).

i. Longline Fisheries

In the Mediterranean, surface longline fisheries are a source of green turtle bycatch (Camiñas, 2004). Incidental captures have been reported from Cyprus (Godley *et al.,* 1998), Turkey (Godley *et al.,* 1998), Italy (Laurent *et al.,* 2001), and Egypt (Nada, 2001; Camiñas, 2004). In Egypt, based on fleet data and catch rates reported by fishers during the 2000s, the total number of sea turtles (*i.e.,* all species) bycaught in longlines was estimated to be over 2,200 per year (Nada and Casale, 2008). Fishers also reported that some of the caught turtles are dead, and the incidence of mortality is particularly high in longlines and gill nets.

ii. Set Net (Gill Net) Fishing

Casale (2008) considered mortality by set nets to be 60 percent, with a resulting estimate of 16,000 turtles killed per year. However, a breakdown of these estimates by turtle species is not available. Most of these turtles are likely juveniles, with an average size of 45.4 cm CCL (n=74, Casale, 2008).

iii. Trawl Fisheries

Green turtles have been reported as incidentally captured in bottom trawls in Egypt (Nada and Casale, 2011), Greece (Margaritoulis *et al.,* 2003), Tunisia (Laurent *et al.,* 1990), Turkey (Laurent *et al.,* 1996; Oruç, 2001), Syria, Israel, and Libya (Casale *et al.,* 2010), but are likely also captured by bottom trawlers in other neritic foraging areas in the eastern Mediterranean (Casale *et al.,* 2010). Laurent *et al.* (1996) estimated that approximately 10,000 to 15,000 sea turtles were being captured annually by bottom trawling in the eastern Mediterranean. Although most of the turtles taken were loggerheads, they estimated that the number of green turtles taken was 1,000 to 3,000 annually in Turkey and Egypt alone. More recently, Casale (2011) compiled available trawl bycatch data throughout the Mediterranean and reported that Italy and Tunisia have the highest level of sea turtle bycatch, potentially over 20,000 captures per year combined, and Croatia, Greece, Turkey, Libya, Greece, and Egypt each have an estimated 1,900 or more sea turtle captures per year. Further, Albania, Algeria, Cyprus, Morocco, Slovenia, Spain, and Syria may each capture a few hundred sea turtles per year (Casale, 2011). Available data suggest the annual number of sea turtle captures by all Mediterranean trawlers may be greater than 39,000 (Casale, 2011). Although most of the turtles reported by Casale (2011) as taken by bottom trawlers were undoubtedly loggerheads, a few thousand were likely green turtles based on earlier reports (Laurent *et al.,* 1990; Laurent *et al.,* 1996; Oruç, 2001; Margaritoulis *et al.,* 2003; Nada and Casale, 2008).

b. Vessel Strikes and Boat Traffic

Propeller and collision injuries from boats and ships are becoming more common for sea turtles in the Mediterranean, although it is unclear as to whether the events, or just the reporting of the injuries, are increasing. Speedboat and jet-ski impacts are of particular concern in areas of intense tourist activity, such as Greece, Turkey, and Syria. Boats operating near sea turtle nesting beaches during the nesting season are likely to either cause females to abandon nesting attempts or cause their injury or death (Camiñas, 2004). Males may also be affected in high-use boating areas where sea turtle mating occurs (Demetropoulos, 2000; Rees *et al.,* 2010).

c. Pollution

Unattended or discarded nets, floating plastics and bags, and tar balls are of particular concern in the Mediterranean (Camiñas, 2004; Margaritoulis, 2007). Monofilament netting appears to be the most dangerous waste produced by the fishing industry (Camiñas, 2004).

The discharge of chemical substances, including highly toxic chromium compounds from a soda-chromium factory close to the Kazanli nesting beach in Turkey, is cause for concern (Kasparek *et al.,* 2001; Venizelos and Kasparek, 2006).

d. Effects of Climate Change

Both the marine and terrestrial realms will be influenced by temperature increases and will likely undergo alterations that will adversely affect green turtles. Mediterranean turtle populations could be affected by the alteration of thermal sand characteristics (from global warming), resulting in the reduction or cessation of male hatchling production (Kasparek *et al.,* 2001; Camiñas, 2004; Hawkes *et al.,* 2009; Poloczanska *et al.,* 2009). In northern Cyprus, green turtle hatchling sex ratios are already thought to be highly female biased (approximately 95 percent female; Wright *et al.,* 2012). This, in tandem with predicted future rises in temperatures, is cause for concern (Fuller *et al.,* 2010). As temperatures increase, there is also concern that incubation temperatures will reach levels that exceed the thermal tolerance for embryonic development, thus increasing embryo and hatchling mortality (Fuller *et al.,* 2010). Further, a significant rise in sea level would restrict green turtle nesting habitat in the eastern Mediterranean. While sea turtles have survived past eras that have included significant temperature fluctuations, future climate change is expected to happen at unprecedented rates, and if turtles cannot adapt quickly they may face local to widespread extirpations (Hawkes *et al.,* 2009). Impacts from global climate change induced by human activities are likely to become more apparent in future years (IPCC, 2007).

In summary, within Factor E, we find that fishery bycatch and marine pollution that occurs throughout the range of the Mediterranean DPS are significant threats to this DPS. In addition, boat strikes and changes likely to result from climate change are an increasing threat to the persistence of this DPS.

C. Conservation Efforts

Regional and national efforts are underway to conserve green turtles (often all sea turtles) throughout the range of the DPS. The extent to which threats have been reduced as a result of these efforts is difficult to ascertain.

Green turtle nesting primarily occurs in Turkey, Cyprus, and Syria, and a

notable proportion of nesting in those areas is protected through various mechanisms. In Turkey, three important green turtle nesting beaches (Alata, Kazanli, and Akyatan) were all designated as protected areas by the Turkish Ministry of Culture, while two other beaches (Belek and Göksu Delta) also have some level of protected status (Kasparek *et al.,* 2001; Fuller *et al.,* 2010). These five protected beaches represent approximately 60 percent of nesting in Turkey (see Canbolat *et al.,* 2009 and Fuller *et al.,* 2010).

There has been success within these protected areas, but as the protection has been in place for some time and the threats to the species remain (particularly from increasing tourism activities), it is unlikely that the protective measures discussed here are sufficient for the conservation of the species in the Mediterranean.

Marine debris is also a significant problem on many green turtle nesting beaches in the eastern Mediterranean, in particular the nesting beaches of Cyprus and Turkey (Camiñas, 2004; Demetropoulos and Hadjichristophorou, 2010; Fuller *et al.,* 2010; Türkozan and Kaska, 2010). Although organized beach clean-ups in recent years on some beaches in Cyprus have greatly reduced the amount of litter on the beach (Demetropoulos and Hadjichristophorou, 2010; Fuller *et al.,* 2010), it is still an overall pervasive problem.

Protection of marine habitats is in the early stages in the Mediterranean, as in other areas of the world. Off the Lara-Toxeftra nesting beaches in western Cyprus, a marine protection zone extends to the 20-m isobath (*i.e.,* 20-m depth line) as delineated by the Fisheries Regulation (Margaritoulis, 2007; Demetropoulos and Hadjichristophorou, 2010). As mentioned above, establishment of a protected area at Latakia beach in Syria is being sought and would include protection of a section of sea offshore; however, it is facing strong opposition from the tourism sector (Serra, 2008; Rees *et al.,* 2010).

D. Extinction Risk Assessment and Findings

The Mediterranean DPS is characterized by low green turtle nesting abundance at 32 different locations, with many of these sites having only one or two known nesting females and none having greater than 245 nesting females. While some of these sites show stable or increasing trends, the extremely low nesting abundance of this DPS compared to historical abundance creates an intrinsically high risk to the long-term stability of the population. The spatial range of the population is limited to the eastern Mediterranean, and the nesting season is consistent throughout this DPS (June to August; Broderick *et al.,* 2002a), thus limiting the temporal buffering against climate change in terms of impacts due to storms and other seasonal events. The fact that turtles nest on both insular and continental sites suggests some degree of nesting diversity but, with the sites so close together, the benefits of this diversity may be minimal. Mitochondrial DNA studies have identified two stocks but, in general there is low population substructuring in the Mediterranean.

The five-factor analysis in the Status Review reveals numerous significant threats to green turtles within the range of the DPS. Coastal development, beachfront lighting, erosion resulting from sand extraction, illegal harvest, detrimental fishing practices, and marine pollution both at nesting beaches and important foraging grounds are continuing concerns across the Mediterranean DPS, and are insufficiently tempered by conservation efforts. Current illegal harvest of green turtles for human consumption continues as a moderate threat to this DPS. Fishery bycatch occurs throughout the Mediterranean Sea, particularly bycatch mortality of green turtles in pelagic longline, set net, and trawl fisheries. Additional threats from boat strikes, which are becoming more common, and changes likely to result from climate change will negatively affect this DPS.

For the above reasons, we propose to list the Mediterranean DPS as endangered. Based on its low nesting abundance, limited spatial distribution, and exposure to increasing threats, we find that this DPS is presently in danger of extinction throughout its range.

IX. South Atlantic DPS

A. Discussion of Population Parameters for the South Atlantic DPS

The South Atlantic DPS's range boundary begins at the border of Panama and Colombia at 7.5° N., 77° W., heads due north to 10.5° N., 77° W., then northeast to 19° N., 63.5° W., and along 19° N. latitude to Mauritania in Africa, to include the U.S. Virgin Islands in the Caribbean. It extends along the coast of Africa to South Africa, with the southern border being 40° S. latitude.

Green turtle nesting occurs on beaches along the western coast of Africa from southern Mauritania to South Africa, in the middle of the South Atlantic on Ascension Island, in the Caribbean portion of the South Atlantic including Caribbean South America, and along eastern South America down through Brazil (Figure 2). In the eastern South Atlantic, significant sea turtle habitats have been identified, including green turtle feeding grounds in Corisco Bay, Equatorial Guinea/Gabon (Formia, 1999); Congo (Bal *et al.,* 2007; Girard *et al.,* 2014); Mussulo Bay, Angola (Carr and Carr, 1991); and Principe Island (SWOT, 2010). In the western South Atlantic, juvenile and adult green turtles utilize foraging areas throughout the Caribbean areas of the South Atlantic, often resulting in interactions with fisheries occurring in those same waters (Dow *et al.,* 2007). While no nesting occurs as far south as Uruguay and Argentina, both countries have important foraging grounds for South Atlantic green turtles (Lopez-Mendilaharsu *et al.,* 2006; Lezama, 2009; González Carman *et al.,* 2011; Prosdocimi *et al.,* 2012; Rivas-Zinno, 2012). Within the range of the South Atlantic DPS, there are a total of 51 nesting sites (some being individual beaches and others representing multiple nesting beaches) that can be roughly divided into four regions: western Africa, Ascension Island, Brazil, and the South Atlantic Caribbean (including Colombia, the Guianas, and Aves Island in addition to the numerous small, insular nesting sites). Much of the South Atlantic is data poor with only occasional or incomplete nesting surveys. Therefore, for 37 of the 51 identified nesting areas of this DPS, we were not able to estimate nesting female abundance, even for relatively large nesting sites such as French Guiana. Of the nesting sites for which an estimate could be derived, three account for the bulk of the nesting: Poilão, Guinea-Bissau (29,016 nesting females; Catry *et al.,* 2009); Ascension Island, UK (13,417 nesting females; S. Weber, Ascension Island Government, pers. comm., 2013); and the Galibi Reserve, Suriname (9,406 nesting females; Schulz, 1975; Weijerman *et al.,* 1998). There are two sites with >10,000 nesting females (Poilão and Ascension Island); one site with 5,001–10,000 nesting females (Suriname); three sites with 1,001–5,000 nesting females (Trindade Island, Brazil (2,016; Almeida *et al.,* 2011; Projecto Tamar, 2011); Aves Island, Venezuela (2,833; Prieto *et al.,* 2012); and Matapica Reserve, Suriname (3,661; A. Turney, pers. comm., 2012). There are three sites with 501–1,001 nesting females, three sites with 101–500, two sites with 51–100, and 37 unquantified sites. Poilão

accounts for almost 46 percent of the total number of nesting females.

Long-term monitoring data for this DPS are relatively scarce. There are three sites for which 10 or more years of recent data are available for annual nesting female abundance (a criterion for presenting trends in a bar graph in the Status Review): (1) Ascension Island, UK; (2) Galibi and Matapica Reserves, Suriname; and (3) Atol das Rocas, Brazil. Together, the first two sites represent approximately 26,759 nesting females (42 percent of the population), while the third site has only 275 nesting females (Bellini *et al.,* 2013). Ascension Island, and Galibi and Matapica Reserves have exhibited substantial increases since the 1970s. Although they did not meet the criteria for presenting bar graphs, there are indications of trends at other beaches in the South Atlantic, such as increasing trends at Isla Trindade, Brazil, and Aves Island, Venezuela, and decreasing trends at Bioko Island, Equatorial Guinea.

With regard to spatial structure, the phylogenic relationship of the eastern Caribbean nesting sites indicates that, despite the close proximity of other Caribbean nesting sites, they are more closely related to the nesting sites in the South Atlantic (M. Jensen, NRC, unpubl. data). Green turtle nesting sites found in Brazil, Ascension Island, and West Africa have shallow structuring and are dominated by a common and widespread haplotype, CM–A8, that is found in high frequency across all nesting sites in the South Atlantic (Bjorndal *et al.,* 2006; Formia *et al.,* 2006). A recent study showed that a large proportion of juvenile green turtles foraging in Cape Verde in the eastern Atlantic originated from distant nesting sites across the Atlantic, namely Suriname (38 percent), Ascension Island (12 percent), and Guinea Bissau (19 percent), suggesting that, like the loggerheads, green turtles in the Atlantic undertake transoceanic developmental migrations (Monzón-Argüello *et al.,* 2010). The fact that long distance dispersal is only seen for juvenile turtles suggests that larger adult-sized turtles return to forage within the region of their natal nesting sites, thereby limiting the potential for gene flow across larger scales (Monzón-Argüello *et al.,* 2010). Important foraging grounds in the western South Atlantic, such as those off of Brazil, Uruguay and Argentina, are shared by turtles from various nesting assemblages in the western South Atlantic and Ascension Island. Important foraging grounds in the eastern South Atlantic, such as the Gulf of Guinea, are shared by turtles from the eastern South Atlantic as well as juveniles from Suriname and Ascension Island.

Overall, many demographic parameters of green turtles in the South Atlantic appear to vary widely among the various nesting assemblages. However, this variability in parameters such as remigration interval, clutch size, hatching success, sex ratio, and clutch frequency is not separated out regionally within the range of the DPS and therefore does not necessarily suggest a high level of population structuring. Average sizes of nesting females are the largest reported for females globally (Hirth, 1997; Almeida *et al.,* 2011; Bellini *et al.,* 2013).

With regard to diversity and resilience, the overall range of the DPS is extensive and varied, with both insular and continental nesting. Ascension Island, one of the largest nesting sites, is isolated and protected in the middle of the South Atlantic, and appears to have migratory connections to nesting sites on the eastern and western ends of the DPS's range. The insular sites vary quite a bit in terms of potential impacts from sea level rise and tropical weather. Aves Island, one of the largest Caribbean nesting sites within the range of the South Atlantic DPS is particularly vulnerable to sea level rise as it is a very low-lying island.

B. Summary of Factors Affecting the South Atlantic DPS

1. Factor A: The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

a. Terrestrial Zone

At continental sites in the South Atlantic DPS destruction and modification of sea turtle nesting habitat (for green turtles and other species) result from coastal development and construction, placement of erosion control structures and other barriers to nesting, beachfront lighting, vehicular and pedestrian traffic, sand extraction, beach erosion, beach sand placement, beach pollution, removal of native vegetation, and planting of non-native vegetation (D'Amato and Marczwski, 1993; Marcovaldi and dei Marcovaldi, 1999; Naro-Maciel *et al.,* 1999; Broderick *et al.,* 2002b; Marcovaldi *et al.,* 2002; Formia *et al.,* 2003; Tanner, 2013).

In very low-lying islands such as Aves, rising sea levels and increased storms could result in a loss of nesting habitat, thus potentially eliminating their functionality as nesting beaches.

b. Neritic/Oceanic Zones

On the western side of the South Atlantic, the Brazil Current Large Marine Ecosystem (LME) region is characterized by the Global International Waters Assessment (GIWA) as suffering severe impacts in the areas of pollution, coastal habitat modification, and overexploitation of fish stocks (Marques *et al.,* 2004). The Patagonian Shelf LME is moderately affected by pollution, habitat modification, and overfishing (Mugetti *et al.,* 2004). In the Canary Current LME, the area is characterized by the GIWA as severely impacted in the area of modification or loss of ecosystems or ecotones and health impacts, but these impacts are decreasing (*http://www.lme.noaa.gov*). The Celtic-Biscay Shelf LME is affected by alterations to the seabed, agriculture, and sewage (Valdéz-González and Ramírez-Bautista, 2002). The Gulf of Guinea has been characterized as severely impacted in the area of solid wastes by the GIWA; this and other pollution indicators are increasing (*http://www.lme.noaa.gov*). On the eastern side of the South Atlantic, the Benguela Current LME has been moderately impacted by overfishing, with future conditions expected to worsen by the GIWA (Prochazka *et al.,* 2005).

In Brazil, green turtles in degraded coastal areas that have ingested plastic debris have been found to have diets that are lower in diversity and quality (Santos *et al.,* 2011). Off the northwestern coast of Suriname run-off from rice production and other agricultural activities is a problem (Reichart and Fretey, 1993) and likely would have similar impacts. The reduction of carrying capacity for green turtles in seagrass beds impacted by anchor damage in popular bays in the U.S. Virgin Islands has also been documented (Williams, 1988). Likewise, sediment contamination from coastal and upstream industrial sites has been recognized in the Caribbean, including St. Croix (Ross and DeLorenzo, 1997), and has the potential to impact green turtle habitat as well as the turtles themselves. Such coastal degradation has been seen throughout the Caribbean areas that fall within the range of the South Atlantic DPS (Dow *et al.,* 2007).

In summary, we find that the South Atlantic DPS of the green turtle is negatively affected by ongoing changes in both its terrestrial and marine habitats as a result of land and water use practices as considered above in Factor A. However, sufficient data are not available to assess the significance of

these threats to the persistence of this DPS.

2. Factor B: Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Overutilization for commercial purposes likely was a factor that contributed to the historical declines of this DPS. Although legal and illegal collection of eggs and harvest of turtles persists as a threat to this DPS, it does not appear to be a significant threat to its resilience. Eggs are taken for human consumption in Brazil, but the amount is considered minor when compared to historical rates of egg collection (Marcovaldi and dei Marcovaldi, 1999; Marcovaldi *et al.,* 2005; Almeida and Mendes, 2007). Use of sea turtles, including green turtles, for medicinal purposes occasionally occurs in northeastern Brazil (Alvez and Rosa, 2006; Braga-Filho and Schiavetti, 2013). Egg harvest occurred in the Galibi area until 1967 when a ban was enacted. Subsequently, a controlled harvest was allowed until the early 2000s via permit with poaching continuing at approximately 100 to 450 nests per year (Reichart and Fretey, 1993).

Throughout the Caribbean areas of the South Atlantic DPS, harvest of green turtle eggs and turtles, both illegal and legal, continues (Dow *et al.,* 2007). Among the British Caribbean territories within the South Atlantic DPS (including Anguilla, Turks and Caicos, the British Virgin Islands, and Montserrat) there are legal sea turtle fisheries, with anywhere from a few (Montserrat) to over a thousand (Turks and Caicos) green turtles taken per year (Godley *et al.,* 2004).

Turtles are harvested along the west African coast and, in some areas, are considered a significant source of food and income due to the poverty of many residents (Formia *et al.,* 2003; Tomás *et al.,* 2010). In the Bijagós Archipelago (Guinea-Bissau), all sea turtles are protected by national law, but enforcement is limited and many turtles are killed by locals for consumption (Catry *et al.,* 2009).

3. Factor C: Disease or Predation

FP is highly variable in its presence and severity throughout the range of the DPS, with areas of lower water quality, especially due to nutrient enrichment, often being the sites with the most prevalent and most severe cases of FP. In Brazilian waters, FP has been documented but is highly variable among sites (Williams and Bunkley-Williams, 2000). FP has been confirmed among green turtles of Africa's Atlantic coast, from Gabon and Equatorial Guinea (Formia *et al.,* 2013), Guinea-Bissau (Catry *et al.,* 2009), Gambia, and Senegal (Barnett *et al.,* 2004), the Congo and Principe Island (Girard *et al.,* 2013). The prevalence varies greatly among locations.

Eggs and nests in Brazil experience depredation, primarily by foxes (*Dusycion vetulus;* Marcovaldi and Laurent, 1996). Nests laid by green turtles in the southern Atlantic African coastline experience predation from local wildlife and feral animals, such as jackals (*Canus* sp.; Weir *et al.,* 2007). Shark predation on green turtles, especially by tiger sharks (*Galeocerdo cuvier*), has been documented off northeastern Brazil at a frequency high enough to indicate that green turtles may be an important food source for tiger sharks off Brazilian waters (Bornatowski *et al.,* 2012). Predation on nesting females can also occur from large predators, such as jaguars (*Panthera onca*) in Suriname (Autar, 1994). On Ascension Island predation by domestic and feral cats (*Felus* sp.) and dogs (*Canus* sp.), frigate birds (*Fregata minor*), land crabs (subphylum Crustacea), and fish (class Osteichthyes) have all been cited as mortality sources for hatchling green turtles (Broderick *et al.,* 2002a). On the Bijagós Archipelago nest predation by monitor lizards (*Varanus* sp.) was highly variable, with green turtle nests experiencing 76 percent predation rates on João Vieira (da Silva Ferreira, 2012). On the southern beaches of Bioko in the Gulf of Guinea, predation on eggs and hatchlings can come from a wide variety of species, such as ghost crabs (family Ocypodidae), ants (family Formicidae), monitor lizards, monkeys (suborder Haplorrhini), porcupines (order Rodentia), vultures (family Accipitridae) and crows (*Corvus* sp.), in addition to village dogs (Tomás *et al.,* 1999).

Although disease and predation are known to occur, quantitative data are not sufficient to assess the degree of impact of these threats on the persistence of this DPS.

4. Factor D: Inadequacy of Existing Regulatory Mechanisms

There are at least 20 national and international treaties and/or regulatory mechanisms that pertain to the South Atlantic DPS. Regulatory mechanisms that address the direct capture of green turtles for most of the countries within this DPS are implemented to various degrees throughout the range of the DPS, with some countries having no commitment to the implementation of the regulation. The main threats to South Atlantic green turtles include fishery bycatch, marine debris and pollution, habitat destruction affecting eggs and hatchlings at nesting beaches, and nest and hatchling predation. Most South Atlantic countries, including those in South America, the Caribbean, and Africa, have developed national legislation and have various projects sponsored by governments, local communities, academic institutions, and non-governmental organizations to protect sea turtles and nesting and foraging habitats to varying degrees (Dow et al., 2007; Formia et al., 2003). The consistency and effectiveness of such programs likely vary greatly across countries and over time based on resource availability and political stability. In addition, some countries have site specific legislation or conservation designation for turtle habitat protection. Regional and national legislation to conserve green turtles (often all sea turtles) exists throughout the range of the DPS. The extent to which threats have been reduced as a result of these efforts is difficult to ascertain. The following countries have laws to protect green turtles: Angola, Argentina, Ascension Island, Benin, Brazil, British Virgin Islands, Cameroon, Cape Verde, Colombia, Congo, Democratic Republic of the Congo, Equatorial Guinea, French Guiana, Gabon, The Gambia, Ghana, Guinea-Bissau, Guinea, Guyana, Ivory Coast, Liberia, Namibia, Nigeria, St. Helena, Sao Tome and Principe, Senegal, Sierra-Leone, South Africa, Suriname, Togo, Trinidad and Tobago, Turks and Caicos Islands, U.S. Virgin Islands, Uruguay, Venezuela.

The Status Review described limited regulatory mechanisms to address bycatch, such as TED requirements; however, there are no widespread regulations to address bycatch as a result of the gill net fisheries. A variety of countries operate industrial trawling off Guinea-Bissau. The national government does not have any requirements for TED use in their waters. There is also extensive illegal fishing occurring (Catry *et al.,* 2009). While the Bolama-Bijagós Biosphere Reserve covers the entire archipelago and provides some protection through the management of the reserve and the survey work patrolling the areas, limited enforcement and resource shortages limit the effectiveness of the reserve. It is unlikely that bycatch mortality, discussed in more detail in Factor E, can be sufficiently reduced across the range of the DPS in the near future because of the diversity and magnitude of the fisheries operating in the DPS, the lack of comprehensive information on fishing distribution and effort,

limitations on implementing demonstrated effective conservation measures, geopolitical complexities, limitations on enforcement capacity, and lack of availability of comprehensive bycatch reduction technologies.

The Status Review did not reveal any regulatory mechanisms in place to specifically address coastal development, marine pollution, sea level rise, and effects of climate change that continue to contribute to the extinction risk of this DPS.

5. Factor E: Other Natural or Manmade Factors Affecting Its Continued Existence

a. Incidental Bycatch in Fishing Gear

Green turtles are incidentally captured throughout the South Atlantic DPS in pelagic and demersal longlines, drift and set gill nets, bottom and mid-water trawls, fishing dredges, pound nets and weirs, haul and purse seines, pots and traps, and hook and line gear.

There is also substantial documentation of the interaction of small-scale artisanal gill net fisheries with green turtles in their foraging grounds along the western South Atlantic, with green turtles documented as the most common species stranded throughout the coast of Brazil (Marcovaldi *et al.,* 2009); Lima *et al.,* 2010; Barata *et al.,* 2011; López-Barrera *et al.,* 2012). Similarly, artisanal gill net fisheries in the coastal waters of the Rio de la Plata area of Uruguay were estimated to have captured 1,861 green turtles over the 13-month duration of a study, despite a time-area closure during the ''peak'' season identified in Lezama (2009).

Incidental captures of juvenile green turtles have also been documented on important foraging grounds off Argentina, especially Samborombón Bay and El Rincón, primarily from gill nets used by the artisanal fisheries, but also from shrimp nets and other artisanal fishing gear (González Carman *et al.,* 2011). Green turtles utilizing foraging grounds off Argentina have been demonstrated to be primarily from the Ascension Islands nesting beaches, although individuals from Trindade Island, Suriname, and Aves Island nesting assemblages were also utilizing the Argentine foraging grounds (Prosdocimi *et al.,* 2012). Therefore impacts to green turtles off Argentina affect a variety of nesting assemblages within the western and central South Atlantic.

A variety of countries operate industrial trawling off Guinea-Bissau. The national government does not have any requirements for TED use in their waters. There is also extensive illegal fishing occurring (Catry *et al.,* 2009). While the Bolama-Bijagós Biosphere Reserve covers the entire archipelago and provides some protection through the management of the reserve and the survey work patrolling the areas, limited enforcement and resource shortages limit the effectiveness of the reserve.

In Ghana and the Ivory Coast, fish stocks have been reduced through overfishing and environmental degradation, and many fishers that incidentally catch sea turtles will keep and kill the turtle to feed their families (Tanner, 2013). Since 2001, a push has been made to generate alternative sources of income for the local populations of the Ivory Coast and to employ ex-poachers to patrol the beaches (Peñate *et al.,* 2007).

b. Marine Debris and Pollution

Various studies have shown high prevalence of marine debris ingestion by green turtles in the western South Atlantic, in some cases occurring in 100 percent of the individuals examined (Bugoni *et al.,* 2001; Tourinho *et al.,* 2010; Guebert-Bartholo *et al.,* 2011; Murman, 2011).

Oil exploration and extraction within the Gulf of Guinea rapidly increased since the discovery of oil reserves in the 1980s and 1990s (Formia *et al.,* 2003), with the associated activities and potential for oil spills and other pollution creating a threat to the important foraging areas and nesting beaches for green turtles in the area.

c. Effects of Climate Change

As in other areas of the world, climate change and sea level rise have the potential to affect green turtles in the South Atlantic. Effects of climate change include, among other things, increased sea surface temperature, the alteration of thermal sand characteristics of beaches (from warming temperatures), which could result in the reduction or cessation of male hatchling production (Hawkes *et al.,* 2009; Poloczanska *et al.,* 2009), and a significant rise in sea level, which could significantly restrict green turtle nesting habitat. In very low-lying islands such as Aves, rising sea levels and increased storms could potentially eliminate its functionality as a nesting beach. Some beaches will likely experience lethal incubation temperatures that will result in losses of complete hatchling cohorts (Fuentes *et al.,* 2010; Fuentes *et al.,* 2011; Glen and Mrosovsky, 2004). While sea turtles have survived past eras that have included significant temperature fluctuations, future climate change is expected to happen at unprecedented rates, and if turtles cannot adapt quickly they may face local to widespread extirpations (Hawkes *et al.,* 2009). Impacts from global climate change induced by human activities are likely to become more apparent in future years (IPCC, 2007).

In summary, within Factor E, we find that bycatch that occurs throughout the South Atlantic, particularly bycatch mortality of green turtles from nearshore gill net fisheries, continues to be a significant threat to this DPS. In addition, changes likely to result from climate change are also an increasing threat to this DPS and likely a significant threat to the persistence of this DPS.

C. Conservation Efforts for the South Atlantic DPS

The main in-water threat to green turtles in the South Atlantic DPS is incidental capture in fisheries, although marine debris and pollution are also threats. The main threat on beaches is habitat destruction, followed by hatchling predation. Most South Atlantic countries, including those in South America, the Caribbean, and Africa, have developed national legislation and have various projects sponsored by governments, local communities, academic institutions, and non-governmental organizations to protect sea turtles, and nesting and foraging habitats to varying degrees (Dow *et al.,* 2007; Formia *et al.,* 2003). The consistency and effectiveness of such programs likely vary greatly across countries and over time based on resource availability and political stability. In addition, some countries have site specific legislation or conservation designation for turtle habitat protection. When assessing conservation efforts, we assumed that all conservation efforts would remain in place at their current levels.

Conservation through education is a widely-used and valuable tool throughout nations within the range of the South Atlantic DPS and around the world. Such education initiatives can be highly successful. In Akassa, Nigeria, a dedicated, intensive conservation education program by the Akassa Community Development Project resulted in sea turtles being recognized locally as an essential part of the area's natural heritage. This has resulted in the majority of the nests in Akassa being protected, and when live stranded turtles are found, they are released (Formia *et al.,* 2003). However, in areas where the utilization of sea turtles is deeply ingrained in the local culture, such as the La Guajira region of

Colombia (Patino-Martinez *et al.,* 2012), changing people's attitudes about the use of sea turtles can be a long, slow process.

In the Caribbean, green turtle conservation on the nesting beach varies widely among the 22 nations and territories. However, programs at the three largest nesting sites—Aves Island, French Guiana, and Suriname—with over 500 crawls per year (Dow *et al.,* 2007), provide protection to a significant proportion of nesting in the area.

In South America, outside of the Caribbean, Brazil is the only nation with substantial green turtle nesting. In Brazil, the primary nesting areas are monitored by Projeto TAMAR, the national sea turtle conservation program, and many detrimental human activities are restricted by various state and Federal laws (Marcovaldi and dei Marcovaldi, 1999; Marcovaldi *et al.,* 2002; 2005). Nevertheless, tourism development in coastal areas in Brazil is high, and Projeto TAMAR works toward raising awareness of turtles and their conservation needs through educational and informational activities at their Visitor Centers that are dispersed throughout the nesting areas (Marcovaldi *et al.,* 2005; Marcovaldi 2011). Since 1990, TAMAR has worked along green turtle foraging areas such as Almofala and Ubatuba (Marcovaldi *et al.,* 2002).

The South Atlantic Association is a multinational group that includes representatives from Brazil, Uruguay, and Argentina that meets bi-annually to share information and develop regional action plans to address threats, including bycatch. In 2001, the Brazilian Plan for Reduction of Incidental Sea Turtle Capture in Fisheries was created to address incidental capture of the five species in the country (Marcovaldi *et al.,* 2002, 2006). This national plan includes various activities to mitigate bycatch, including time-area restrictions of fisheries, use of bycatch reduction devices, and working with fishers to successfully release live-captured turtles. In Uruguay, all sea turtles are protected from human impacts, including fisheries bycatch, by presidential decree (Decreto Presidencial 144/98). The Karumbe conservation project in Uruguay has been working on assessing in-water threats to marine turtles for several years (see *http://cicmar.org/proyectos/promacoda*), with the objective of developing mitigation plans in the future. In Argentina, various conservation organizations are working toward assessing bycatch of green turtles and other sea turtle species in fisheries, with the objective of developing mitigation plans for this threat (*http://www.prictma.com.ar*).

Green turtle nesting occurs on many beaches along the western coast of Africa, and there have been, and continue to be, sea turtle projects in many of the nations in the area ranging from research to public awareness to government conservation efforts (see Formia *et al.,* 2003 for a regional synopsis). The largest nesting assemblages occur on Poilão, Bijagós Archipelago, Guinea Bissau, and on Bioko Island, Equatorial Guinea. While conservation efforts on the beaches have been established, issues with enforcement capabilities and resources make consistent protection problematic (Catry *et al.,* 2009; Formia *et al.,* 2003; Tomás *et al.,* 2010). Since 2001, a push has been made to generate alternative sources of income for the local populations of the Ivory Coast and to employ ex-poachers to patrol the beaches (Peñate *et al.,* 2007).

Green turtle conservation efforts on Ascension Island have involved extensive monitoring, outreach, and research. The group Turtles in the UK Overseas Territories promotes the conservation, research, and management of marine turtle populations and their habitats, and has worked extensively on Ascension Island (*http://www.seaturtle.org/mtrg/projects/tukot/ascension.shtml*). Additionally, there are legal prohibitions protecting sea turtles on Ascension.

Overall, conservation efforts for green turtles in the South Atlantic DPS are inconsistent. While there are numerous and varied conservation efforts, especially on the primary nesting beaches, many issues remain due to limited enforcement of existing laws and marine protected areas as well as extensive fishery bycatch, especially in coastal waters. The effectiveness and consistency of conservation measures will need to be increased substantially to prevent the further decline, and allow the recovery, of this DPS in the future.

D. Extinction Risk Assessment and Findings for the South Atlantic DPS

Nesting abundance for this DPS is relatively high, with large rookeries spread out geographically, the two largest at Poilão, Guinea-Bissau, and Ascension Island, UK. Population trends within rookeries are inconsistent and, in many cases, the data are limited and a trend could not be determined, even for major rookeries. While some nesting beaches such as Ascension Island, Aves Island, and Galibi appear to be increasing, others such as Poilão, Trindade, and Atol das Rocas seem to be stable or do not have sufficient data to make a determination. Bioko, Equatorial Guinea, appears to be in decline. The diversity/resilience of the DPS is bolstered by the widespread nature of the rookeries, but a potential concern is the domination of the DPS by insular nesting sites, which has the potential to reduce the resilience of the DPS in the face of sea level rise and increasing tropical storm activity.

The 5-factor analysis in the Status Review revealed numerous continuing threats to green turtles within the South Atlantic DPS. Habitat destruction and degradation both at nesting beaches and important foraging grounds is a continuing concern, though inconsistent across the DPS. Overutilization (harvest) of green turtles within the South Atlantic was likely a primary factor in past declines. While reduced from those levels due to increased legal protections, harvest is still thought to be fairly extensive in some areas of western Africa. Fishery bycatch also continues to be a major concern throughout the range of the DPS, near nesting beaches and foraging areas as well as on the high seas. Despite increasing legal protections for sea turtles within the DPS, the inadequacy of existing regulatory mechanisms is a noted issue. While many international and national laws purporting to protect sea turtles exist, limitations in resources and political will create a situation of inconsistent or sometimes nonexistent practical measures to enforce those laws. Increasing awareness and conservation efforts by governments, local communities, non-governmental organizations, and industries have helped to reduce threats, but efforts remain inconsistent and often resource limited.

While the Status Review indicates that the DPS shows strength in many of the critical population parameters, there are still concerns about the impacts of ongoing threats. The increasing threats are not reflected in the current trend for the South Atlantic DPS as it was based on nesting numbers and not all current life stages. These increasing threats to the population will only become apparent when those life stages affected by the threats return to nest and the beaches are consistently monitored, as the trend information is based solely on numbers of nests. This lag time and nesting data were considered in our analysis.

For the above reasons, we propose to list the South Atlantic DPS as threatened. We do not find the DPS to be in danger of extinction presently because of high nesting abundance and

geographically widespread nesting at a diversity of sites; however, the continued threats are likely to endanger the DPS within the foreseeable future.

X. Southwest Indian DPS

A. Discussion of Population Parameters for the Southwest Indian DPS

The range of the Southwest Indian DPS has as its western boundary the shores of continental Africa from the equator, just north of the Kenya-Somalia border, south to the Cape of Good Hope (South Africa), and extends south from there along 19° E. longitude to 40° S., 19° E. Its southern boundary extends along 40° S. latitude from 19° E. to 84° E., and its eastern boundary runs along 84° E. longitude from 40° S. latitude to the equator. Its northern boundary extends along the equator from 84° E. to the continent of Africa just north of the Kenya-Somalia border (Figure 2). Nesting occurs along the east coast of Africa as far south as 25° S., the north, west, and south coasts of Madagascar, and scattered offshore islands in the southwest Indian Ocean (Figure 8.1 in the Status Review). Foraging occurs along the east coast of Africa, around Madagascar where numerous seagrass beds are found, and on shallow banks and shoals throughout the region, including those associated with virtually every island in Seychelles (Mortimer, 1984; Mortimer *et al.,* 1996). Small and immature turtles are also concentrated in Mozambique around Bazaruto and Inhassoro and in Maputo Bay (Bourjea, 2012). Along the coast of Kenya, an aerial survey in 1994 indicated that sea turtles are widely distributed within the 20-m isobaths mainly within seagrass beds and coral reefs (Frazier, 1975; Wamukoya *et al.,* 1996; Okemwa *et al.,* 2004). The eastern seaboard of South Africa serves as a feeding and developmental area for green turtles (Bourjea, 2012).

For the DPS, there are 14 nesting sites with some measure of abundance, four of which have more than 10,000 nesting females: Europa (Eparses Islands, France; 25,500; Lauret-Stepler *et al.,* 2007; Bourjea, 2012), Aldabra Atoll (Seychelles; 16,000 (Mortimer *et al.,* 2011; Mortimer, 2012; J. Mortimer unpubl. data)), Mohéli (Comoros; 15,000 (Bourjea, 2012), and Mayotte (France; 12,000; Bourjea *et al.,* 2007a; Bourjea, 2012). Les Glorieuses has 5,001–10,000 nesting females (6,000; Lauret-Stepler *et al.,* 2007; Bourjea, 2012). Five sites have 1,001–5,000 nesting females: Tromelin Island; 4,500 (Lauret-Stepler *et al.,* 2007; Bourjea, 2012); Kenya; 1,500 (Okemwa *et al.,* 2004); Tanzania; 1,500 (Muir, 2005; Bourjea, 2012); Mauritius; 1,800 (Bourjea, 2012); and Assumption, Cosmoledo, Astove, and Farquhar in the Seychelles; ~2,000 (J. Mortimer unpubl. data). There are four sites with <500 nesting females: Madagascar; Mozambique; Amirantes Group, Seychelles; and Inner Islands of the Seychelles; and 23 more sites with unquantified numbers of nesting females. The largest nesting site, Europa, accounts for approximately 30 percent of all nesting.

Green turtles in the Southwest Indian Ocean were exploited for many decades (Hughes, 1974; Frazier, 1980, 1982; Mortimer *et al.,* 2011); however, the species has successfully recovered at some nesting beaches in the recent years and trend data show increasing trends, albeit largely at protected sites (Bourjea, 2012). At protected nesting sites with long-term monitoring, five out of six monitoring sites have shown increase in nesting activities (Europa, Glorieuses, Mayotte, Mohéli, and Aldabra), whereas a declining trend has been reported for Tromelin Island (Bourjea, 2012). There are three nesting sites with greater than 10 years of recent monitoring data: Les Glorieuses, Europa and Tromelin, Eparses Islands, the trends of which are discussed above. No sites met our standards for conducting a PVA.

With regard to spatial structure, genetic sampling in the Southwest Indian DPS has been fairly extensive and nesting sites are relatively well represented, with the exception of the northern nesting sites. Mitochondrial DNA studies indicate a moderate degree of spatial structuring within this DPS, with connectivity between proximate nesting sites (see below). Overall, the Southwest Indian DPS appears to have at least two genetic stocks: (1) The South Mozambique Channel consisting of Juan de Nova and Europa; and (2) the numerous nesting sites in the North Mozambique Channel consisting of Nosy Iranja, Mayotte, Mohéli, Glorieuses, Cosmoledo, Aldabra, Farquhar, also including Tromelin located east of Madagascar (Bourjea *et al.,* 2006). Satellite telemetry data are available for green turtles that nest at some nesting beaches within the range of this DPS. Green turtles nesting along the East African coast confine their migration to along the coast. This is in contrast to those nesting on islands (*e.g.,* Comoros, Eparses, and Seychelles), which reach the East African or Malagasy coast via 'migration corridors' or along mid-oceanic seagrass beds. This behavior is believed to be mainly attributable to the fact that those areas are characterized by a network of large seagrass beds (Bourjea, 2012).

With regard to diversity and resilience, nesting in the Southwest Indian DPS occurs throughout the range of this DPS on islands, atolls, and on the main continent of Africa in Kenya. The nesting substrate can be variable as some of the nesting beaches are volcanic islands and the atolls are made of coralline sand. Nesting occurs throughout the year with peaks that vary among nesting sites (Dalleau *et al.,* 2012; Mortimer, 2012). The fact that turtles nest on both insular and continental sites, in variable substrates and at different peak seasons suggests a high degree of nesting diversity and indicates some resiliency.

The genetic structure of this DPS is characterized by high diversity and a mix of unique and rare haplotypes, as well as common and widespread haplotypes. These common and widespread haplotypes (CM–A8, CmP47 and CmP49) make up the majority of the haplotypes present in the Southwest Indian DPS and appear to be ancestral haplotypes (based on presence in the South Atlantic and Southwest Pacific DPSs). The Southwest Indian Ocean represents a genetic hotspot with 0.3 to 6.5 percent (mean = 4.2 percent) estimated sequence divergence among the seven haplotypes identified. These haplotypes belong to three highly diverged genetic clades of haplotypes and highlights the complex colonization history of the region. There have been no nDNA studies from this region, nor are there studies published on genetic stock composition at foraging areas within the range of the Southwest Indian DPS.

B. Summary of Factors Affecting the Southwest Indian DPS

1. Factor A: The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

a. Terrestrial Zone

Habitat degradation is reported as an important source of additional mortality for this DPS, although the exact scale of habitat destruction at nesting beaches often is undocumented (Bourjea, 2012). In particular, habitat destruction due to development of the coastline and dredging or land-fill in foraging areas is a threat to green turtles throughout the Seychelles (Mortimer *et al.,* 1996). Increases in tourism and human population growth on Mayotte Island may lead to further negative impacts upon this coastal environment (Bourjea *et al.,* 2007). The possible negative effects of artificial lighting at a main nesting beach on Aldabra are of concern at the Seychelles (Mortimer *et al.,* 2011), although it is currently being addressed

(J. Mortimer, Seychelles Dept. of Environment, pers. comm., 2014).

b. Neritic/Oceanic Zones

In Mohéli, Comoros Islands, habitat degradation due to sedimentation, sand extraction, and coral reef/seagrass bed degradation is also a concern (Ahamada, 2008). Similar situations are reported for Tanzania (Bourjea, 2012) and Madagascar (Ciccione *et al.,* 2002; Rakotonirina and Cooke, 1994 as cited in Bourjea, 2012).

For both the terrestrial and the neritic/oceanic zones, we believe that sufficient data are not available to assess the significance of these threats to the persistence of this DPS.

2. Factor B: Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Legal and illegal collection of eggs and harvest of turtles throughout the Southwest Indian DPS for human consumption persists as a threat to this DPS. Egg poaching has been reported for Comoros Islands (Ahamada, 2008; Bourjea, 2012); Mozambique (Costa *et al.,* 2007; Videira *et al.,* 2008); Tanzania (Bourjea, 2012); Madagascar (Rakotonirina and Cooke, 1994; Ciccione *et al.* 2002 as cited in Bourjea, 2012; Lilette, 2006 as cited in Bourjea, 2012); and Kenya (Bourjea, 2012). Egg exploitation has affected green turtle populations in the Maldives (Seminoff *et al.,* 2004). Illegal egg collection in Mauritius seems to be an important source of mortality but no data are available.

Nesting green turtle numbers in the Seychelles have increased at protected sites, but declined where there has been heavy poaching, as on the developed islands of Mahé, Praslin, and La Digue (Bourjea, 2012). On Assumption Island and Aldabra, the number of nesting females was known to have decreased due to overharvesting (Mortimer, 1984), but they have been protected at Aldabra since 1968 (J. Mortimer, pers. comm., Seychelles Dept. of Environment, 2014).

Areas of particularly heavy exploitation of green turtles include foraging locations in the Western Indian Ocean such as Madagascar (Rakotonirina and Cooke, 1994; Mbindo, 1996; Bourjea, 2012). Artisanal fisheries, such as beach seines and gill nets, have been reported to take tens of thousands of turtles annually (Hughes, 1981; Rakotonirina, 1987; Rakotonirina and Cooke, 1994; Lilette, 2006; Humber *et al.,* 2010). This exploitation affects turtles nesting in the Eparses Islands, where poaching and illegal trade at international foraging grounds are also a threat (Rakotonirina and Cooke, 1994; Lauret-Stepler *et al.,* 2007). Similarly, commercial and small-scale fisheries at foraging grounds along the east African coast, mainly Tanzania and Kenya, affect green turtles nesting on Mayotte, Comoros Islands (Bourjea *et al.,* 2007). Intentional capture of green turtles continues in the Seychelles (Seminoff *et al.,* 2004) and in the east coast of Africa (Baldwin *et al.,* 2003; Louro *et al.,* 2006).

In summary, current legal and illegal collection of eggs and harvest of turtles persists as a threat throughout this DPS. The killing of nesting females continues to threaten the stability of green turtle populations in many areas affecting the DPS by reducing adult abundance and egg production.

3. Factor C: Disease or Predation

The prevalence of FP in the Southwest Indian DPS is not known. FP is extremely rare among green turtles in Seychelles (J.A. Mortimer, unpublished data). Side striped jackals (*Canis adustus)* and honey badgers (*Melivora capensis*) are known to depredate nests on the mainland coast of East Africa (Baldwin *et al.,* 2003).

However, quantitative data are not sufficient to assess the degree of impact of these threats on the persistence of this DPS.

4. Factor D: Inadequacy of Existing Regulatory Mechanisms

There are at least 15 national and international treaties and/or regulatory mechanisms that pertain to the Southwest Indian DPS. The analysis of these existing regulatory mechanisms assumed that all would remain in place at their current levels; however, some are not realizing their full potential because they are not adequately enforced.

Regulatory mechanisms that address the direct capture of green turtles are implemented to various degrees throughout the range of the DPS with some countries having no commitment to the implementation of the regulation. Existing regulatory mechanisms to address bycatch and coastal development are not implemented adequately as evident by the high level of bycatch within this DPS.

In addition to broad-reaching international instruments, the following countries have laws to protect green turtles: Mozambique, Republic of Seychelles, Comoros Islands, Mayotte Island, and the French Eparses Islands. However, these regulatory mechanisms are not range-wide and do not address the loss of the nesting beach, overutilization, and bycatch that are significant threats to this DPS. The Status Review revealed a lack of existing regulatory mechanisms to address sea level rise, and effects of climate change that continue to contribute to the extinction risk of this DPS.

5. Factor E: Other Natural or Manmade Factors Affecting Its Continued Existence

a. Incidental Bycatch in Fishing Gear

Quantifying the magnitude of the threat of fisheries on green turtles in the Southwest Indian DPS is very difficult given the low level of observer coverage and dearth of investigations into bycatch conducted by countries that have large fishing fleets. Sea turtles are caught in demersal and pelagic longlines, trawls, gill nets, and seines (Peterson, 2005; Louro *et al.,* 2006; Costa *et al.,* 2007; Fennessy and Isaksen, 2007; Peterson *et al.,* 2007; 2009). Bycatch is a concern along the east coast of Africa and in many island Exclusive Economic Zones (EEZs), including the Seychelles, Mayotte, Comoros, Tanzania, Kenya, and South Africa. (Mortimer *et al.,* 1996; Bourjea *et al.,* 2007a; Bourjea, 2012).

b. Effects of Climate Change and Natural Disasters

Effects of climate change include, among other things, increased sea surface temperatures, the alteration of thermal sand characteristics of beaches (from warming temperatures), which could result in the reduction or cessation of male hatchling production (Hawkes *et al.,* 2009; Poloczanska *et al.,* 2009), and a significant rise in sea level, which could significantly restrict green turtle nesting habitat. In the Southwest Indian DPS, climate change could have profound long-term impacts on nesting populations because much of the nesting occurs in low-lying islands and atolls. The pending sea level rise from climate change is a potential problem, as this will inundate nesting sites and decrease available nesting habitat (Daniels *et al.,* 1993). While sea turtles have survived past eras that have included significant temperature fluctuations, future climate change is expected to happen at unprecedented rates, and if turtles cannot adapt quickly they may face local to widespread extirpations (Hawkes *et al.,* 2009). Impacts from global climate change induced by human activities are likely to become more apparent in future years (IPCC, 2007).

In summary, within Factor E, we find that fishery bycatch that occurs throughout the range of the DPS, particularly bycatch of green turtles from long lining operations, small

prawn trawl fishery, and coastal gill nets, can affect juvenile to adult size turtles. In addition, climate change and natural disasters are expected to be an increasing threat to the persistence of this DPS.

C. Conservation Efforts for the Southwest Indian DPS

Nine countries of the southwest Indian Ocean developed and signed the Indian Ocean Southeast Asian Marine Turtle Memorandum of Understanding (IOSEA; *www.ioseaturtles.org*): Comoros in June 2001, United Republic of Tanzania in June 2001, Kenya in May 2002, Mauritius in July 2002, Madagascar in January 2003, Seychelles in January 2003, South Africa in February 2005; and Mozambique and France (Indian Ocean) in December 2008. IOSEA aims to develop and assist countries of the region in the implementation of the IOSEA regional strategy for management and conservation of sea turtles and their habitats. Accordingly, IOSEA has been successfully coordinating and closely monitoring region-wide conservation efforts in the Indian Ocean for years. This has included the development of a state-of-the-art online reporting facility, satellite tracking, genetic regional database, flipper tag inventory, and a global bibliographic resource.

Also within the Southwest Indian DPS, the Western Indian Ocean-Marine Turtle Task Force plays a role in sea turtle conservation. This is a technical, non-political working group comprised of specialists from eleven countries: Comoros, France (La Réunion), Kenya, Madagascar, Mauritius, Mozambique, Seychelles, Somalia, South Africa, United Kingdom and Tanzania, as well as representatives from intergovernmental organizations, academic, and non-governmental organizations within the region.

The Indian Ocean Tuna Commission (IOTC) is playing an increasingly constructive role in turtle conservation. In 2005, the IOTC adopted Resolution 05/08, superseded by Resolution 09/06 on Sea Turtles, which sets out reporting requirements on interactions with sea turtles and accordingly provides an executive summary per species for adoption at the Working Party on Ecosystem and By-catch and then subsequently at the Scientific Committee. In 2011, IOTC developed a ''Sea Turtle Identification Card'' to be distributed to all long-liners operating in the Indian Ocean (*http://www.iotc.org/*).

Although there is considerable uncertainty in anthropogenic mortalities, especially in the water, the DPS may have benefitted from conservation efforts at the nesting beaches.

D. Extinction Risk Assessment and Findings for the Southwest Indian DPS

The Southwest Indian DPS is characterized by relatively high levels of green turtle nesting abundance and increasing trends. The overall nesting range for the Southwest Indian DPS occurs throughout the range of this DPS on islands, atolls, and on the main continent of Africa in Kenya. The fact that turtles nest on both insular and continental sites, and nesting substrate can be variable as some of the nesting beaches are volcanic islands and the atolls are made of coralline sand, suggests a high degree of nesting diversity. Nesting also occurs throughout the year with peaks that vary among rookeries (Dalleau *et al.,* 2012; Mortimer, 2012). The genetic structure of this DPS is characterized by high diversity and a mix of unique and rare haplotypes, as well as common and widespread haplotypes. However, the five-factor analysis in the Status Review revealed continuing threats to green turtles and their habitat within the range of the DPS.

Nesting beaches throughout the range of this DPS are susceptible to coastal development and associated beachfront lighting, erosion, and sea level rise. Coral reef and seagrass bed degradation continues in portions of the range of the DPS affecting foraging turtles. Direct capture of juvenile and adult turtles continues to take place using a variety of gear types in artisanal and industrial fisheries.

The Southwest Indian DPS is protected by various international treaties and agreements as well as a few national laws, and there are protected beaches throughout the range of this DPS. As a result of these designations and agreements, many of the intentional impacts directed at sea turtles have been lessened, such as the harvest of eggs and adults in several nesting areas, although the extent to which they are reduced is not clear.

While the Status Review indicates that the DPS shows strength in many of the critical population parameters, there are still concerns about threats to the DPS from fisheries interactions, direct harvest (eggs and adults), and climate change.

For the above reasons, we propose to list the Southwest Indian DPS as threatened. We do not find the DPS to be in danger of extinction presently because of the high nesting abundance and geographically widespread nesting at a diversity of sites; however, the continued threats are likely to endanger the DPS within the foreseeable future.

XI. North Indian DPS

A. Discussion of Population Parameters for the North Indian DPS

The range of the North Indian DPS begins at the border of Somalia and Kenya north into the Gulf of Aden, Red Sea, Persian Gulf and east to the Gulf of Mannar off the southern tip of India and includes a major portion of India's southeastern coast up to Andra Pradesh. The southern and eastern boundaries are the equator (0°) and 84° E., respectively, which intersect in the southeast corner of the range of the DPS. It is bordered by the following countries (following the water bodies from west to east): Somalia, Djibouti, Eritrea, Sudan, Egypt, Israel, Jordan, Saudi Arabia, Yemen, Oman, United Arab Emirates, Qatar, Bahrain, Kuwait, Iraq, Iran, Pakistan, India, and Sri Lanka (Figure 2).

Nesting is concentrated primarily in the northern and western region of the range of the North Indian DPS from the Arabian Peninsula to the Pakistani-Indian border, with smaller but significant nesting colonies occurring in Sri Lanka, India's Lakshadweep Island group, and the Red Sea. Nesting in the Arabian Gulf occurs in low numbers.

Seagrass beds are extensive within the range of the DPS, although a comprehensive understanding of juvenile and adult foraging areas is lacking. There are extensive foraging areas in the Arabian Gulf, on the coasts of Oman and Yemen, Gulf of Aden, and in the Red Sea (Ross and Barwani, 1982; Salm, 1991; Salm and Salm, 2001). Barr al Hickman, along the Sahil al Jazit coastline in Oman, is one of the most important known foraging grounds for green turtles. Although development of dense seagrass beds is limited seasonally due to monsoons, the Arabian Sea coast's foraging areas are extensive (Jupp *et al.,* 1996 as cited in Ferreira *et al.,* 2006). Juvenile green turtles have been sighted and captured year-round in the lagoons in Agatti and Kavaratti. These Lakshadweep lagoons are known to be important developmental habitat for green turtles in this DPS (Tripathy *et al.,* 2002; Tripathy *et al.,* 2006).

Thirty-eight total nesting sites were identified by the SRT, some being individual beaches and others representing multiple nesting beaches, although nesting data is more than a decade old for the vast majority of these sites. Nonetheless, our best estimates indicate that, of the 38 sites, two have >10,000 nesting females (Ras Sharma,

Yemen; 18,000 (PERSGA/GEF, 2004) and Ras Al Hadd, Oman; 16,184 (Ross, 1979; AlKindi *et al.,* 2008)); one has 5,001–10,000 nesting females (Kamgar Beach at Ormara, Pakistan; 6,000 (Groombridge *et al.,* 1988)); five have 1,001–5,000 nesting females (Saudi Arabian Gulf Islands; 2,410 (Al-Merghani *et al.,* 2000; Pilcher, 2000); north coast of Ras Al Hadd, Oman; 1,875 (Salm *et al.,* 1993); Ra's Jifan to Ra's Jibsh, Oman; 1,500 (Ross, 1979; AlKindi *et al.,* 2008); Masirah Island, Oman; 1,125 (Grobler *et al.,* 2001); and Gujarat, India; 1,125 (Sunderraj *et al.,* 2006a, 2006b; K. Shanker pers. comm., 2013); 15 sites have 101–500 nesting females; 10 have fewer than 50; and one is unquantified. The largest site, Ras Sharma in Yemen, accounts for 33 percent of the nesting females. Daran Beach, Jiwani, Pakistan, with an estimated 371 nesting females (Waqas *et al.,* 2011), and Zabargard Island, Egypt, with an estimated 444 nesting females (Hanafy, 2012; El-Sadek *et al.,* 2013), are the only sites for which 10 or more years of recent data are available for annual nesting female abundance (the standards for representing trends in bar plot in this report). It is difficult to ascertain any trend from these data. No sites met the standards for PVA. However, some other sites were examined, with caveats, as follows.

Nesting at Ras Al Hadd appears to have increased from approximately 6,000 females nesting each year for the period 1977 to 1979 (Ross and Barwani, 1982) through the late 1980s (Groombridge and Luxmoore, 1989), to the estimate of 16,184 nesting females, as calculated from 21,578 nests found in 2007 (AlKindi *et al.,* 2008). Declines are evident at Hawkes Bay and Sandspit, Pakistan, where a mean of approximately 1,300 nests were deposited annually from 1981 to 1985 (Groombridge and Luxmoore, 1989) and a mean of approximately 600 nests were laid from 1994 to 1997 (Asrar, 1999). At Gujarat, India, 866 nests were deposited in 1981 (Bhaskar, 1984) and 461 nests in 2000 (Sunderraj *et al.,* 2006); however, because there are only two data points, it is not possible to determine a trend. At Ras Sharma, counts of nightly nesting females during peak nesting season in 1966 and 1972 (30–40 females; Hirth, 1968; Hirth and Hollingsworth, 1973) versus the same index during the peak of the 1999 nesting season (15 females; Saad, 1999) are suggestive of a decline. Again the lack of multiple-year data sets for both Gujarat and Ras Sharma preclude trend assessment.

With regard to spatial structure, only one stock from this DPS (in Saudi Arabia) has been characterized genetically based on limited sampling; however, it was found to be very distinct from other nesting sites elsewhere in the Indian Ocean based on mtDNA analysis. There are no studies of foraging grounds within the range of the North Indian DPS to provide information on the distribution or the mixing of turtles outside of this DPS. A few flipper tag recoveries have been reported with no reported recoveries outside of the range of the North Indian DPS. Adult females from Egypt, Sri Lanka, and Oman were satellite tagged and tracked during post-nesting migrations, and all remained within the range of the North Indian DPS. The satellite telemetry data for nesting females in Sri Lanka provided some information on possible foraging locations which were within the inshore waters of southern Sri Lanka and the Gulf of Mannar Biosphere Reserve, although sample size was limited (Richardson *et al.,* 2013). Satellite telemetry for nesting females in Kuwait verified nesting in Qaru Island. These turtles migrated to the shallow seas in Saudi Arabia (Rees *et al.,* 2013).

With regard to diversity and resilience, the demography of green turtles in the North Indian DPS appears to vary among nesting assemblages, suggesting a complex population structuring in the North Indian DPS. The population is moderately dispersed within the range of the North Indian DPS, although the greatest nesting is concentrated in the northern and western region of the DPS's range, with about 72 percent of the nesting concentrated in Oman and Yemen. The nesting season varies widely within the range of the DPS. The peak nesting season in Ras Sharma, Yemen is July, in Gujarat, India, it is from August to March (Sunderraj *et al.,* 2006), and in Oman, nesting occurs year-round.

B. Summary of Factors Affecting the North Indian DPS

1. Factor A: The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

a. Terrestrial Zone

One of the largest green turtle nesting populations within this DPS is concentrated on the nesting beaches of Ras Al Hadd, Oman (Ross, 1979). Ras Al Hadd, Ras al Jinz, and the numerous smaller nesting beaches south of it are protected from development as part of the Ras Al Hadd Nature Reserve. However, upland light pollution is negatively impacting these otherwise suitable nesting habitats (E. Possardt, USFWS, pers. comm., 2013). The most important green turtle nesting beaches in Yemen fall within the Ras Sharma Protected Area, and this nesting habitat is secure from beach development threats.

Light pollution is increasing near the Karan Island, Saudi Arabia site from oil rig developments, but the impact on hatchlings and nesting females is unknown (J. Miller, Biological Research and Education Consultants, pers. comm., 2013). At Ras Baridi, one of the main nesting beaches in Saudi Arabia, uncontrolled particulate emissions from a large cement factory has coated the beaches at times and poses a threat to hatchlings because they are unable to emerge from the nest due to the hardened sand (PERSGA/GEF, 2004; Pilcher, 1999).

b. Neritic/Oceanic Zones

Trawling occurs throughout much of the range of the North Indian DPS and has the potential to destroy bottom habitat in these areas. Marine pollution, including direct contamination and structural habitat degradation, affects green turtle neritic and oceanic habitat. The most dramatic example of the threats to sea turtles and their habitat from oil pollution in the region is the Gulf War oil spill in the Arabian Gulf in 1991, which is estimated to be the largest oil spill in history at the time of the 2010 report (ABC, 2010).

In the Arabian Gulf, extensive seagrass beds provide important foraging sites for green turtles within waters of Bahrain, United Arab Emirates, Qatar, and Saudi Arabia, but these are being degraded and lost from the continual threat of dredging, siltation, and land reclamation (Pilcher, 2000, 2006; Al-Muraikhi *et al.,* 2005; Abdulqader, 2008; Al-Abdessalaam *et al.,* 2008).

In the waters surrounding the Lakshadweep islands in India, there exist high densities of green turtles that, without the natural level of control from the top predators such as tiger sharks, can cause an increase in grazing pressure and reduce the amount of healthy seagrass beds available (Kelkar *et al.,* 2013).

In summary, we find that the North Indian DPS of the green turtle is negatively affected by ongoing changes in both its terrestrial and marine habitats as a result of land and water use practices. Beach and marine pollution are an increasing threat to this DPS.

2. Factor B: Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Directed take of eggs and turtles by humans occurs at the primary green

turtle nesting beaches and in waters off of Saudi Arabia (Al-Merghani *et al.,* 1996; Pilcher, 2000), Yemen (K. Nasher, Sana'a University, pers. comm., 2013), Oman (R. Baldwin, Five Oceans LLC, pers. comm., 2013), Djibouti and Somalia (PERSGA 2001; van de Elst, 2006; Galair, 2009; van de Giessen, 2011; Witsen, 2012), Eritrea (Howe *et al.,* 2004; Pilcher, 2006; Teclemariam *et al.,* 2009), the Islamic Republic of Iran (Mobaraki, 2004; 2007; 2011), India (Sunderraj *et al.,* 2006), and Sri Lanka (Rajakaruna *et al.,* 2009; Turtle Conservation Project, 2009). Directed take of nesting females is also still common at nesting beaches in Yemen (K. Nasher, Sana'a University, pers. comm., 2013). In spite of wildlife protection laws, green turtles are still killed opportunistically for food in Oman (R. Baldwin, Five Oceans LLC, pers. comm., 2013).

Illegal and legal capture of sea turtles and the collection of turtle eggs is fairly widespread in the Djibouti and Somalia region of the Gulf of Aden and the Red Sea, and turtle meat, oil and eggs are an important source of subsidiary food for artisanal fishers (PERSGA, 2001; van de Elst, 2006; Galair, 2009; van de Giessen, 2011; Witsen, 2012). Harvesting of sea turtle eggs and meat for consumption by local communities and fishers occurs at a subsistence level in Eritrea (Howe *et al.,* 2004; Pilcher, 2006; Teclemariam *et al.,* 2009); however, the pressure on green turtle populations is reported to be high because they are prized for their meat products (Teclemariam *et al.,* 2009). Egg harvesting has also been reported as a threat impacting green turtles in the Islamic Republic of Iran, with eggs being used for both consumption (in some cases as an aphrodisiac) and for use in traditional medicines (Mobaraki, 2004; 2007; 2011).

In spite of wildlife protection laws, green turtles are still killed opportunistically for trade in the Bay of Mannar between India and Sri Lanka (Bhupathy and Saravanan, 2006). In India, green turtle export was banned in the 1980s; however, subsistence harvesting continues (Bhupathy and Saravanan, 2006). An increase in the number of green turtles killed by fishers has been reported in Agatti Island, Lakshadweep, India. The cause for the killing has been linked to increases in green turtles within the area. The perception is that green turtles damage fishing gear and overgraze seagrass thereby reducing catch levels (Arthur *et al.,* 2013).

In summary, current legal and illegal collection of eggs and harvest of turtles throughout the range of the North Indian DPS for human consumption persists as a threat to this DPS. The harvest of nesting females continues to threaten the stability of green turtle populations in many areas affecting the DPS by reducing adult abundance and egg production.

3. Factor C: Disease or Predation

The prevalence of FP in the North Indian DPS is not known. Predation of hatchlings and eggs by red foxes (*Vulpes vulpes arabica*) is common at the Ras al Jinz, Oman green turtle nesting beach (Mendonça *et al.,* 2010), and depredation by feral dogs has been identified as a major threat at sea turtle nesting beaches in Pakistan (Asrar, 1999; Firdous, 2001) and the main green turtle nesting beach at Ras Sharma (Stanton, 2008). On two Egyptian Red Sea beaches (Ras Honkorab and Om Al-Abath beaches, which are both within Wadi Gimal National Park limits), predation is reported to be very high with only a few nests surviving (Mancini, 2012). The most common predators observed on these two beaches in Egypt were desert foxes (*V. zerda*) and dogs (*Canis lupus familiaris*), but ghost crabs were regularly observed near nests as well. In Qatar, depredation of eggs and hatchlings by foxes has been identified as a key source of turtle mortality (Al-Muraikhi *et al.,* 2005; Pilcher, 2006). Along the beaches of Gujarat in India, dogs, jackals, monitor lizards, crabs, crows, and possibly hyenas and feral pigs depredate nests and eat hatchings (Sunderraj *et al.,* 2006).

Although disease and predation are known to occur, quantitative data are not sufficient to assess the degree of impact of these threats on the persistence of this DPS.

4. Factor D: Inadequacy of Existing Regulatory Mechanisms

There are several international treaties and/or regulatory mechanisms that pertain to the North Indian DPS, and nearly all countries lining the North Indian DPS have some level of national legislation directed at sea turtle protection. The following countries have laws to protect green turtles: Bahrain, Djibouti, Egypt, Eritrea, India, Iran, Iraq, Kuwait, Oman, Pakistan, Qatar, Saudi Arabia, Somalia, Sri Lanka, Sudan, United Arab Emirates, and Yemen. In addition, at least 14 international treaties and/or regulatory mechanisms apply to the conservation of green turtles in the North Indian DPS.

Within the last decade, since the establishment of the Jeddah Convention (The Regional Convention for the Conservation of the Red Sea and Gulf of Aden Environment), there is more of an effort to strengthen participation in international and regional agreements (PERSGA, 2010). The analysis of these existing regulatory mechanisms assumed that all would remain in place at their current levels. The overall effectiveness and enforcement of these laws varies among the countries and relies on each country's priorities. Often the enforcement of these laws is done in collaboration with non-governmental agencies such as HEPCA in the Red Sea (*http://www.hepca.org/*).

Regulatory mechanisms that address the direct capture of green turtles are implemented to various degrees throughout the range of the DPS with some countries having no regulation in place. Our Status Review reported no widespread regulations for the gill net and trawl fisheries to address the threat of bycatch. The Status Review revealed a lack of existing regulatory mechanisms to address coastal development, sea level rise, and effects of climate change that continue to contribute to the extinction risk of this DPS.

5. Factor E: Other Natural or Manmade Factors Affecting Its Continued Existence

a. Incidental Bycatch in Fishing Gear

Sea turtle bycatch from gill nets, trawls, and longline fisheries is a significant cause of sea turtle mortality for the North Indian DPS, although there are fewer bycatch data than for other regions of the world (Wright and Mohanty, 2002; Project GloBAL, 2007; Bourjea *et al.,* 2008; Abdulqader, 2010; Wallace *et al.,* 2010). The magnitude of trawl, gill net, and longline fisheries within the range of the North Indian DPS is great with no substantive sea turtle protection measures in place to reduce sea turtle bycatch mortality. Along the coast of Ras Al Hadd, one of the densest nesting beaches of this DPS, fishery related mortality is particularly high where green turtles are incidentally caught in fishing gear (Salm, 1991).

i. Gill Net Fisheries

Gill nets are widely deployed and used throughout the region and known to kill thousands of sea turtles in some regions (Project GloBAL, 2007). Two member Indian Ocean Tuna Commission parties, Iran and Kenya, alone reported the use of 12,023 gill nets in the Indian Ocean in 2012. In Lakshadweep and Tamil Nadu, India, the most common net fisheries (*i.e.,* gill net, shore seine, anchor net and drag nets) are known to incidentally catch green turtles (Tripathy *et al.,* 2006; Bhupathy and Saravanan, 2006).

Incidental capture of sea turtles in fishing nets (presumably in gill nets or set nets) has been identified as the main cause of mortality of juvenile green turtles within Iranian and the United Arab Emirates foraging areas (Mobaraki, 2007; Al-Abdessalaam *et al.,* 2008). In Qatar, entrapment of turtles in fishing nets has been identified as a key source of mortality (Al-Muraikhi *et al.,* 2005).

ii. Trawl Fisheries

Shrimp trawling occurs in many countries throughout the range of the North Indian DPS including Pakistan, India, Bahrain, and Saudi Arabia. In Yemen, trawling is believed to be a significant threat to sea turtles, mainly hawksbill and greens; however, no data are available (Bourjea *et al.,* 2008). Pakistan and India require the use of TEDs to meet the requirements of U.S. Public Law 101–162, section 609 for exporting shrimp to the United States, but the level of compliance is unclear (E. Possardt, USFWS, pers. obs. 2013). Nowhere else within the range of the North Indian DPS are TEDs being used and it can be assumed that significant sea turtle bycatch occurs. One documented assessment of the impact of trawling on sea turtles in this region is from Bahrain where trawls were reported to capture over 300 sea turtles annually, mostly greens (Abdulqader and Miller, 2012; Abdulqader, 2010).

b. Vessel Strikes

Boat strikes have been identified as a major cause of sea turtle mortality in the United Arab Emirates (Al-Abdessalaam *et al.,* 2008) and Qatar (Al-Muraikhi *et al.,* 2005). Boat strikes of sea turtles also have been identified as a regular occurrence in Iran and seem to be increasing in some areas (Mobaraki, 2011). Boat strikes are undoubtedly a regular occurrence throughout the Arabian Gulf and other important green turtle foraging grounds within the range of the North Indian DPS and, cumulatively, are likely significant, but quantification is lacking.

c. Beach Driving

Beach driving by fishers who haul and launch boats from Ras al Jinz beach in Oman is highly problematic, and hatchling turtles are likely being caught in ruts, struck or run over. However, no assessment has been conducted to determine the extent of impacts on nesting turtles and hatchlings (E. Possardt, USFWS, pers. comm., 2013).

d. Pollution

Pollution has been identified as a main threat to sea turtles in Iran (Mobaraki, 2007) and Pakistan (Firdous, 2001); however, no specific information about the type of pollution was provided. In Sri Lanka, Kapurusinghe (Kapurusinghe, 2006) stated that polluted inland water flows into Beira Lake and subsequently the sea, and that garbage, including polythene and plastics, dumped on beaches in some areas is washed into the sea, where it can be lethal to sea turtles. In Gujarat, India, the increase in ports and shipping traffic results in problems from oil spills, garbage, and other pollutants such as fertilizers and cement (Surderraj *et al.,* 2006).

e. Effects of Climate Change and Natural Disasters

Similar to other areas of the world, climate change and sea level rise have the potential to affect green turtles in the North Indian DPS. Effects of climate change include, among other things, increased sea surface temperatures, the alteration of thermal sand characteristics of beaches (from warming temperatures), which could result in the reduction or cessation of male hatchling production (Hawkes *et al.,* 2009; Poloczanska *et al.,* 2009), and a significant rise in sea level, which could significantly restrict green turtle nesting habitat. In addition, cyclones such as those occurring in consecutive years in 1998 and 1999 in Kachchch, India, cause severe erosion of the nesting beach (Surderraj *et al.,* 2006) and, when combined with the effects of sea level rise, may have increased cumulative impacts in the future. While sea turtles have survived past eras that have included significant temperature fluctuations, future climate change is expected to happen at unprecedented rates, and if turtles cannot adapt quickly they may face local to widespread extirpations (Hawkes *et al.,* 2009). Impacts from global climate change induced by human activities are likely to become more apparent in future years (IPCC, 2007).

Within Factor E, we find that fishery bycatch (longline, gill net, and trawl fishing) occurs throughout the range of the DPS and is a significant threat to this DPS. In addition, pollution, vessel strikes, climate change and natural disasters are expected to be an increasing threat to the persistence of this DPS.

C. Conservation Efforts for the North Indian DPS

In 2012, the IOTC began requiring its 31 contracting Parties to report sea turtle bycatch and to use safe handling and release techniques for sea turtles on longline vessels. The IOTC and IOSEA also recently completed an ''Ecological Risk Assessment and Productivity—Susceptibility Analysis of sea turtles overlapping with fisheries in the IOTC region.'' One conclusion was that green turtles account for 50 88 percent of artisanal and commercial gill nets bycatch. Two methods of estimating total bycatch were used, and resulted in an annual gill net bycatch estimate of 29,488 sea turtles within the IOTC region.

While conservation efforts for the North Indian DPS are extensive and expanding, they still remain inadequate to ensure the long-term viability of the population. Efforts have been largely focused on the nesting beaches, and there are only recent efforts underway to understand the extent of green turtle interactions with gill nets and trawlers and the resulting cumulative effects from bycatch—one of the major threats to this DPS. Concerted efforts to identify and protected critical foraging grounds is also lacking.

D. Extinction Risk Assessment and Findings for the North Indian DPS

The North Indian DPS has a high level of green turtle nesting abundance with two of the largest nesting assemblages of green turtles in the world nesting in Yemen and Oman. The North Indian DPS also has expansive, largely undeveloped nesting beaches, and many of these beaches are protected from development as nationally designated reserves or protected areas, although threats still remain. The North Indian DPS also features extensive coastal seagrass beds distributed throughout the region, which provide abundant foraging grounds for this species. Nesting beaches are distributed broadly throughout the region.

Coastal development, beachfront lighting, fishing practices, and marine pollution at nesting beaches and important foraging grounds are continuing concerns across the DPS. Current illegal harvest of green turtles and eggs for human consumption is a continuing but limited threat to this DPS. Fishery bycatch occurs throughout the North Indian DPS, particularly bycatch mortality of green turtles from gill nets and trawl fisheries, and the cumulative mortality from these fisheries is probably the greatest threat to this DPS. Additional threats from boat strikes, which are becoming more common, and expected impacts of climate change, will negatively affect this DPS.

Conservation efforts are substantial but uneven in the range of the North Indian DPS and focused almost entirely on nesting beaches. The ability for some countries to sustain or develop needed

conservation programs in the context of political instability within the region is of concern. Further, our analysis did not consider the scenario in which current laws or regulatory mechanisms were not continued. Given the conservation dependence of the species, without mechanisms in place to continue conservation efforts in this DPS, some threats could increase and population trends could be affected.

For the above reasons, we propose to list the North Indian DPS as threatened. We do not find the DPS to be in danger of extinction presently because of high nesting abundance in protected areas; however, the continued threats are likely to endanger the DPS within the foreseeable future.

XII. East Indian-West Pacific DPS

A. Discussion of Population Parameters for the East Indian-West Pacific DPS

The western boundary for the range of the East Indian–West Pacific DPS is 84° E. longitude from 40° S. to where it coincides with India near Odisha, northeast along the shoreline and into the West Pacific Ocean to include Taiwan extending east at 41° N. to 146° E. longitude, south and west to 4.5° N., 129° E., then south and east to West Papua in Indonesia and the Torres Straits in Australia. The southern boundary is 40° S. latitude, encompassing the Gulf of Carpentaria (Figure 2).

Green turtle nesting is widely dispersed throughout the range of the East Indian–West Pacific DPS, with important nesting sites occurring in Northern Australia, Indonesia, Malaysia (Sabah and Sarawak Turtle Islands), Peninsular Malaysia, and the Philippine Turtle Islands. The in-water range of the East Indian-West Pacific DPS is similarly widespread with shared foraging sites throughout the range of the DPS. The largest nesting site lies within Northern Australia, which supports approximately 25,000 nesting females (Limpus, 2009). Nonetheless, populations are substantially depleted from historical levels.

There are 58 known nesting sites, although we note that the nesting female estimates for many of these sites are over a decade old. The largest, Wellesley Group, lies in northern Australia and supports approximately 25,000 nesting females (EPA Queensland Turtle Conservation Project unpublished data cited in Limpus, 2009). Five sites have 5,001–10,000 nesting females: Bilang-Bilangan, Indonesia (7,156; Reischig *et al.,* 2012); Sabah Turtle Island Park, Malaysia (7,011; de Silva, 1982; Basintal, 2002; P. Bastinal pers. comm., 2011); Ningaloo, North West Cape, Australia (6,269; Prince, 2003; Markovina, 2008; Bool *et al.,* 2009; Gourlay *et al.,* 2010; Kelliher *et al.,* 2011); Baguan Island, Philippines (5,874; Pawikan Conservation Project, 2013); and Pangumbahan, Indonesia (5,199; Muhara and Herlina, 2012). Seven sites have 1,001–5,000 nesting females: Sangalaki (2,740; Reischig *et al.,* 2012), Enu (2,048; Dethmers, 2010), Mataha (1,652; Reischig *et al.,* 2012), and Belambangan Island, Indonesia (1,736; Dermawan, 2002); Terranganu (1,875; Chan, 2010) and Sarawak Turtle Island, Malaysia (1,155; Groombridge and Luxmoore, 1989; Chan 2006; Chan, 2010); and Lihiman, Philippines (1,217; Pawikan Conservation Project, 2013). Eight sites have 501–1,000 nesting females, 30 have <500 nesting females, and seven are unquantified.

Green turtle populations within the range of the East Indian-West Pacific DPS have experienced apparent declines at some nesting sites, and increases at others in the past several decades. For instance, in Southeast Asia, data suggest that populations have declined in the Gulf of Thailand, Vietnam, and the Berau Islands, Meru Betiri National Park, Pangumbahan, Thamihla Kyun, and perhaps Enu Island, all in Indonesia, although the lack of recent and/or multiple year data prevents an assessment of the current trends at these sites. At Sipadan, Sarawak and Terengganu in Malaysia, nesting appears to be stable, although Terengganu might be decreasing. Nesting has remained stable in the Philippine Turtle Islands and may have increased at the Sabah Turtle Islands, Malaysia. In Western Australia, data are not sufficient to draw any conclusions regarding long-term trends, although these sites, together with the Wellesley Group in Northern Australia (the largest nesting site), may constitute the most important green turtle nesting concentration in the Indian Ocean.

When examining spatial structure for the East Indian-West Pacific DPS, the SRT examined three lines of evidence: genetic data, flipper and satellite tagging, and demographic data. Genetic sampling in the East Indian-West Pacific DPS has occurred at 22 nesting sites. There appears to be a complex population structure, even though there are gaps in sampling relative to distribution. Overall, this region is dominated by a few common and widespread haplotypes and has varying levels of spatial structure characterized by the presence of rare/unique haplotypes at most nesting sites. There is significant population substructuring.

Tagging and tracking studies have been geared to studying internesting migrations, and defining the range of internesting habitats and post-nesting migrations. Green turtles that were satellite tracked from Pulau Redang, Terengganu indicate migrations to the South China Sea and Sulu Sea areas (Liew, 2002). Cheng (2000) reported movements of eight post-nesting green turtles from Wan-An Island, Taiwan that were satellite tracked, and which distributed widely on the continental shelf to the east of mainland China. Satellite telemetry studies conducted from 2000 to 2003 demonstrated that the green turtles nesting at Taipin Tao are a shared natural resource among the nations in the southern South China Sea. Female green turtles tracked in the same area travelled long distances in a post-nesting migration, ending in the Sulu Sea in the Philippines and the Malaysia Peninsula with distances that ranged from 456 to 2,823 km (Charuchinda *et al.,* 2002) and in the coastal region of Japan (Wang, 2006). Waayers and Fitzpatrick (2013) found that in the Kimberly region of Australia, the green turtle appears to have a broad migration distribution and numerous potential foraging areas.

Mixed stock analysis of foraging grounds shows that green turtles from multiple nesting beach origins commonly mix at feeding areas in foraging grounds across northern Australia (Dethmers *et al.,* 2010) and Malaysia (Jensen, 2010) with higher contributions from nearby large nesting sites. There is evidence of low frequency contribution from nesting sites outside the range of the DPS at some foraging areas.

The demography of green turtles in the East Indian-West Pacific DPS varies throughout the nesting assemblages. This variation in parameters such as mean nesting size, remigration interval, internesting interval, clutch size, hatching success, and clutch frequency suggests a high level of population structuring in this DPS.

With regard to diversity and resilience, nesting and foraging areas are widespread within the range of this DPS, providing a level of population resilience through habitat diversity. The nesting season varies throughout the range of the DPS, with nesting from June to August in the inner Gulf of Thailand, peak nesting from March to July on Derawan Island (Charuchinda and Monanunsap, 1998; Abe *et al.,* 2003; Aureggi *et al.,* 2004; Adnyana *et al.,* 2008), year-round nesting in Thameela Island, Myanmar and Aru, Indonesia (although peaking from November to March; (Dethmers, 2010; Lwin, 2009),

and peak nesting from November to March in Aru, Indonesia (Dethmers, 2010), Sukamade, southeastern Java (Arinal, 1997), Barrow Island, and western Australia (Pendoley, 2005). Nesting occurs on both insular and continental sites, yielding a degree of nesting diversity. Limited information also suggests that there are two types of nesting females within the DPS: Those with high site fidelity which nest regularly at one site, such as the Sabah Turtle Islands; and those with low site fidelity such as at Ishigaki Island which select different nesting sites allowing for increased diversity and resilience for the DPS (Basintal, 2002; Abe *et al.,* 2003).

B. Summary of Factors Affecting the East Indian-West Pacific DPS

1. Factor A: The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

a. Terrestrial Zone

In the East Indian-West Pacific DPS, the majority of green turtle nesting beaches are extensively eroded. Nesting habitat is degraded due to a variety of human activities largely related to tourism. Coastal development and associated artificial lighting, sand mining, and marine debris affect the amount and quality of habitat that is available to nesting green turtles. However, there are sanctuaries and parks throughout the region where nests are protected to various degrees.

Most of the beaches in Vietnam have a large amount of marine debris, which includes glass, plastics, polystyrenes, floats, nets, and light bulbs. This debris can entrap turtles and impede nesting activity.

In Australia, the majority of green turtle nesting along the beaches of the Gulf of Carpentaria occurs outside of the protection of the National Park. Other minor nesting sites lie within the protected lands of the Indigenous Protected Areas (Limpus, 2009). In Western Australia, the impacts to nesting and hatchling green turtles by independent turtle watchers as well as off-road vehicles has increased in the Ningaloo region as the number of visitors has increased over the years (Waayers, 2010). Nesting turtles and hatchlings are routinely disturbed by people with their cars and flashlights (Kelliher *et al.,* 2011). Burn-off flares associated with oil and gas production on the Northwest shelf of Australia are in sufficiently close proximity to the green turtle nesting beaches to possibly cause hatchling disorientation (Pendoley, 2000)

b. Neritic/Oceanic Zones

Green turtles forage in the seagrass beds around the Andaman and Nicobar Islands in India. Some of these seagrass beds in the South Andaman group are no longer viable foraging habitat because of siltation and degradation due to waste disposal, a byproduct of the rapid increase in tourism (Andrews, 2000). Green turtles that forage off the waters of the Bay of Bengal in south Bangladesh also face depleted foraging habitat from divers collecting seagrass for commercial purposes and by anchoring of commercial ships, ferries, and boats in this habitat (Sarkar, 2001). In the nearshore waters of Thailand, seagrass beds are partially protected since fishing gear such as trawls are prohibited (Charuchinda *et al.,* 2002). In the waters surrounding the islands of Togean and Banggai in Indonesia, the use of dynamite and potassium cyanide are common, and this type of fishing method destroys green turtle foraging habitat (Surjadi and Anwar, 2001).

Seagrass beds are found throughout the nearshore areas of Vietnam's mainland coast and islands (Ministry of Fisheries, 2003). Destructive fishing practices have been and possibly continue to be a major threat to this habitat in 21 of Vietnam's 29 provinces (Asia Development Bank, 1999 as cited in the Ministry of Fisheries, 2003) and in the waters of Indonesia (Cruz, 2002; Dethmers, 2010). Although these destructive fishing practices are prohibited by legislation passed in 1989, enforcement may not be sufficient to prevent these practices from occurring. Green turtle foraging habitat is under increased threat from decreased water quality through river run-off and development (Ministry of Fisheries, 2003).

In summary, within Factor A, we find that coastal development, beachfront lighting, erosion resulting from sand mining, and sea level rise, are a significant threat to a large portion of this DPS. The extent of fishing practices, depleted seagrass beds, and marine pollution is broad with high levels occurring in waters where high numbers of green turtles are known to forage and migrate are significant threats to the persistence of this DPS.

2. Factor B: Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The green turtle populations within this DPS have been declining throughout their range. Populations throughout Asia have been depleted by long-term harvests of eggs and adults, and by by-catch in the ever-growing fisheries (Shanker and Pilcher, 2003). On St. Martins Island, Bangladesh, over-exploitation has brought the nesting turtles to near extinction (Hasan, 2009). Nesting females continue to be killed in countries within Southeast Asia and the Indian Ocean (Fleming, 2001; Fretey, 2001; Cruz, 2002). Despite substantial declines in green turtle nesting numbers, egg harvest remains legal in several of the countries within the range of this DPS. Some countries have protections in place; however, harvest continues due to lack of enforcement.

In Myanmar and Thailand, hatcheries are set up to protect a portion of the eggs. However, these hatcheries retain hatchlings for several days for tourism purposes, thus reducing the likelihood of hatchling survival (Charuchinda *et al.*, 2002).

Turtle nesting numbers have decreased in peninsular Malaysia and the Philippines due to more than 40 years of overharvesting of eggs and females (Siow and Moll, 1982; de Silva, 1982; Limpus, 1995; Cruz, 2002). In order to provide some protection for turtles, all three Sabah Turtle Islands were acquired and protected by the Sabah State Government in the 1970s (de Silva, 1982). After more than 20 years of conservation efforts (1970–1990), the population had still not shown signs of recovery (Limpus *et al.*, 2001).

Local islanders in Indonesia have traditionally considered turtles, especially green turtles, as part of their diet (Hitipeuw and Pet-Soede, 2004 as cited in FAO, 2004). Illegal egg harvesting continues, but there is an increased effort to fully protect green turtles from harvest on the islands of Bilang-Bilangan and Mataha in Indonesia (Reischig *et al.*, 2012).

Despite legal protections for sea turtles, at-sea poaching of turtles is a continuing problem in Southeast Asia, especially by Hainanese and Vietnamese vessels. The poaching occurs in a wide-ranging area of the region, and has moved as turtle stocks have been depleted, with vessels being apprehended off Malaysia, Indonesia, and the Philippines (Pilcher *et al.*, 2009 as cited in Lam *et al.*, 2011).

In Australia, green turtles are harvested by Aboriginal and Torres Strait Islanders for subsistence purposes. There is a widespread use of motorized aluminum boats in contrast to the traditional dugout canoes powered by paddles or sail. The total harvest of green turtles by indigenous people across northern and Western Australia is probably several thousand annually (Kowarsky, 1982; Henry and Lyle, 2003 as cited in Limpus, 2009).

The indigenous harvest of eggs may be unsustainable in northeast Arnhem Land (Kennett and Yunupingu, 1998).

Current legal and illegal collection of eggs and harvest of turtles occur throughout the East Indian-West Pacific DPS and persists as a significant threat to this DPS. The harvest of nesting females continues to threaten the stability of green turtle populations in many areas affecting the DPS by reducing adult abundance and reducing egg production.

3. Factor C: Disease or Predation

FP has been found in green turtles in Indonesia (Adnyana *et al.*, 1997), Japan (Y. Matsuzawa, Japanese Sea Turtle Association, pers. comm., 2004), the Philippines (Nalo-Ochona, 2000), Western Australia (Raidal and Prince, 1996; Aguirre and Lutz, 2004), and on PhuQuoc in Vietnam (Ministry of Fisheries, 2003). Epidemiological studies indicate rising incidence of this disease (George, 1997), thus the above list will likely grow in the future.

The best available data suggest that current nest and hatchling predation on the East Indian-West Pacific DPS is prevalent and may be an increasing threat without nest protection and predatory control programs in place. Depredation of nests by feral animals is also widespread in many South Asian areas (Sunderraj *et al.*, 2001; Islam, 2002). Nest predation by feral pigs and dogs is a major threat on the Andaman and Nicobar Islands of India (Fatima *et al.*, 2011). Monitor lizards are also a significant and widespread predator in some areas (Andrews *et al.*, 2006). Dog predation is a major threat to the green turtle nests on Sonadia Island in Bangladesh (Islam *et al.*, 2011). Jackals, foxes, wild boars, and monitor lizards also predate green turtle nests and hatchlings along the beaches of Bangladesh, and dogs also kill or injure nesting females in Bangladesh (Andrews *et al.*, 2006). Lizards and ghost crabs are the natural predators of green turtle nests in Thailand (Chantrapornsyl, 1993). In Malaysia, crabs (*Ocypode* spp.) predate green turtle eggs (Ali and Ibrahim, 2000), and gold-ringed cat snakes or mangrove snakes (*Boigadendrophila*), (Asiatic) reticulated pythons (*Python reticulatus*), monitor lizards (*Varanus* sp.), and house mice (*Mus musculus*) predate hatchlings (Hendrickson, 1958). Monitor lizards, crabs, and ants predate eggs and hatchlings on the beaches of Vietnam (as cited in ''Sea Turtle Migration-Tracking and Coastal Habitat Education Program—An Educator's Guide'' *http://www.ioseaturtles.org/Education/seaturtlebooklet.pdf*). In Japan, raccoon dogs (*Nyctereutes procyonoides*) and weasels (*Mustela itatsi*) are a threat to nests (Kamezaki *et al.*, 2003). In Taiwan, snakes predate the nests (Cheng *et al.*, 2009). On the North West Cape and the beaches of the Ningaloo coast of mainland Australia, a long established feral European red fox (*Vulpes vulpes*) population historically preyed heavily on eggs and is thought to be responsible for the lower numbers of nesting turtles on the mainland beaches (Baldwin *et al.*, 2003; Kelliher *et al.*, 2011).

Although disease and predation are known to occur, quantitative data are not sufficient to assess the degree of impact of these threats on the persistence of this DPS.

4. Factor D: Inadequacy of Existing Regulatory Mechanisms

Although conservation efforts to protect some nesting beaches and marine habitat are underway, more widespread and consistent protection is needed. There are at least 16 national and international treaties and/or regulatory mechanisms that pertain to the East Indian-West Pacific DPS. The analysis of these existing regulatory mechanisms assumed that all would remain in place at their current levels. The following countries have laws to protect green turtles: Australia, Bangladesh, Brunei Darussalam, Cambodia, China, Hong Kong, India, Indonesia, Japan, Myanmar, Thailand, Malaysia, Philippines, Taiwan, and Vietnam. In addition, at least 17 international treaties and/or regulatory mechanisms apply to the conservation of green turtles in the East Indian-West Pacific DPS. However, some regulatory mechanisms, including laws and international treaties, are not realizing their full potential because they are not enforced, or do not apply in all countries occupied by the DPS.

Regulatory mechanisms are in place throughout the range of the DPS that address the direct capture of green turtles for most of the countries within this DPS. These are implemented to various degrees throughout the range of the DPS. There are some national regulations within this DPS that specially address the harvest of green turtles, while a few regulations are limited in that they only apply to certain size classes, or times of year, or allowed for traditional use.

Fishery bycatch throughout the range of the East Indian-West Pacific DPS (see Factor E), as well as anthropogenic threats to nesting beaches and foraging grounds (Factor A) and eggs/turtles and foraging (Factors A, B, C, and E), are substantial. Although national and international governmental and non-governmental entities in the East Indian-West Pacific DPS are currently working toward reducing green turtle bycatch as well as egg and turtle harvest, it is unlikely that this source of mortality can be sufficiently reduced across the range of the DPS in the near future. This is due to the lack of bycatch reduction in commercial and artisanal fisheries operating within the range of this DPS, the lack of comprehensive information on fishing distribution and effort, limitations on implementing demonstrated effective conservation measures, geopolitical complexities, limitations on enforcement capacity, and lack of availability of comprehensive bycatch reduction technologies. Beaches and in-water habitat throughout the range of the DPS are under various levels of protection, depending in part on the clarity of regulations and consistency of funding for enforcement.

In summary, although regulatory mechanisms are in place that should address direct and incidental take of green turtles within this DPS, these regulatory mechanisms are not implemented throughout the range of this DPS. These mechanisms are not sufficiently implemented to address the direct harvest of green turtles and are insufficient to address the major threat of bycatch which remains a significant risk to this DPS.

5. Factor E: Other Natural or Manmade Factors Affecting its Continued Existence

a. Incidental Bycatch in Fishing Gear

Incidental capture in artisanal and commercial fisheries is a significant threat to the survival of green turtles in the East Indian-West Pacific DPS. Green turtles may be caught in drift and set gill nets, bottom and mid-water trawling, fishing dredges, pound nets and weirs, and haul and purse seines.

Bycatch in fisheries using gears such as trawlers, drift nets, and purse seines is thought to be one of the main causes of decline in the green turtle population in Thailand and Malaysia. The rapid expansion of fishing operations is largely responsible for the increase in adult turtle mortality due to bycatch (Settle, 1995). The most used fishing gears in the waters of Thailand are trawling and drift gill nets. Heavy fishing is the main threat to foraging sea turtles (Chan *et al.*, 1988; Chantrapornsyl, 1993; Liew, 2002).

Gill nets and set bag nets are the two major fishing gears used in the Bay of Bengal, and green turtles are likely captured during these fishing operations (Hossain and Hoq, 2010). Along the

coast of Andaman and Nicobar Islands, the main type of fishery is gill nets and purse seines with thousands of turtles killed annually by fisheries operations including the shark fishery (Chandi *et al.*, 2012; Shanker and Pilcher, 2003). In 1994, Bhaskar estimated at least 600 green turtles were killed as a result of the shark fishery in this area. Over the last decade, there has been an increase in the large predator fishing industry. Green turtle mortality can be expected to be much higher than that estimated in the 1990s as a result of these current operations (Namboothri *et al.*, 2012).

Trawl fishing is also common in Bangladesh. No green turtle stranding information is available to determine the fishery threat level to the green turtle population; however, it is expected to be high as TEDs are not used and the population has declined (Ahmed *et al.*, 2006; Khan *et al.*, 2006). On the Turtle Islands in the Philippines, there have been an increased number of dead turtles as a result of fishing activities, such as shrimp trawlers and demersal nets (Cruz, 2002).

One of the main threats to green turtles in Vietnam and Indonesia is the incidental capture from gill and trawl nets and the opportunistic capture by fishers. Hundreds of green turtles are captured by fisheries per year in Vietnam (Ministry of Fisheries, 2003; Hamann *et al.*, 2006a; Dethmers, 2010).

In Indonesia, green turtles were recorded as one of the main species caught in the longline fisheries. Trawl gear is still allowed in the Arafura Sea, posing a major threat to green turtles (Dethmers, 2010). Shrimp trawl captures in Indonesia are high because of the limited use of TEDs (Zainudin *et al.*, 2008).

The estimated bycatch of the Japanese large-mesh drift net fishery in the North Pacific Ocean in 1990–1991 was 1,501 turtles, of which 248 were estimated to be green turtles (Wetherall *et al.*, 1993). Wetherall *et al.* (1993) report that the actual mortality of sea turtles taken in the Japanese and Taiwanese large-mesh fisheries may have been between 2,500 and 9,000 per year.

b. Marine Debris and Pollution

Pollution from oil spills, as well as from agricultural and organic chemicals, is a major threat to the waters used by green turtles in the Bay of Bengal (Sarkar, 2001). The result of human population growth in China has been an increased amount of pollutants in the coastal system. Discharges from untreated sewage have occurred in Xisha Archipelago (Li *et al.*, 2004 as cited in Chan *et al.*, 2007). Concentrations of nine heavy metals (iron, manganese, zinc, copper, lead, nickel, cadmium, cobalt, and mercury) and other trace elements were found in liver, kidney, and muscle tissues of green turtles collected from Yaeyama Islands, Okinawa, Japan (Anan *et al.*, 2001). The accumulation of cadmium found in the green turtles is likely due to accumulations of this heavy metal in the plant materials on which they forage (Sakai *et al.*, 2000).

In the Gulf of Carpentaria, Australia, discarded fishing nets have been found to cause a high number of turtle deaths with the majority being green turtles (Chatto *et al.*, 1995).

c. Effects of Climate Change and Natural Disasters

Effects of climate change include, among other things, increased sea surface temperatures, the alteration of thermal sand characteristics of beaches (from warming temperatures), which could result in the reduction or cessation of male hatchling production (Hawkes *et al.*, 2009; Poloczanska *et al.*, 2009), and a significant rise in sea level, which could significantly restrict green turtle nesting habitat. While sea turtles have survived past eras that have included significant temperature fluctuations, future climate change is expected to happen at unprecedented rates, and if turtles cannot adapt quickly they may face local to widespread extirpations (Hawkes *et al.*, 2009). Impacts from global climate change induced by human activities are likely to become more apparent in future years (IPCC, 2007).

Natural environmental events, such as cyclones and hurricanes, may affect green turtles in the East Indian-West Pacific DPS. Typhoons have been shown to cause severe beach erosion and negatively affect hatching success at green turtle nesting beaches in Japan, especially in areas already prone to erosion.

In summary, within Factor E, we find that fishery bycatch, particularly from drift net and purse seine fisheries, occur throughout the East Indian-West Pacific DPS, with localized high levels of mortality in waters where juvenile to adult turtles are known to forage and migrate are a persistent risk to this DPS. In addition, vessel collisions, marine pollution, changes likely to result from climate change, and natural disasters are expected to be an increasing threat to the persistence of this DPS.

C. Conservation Efforts for the East Indian-West Pacific DPS

There are numerous ongoing conservation efforts in this region. Hatcheries have been set up throughout the region to protect a portion of the eggs laid and prevent complete egg harvesting. In addition, bycatch reduction efforts have been made in some areas, protected areas are established throughout the region, and monitoring, outreach and enforcement efforts have made progress in sea turtle conservation. Despite these conservation efforts, considerable uncertainty in the status of this DPS lies with inadequate efforts to measure bycatch in the region, a short time-series of monitoring on nesting beaches, and missing vital rates data necessary for population assessments.

In India, since 1978, the Centre for Herpetology/Madras Crocodile Bank Trust has conducted sea turtle surveys and studies in the islands. In a bilateral agreement, the Governments of the Philippines and Malaysia established The Turtle Island Heritage Protected Area (TIHPA), made up of nine islands (six in the Philippines and three in Malaysia). The TIHPA is one of the world's major nesting grounds for green turtles. Management of the TIHPA is shared by both countries. One of the nesting beaches for this DPS, Australia's Dirk Hartog Island, is part of the Shark Bay World Heritage Area and recently became part of Australia's National Park System. This designation may facilitate monitoring of nesting beaches and enforcement of prohibitions on direct take of green turtles and their eggs. Conservation efforts on nesting beaches have included invasive predator control.

Illegal trade of turtle parts continues to be a problem in the East Indian-West Pacific DPS. In order to reduce this threat, the Vietnamese Government, with assistance from IUCN, WWF, TRAFFIC and the Danish Government, formulated a Marine Turtle Conservation Action Plan in 2010 to expand awareness to fishers and enforcement officers, and to confiscate sea turtle products (Stiles, 2009; Ministry of Fisheries 2010). The level of effectiveness and progress of this program is not known.

TEDs are now in use in Thailand, Malaysia, the Philippines, Indonesia and Brunei, expanded by initiatives of the South East Asian Fisheries Development Center (Food and Agriculture Organization of the United Nations, 2004). In 2000, the use of TEDs in the Northern Australian Prawn Fishery was made mandatory. Prior to the use of TEDs, this fishery took between 5,000 and 6,000 sea turtles as bycatch annually, with a mortality rate estimated to be 40 percent (Poiner and Harris, 1996). Since the mandatory use of TEDs has been in effect, the annual bycatch of sea turtles in the Northern

Australian Prawn Fishery has dropped to fewer than 200 sea turtles per year, with a mortality rate of approximately 22 percent (based on recent years). Initial progress has been made to measure the threat of incidental capture of sea turtles in other artisanal and commercial fisheries in the Southeast Indo-Pacific Ocean (Lewison *et al.*, 2004; Limpus, 2009); however, the data remain inadequate for population assessments.

As in other DPSs, persistent marine debris poses entanglement and ingestion hazards to green turtles. In 2009, Australia's Department of the Environment, Water, Heritage and the Arts published a threat abatement plan for the impacts of marine debris on vertebrate marine life (*http://www.environment.gov.au/system/files/resources/d945695b-a3b9-4010-91b4-914efcdbae2f/files/marine-debris-threat-abatement-plan.pdf*).

D. Extinction Risk Assessment and Findings for the East Indian-West Pacific DPS

The East Indian-West Pacific DPS is characterized by a relatively large geographic area with widespread nesting reported in 58 different locations throughout the range of the DPS. Although the numerous nesting sites have relatively high abundance of nesting females, decades of harvesting and habitat degradation have led to a drastic decline in the sea turtle populations within this DPS in the last century. Population trends at many of the higher abundance rookeries are decreasing, though there appears to be an increasing trend on Sabah in Malaysia and on Baguan in the Philippines, presumably due to effective conservation efforts.

Continued harvest, coastal development, beachfront lighting, erosion, fishing practices, and marine pollution both at nesting beaches and important foraging grounds are all continuing concerns across the range of the DPS. Harvest of turtles and eggs for human consumption continues as a high threat to this East Indian-West Pacific DPS. Coastal development, largely due to tourism, is an increasing threat in many areas. Fishery bycatch occurs throughout the range of the DPS, particularly bycatch mortality of green turtles from pelagic longline, set net, and trawl fisheries. Additional threats due to climate change, such as loss of habitat due to sea level rise and increased ratio of female to male turtles, negatively impact this DPS. Conservation efforts have been effective in a few areas but are lacking or not effective in most.

For the above reasons, we propose to list the East Indian-West Pacific DPS as threatened. We do not find the DPS to be in danger of extinction presently because of high nesting abundance and geographically widespread nesting at a diversity of sites; however, the continued threats are likely to endanger the DPS within the foreseeable future.

XIII. Central West Pacific DPS

A. Discussion of Population Parameters for the Central West Pacific DPS

The range of the Central West Pacific DPS has a northern boundary of 41° N. latitude and is bounded by 41° N., 169° E. in the northeast corner, going southeast to 9° N., 175° W., then southwest to 13° S., 171° E., west and slightly north to the eastern tip of Papua New Guinea, along the northern shore of the Island of New Guinea to West Papua in Indonesia, northwest to 4.5° N., 129° E. then to West Papua in Indonesia, then north to 41° N., 146° E. It encompasses the Republic of Palau (Palau), FSM, New Guinea, Solomon Islands, Marshall Islands, Guam, the CNMI, and a portion of Japan (Ogasawara; Figure 2).

Green turtle nesting occurs at low levels throughout the geographic distribution of the DPS (approximately 51 sites), with isolated locations having higher nesting activity. Only two populations are known to have >1,000 nesting turtles, with all the rest having fewer than 400 nesting females, for a total number of known nesting females of approximately 6,500. The highest numbers of females nesting in this DPS are located in Gielop and Iar Island, Ulithi Atoll, Yap, Federated States of Micronesia (FSM; 1,412) or 22 percent of the population 2013); Chichijima (1,301) and Hahajima (394), Ogasawara, Japan; Bikar Atoll, Marshall Islands (300); and Merir Island, Palau (441; (NMFS and USFWS, 1998; Bureau of Marine Resources, 2005; Barr, 2006; Palau Bureau of Marine Resources, 2008; Maison *et al.*, 2010; H. Suganuma, Everlasting Nature of Asia, pers. comm., 2012; J. Cruce, Ocean Society, pers. comm., 2013). There are numerous other populations in the FSM, Solomon Islands, Palau, Guam, and the CNMI. Historical baseline nesting information in general is not widely available in this region, but exploitation and trade of green turtles throughout the region is well-known (Groombridge and Luxmoore, 1989).

Green turtles departing nesting grounds within the range of this DPS travel throughout the western Pacific Ocean. Green turtles are found in coastal waters in low to moderate densities at foraging areas throughout the range of the DPS. Aerial sea turtle surveys show that an in-water population exists around Guam (Division of Aquatic and Wildlife Resources, 2011). In-water green turtle density in the Marianas Archipelago is low and mostly restricted to juveniles (Pultz *et al.*, 1999; Kolinski *et al.*, 2005; Kolinski *et al.*, 2006; Palacios, 2012a). In-water information in this DPS overall is particularly limited.

There is insufficient long-term and standardized monitoring information to adequately describe abundance and population trends for many areas of the Central West Pacific DPS. The available information suggests a nesting population decrease in some portions of the DPS like the Marshall Islands, or unknown trends in other areas such as Palau, Papua New Guinea, the Marianas, Solomon Islands, or the FSM (Maison *et al.*, 2010). There is only one site for which 15 or more years of recent data are available for annual nesting female abundance, one of the standards for performing a PVA. This is at Chichijima, Japan, one of the major green turtle nesting concentrations in Japan (Horikoshi *et al.*,1994). Although the PVA has limitations, it shows a continuing upward trend for the population. The population has increased in abundance from a mean of approximately 100 annual nesting females in the late 1970s/early 1980s to a mean of approximately 500 annual nesting females since 2000. Chaloupka *et al.* (2008a) reports an estimated annual population growth rate of 6.8 percent per year for the Chichijima nesting site.

With regard to spatial structure, genetic sampling in the Central West Pacific has recently improved, but remains challenging given the large number of small islands and atoll nesting sites. Stock structure analysis indicated that nesting sites separated by more than 1,000 km were significantly differentiated from each other while neighboring nesting sites within 500 km showed no genetic differentiation (Dutton *et al.*, 2014). Based on mtDNA analyses, there are four independent stocks within the DPS (Dethmers *et al.* 2006; Jensen 2010; Dutton *et al.* 2014).

With respect to tagging and telemetry, there are records of turtles flipper tagged in the Philippines nesting in the FSM; a turtle tagged in Japan was recorded nesting in the FSM; turtles tagged in the Japan Archipelago and China were recorded nesting in the Ogasawara islands (Suganuma, pers. comm., Ogasawara Marine Center, Everlasting Nature of Asia, unpublished data); and turtles tagged in the FSM were recaptured in the Philippines, Marshall

Islands, and Papua New Guinea (Palau BMR, 2008; Cruce, 2009). Satellite telemetry shows that nesting females migrate to areas both within and outside of the range of the Central West Pacific DPS. For example, satellite tracks show turtles moving from the Mariana Islands to the Philippines and Japan, and others moving from the Chichijima Islands of Ogasawara to the main islands of Japan (Hatase *et al.*, 2006; Japan Fisheries Resource Conservation Association, 1999). Green turtles have also been shown to move from the FSM to the Philippines and to the west (G. Balazs, NMFS, unpublished data; Kolinski, *et al.*, unpublished data.)

Demographic data availability is limited and somewhat variable for many nesting sites in the range of this DPS. Variability in parameters such as remigration interval, clutch size, hatching success, and clutch frequency is not separated out regionally within the DPS and, therefore, does not necessarily suggest a high level of population structuring.

With regard to diversity and resilience, the overall range of the DPS is relatively widespread, which lends some resilience. However, nesting generally occurs at what appear to be low numbers, except in several locations, and only on islands and atolls throughout the range of the DPS. Nesting information is limited for some areas, but occurs from November to August in Palau; from March through September in the FSM; and May to August in Ogasawara, Japan. Some turtles travel outside the bounds of the range of this DPS, into the East Indian/West Pacific DPS presumably to forage.

B. Summary of Factors Affecting the Central West Pacific DPS

1. Factor A: The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

a. Terrestrial Zone

In the Central West Pacific Ocean, some nesting beaches have become severely degraded from a variety of activities. Destruction and modification of green turtle nesting habitat results from coastal development and construction, placement of barriers to nesting, beachfront lighting, vehicular and pedestrian traffic, sand extraction, beach erosion, beach pollution, removal of native vegetation, and presence of non-native vegetation.

Human populations are growing rapidly in many areas of the insular Pacific and this expansion is exerting increased pressure on limited island resources. The most valuable land on most Pacific islands is often located along the coastline, particularly when it is associated with a sandy beach. For instance, construction (and associated lighting) on the islands of Saipan, Tinian, and Rota in the CNMI, is occurring at a rapid rate in some areas and is resulting in loss or degradation of green turtle nesting habitat (NMFS and USFWS, 1998).

In the FSM, construction of houses and pig pens on Oroluk beaches in Pohnpei State interferes with turtle nesting by creating barriers to nesting habitat (NMFS and USFWS, 1998; Buden, 1999). Nesting habitat destruction is also a major threat to Guam turtles and has resulted mainly from construction and development due to increased tourism (NMFS and USFWS, 1998; Project GloBAL, 2009a). Coastal construction is a moderate problem on Majuro Atoll in the Republic of the Marshall Islands (NMFS and USFWS, 1998); however, it is unknown to what extent nesting beaches are being affected. On the outer atolls of the Marshall Islands, beach erosion has been aggravated by airfield and dock development, and by urban development on Majuro and Kwajalein Atolls. In the Republic of Palau, increasing nesting habitat degradation from tourism and coastal development has been identified as a threat to sea turtles (Eberdong and Klain, 2008; Isamu and Guilbeaux, 2002), although the extent and significance of the impacts are unknown.

Also in the CNMI, the majority of the nesting beaches on Tinian are on military-leased land, where the potential for construction impacts exists (CNMI Coastal Resources Management Office, 2011). Increased public use of nesting beaches is a threat to sea turtle nesting habitat throughout the CNMI. Public use of beaches includes a variety of recreational activities, including picnicking, swimming, surfing, playing sports, scuba diving and snorkeling access (CNMI Coastal Resources Management Office, 2011). Beach driving is a pastime on Saipan and could threaten green turtle nesting habitat (NMFS and USFWS, 1998; Palacios, 2012a; Wusstig, 2012).

Expected U.S. military expansion plans for this region are likely to include relocation of thousands of military personnel to Guam and increased training exercises in the CNMI (CNMI Coastal Resources Management Office, 2011).

In the Ogasawara Islands of Japan, nighttime tourist and resident activity on beaches to view and photograph nesting turtles is a problem, resulting in harassment of nesting turtles and increased aborted nesting attempts (Ishizaki *et al.*, 2011).

b. Neritic/Oceanic Zones

Fishing methods not only incidentally capture green turtles and destroy bottom habitat (including seagrasses) but may also deplete invertebrate and fish populations and thus alter ecosystem dynamics. Dynamite fishing occurs in the FSM (NMFS and USFWS, 1998; Government of the Federated States of Micronesia, 2004) and the Marshall Islands (Hay and Sablan-Zebedy, 2005). Dynamite fishing, as well as use of fish poisons, occurs in Papua New Guinea, although these practices are small scale and relatively isolated (Berdach and Mandeakali, 2004). Coral reefs and seagrass beds within the urban centers of the four states of the FSM (Pohnpei, Yap, Chuuk, and Kosrae; NMFS and USFWS, 1998) and Saipan have been reported as being degraded by hotels, golf courses, and general tourist activities (Project GloBAL, 2009b), presumably as a result of runoff and other impacts. Coastal development in Guam has resulted in sedimentation, which has damaged Guam's coral reefs and, presumably, food sources for turtles (NMFS and USFWS, 1998). Coral reefs and seagrass habitat off the lagoon shoreline of the Kwajalein Atoll islands and Majuro Atoll have been degraded by coastal construction, dredging, boat anchoring, and/or eutrophication from sewage and runoff from landfills, grave sites, and pig and chicken pens (NMFS and USFWS, 1998; Hay and Sablan-Zebedy, 2005).

Dredging and filling as well as sand extraction have contributed to changes to longshore processes and coastal erosion in the Marshall Islands, FSM, Kiribati's Gilbert Islands chain, and Palau (Smith *et al.*, 1997; NMFS and USFWS, 1998; Government of the Federated States of Micronesia, 2004; Hay and Sablan-Zebedy, 2005; Pacific News Center, 2012).

Marine pollution, including direct contamination and structural habitat degradation, can affect green turtle neritic and oceanic habitat. In Palau, environmental contamination in the form of sewage effluent is a problem around Koror State, particularly Malakal Harbor, and nearby urban areas (NMFS and USFWS, 1998). In the Solomon Islands, sewage discharges from land and discharges of garbage, bilge water, and other pollutants from ships have been identified as sources of pollution to the coastal and marine environments (Solomon Islands Ministry of Environment Conservation and Meteorology, 2008). Land-based activities, including logging, plantation

development, and mining, often cause excessive sedimentation of nearshore waters (Sulu *et al.,* 2000).

Environmental contamination was identified as a minor problem in the Marshall Islands in 1998 (NMFS and USFWS, 1998) and around Wake Island (Defense Environmental Network and Information Exchange, undated). Rudrud *et al.* (2007) found that there is a high probability of green turtles being exposed to toxicants remaining in the Marshall Islands from past wars and weapons testing (*e.g.,* foraging on algae growing on toxic surfaces, resting near irradiated shipwrecks).

In summary, we find that the Central West Pacific DPS of the green turtle is negatively affected by ongoing changes in both its terrestrial and marine habitats as a result of land and water use practices as considered above in Factor A. Destruction and modification of green turtle nesting habitat resulting from coastal development and construction, beachfront lighting, vehicular and pedestrian traffic, beach erosion, and pollution are significant threats to the persistence of this DPS.

2. Factor B: Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Directed take of eggs is a known ongoing problem in the Central West Pacific in the CNMI, FSM, Guam, Kiribati (Gilbert Islands chain), Papua, Papua New Guinea, Marshall Islands, and Palau (Eckert, 1993; Guilbeaux, 2001; Hitipeuw and Maturbongs, 2002; Philip, 2002). In addition to the collection of eggs from nesting beaches, the killing of nesting females continues to threaten the stability of green turtle populations. Ongoing harvest of nesting adults has been documented in the CNMI (Palacios, 2012a), FSM (Cruce, 2009), Guam (Cummings, 2002), Papua (Hitipeuw and Maturbongs, 2002), Papua New Guinea (Maison *et al.,* 2010), and Palau (Guilbeaux, 2001). Mortality of turtles in foraging habitats is also problematic for recovery efforts. Ongoing intentional capture of green turtles in their marine habitats has been documented in southern and eastern Papua New Guinea (Limpus *et al.,* 2002) and the Solomon Islands (D. Broderick, 1998; Pita and Broderick, 2005).

Green turtles have long been harvested for their meat in the Ogasawara Islands, and records show a rapid decline in the sea turtle population between 1880 and 1920 (Horikoshi *et al.,* 1994; Ishizaki, 2007). Currently, sea turtle harvest is strictly regulated with a harvest limit of 135 mature turtles per year (Ishizaki, 2007).

3. Factor C: Disease or Predation

The potential effects of FP and endoparasites also exist for green turtles found in the Central West Pacific Ocean, but the impacts to the population are unknown.

The loss of eggs to non-human predators is a severe problem in some areas. These predators include domestic animals, such as cats, dogs, and pigs, as well as wild species such as rats, mongoose, birds, monitor lizards, snakes, and crabs, ants, and other invertebrates (Suganuma *et al.,* 1996; NMFS and USFWS, 1998; Maturbongs, 2000; Cummings, 2002; Wilson *et al.,* 2004; Cruce, 2008).

Although disease and predation are known to occur, quantitative data are not sufficient to assess the degree of impact of these threats on the persistence of this DPS.

4. Factor D: Inadequacy of Existing Regulatory Mechanisms

Regional and national legislation to conserve green turtles (often all sea turtles) exists throughout the range of the DPS. National protective legislation generally prohibits intentional killing, harassment, possession, trade, or attempts at these; however, a lack of or inadequate enforcement of these laws appears to be pervasive. The following countries have laws to protect green turtles: CNMI, FSM, Guam, Japan (Ogasawara Islands), Kiribati, Marshall Islands, Nauru, Palau, Papua, Papua New Guinea, Solomon Islands, and United States (Wake Island). In addition, at least 17 international treaties and/or regulatory mechanisms apply to the conservation of green turtles in the Central West Pacific DPS. These are implemented to various degrees throughout the range of the DPS. There are some national regulations, within this DPS, that specially address the harvest of green turtles while a few regulations are limited in that they only apply to turtles of certain sizes, times of years, or allow for harvest for tradition use.

On December 12, 2008, the Western and Central Pacific Fisheries Commission issued a Conservation and Management Measure (2008–03; *https://www.wcpfc.int/doc/cmm-2008-03/conservation-and-management-sea-turtles*) to reduce sea turtle mortality during fishing operations, collect and report information on fisheries interactions with turtles, and encourage safe handling and resuscitation of turtles. This measure requires purse seine vessels to avoid encircling turtles and to release entangled turtles. It also requires longline vessels to use line cutters and dehookers to release turtles. However, enforcement mechanisms are not explicit, and the level of compliance is uncertain.

Additional regulatory mechanisms are not in place in many countries within this DPS to address the major threat of bycatch within this DPS. It is unlikely that bycatch mortality can be sufficiently reduced across the range of the DPS in the near future because of the diversity and magnitude of the fisheries operating in the DPS, the lack of comprehensive information on fishing distribution and effort, limitations on implementing demonstrated effective conservation measures, geopolitical complexities, limitations on enforcement capacity, and lack of availability of comprehensive bycatch reduction technologies. Although conservation efforts to protect some nesting beaches are underway, more widespread and consistent protection would speed recovery. Some regulatory mechanisms, including laws and international treaties, are not realizing their full potential because they are not enforced adequately, or do not apply in all countries occupied by the DPS.

The Status Review revealed a lack of existing regulatory mechanisms to address coastal development, pollution, sea level rise, and effects of climate change that continue to contribute to the extinction risk of this DPS.

5. Factor E: Other Natural or Manmade Factors Affecting its Continued Existence

a. Incidental Bycatch in Fishing Gear

Incidental capture in artisanal and commercial fisheries is a threat to the survival of green turtles in the Central West Pacific. Sea turtles may be caught in longline, pole and line, and purse seine fisheries.

Within the Marshall Islands, Palau, the FSM, and the Solomon Islands, a purse-seine fishery for tuna and a significant longline fishery operate, and sea turtles have been captured in both fisheries with green turtle mortality occurring (Oceanic Fisheries Programme, 2001; McCoy, 2003; Hay and Sablan-Zebedy, 2005; McCoy, 2007a; McCoy, 2007b; Western and Central Pacific Fisheries Commission, 2008).

Numerous subsistence and small-scale commercial fishing operations occur along Saipan's western coast and along both the Rota and Tinian coasts (CNMI Coastal Resources Management Office, 2011). Incidental catch of turtles in Guam's coastal waters by commercial fishing vessels likely also occurs (NMFS

and USFWS, 1998). In 2007, 222 fishing vessels (200 purse-seiners and 22 longliners) had access to Papua New Guinea waters (Kumoru, 2008). Although no official reports have been released on sea turtle bycatch within these fisheries (Project GloBAL, 2009c), sea turtle interactions with both fisheries have been commonly observed (Kumoru, 2008). However, the level of mortality is unknown.

b. Vessel Strikes

The impacts of vessel strikes in the Central West Pacific are unknown, but not thought to be of great consequence, except possibly in Palau where high speed skiffs constantly travel throughout the lagoon south of the main islands (NMFS and USFWS, 1998). However, green turtles have been documented as occasionally being hit by boats in Guam (Guam Division of Aquatic and Wildlife Resources, 2012).

c. Pollution

In the FSM, debris is dumped freely and frequently off boats and ships (including government ships). Landfill areas are practically nonexistent in the outer islands and have not been addressed adequately on Yap proper or on Chuuk and Pohnpei. The volume of imported goods (including plastic and paper packaging) appears to be increasing (NMFS and USFWS, 1998). In Palau, entanglement in abandoned fishing nets has been identified as a threat to sea turtles (Eberdong and Klain, 2008). In the Marshall Islands, debris and garbage disposal in coastal waters is a serious problem on Majuro Atoll and Ebete Island (Kwajalein Atoll), both of which have inadequate space, earth cover, and shore protection for sanitary landfills. This problem also exists to a lesser extent at Daliet Atoll (NMFS and USFWS, 1998).

A study of the gastrointestinal tracts of 36 slaughtered green turtles in the Ogasawara Islands of Japan in 2001 revealed the presence of marine debris (*e.g.,* plastic bag pieces, plastic blocks, monofilament lines, Styrofoam pieces) in the majority of the turtles (Sako and Horikoshi, 2003).

d. Effects of Climate Change and Natural Disasters

Over the long term, Central West Pacific turtle populations could be affected by the alteration of thermal sand characteristics (from global warming), resulting in the reduction or cessation of male hatchling production (Camiñas, 2004; Hawkes *et al.,* 2009; Kasparek *et al.,* 2001; Poloczanska *et al.,* 2009). Further, a significant rise in sea level would restrict green turtle nesting habitat in the Central West Pacific. Coastal erosion has been identified as a high risk in the CNMI due to the existence of concentrated human population centers near erosion-prone zones, coupled with the potential increasing threat of erosion from sea level rise (CNMI Coastal Resources Management Office, 2011). In the FSM, Yap State's low coralline atolls are extremely vulnerable to rises in sea levels and will be adversely affected if rises occur (NMFS and USFWS, 1998). These risks are high for all beaches in the Central West Pacific. Interestingly, Barnett and Adger (2003) identified projected increases in sea-surface temperature, and not sea level rise, as the greatest long-term risk of climate change to atoll morphology and thus to atoll countries like those in the Central West Pacific. They state that coral reefs, which are essential to the formation and maintenance of the islets located around the rim of an atoll, are highly sensitive to sudden changes in sea-surface temperature. Thus, climate change impacts could have profound long-term impacts on green turtle nesting in the Central West Pacific, but it is not possible to project the impacts at this point in time.

Natural environmental events such as cyclones and hurricanes may affect green turtles in the Central West Pacific DPS. These storm events have been shown to cause severe beach erosion with likely negative effects on hatching success at many green turtle nesting beaches, especially in areas already prone to erosion. Shoreline erosion occurs naturally on many islands in the atolls of the Marshall Islands due to storms, sea level rise from the El Niño–Southern Oscillation, and currents (NMFS and USFWS, 1998). Some erosion of nesting beaches at Oroluk was reported in 1990 after passage of Typhoon Owen (NMFS and USFWS, 1998). However, effects of these natural events may be exacerbated by climate change. While sea turtles have survived past eras that have included significant temperature fluctuations, future climate change is expected to happen at unprecedented rates, and if turtles cannot adapt quickly they may face local to widespread extirpations (Hawkes *et al.,* 2009). Impacts from global climate change induced by human activities are likely to become more apparent in future years (IPCC, 2007).

In summary, within Factor E, we find that fishery bycatch continues to threaten this DPS. In addition, changes likely to result from climate change and natural disasters are increasing threats to this DPS.

C. Conservation Efforts for the Central West Pacific DPS

Very few areas that host important green turtle nesting or foraging aggregations have been designated as protected areas within the Central West Pacific. However, at least one country, Palau, has site-specific conservation for sea turtle habitat protection. Two nationally mandated protected areas, Ngerukewid Islands Wildlife Preserve and Ngerumekaol Spawning Area, exist within Koror State, and restrictions are placed on entry and fishing within established boundaries.

Marine debris is a problem on some green turtle nesting beaches and foraging areas in the Central West Pacific, in particular on the nesting beaches of the CNMI (Palacios, 2012a; 2012b) and in the nearshore foraging areas of the FSM, Marshall Islands, and Palau (NMFS and USFWS, 1998; Eberdong and Klain, 2008). Organized beach clean-ups on some CMNI beaches have been conducted to help mitigate this impact (Palacios, 2012b).

Overall, it appears that international and national laws to protect green turtles may be insufficient or not implemented effectively to address the needs of green turtles in the Central West Pacific. This minimizes the potential success of existing conservation efforts.

D. Extinction Risk Assessment and Findings for the Central West Pacific DPS

The Central West Pacific DPS is characterized by a relatively small nesting population spread across a relatively expansive area roughly 2,500 miles wide (Palau to the Marshall Islands) and 2,500 miles long (Ogasawara, Japan to the Solomon Islands). This DPS is dominated by insular nesting. Fifty-one known nesting sites were analyzed, although many had very old data (20–30 years old). Sixteen sites were identified but numbers of nesting females were ''unquantified,'' and another 21 had fewer than 100 nesting females. Only two sites had more than 1,000 nesting females (1,412 and 1,301). Further study of this DPS would improve our understanding of it.

The limited available information on trends suggests a nesting population decrease in some areas, an increase in one Japanese nesting site, and unknown trends in others. The second largest nesting site in this DPS (Chichijima, Japan) shows positive growth. The dispersed location of nesting sites and lack of concentration of nesting provides a level of habitat diversity and population resilience which reduces

overall extinction risk, as does widely varied nesting seasons; however, the contribution of this characteristic to such diversity and resilience is reduced by the small size of many of these sites and the threats faced in each of the nesting and foraging areas.

Human populations are growing rapidly in many areas of the insular Pacific and this expansion is accompanied by threats to green turtle nesting habitat resulting from coastal development and construction, beachfront lighting, degradation of waters and seagrass beds off of populated areas, and sand extraction. Destructive fishing methods (use of dynamite and poisons) not only incidentally capture green turtles, but also deplete invertebrate and fish populations and thus alter ecosystem dynamics. Fishery bycatch, particularly bycatch mortality of green turtles from longline, pole and line, and purse seine fisheries, continue as threats to this DPS. In addition, legal and illegal harvest of green turtles and eggs for human consumption remains a significant threat in many areas of this DPS. Finally, changes likely to result from climate change and natural disasters could have profound long-term impacts on green turtle nesting in the Central West Pacific.

Although regulatory mechanisms are in place that should address direct and incidental take of Central West Pacific green turtles, these regulatory mechanisms are insufficient or are not being implemented effectively to address the population trajectories of green turtles.

For the above reasons, we propose to list the Central West Pacific DPS as endangered. Based on its low nesting abundance and exposure to increasing threats, we find that this DPS is presently in danger of extinction throughout its range.

XIV. Southwest Pacific DPS

A. Discussion of Population Parameters in the Southwest Pacific DPS

The range of the Southwest Pacific DPS extends from the western boundary of Torres Strait, to the eastern tip of Papua New Guinea and out to the offshore coordinate of 13° S., 171° E.; the eastern boundary runs from this point southeast to 40° S., 176° E.; the southern boundary runs along 40° S. from 142° E. to 176° E.; and the western boundary runs from 40° S., 142° E north to Australian coast then follows the coast northward to Torres Strait (Figure 2).

Green turtle nesting is widely dispersed throughout the Southwest Pacific Ocean at 12 total nesting sites, although it should be noted that, perhaps more so than in other DPSs, proximate nesting beaches were grouped for analysis because nesting populations are small, with the exception of a few sites, including Raine Island, where the majority (>90 percent) of the nesting in the northern GBR occurs. While it would be possible to split the nesting aggregations into more than 100 different sites, because many of the most recent estimates are aggregated (Limpus, 2009), we followed this tendency and aggregated nesting within broad regional areas. The bulk of this DPS nests within Australia's Great Barrier Reef World Heritage Area and eastern Torres Strait. The northern GBR and Torres Strait support some of the world's highest concentrations of nesting (Chaloupka *et al.,* 2008a). Nesting abundance in the northern GBR is not directly counted throughout the nesting season largely because of the remoteness of the site and the sheer numbers of turtles that may nest on any given night. Raine Island, with estimates of annual nesting females varying from 4,000–89,000 (Seminoff *et al.,* 2004; NMFS and U.S. FWS, 2007; Chaloupka *et al.,* 2008a; Limpus, 2009) (note the Status Review used an estimate of 25,000 nesting females), Moulter Cay, with 15,965 nesting females (Limpus *et al.,* 2003; Limpus, 2009), and the rest of the Capricorn Bunker Group with 31,249 nesting females (Limpus, 2009) represent the three sites with >10,000 nesting females. Heron Island is the index nesting beach for the southern GBR, and nearly every nesting female on Heron Island has been tagged since 1974 (Limpus and Nicholls, 2000). Heron Island (4,891 nesting females; Chaloupka *et al.,* 2008a; Limpus, 2009), Bramble Cay in the northern GBR (1,660; Limpus *et al.,* 2003; Limpus 2009), and Huon, Leleizour and Fabre in New Caledonia (1,777; Limpus, 2009) represent the sites with 1,001–5,000 nesting females. There are three sites with 501–1,000: The Coral Sea (all sites; 1,000; Limpus, 2009), No. 8 Sandbank in northern GBR (637; Limpus *et al.,* 2003; Limpus 2009), and other northern GBR sites, including Murray Islands, other outer islands, most inner shelf cays and the mainland coast (535; Limpus 2009). Bamboo Bay in Vanuatu (165; MacKay and Petro, 2013) and No. 7 Sandbank in the northern GBR represent the two sites with nesting females in the 101–500 category. The rest of the southern GBR (represented here as one site) is unquantified.

The Raine Island and Heron Island sites both have high inter-annual variability and slightly increasing linear trends. These were the only two nesting areas for which 15 or more years of recent data are available for annual nesting female abundance, one of the standards for performing a PVA in the Status Review. Both show a continued increasing trend, though the Raine Island PVA indicates that there is a 9.1 percent probability that this population will fall below the trend reference point (50 percent decline) at the end of 100 years, and a 0.4 percent probability that it will fall below the absolute abundance reference (100 females per year) at the end of 100 years. However, extra caution must be used when interpreting results of the Raine Island PVA, because it only represents females observed during one sampling event on one night. The Heron Island PVA indicates that there is a 17.5 percent probability that the magnitude of adult females associated with Heron Island nesting will fall below the trend reference point (50 percent decline) at the end of 100 years, and an 8.3 percent probability that this population will fall below the absolute abundance reference (100 females per year) at the end of 100 years. It should be noted that PVA modeling has important limitations, and does not fully incorporate other key elements critical to the decision making process such as spatial structure or threats. It assumes all environmental and anthropogenic pressures will remain constant in the forecast period and it relies on nesting data alone.

Although long robust time series are not available for New Caledonia, recent and historical accounts do not suggest a significant decline in abundance of green turtles nesting in New Caledonia (Maison *et al.,* 2010). The trend at Vanuatu has not been documented (Maison *et al.,* 2010).

With regard to spatial structure, genetic sampling in the Southwest Pacific DPS has been extensive for larger nesting sites along the GBR, the Coral Sea, and New Caledonia; however, there are several smaller nesting sites in this region that still need to be sampled (*e.g.* Solomon Islands, Vanuatu, Tuvalu, and Papua New Guinea). Within this DPS, four regional genetic stocks have been identified in the Southwest Pacific Ocean; northern GBR, southern GBR, Coral Sea (Dethmers *et al.,* 2006; Jensen, 2010), and New Caledonia (Dethmers *et al.,* 2006; Dutton *et al.,* 2014). Mixed stock analysis of foraging grounds shows that green turtles from multiple nesting beach origins commonly mix in foraging grounds along the GBR and Torres Strait regions (Jensen, 2010), but with the vast majority originating from nesting sites within the GBR. There is

evidence of low frequency contribution from nesting sites outside the range of the DPS at some foraging areas.

With regard to diversity and resilience, nesting beach monitoring along with flipper and satellite tagging show the spatial structure of this DPS is largely consistent with viable populations. Nesting can occur year-round in the most northerly nesting sites, but a distinct peak occurs in late December to early January for all Australian nesting sites. Foraging is widely dispersed throughout the range of this DPS (Limpus, 2009). There are various factors that lead to resilience in nesting in the Southwest Pacific DPS: it is widely dispersed throughout the region, there is more than one major nesting site, there is evidence of some connectivity between nesting sites within each of the four regional stocks but no connectivity among regional stocks, and there is continental and insular nesting. Nesting, however, is not evenly distributed throughout the range of the DPS, and some of the densest nesting occurs on Raine Island, which has habitat-based threats.

B. Summary of Factors Affecting the Southwest Pacific DPS

1. Factor A: The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

a. Terrestrial Zone

Destruction and modification of green turtle nesting habitat in the Southwest Pacific DPS result from beach erosion, beach pollution, removal of native vegetation, and planting of non-native vegetation, as well as natural environmental change (Limpus, 2009). Coastal development and construction, placement of erosion control structures and other barriers to nesting, and vehicular traffic minimally impact green turtles in this DPS (Limpus, 2009). Artificial light levels have increased significantly for green turtles in minor nesting sites of the northern GBR and remained relatively constant for the mainland of Australia (part of southern GBR) south of Gladstone (Kamrowski *et al.,* 2014). Most of the nests at the documented nesting sites within this DPS occur within the protected habitat, but there is still concern about the viability of nesting habitat (Limpus, 2009). Total productivity is limited by reduced nesting and hatching success, which at Raine Island appear to be depressed due to habitat issues. At Raine Island, mean nesting success (*i.e.,* probability that a clutch will be laid when a turtle comes ashore for a nesting attempt) can be as low as 3.3 percent (Limpus *et al.,* 2007). Reduced recruitment can be caused by flooding of egg chambers by ground water, dry collapsing sand around egg chambers, and underlying rock which prevents appropriately deep egg chambers (Limpus *et al.,* 2003). In the 1996 to 1997 breeding season, for example, flooding of nests caused a near total loss of viable eggs, and flooding has been a regular event in subsequent years (Limpus *et al.,* 2003; Limpus, 2009). Death of nesting females occurs on Raine Island when they enter the elevated interior of the island due to crowding on the beach and return along a different route, encountering hazards such as small cliffs, over which they wander and roll onto their backs. Nightly mortality ranges from 0 to over 70 per night and is highest when nesting the previous night exceeds 1,000 (Limpus *et al.,* 2003). Understanding the root cause of changes to Raine Island nesting habitat is challenging and is the aim of several Australian and State Government research and monitoring projects. These habitat-based threats (particularly related to hatchling production) constitute serious threats to this DPS, given the large abundance of turtles nesting in the northern GBR.

b. Neritic/Oceanic Zones

Threats to habitat in the neritic and/or oceanic zones in the Southwest Pacific DPS include fishing practices, channel dredging, and marine pollution, although the internesting habitat adjacent to the nesting sites with the highest documented nesting levels in this DPS is protected by the Great Barrier Reef Coastal Marine Park and the adjacent Great Barrier Reef Marine Park (Limpus, 2009). Protection for marine turtles in the Great Barrier Reef World Heritage area has been increasing since the mid-1990s (Dryden *et al.,* 2008).

In summary, we find that the Southwest Pacific DPS of the green turtle is negatively affected by ongoing changes in both its terrestrial and marine habitats as a result of land and water use practices as considered above in Factor A. Groundwater intrusion on high density beaches, artificial lighting, fishery practices, channel dredging, and marine pollution are continual threats to the persistence of this DPS.

2. Factor B: Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Southwest Pacific DPS turtles are vulnerable to harvest throughout Australia and neighboring countries such as New Caledonia, Fiji, Vanuatu, Papua New Guinea, and Indonesia (Limpus, 2009). Cumulative annual harvest of green turtles that nest in Australia may be in the tens of thousands, and it appears likely that historical native harvest may have been in the same order of magnitude (Limpus, 2009). The Australian Native Title Act (1993) gives Aboriginal and Torres Strait Islanders a legal right to hunt sea turtles in Australia for traditional, communal, non-commercial purposes (Limpus, 2009). Although indigenous groups, governments, wildlife managers and scientists work together with the aim of sustainably managing turtle resources (Maison *et al.,* 2010 citing K. Dobbs, Queensland Parks Authority, pers. comm., 2010), traditional harvest remains a threat to green turtle populations. However, quantitative data are not sufficient to assess the degree of impact of harvest on the persistence of this DPS.

3. Factor C: Disease or Predation

Low levels of FP-associated turtle herpes virus is common in green turtles in some but not all semi-enclosed waters like Moreton Bay and Repulse Bay in Australia, more infrequent in nearshore open waters, and rare in off-shore coral reef habitats (Limpus, 2009). Mortality and recovery rates from this virus are not quantified but stranded, infected turtles are regularly encountered in south Queensland (Limpus, 2009).

Primary hatchling and egg predators of this DPS include crabs, birds, fish, and mammals. The magnitude of egg predation is not well documented, but within Australia the highest levels of vertebrate predation on eggs occur in other species, primarily loggerheads (Environment Australia, 2003). In Vanuatu, nest predation by feral dogs is a primary threat (Maison *et al.,* 2010). Survivorship of hatchlings in the southern GBR during the transition from nest to sea (accounting for crab and bird predation) may be quite high (Limpus, 1971), but survivorship of hatchlings as they transition across the reef flat from the water's edge to deep water is likely considerably lower (Gyuris, 1994 as cited in Limpus, 2009). Similar survivorship estimates are not available for the northern GBR, but survival during the nest to sea transition is expected to be low and variable, depending on the predator assemblage. Although many birds co-occur with sea turtle hatchlings in the northern GBR, only some birds, like the rufous night heron (*Nycticorax caledonicus*), are important predators (Limpus *et al.,* 2003). Terrestrial crabs that occur throughout the northern GBR have been observed feeding on turtle hatchlings and eggs, but crabs are generally of low density (Limpus *et al.,* 2003). Shark

predation on hatchlings as well as adults has been documented (Limpus *et al.,* 2003).

Although disease and predation are known to occur, quantitative data are not sufficient to assess the degree of impact of these threats on the persistence of this DPS.

4. Factor D: Inadequacy of Existing Regulatory Mechanisms

Regulatory mechanisms are in place throughout the range of the DPS that address the direct capture of green turtles within this DPS. There are regulations, within this DPS, that specially address the harvest of green turtles while a few regulations are limited in that they only apply to certain times of year or allow for traditional use. Australia, New Caledonia and Vanuatu, the only countries with nesting aside from the Coral Sea Islands, which are a territory of Australia, have laws to protect green turtles. National protective legislation generally regulates intentional killing, possession, and trade (Limpus, 2009; Maison *et al.,* 2010). In addition, at least 17 international treaties and/or regulatory mechanisms apply to the conservation of green turtles in the Southwest Pacific DPS.

The majority of nesting beaches (and often the associated internesting habitat) are protected in Australia, which is the country with the vast majority of the known nesting.

In Australia, the conservation of green turtles is governed by a variety of national and territorial legislation. Conservation began with 1932 harvest restrictions on turtles and eggs in Queensland in October and November, south of 17° S., and by 1968 the restriction extended all year long for all of Queensland (Limpus, 2009). As described in the preceding section, other conservation efforts include sweeping take prohibitions, implementation of bycatch reduction devices and safer dredging practices, improvement of shark control devices, and safer dredging practices, and the development of community based management plans with Indigenous groups. Australia has undertaken extensive marine spatial planning to protect nesting turtles and internesting habitat surrounding important nesting sites. The GBR's listing on the United Nations Educational, Scientific and Cultural Organization's World Heritage List in 1981 has increased the protection of habitats within the GBR World Heritage Area (Dryden *et al.,* 2008).

In New Caledonia, 1985 fishery regulations contained some regional sea turtle conservation measures, and these were expanded in 2008 to include the EEZ, the Main Island, and remote islands (Maison *et al.,* 2010). In Vanuatu, new fisheries regulations in 2009 prohibit the take, harm, capture, disturbance, possession, sale, purchase of or interference, import, or export of green turtles Maison *et al.,* 2010).

There are several regulatory mechanisms in place that should address incidental take of green turtles within this DPS; however, these regulatory mechanisms are not realizing their full potential because they are not enforced at the local level. The analysis of these existing regulatory mechanisms assumed that all would remain in place at their current levels.

The inadequacy of existing regulatory mechanisms to address impacts to nesting beach habitat and overutilization is a continuing concern for this DPS. Other threats with inadequate regulatory mechanisms include incidental bycatch in fishing gear, boat strikes, port dredging, debris, national defense, and toxic compounds. Lack of implementation or enforcement by some nations renders regulatory mechanisms less effective than if they were implemented in a more consistent manner across the target region. It is unlikely that bycatch mortality can be sufficiently reduced across the range of the DPS in the near future because of the diversity and magnitude of the fisheries operating in the DPS, the lack of comprehensive information on fishing distribution and effort, limitations on implementing demonstrated effective conservation measures, geopolitical complexities, limitations on enforcement capacity, and lack of availability of comprehensive bycatch reduction technologies.

The Status Review did not reveal regulatory mechanisms in place to specifically address threats to nesting beaches, eggs, hatchlings, juveniles, and adults through harvest and incidental harm occur throughout the range of the Southwest Pacific DPS. Some threats, such as inundation of nests at Raine Island and sea level rise, cannot be controlled through individual national legislation and persist as a threat to this DPS.

5. Factor E: Other Natural or Manmade Factors Affecting Its Continued Existence

a. Incidental Bycatch in Fishing Gear

Incidental capture in artisanal and commercial fisheries is a threat to the survival of green turtles in the Southwest Pacific Ocean. The primary gear types involved in these interactions include trawl fisheries, longlines, drift nets, and set nets. These are employed by both artisanal and industrial fleets, and target a wide variety of species including prawns, crabs, sardines, and large pelagic fish.

Nesting turtles of the Southwest Pacific DPS are vulnerable to the Queensland East Coast Trawl Fisheries and the Torres Strait Prawn Fishery, and to the extent other turtles forage west of Torres Strait, they are also vulnerable (Limpus, 2009). In 2000, the use of TEDs in the Northern Australian Prawn Fishery became mandatory, due in part to several factors: (1) Objectives of the Australian Recovery Plan for Marine Turtles, (2) requirements of the Australian Environment Protection and Biodiversity Conservation Act for Commonwealth fisheries to become ecologically sustainable, and (3) the 1996 U.S. import embargo on wild-caught prawns taken in a fishery without adequate turtle bycatch management practices (Robins *et al.,* 2002).

Australian and international longline fisheries capture green turtles. Precise estimates of international capture of Southwest Pacific Ocean DPS green turtles by the international longline fleet are not available, but they are thought to be larger than the Australian component (DEWHA, 2010). In addition to threats from prawn trawls, green turtles may face threats from other fishing gear (summarized from Limpus, 2009). Take of green turtles in gill nets (targeting barramundi, salmon, mackerel, and shark) in Queensland and the Northern Territory has been observed but not quantified. Untended ''ghost'' fishing gear that has been intentionally discarded or lost due to weather conditions may entangle and kill many hundreds of green turtles annually.

b. Shark Control Programs

Green turtles are captured in shark control programs, but protocols are in place to reduce the impact. The Queensland Shark Control Program is managed by the Queensland Department of Primary Industries and Fisheries (Limpus, 2009) and has been operating since 1962 (Gribble *et al.,* 1998). In 1992, their operations began to be modified to reduce mortality of non-target species (Gribble *et al.,* 1998). Observed green turtle annual mortality during 1998–2003 was 2.7 per year (Limpus, 2009). Green turtles have been captured in the New South Wales shark-meshing program since 1937, but total capture for all turtle species from 1950 through 1993 is roughly five or fewer turtles per year (Krogh and Reid, 1996).

Post-release survival does not appear to have been monitored in any of the monitoring programs.

c. Boat Strikes and Port Dredging

The magnitude of mortality from boat strikes may be in the high tens to low hundreds per year in Queensland (Limpus, 2009). This threat affects juvenile and adult turtles and may increase with increasing high-speed boat traffic in coastal waters. The magnitude of mortality from port dredging in Queensland may be in the order of tens of turtles or less per year (Limpus, 2009).

d. Toxic Compounds and Marine Debris

Toxic compounds and bioaccumulative chemicals threaten green turtles in the Southwest Pacific DPS. Poor health conditions (debilitation and death) have been reported in the southern Gulf of Carpentaria for green turtles, many of which had unusual black fat (Kwan and Bell, 2003; Limpus, 2009). Heavy metal concentrations have also been reported in Australia (Dight and Gladstone, 1994; Reiner, 1994; Gordon *et al.,* 1998; Limpus, 2009), but the health impact has not been quantified. The magnitude of mortality from ingestion of synthetic material in Queensland is expected to be at least tens of turtles annually (Limpus, 2009).

e. Effects of Climate Change and Natural Disasters

Green turtle populations could be affected by the effects of climate change on nesting grounds (Fuentes *et al.,* 2011) as well as in marine habitats (Hamann *et al.,* 2007; Hawkes *et al.,* 2009). Potential effects of climate change include changes in nest site selection, range shifts, diet shifts, and loss of nesting habitat due to sea level rise (Hawkes *et al.,* 2009; Poloczanska *et al.,* 2009). Climate change will likely also cause higher sand temperatures leading to increased feminization of surviving hatchlings (*i.e.,* changes in sex ratio), and some beaches will likely experience lethal incubation temperatures that will result in losses of complete hatchling cohorts (Glen and Mrosovsky, 2004; Fuentes *et al.,* 2010; Fuentes *et al.,* 2011). While sea turtles have survived past eras that have included significant temperature fluctuations, future climate change is expected to happen at unprecedented rates, and if turtles cannot adapt quickly they may face local to widespread extirpations (Hawkes *et al.,* 2009). Impacts from global climate change induced by human activities are likely to become more apparent in future years (IPCC, 2007).

In a study of the northern GBR nesting assemblages, Bramble Cay and Milman Islet were vulnerable to sea-level rise, and almost all sites in the study were expected to be vulnerable to increased temperatures by 2070 (Fuentes *et al.,* 2011). Similar data are not available for other nesting sites.

The Southwest Pacific DPS contains some atolls, as well as coral reef areas that share some ecological characteristics with atolls. Barnett and Adger (2003) state that coral reefs, which are essential to the formation and maintenance of the islets located around the rim of an atoll, are highly sensitive to sudden changes in sea-surface temperature. Thus, climate change impacts could have long-term impacts on green turtle ecology in the Southwest Pacific DPS, but it is not possible to project the impacts at this point in time.

In summary, within Factor E, we find that fishery bycatch that occurs throughout the range of the DPS, particularly bycatch mortality of green turtles from pelagic longline, drift nets, set net, and trawl fisheries, is a continued risk to this DPS. Additional threats from boat strikes, marine pollution, changes likely to result from climate change, and cyclonic storm events are pose an increasing risk to the persistence of this DPS.

C. Conservation Efforts for the Southwest Pacific DPS

Conservation efforts for the Southwest Pacific DPS have resulted in sweeping take prohibitions, implementation of bycatch reduction devices, improvement of shark control devices, and safer dredging practices. Australia, in particular, has undertaken extensive marine spatial planning to protect nesting turtles and internesting habitat surrounding some of the largest and most important nesting sites in the DPS.

D. Extinction Risk Assessment and Findings for the Southwest Pacific DPS

The Southwest Pacific DPS is characterized by relatively high levels of green turtle nesting abundance (>80,000 nesting females) and contains the GBR, the largest coral reef system in the world, as well as continental coastline, islands, and atolls. The trends in nesting female abundance at the two index beaches (Raine Island and Heron Island, Australia) are stable or increasing. The spatial structure of this DPS extends over a large geographic area, with several large nesting sites spread within the range of this DPS, and includes both continental and insular nesting, thereby providing a level of habitat diversity and population resilience. This region has high genetic diversity resulting from a mix of highly divergent lineages, some of which are among the oldest lineages found in *C. mydas.* There are concerns about climate change in general and the nesting habitat at Raine Island in particular, where nests are sometimes flooded and nesting female mortality can range from 1–70 per night due to overcrowding.

The threats to this Southwest Pacific DPS include directed harvest, incidental bycatch in fisheries, shark control programs, boat strikes, port dredging, debris, activities associated with national defense, disease, predation, toxic compounds, and climate change. Conservation efforts have resulted in sweeping take prohibitions, implementation of bycatch reduction devices, improvement of shark control devices, and safer dredging practices. Australia, in particular, has undertaken extensive marine spatial planning to protect nesting turtles and internesting habitat surrounding important nesting sites. In the southern GBR threats are well managed, harvest is low, and the population increasing; however, in the northern GBR there are concerns for Raine Island and harvest is a cause for concern. In the Coral Sea there are few known threats and it is remote and well managed from human threats. Although the DPS shows strength in many of the critical elements, there are still concerns about numerous threats including climate change and habitat degradation.

For the above reasons, we propose to list the Southwest Pacific DPS as threatened. We do not find the DPS to be in danger of extinction presently because of high nesting abundance and geographically widespread nesting at a diversity of sites; however, the continued threats are likely to endanger the DPS within the foreseeable future.

XV. Central South Pacific DPS

A. Discussion of Population Parameters for the Central South Pacific DPS

The range of the Central South Pacific DPS extends north and east of New Zealand to include a longitudinal expanse of 7,500 km—from Easter Island, Chile in the east to Fiji in the west, and encompasses American Samoa, French Polynesia, Cook Islands, Fiji, Kiribati, Tokelau, Tonga, and Tuvalu. Its open ocean polygonal boundary endpoints are (clockwise from the northwest-most extent): 9° N., 175° W. to 9° N., 125° W. to 40° S., 96° W. to 40° S., 176° E., to 13° S., 171° E., and back to 9° N., 175° W. (Figure 2).

Nesting occurs sporadically throughout the geographic distribution

of the DPS at low levels. Green turtles departing nesting grounds within the range of this DPS travel throughout the South Pacific Ocean. Post-nesting green turtles tagged in the early 1990s from Rose Atoll returned to foraging grounds in Fiji and French Polynesia (Craig *et al.,* 2004). Nesting females tagged in French Polynesia migrated west after nesting to various sites in the western South Pacific (Tuato'o-Bartley *et al.,* 1993). In addition to nesting beaches, green turtles are found in coastal waters (White and Galbraith, 2013; White, 2013), but in-water information for this DPS is particularly limited.

Based on available data, we estimate there are approximately 2,800 nesting females in this DPS at 59 nesting sites. The most abundant nesting area was Scilly Atoll, French Polynesia, which in the early 1990s was estimated to host 300–400 nesting females annually (Balazs *et al.,* 1995), and has an estimated total nesting female abundance of 1,050 breeding females, roughly one-third of all nesting females in the DPS (although this number is dated, it is used in the Status Review as it is the most recent data and the best available). However, Scilly Atoll was last monitored in the early 1990s (Balazs *et al.,* 1995), and abundance has reportedly declined as a result of commercial exploitation (Conservation International Pacific Islands Program, 2013). There are six other sites with 101–500 nesting females according to the best available data, although the estimate for Nukunonu, Tokelau is from the 1970s. Many nesting areas (21 of 58, or 36 percent) only have qualitative information that nesting is present, indicating that there is still much to learn about green turtle nesting in this region. As these unquantified nesting sites most likely each have a female abundance in the 1–100 range, their collective sum is probably fewer than 700 nesting females. Historical baseline nesting information in general is not widely available in this region, but exploitation and trade of green turtles throughout the region is well-known (Groombridge and Luxmoore, 1989).

No long-term monitoring programs are currently available at beaches in this population, and no single site has had standardized surveys for even 5 continuous years. Most nesting areas are in remote, low-lying atolls that are logistically difficult to access. Partial and inconsistent monitoring from the largest nesting site in this DPS, Scilly Atoll, suggests significant nesting declines from persistent and illegal commercial harvesting (Petit, 2013). Historically, 100–500 females nested annually at Canton Island, Kiribati (Balazs, 1975b) but, as of 2002, it had an estimated 29 nesting females. Nesting abundance is reported to be stable to increasing at Tongareva Atoll (White and Galbraith, 2013). It is also reported to be stable to increasing at Rose Atoll, Swains Atoll, Tetiaroa, Tikehau, and Maiao. However, these sites are of relatively low abundance and in sum represent less than 16 percent of the population abundance at Scilly Atoll alone.

With regard to spatial structure, genetic sampling in the Central South Pacific is limited and many of the small isolated nesting sites that characterize this region have not been covered. Mitochondrial DNA studies indicate there are at least two genetic stocks in American Samoa and French Polynesia (Dutton *et al.,* 2014), which have unique haplotypes (Dutton *et al.,* 2014). Flipper tag returns and satellite tracking studies demonstrate that post-nesting turtles travel the complete geographic breadth of the range of this DPS, from French Polynesia in the east to Fiji in the west, and sometimes even slightly beyond (Tuato'o-Bartley *et al.,* 1993; Craig *et al.,* 2004; Maison *et al.,* 2010; White, 2012), even as far as the Philippines (Trevor, 2009). Limited demographic information suggests a low level of population structuring within this DPS (Tuato'o-Bartley *et al.,* 1993; Craig *et al.,* 2004; White, 2012; White and Galbraith, 2013).

With regard to diversity and resilience, the Central South Pacific has a broad geographical area, but the nesting sites themselves exhibit little diversity. Most nesting sites are located in low-lying coral atolls or oceanic islands and thus are subject to loss of habitat due to sea level rise. Local nesting density is sparse spatially, typically spread over >10 km stretches of beach and is also low in terms of abundance. Only one nesting site (Scilly Atoll with 1,050 females; Balazs *et al.,* 1995) has a nesting female abundance exceeding 250, and this estimate is 20 years old. Foraging areas are mostly coral reef ecosystems, with seagrass beds in Tonga and Fiji being a notable exception.

B. Summary of Factors Affecting the Central South Pacific DPS

1. Factor A: The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

a. Terrestrial Zone

Nesting in the Central South Pacific DPS is geographically widespread with the majority of nesting sites being remote and not easily accessed, and at low-lying oceanic islands or coral atolls. The largest nesting site for this DPS is believed to be at Scilly Atoll in French Polynesia. Balazs *et al.* (1995) report that the earliest human settlement at Scilly Atoll in French Polynesia appears to have occurred around 1952. It is unclear how much of an effect human habitation of the atoll has had, or is having, on the nesting habitat for the turtle.

In the populated islands of American Samoa, such as Tutuila, continuous incremental loss of habitat has occurred due to varied activities of human populations (Tuato'o-Bartley *et al.,* 1993; NMFS and USFWS, 1998; Saili, 2005). Indeed, human population growth and attendant village expansion and development on Tutuila Island have resulted in decreasing usage of some Tutuila beaches by nesting turtles and pre-emption of some green turtle nesting beaches (Tuato'o-Bartley *et al.,* 1993). Turtles on Tutuila, possibly disoriented by land-based lights, are subject to mortality from cars (A. Tagarino, American Samoa DMWR, pers. comm., 2013). Lighting is a potential problem affecting the quality of the nesting habitat on Ofu nesting beach as well (Tagarino, 2012). The main nesting site in American Samoa is Rose Atoll, which is uninhabited and therefore without current threats to terrestrial habitat.

In Samoa, degradation of habitat through coastal development and natural disasters as cited in SPREP (SPREP, 2012) remains a threat (J. Ward, Ministry of Natural Resources and Environment, Samoa, pers. comm., 2013).

In Kiribati, historical destruction (bulldozing) of the vegetation zone next to the nesting beach on Canton Island in the Phoenix Islands occurred during World War II and may have negatively affected the availability of a portion of nesting beach area (Balazs, 1975). The remoteness of these islands and minimal amount of study of sea turtles in this area makes recent information on nesting beach condition and threats difficult to obtain.

In the Cook Islands, the major nesting site for green turtles, Tongareva Atoll, is uninhabited and there are not likely threats related to development or human disturbance (White, 2012b). However, elsewhere in the Cook Islands, sand extraction (for building purposes) and building developments are reported as potential threats to sea turtles; for instance, the best potential site at Tauhunu motu on Manihiki appears to be no longer used for nesting (White, 2012a). Weaver (1996) notes that sea turtles are negatively affected in Fiji by modification of nesting beaches. Coastal erosion in Tonga and Tuvalu is reported

as a major problem for turtle nesting (Alefaio and Alefaio, 2006; Bell *et al.,* 2010).

b. Neritic/Oceanic Zones

Little is known regarding the status of the foraging habitat and threats found in French Polynesia (Balazs *et al.,* 1995). NMFS and USFWS (1998) noted that degradation of coral reef habitats on the south side of Tutuila Island, American Samoa is occurring due to sedimentation from erosion on agricultural slopes and natural disasters. Ship groundings are also potential threats to habitat in American Samoa. For example, a ship grounded at Rose Atoll in 1993, damaging reef habitat and spilling 100,000 gallons of fuel and other contaminants (USFWS, 2014). In the nearby neighboring country of Samoa, coastal and marine areas have been negatively impacted by pollution (Government of Samoa, 1998).

Fiji appears to be an important foraging area for green turtles of this DPS. Sea turtles have been negatively affected by alteration and degradation of foraging habitat and to some extent pollution or degradation of nearshore ecosystems (Batibasaga *et al.,* 2006). Jit (2007) also suggests that sea turtles in Fiji are threatened by degradation of reefs and seagrass beds. Given that turtles outside of Fiji appear to use this foraging habitat, negative effects to this foraging area have important implications for the entire DPS. Tourism development on the eastern coast of Viti Levu could negatively impact sea turtle foraging sites (Jit, 2007).

In Tonga, marine habitat is being affected by anthropogenic activities. Heavy sedimentation and poor water quality have killed patch reefs; high nutrients and high turbidity are negatively impacting seagrasses; and human activities are negatively impacting mangroves (Prescott *et al.,* 2004).

Although Palmyra Atoll is now protected, it was altered by U.S. military activities during World War II through dredging, connection, and expansion of islets (Sterling *et al.,* 2013).

In summary, as to Factor A, we find that the Central South Pacific DPS of the green turtle is negatively affected by ongoing changes in both its terrestrial and marine habitats as a result of land and water use practices. Pollution persists and loss of beach due to coastal development is significant threats to this DPS.

2. Factor B: Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Human consumption has had a significant impact on green turtles in the Central South Pacific DPS. Hirth and Rohovit (1992) report that exploitation of green turtles for eggs, meat, and parts has occurred throughout the South Pacific Region, including American Samoa, Cook Islands, Fiji Islands, French Polynesia, and Kiribati. Allen (2007) notes that in Remote Oceania (which includes this DPS) sea turtles were important in traditional societies but, despite this, have experienced severe declines since human colonization approximately 2,800 years ago. At western contact, some of the islands supported sizable human populations resulting in intense pressures on local coastal fisheries.

At Scilly Atoll in French Polynesia local residents (approximately 20 to 40 people) are allowed to take 50 adults per year from a nesting population that could be as low as 300–400 (M. S. Allen, 2007; Balazs *et al.,* 1995). Balazs *et al.* (1995) reported that declines in nesting green turtles at the important areas of Scilly, Motu-one, and Mopelia, among the highest density nesting sites in the DPS, have occurred due to commercial exploitation for markets in Tahiti, as well as exploitation due to human habitation. Illegal harvest of sea turtles has been reported for French Polynesia by Te Honu Tea (2007). Brikke (2009) conducted a study on Bora Bora and Maupiti islands and reported that sea turtle meat remains in high demand and that fines are rarely imposed.

Directed take in the marine environment has been a significant source of mortality in American Samoa, and turtle populations have seriously declined (Tuato'o-Bartley *et al.,* 1993; NMFS and USFWS, 1998). Although take of sea turtle eggs or sea turtles is illegal (the ESA applies in this territory), turtles from American Samoa migrate to other countries (*e.g.,* Fiji, Samoa, French Polynesia) where turtle consumption is legal or occurs illegally (Craig, 1993; Tuato'o-Bartley *et al.,* 1993).

Turtles have been traditionally harvested for food and shells in the country of Samoa, and over-exploitation of turtles has negatively affected local populations (Government of Samoa, 1998). Unsustainable harvest (direct take for meat) remains a major threat to green turtles in Samoa (J. Ward, Government of Samoa, pers. comm. 2013).

In Fiji, Weaver (1996) identified the contemporary harvest and consumption of turtles by humans for eggs, meat, and shells as a significant threat for sea turtles. This includes commercial harvest, as well as subsistence and ceremonial harvest. In Kiribati (*e.g.,* Phoenix Islands), an unknown number of turtles are caught as bycatch on longlines and eaten (Obura and Stone, 2002). Poaching has been reported for Caroline Atoll, but to what extent it currently occurs is unknown (Teeb'aki, 1992).

In Tonga, Bell *et al.* (1994) report that collection of eggs for subsistence occurs. Prescott *et al.* (2004) and Havea and MacKay (2009) also note that it is still a practice on islands where turtles nest. Bell *et al.* (2009) report that in Tonga sea turtles are harvested and live turtles are often seen transported from outer islands to the main island, Tongatapu. It is unclear if this harvest is sustainable, especially given the increased catch rates in Tungua for the commercial market (Havea and MacKay, 2009).

In Tuvalu, harvest of sea turtles for their meat has been cited as a major threat (Alefaio and Alefaio, 2006; Ono and Addison, 2009). In the Cook Islands, turtles are sometimes killed during nesting at Palmerston and Rakahanga, while nesting and fishing on Nassau, and while nesting at Manihiki, Tongareva, and probably at other atolls (White, 2012). In Tokelau, Balazs (1983) reported human take of both sea turtle eggs from nests and adult males and females while copulating, nesting, or swimming (by harpoon).

In summary, within Factor B current legal and illegal collection of eggs and harvest of turtles throughout the Central South Pacific DPS persist as a threat to this DPS. The threat to the stability of green turtle populations posed by harvesting nesting females is particularly significant due to the small number of nesting females within this DPS.

3. Factor C: Disease or Predation

While FP is recorded elsewhere in the Pacific, it does not appear to be a threat in the Central South Pacific DPS (Utzurrum, 2002; A. Tagarino, American Samoa DMWR, pers. comm., 2013). The best available data suggest that current nest and hatchling predation on several Central South Pacific DPS nesting beaches and in-water habitats is a potential threat to this DPS.

Predation of green turtles (*e.g.,* by sharks) occurs in French Polynesia; however, the extent of such predation is unknown. In American Samoa, Polynesian rats (*Rattus exultans*) were an issue at Rose Atoll prior to a 1993 eradication (USFWS, 2014), but no longer appear to be a problem. Crabs are

reported to eat hatchlings at Rose Atoll (Ponwith, 1990; Balazs, 1993; Pendleton pers. comm., USFWS, 2013). On Swains Island, feral pig activity has been documented and may be a threat to nests on the island (Tagarino and Utzurrum, 2010). Predation of green turtles by sharks has been reported at Rose Atoll and Palmyra Atoll; however, the extent of such predation is unknown (Graeffe, 1873; Sachet, 1954; Balazs, 1999; Sterling *et al.,* 2013). The main threat to wildlife on Rose Atoll is thought to be the introduction (or possible reintroduction) of exotic species (K. Van Houtan, NMFS, pers. comm., 2013).

In Samoa, feral animal predation on turtle nests and eggs remains a threat (SPREP, 2012; J. Ward, Government of Samoa, pers. comm., 2013). In other areas, predation is likely a contributing threat to green turtles. Introduced animals, including feral cats, rats, and feral pigs, are reported problems for wildlife (Teeb'aki, 1992) and may threaten green turtles on certain islands in Kiribati such as Kiritimati. In Tokelau, identified predators that may constitute a terrestrial threat to turtles include hermit crabs, ghost crabs, Polynesian rats, frigate birds (*Fregata ariel, F. minor*), and reef herons (*Egretta sacra;* Balazs, 1983). Feral pigs, rats, crabs, possibly some sea birds, and large fish are potential predators of sea turtles (eggs and hatchlings) in the Cook Islands (White, 2012). Pigs are reported on Mauke, although their impact on sea turtles is unquantified (Bradshaw and Bradshaw, 2012).

Although predation is known to occur, quantitative data are not sufficient to assess the degree of impact of these threats on the persistence of this DPS.

4. Factor D: Inadequacy of Existing Regulatory Mechanisms

Lack of regulatory mechanisms and/or adequate implementation and enforcement is a threat to the Central South Pacific DPS. The analysis of these existing regulatory mechanisms assumed that all would remain in place at their current levels. Regulatory mechanisms that address the direct capture of green turtles for most of the countries within this DPS specifically address the harvest of green turtles, while a few regulations are limited in that they only apply during certain times of the year or allow for traditional harvest.

Numerous countries have reserves (French Polynesia, Kiribati, Samoa, and the U.S. Pacific Remote Islands Marine National Monument), national legislation, and/or local regulations protecting turtles. These include the foreign Cook Islands, Fiji, French Polynesia, Kiribati, Pitcairn Islands, Samoa, Tonga, Tuvalu, and the U.S. territories of Wake, Baker, Howland and Jarvis Islands, Kingman Reef and Palmyra Atoll. In some places such as Tokelau and Wallis and Futuna, information on turtle protection was either unclear or could not be found. At least 17 international treaties and/or regulatory mechanisms apply to the conservation of green turtles in the Central South Pacific DPS.

Green turtles in American Samoa are fully protected under the ESA. Green turtles are also protected by the Fishing and Hunting Regulations for American Samoa (24.0934), which prohibit the import, export, sale, possession, transport, or trade of sea turtles or their parts and take (as defined by the ESA) and carry additional penalties for violations at the local government level (Maison *et al.,* 2010). Additionally, an American Samoa Executive Order in 2003 established the territorial waters of American Samoa as a sanctuary for sea turtles and marine mammals, in 2003; American Samoa declared its submerged lands a Whale and Turtle Sanctuary. It is not known how effective implementation of these protections is in American Samoa. The NOAA National Marine Sanctuary of American Samoa is comprised of six protected areas, covering 35,175 km^2 of nearshore coral reef and offshore open ocean waters across the Samoan Archipelago. Additionally, Rose Atoll Marine National Monument was established in 2009 and encompasses the Rose Atoll National Wildlife Refuge. These protected areas should provide some level of protection for green turtles and their habitat; however the effectiveness of these monuments for this species is unknown.

Regulatory mechanisms are apparently inadequate to curb a continued loss of nesting habitat and degradation of foraging habitat due to human activities and coastal development on populated islands of American Samoa, Samoa, Tonga, Tuvalu, Fiji, and the Cook Islands. Turtles continue to be harvested for food and shells, and are used in commercial, subsistence, and ceremonial capacities. Rudrud (2010) suggests that traditional laws in Polynesia may have historically limited green turtle consumption to certain people (chiefs, priests) or special ceremonies. However, as the societies of this region have been affected by Western culture and modernization of traditions have been altered; traditional laws have lost their effectiveness in limiting negative effects of harvest on sea turtles.

There are protected areas, within this DPS, that should provide some level of protection for green turtles and their habitat; however the effectiveness of these monuments for this species is unknown. The Status Review did not reveal regulatory mechanisms in place to specifically address coastal development, marine pollution, sea level rise, and effects of climate change that continue to contribute to the extinction risk of this DPS.

5. Factor E: Other Natural or Manmade Factors Affecting its Continued Existence

a. Incidental Bycatch in Fishing Gear

Incidental capture in artisanal and commercial fisheries is a significant threat to the survival of green sea turtles throughout the Central South Pacific DPS. The primary gear types involved in these interactions include longlines and nets.

Incidental capture in line, trap, or net fisheries presents a threat to sea turtles in American Samoa (Tagarino, 2011). Subsistence gill nets have been known to occasionally catch green turtles. Additionally, longline fishing is considered a threat to Central South Pacific green turtles. In 2010, the American Samoa longline fishery was estimated to have interacted with an average of 33 green turtles annually, with a 92 percent mortality rate, triggering reinitiation of a section 7 consultation; the current incidental take statement allows 45 green sea turtle interactions (41 mortalities) every three years (*http://www.fpir.noaa.gov/Library/PUBDOCs/biological_opinions/622-NMFS-ASLL_Am_to_Pelagics_FMP_Biop_FINAL_9-16-10.pdf*).

In Fiji, green turtles are killed in commercial fishing nets; however, the exact extent and intensity of this threat is unknown (Rupeni *et al.* 2002). Jit (2007) and McCoy (2008) report that green turtle bycatch is occurring in longline tuna fisheries in Fiji. The exact level of interaction with green turtles is unclear.

In the Cook Islands, longline fishery regulations require fishers to adopt the use of circle hooks and to follow ''releasing hooked turtles'' guidelines (Goodwin, 2008), although it is unclear how effective these regulations are. McCoy (2008) suggests that sea turtle bycatch is occurring in tuna fisheries in the Cook Islands; however, no information is provided on possible extent of sea turtle take or the species that are possibly taken.

b. Marine Debris and Pollution

Direct or indirect disposal of anthropogenic waste introduces potentially lethal materials into green turtle foraging habitats. Green turtles will ingest plastic, monofilament fishing line, and other marine debris (Bjorndal *et al.,* 1994), and the effects may be lethal or non-lethal, resulting in varying effects that may increase the probability of death (Balazs, 1985; Carr, 1987; McCauley and Bjorndal, 1999). Marine debris presents a threat to green turtles in American Samoa (Aeby *et al.,* 2008; USFWS, 2014; Tagarino *et al.,* 2008). It is potentially hazardous to adults and hatchlings and is present at Rose Atoll (USFWS, 2014). It is also a threat at nearby inhabited islands.

Pago Pago Harbor in American Samoa is seriously polluted, and uncontrolled effluent contaminants have impaired water quality in some coastal waters (Aeby *et al.,* 2008). Effects to coastal habitat (*e.g.,* reefs) from sedimentation related to development and runoff are significant potential threats in American Samoa, and human population pressures place strains on shoreline resources (Aeby *et al.,* 2008).

Ship groundings (*e.g.,* at Rose Atoll in 1993) that damage reef habitat and spill fuel and other contaminants, degradation of coastal waters due to silt-laden runoff from land and nutrient enrichment from human discharges and wastes, and contamination by heavy metals and other contaminants are threats to green turtles in American Samoa (NMFS and USFWS, 1998; USFWS, 2014).

In Fiji, Weaver (1996) identified potential threats to sea turtles from heavy metals and industrial waste, organic loadings in coastal areas, plastic bags, and leachate poisoning of seagrass foraging areas. In the Cook Islands, White (2012) noted possible issues with oil, tar, or toxic chemicals and terrestrial run-off into lagoons at Rarotonga, and Bradshaw and Bradshaw (2012) note pollution (*e.g.,* accumulation of plastics on the beach) on Mauke (M.White, unpubl. data, *www.honucookislands .com*).

c. Effects of Climate Change and Natural Disasters

Climate change has the potential to greatly affect green turtles. Potential impacts of climate change on green turtles include loss of beach habitat from rising sea levels, repeated inundation of nests, skewed hatchling sex ratios from rising incubation temperatures, and abrupt disruption of ocean currents used for natural dispersal (Fish *et al.,* 2005, 2008; Hawkes *et al.,* 2009; Poloczanska *et al.,* 2009). Impacts from global climate change induced by human activities are likely to become more apparent in future years (IPCC, 2007).

A recent study of 27 atoll islands in the central Pacific (including Kiribati and Tuvalu), demonstrated that 14 percent of islands decreased in area over a 19–60 year time span (Webb and Kench, 2010). This occurred in a region considered most vulnerable to sea-level rise (Nicholls and Cazenave, 2010) during a period in which sea-levels rose 2 mm per year.

Catastrophic natural environmental events, such as cyclones or hurricanes, may affect green turtles in the Central South Pacific Ocean, and may exacerbate issues such as decreased available habitat due to sea level rise. These types of events may disrupt green turtle nesting activity (Van Houtan and Bass, 2007), even if just on a temporary scale.

In summary, within Factor E, we find that incidental fishery bycatch, interactions with recreational and commercial vessels, marine pollution as well as the increasing threat of climate change, and major storm events are expected to be an increasing threat to the persistence of this DPS.

C. Conservation Efforts for the Central South Pacific DPS

There are many islands and atolls in the range of this DPS spread across an expansive area. Conservation efforts, such as establishment of protected areas, exist that are beneficial to green turtles.

It is unclear how well conservation efforts such as protected areas and the national legislation relating to green turtles are working. It appears that the remoteness of some of the areas is providing the most conservation protection for certain threats.

D. Extinction Risk Assessment and Findings for the Central South Pacific DPS

The Central South Pacific DPS is characterized by geographically widespread nesting at very low levels of abundance, mostly in remote low-lying oceanic atolls. Nesting is reported in 57 different locations, although some abundance numbers are 20 years old or older. By far the highest nesting abundance estimate is from Scilly Atoll, French Polynesia (1,050 nesting females), but this estimate is from 1991 data and abundance of nesting females has reportedly significantly declined in the past 30 years as a result of commercial exploitation. There are also no long-term monitoring programs that have been active in this DPS for even a 5-year period. While the dispersed location of nesting sites might provide a level of habitat diversity and population resilience which reduces overall extinction risk, this contribution is reduced by the low population size of these sites (only Scilly Atoll has over 225 nesting females) and overall population size of fewer than 3,000 nesting females.

Chronic and persistent illegal harvest is a concern in the Central South Pacific DPS, and sea level rise is a threat that is expected to increase in the future. Indeed, climate change may affect this DPS more than any other because nearly all nesting sites exist on low-lying atolls. Sea level rise is expected to exacerbate beach erosion, inundations, and storm surge on small islands (IPCC, 2007). The loss of habitat as a result of climate change could be accelerated due to a combination of other environmental and oceanographic changes such as an increase in the intensity of storms and/or changes in prevailing currents, both of which could lead to increased beach loss via erosion (Kennedy *et al.,* 2002; Meehl *et al.,* 2007).

For the above reasons, we propose to list the Central South Pacific DPS as endangered. Based on its low nesting abundance and exposure to increasing threats, we find that this DPS is presently in danger of extinction throughout its range.

XVI. Central North Pacific DPS

A. Discussion of Population Parameters for the Central North Pacific DPS

The range of the Central North Pacific DPS covers the Hawaiian Archipelago and Johnston Atoll. It is bounded by a four-sided polygon with open ocean extents reaching to 41° N., 169° E. in the northwest corner, 41° N., 143° W. in the northeast, 9° N., 125° W. in southeast, and 9° N., 175° W. in the southwest (Figure 2). The Hawaiian Archipelago is the most geographically isolated island group on the planet. From 1965 to 2013, 17,536 green turtles were tagged, including all post-pelagic size classes from juveniles to adults. With only three exceptions, the 7,360 recaptures of these tagged turtles have been made within the Hawaiian Archipelago. The three outliers involved a recovery in Japan, one in the Marshall Islands and one in the Philippines.

The principal nesting site for green turtles in the Central North Pacific DPS is FFS, where 96 percent of the population (3,710 of 3,846 nesting females) currently nests (Balazs, 1980; Lipman and Balazs, 1983). However, nesting was historically abundant at

various sites across the archipelago as recently as 1920 (Kittinger *et al.,* 2013), and remnant nesting aggregations may have existed in the MHIs as recently as the 1930s, but were no longer present in the 1970s (Balazs, 1976). Current nesting by green turtles occurs in low numbers (3–36 nesting females at any one site) throughout the Northwest Hawaiian Islands (NWHI) at Laysan, Lisianski, Pearl and Hermes Reef, and very uncommonly at Midway. Since 2000, green turtle nesting on the MHI has been identified in low numbers (1–24) on seven islands (Frey *et al.,* 2013; Kittinger *et al.,* 2013; NMFS Pacific Islands Fisheries Science Center, unpublished data, 2013). Green turtles in the Central North Pacific DPS bask on beaches throughout the NWHI and in the MHI.

Since nesting surveys were initiated in 1973, there has been a marked increase in annual green turtle nesting at East Island, FFS, where approximately 50 percent of the nesting on FFS occurs (Balazs and Chaloupka, 2004, 2006). During the first 5 years of monitoring (1973–1977), the mean annual nesting abundance was 83 females, and during the most recent 5 years of monitoring (2009–2012), the mean annual nesting abundance was 464 females (Balazs and Chaloupka, 2006; G. Balazs, NMFS, unpublished data). This increase over the last 40 years corresponds to an annual increase of 4.8 percent.

Information on in-water abundance trends is consistent with the increase in nesting (Balazs, 2000; Balazs *et al.,* 2005; Balazs *et al.,* 1996). This linkage is to be expected since genetics, satellite telemetry, and direct observation show that green turtles from the nesting beaches in the FFS nesting site remain resident to foraging pastures throughout the archipelago (Balazs, 1976; Craig and Balazs, 1995; Keuper-Bennett and Bennet, 2000; P. Dutton, NMFS, pers. comm., 2013). The number of immature green turtles residing in foraging areas of the eight MHI has increased (Balazs *et al.,* 1996). In addition, although the causes are not totally clear, there has been a dramatic increase in the number of basking turtles in the Hawaiian Islands over the last 2 decades, both in the southern foraging areas of the main islands (Balazs *et al.,* 1996) as well as at northern foraging areas at Midway Atoll (Balazs *et al.,* 2005).

With regard to spatial structure, genetic sampling in the Central North Pacific DPS has been extensive and representative, given that there are few nesting populations in this region. Results of mtDNA analysis indicate a low level of spatial structure with regard to minor nesting around the MHI and the NWHI, and the same haplotypes occur throughout the range of the DPS. Within the NWHI, studies show no significant differentiation (based on mtDNA haplotype frequency) between FFS and Laysan Island (P. Dutton, NMFS, pers. comm., 2013). An analysis by Frey *et al.* (2013) of the low level of scattered nesting on the MHI (Moloka'i, Maui, O'ahu, Lana'i and Kaua'i; mtDNA and nDNA) showed that nesting in the MHI might be attributed to a relatively small number of females that appear to be related to each other, and demographically isolated from FFS. Frey *et al.* (2013) suggest that the nesting population at the MHI may be the result of a few recent founders that originated from the FFS breeding population. Demographic studies of green turtles do not reveal any structuring of traits within the DPS.

With regard to diversity and resilience, because nesting in the Central North Pacific DPS is unusually concentrated at one site, there is little diversity in nesting areas. Balazs (Balazs, 1980) reported that the distribution of green turtles in the Hawaiian Archipelago has been reduced within historical times, and Kittinger *et al.* (2013) suggest that a significant constriction in the spatial distribution of important reproduction sites presents a challenge to the population's future and makes this DPS highly vulnerable. Further, the primary nesting site, FFS, is a low-lying coral atoll that is susceptible to erosion, geomorphological changes and sea level rise, and has already lost significant nesting area (Baker *et al.,* 2006).

B. Summary of Factors Affecting the Central North Pacific DPS

1. Factor A: The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

a. Terrestrial Zone

In Hawai'i, most nesting currently occurs in the NWHI, although nesting is increasing in the MHI, as is basking of green turtles. Coastal development and construction, vehicular and pedestrian traffic, beach pollution, tourism, and other human related activities are current threats to nesting and basking habitat in the MHI. These threats will affect more green turtles in this DPS if nesting increases in the MHI. Human populations are growing rapidly in many areas of the insular Pacific, including Hawai'i, and this expansion is exerting increased pressure on limited island resources.

Climatic changes in the NWHI pose threats through reduction in area of nesting beaches critical to this DPS (Baker *et al.,* 2006). Baker *et al.* (2006) examined the potential effects of sea level rise in the NWHI and found that the primary nesting area for the Central North Pacific population will be negatively impacted by sea level rise through possible loss of nesting habitat. For example, Whale-Skate Island at French Frigate Shoals was formerly a primary green turtle nesting site for this DPS, but the island has subsided and is no longer available for nesting (Kittinger *et al.,* 2013). Trig, Gin, and Little Gin could lose large portions of their area, concentrating nesting even further at East Island (Baker *et al.,* 2006).

b. Neritic/Oceanic Zones

Impacts to the quality of coastal habitats in the MHI are a threat to this DPS and are expected to continue and possibly increase with an increasing human population and annual influx of millions of tourists. Loss of foraging habitat or reduction in habitat quality in the MHI due to nearshore development is a threat to this DPS. Marina construction, beach development, siltation of forage areas, contamination of forage areas from anthropogenic activities, resort development or activities, increased vessel traffic, and other activities are all considered threats to this population and its habitat (Bowen *et al.,* 1992; NMFS and USFWS, 1998; Friedlander *et al.,* 2006; Wedding and Friedlander, 2008; Wedding *et al.,* 2008; Van Houtan *et al.,* 2010). Seagrass and coral reef habitat of Moloka'i has been degraded from upland soil erosion and siltation, and coral reefs of Hawai'i, Kaua'i, Lana'i, Maui, and O'ahu have been degraded by sedimentation, sewage, or coastal construction (NMFS and USFWS, 1998). In general, MHI coral reefs have suffered from land-based sources of pollution, overfishing, recreational overuse, and alien and invasive species (Friedlander *et al.,* 2005). Vessel groundings (mechanical damage to habitat and reef-associated organisms) and related release of contaminants (*e.g.,* fuel, hazardous substances, etc.) are a threat to Central North Pacific green turtle habitat (Keller *et al.,* 2009). It is difficult to predict the exact number or severity of vessel groundings expected in any future year, but key nesting and foraging habitat for green sea turtles occurs in the areas of the MHI and the NWHI where commercial and recreational boating occurs (Keller *et al.,* 2009).

During the last century, habitat on Johnston Atoll was affected by military activities such as nuclear testing and chemical weapons incineration. The lingering effects of these activities

include water contamination from nutrients, dioxins, plutonium, and a subsurface plume of PCB-contaminated petroleum product (Balazs, 1985).

In summary, within Factor A, we find that the loss of nesting beach habitat is a threat to the DPS in the NWHI. We find that coastal development and construction, vehicular and pedestrian traffic, beach pollution, tourism, and other human related activities are threats in the MHI. Climate change, marina construction, contamination of forage areas from anthropogenic activities, resort development or activities, increased vessel traffic are significant, increasing threats posing a risk to the persistence of this DPS.

2. Factor B: Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Harvest of green turtles has been illegal since green turtles were listed under the ESA in 1978. It is possible that human take today is underreported, as anecdotal information suggests that some degree of illegal take occurs throughout the MHI. The extent of such take is unknown; however, it is believed that current illegal harvest of green turtles for human consumption continues in a limited way, although Federal and State cooperative efforts and existing legislation appear to be minimizing the threat.

3. Factor C: Disease or Predation

The FP disease affects green turtles found in the Central North Pacific Ocean (Francke *et al.,* 2013). This disease results in internal and/or external tumors (fibropapillomas) that may grow large enough to hamper swimming, vision, feeding, and potential escape from predators. FP appears to have peaked in some areas of Hawai'i, remained the same in some regions, and increased in others (Van Houtan *et al.,* 2010). Environmental factors may be significant in promoting FP, and eutrophication (increase in nutrients) of coastal marine ecosystems may promote this disease (Van Houtan *et al.,* 2010). FP remains an important concern in some green turtle populations. This is particularly true given the continued, and possibly future increasing, human impacts to, and eutrophication of, coastal marine ecosystems that may promote this disease. However, its effects on reproductive effort are uncertain.

Ghost crabs (*Ocypode* spp.) prey on hatchlings at FFS (Niethammer *et al.,* 1997) at approximately 5 percent (Balazs, 1980). Large grouper (*Epinephelus tauvina*), sea birds, and sharks are documented natural predators of green turtles in Hawai'i; however, the extent of predation is unknown (Balazs, 1995; Balazs and Kubis, 2007; Francke, 2013).

Mongoose, rats, dogs, feral pigs, and cats—all introduced species—that exist on the MHI are known to prey on eggs and hatchlings, although the impact on the current low level of nesting is unclear (nesting in the MHI is extremely low compared to historical levels). If nesting in the MHI increases, the importance of the threat from these potential predators would increase.

4. Factor D: Inadequacy of Existing Regulatory Mechanisms

Regulatory mechanisms that protect green turtles are in place and include State, Federal, and international laws. The analysis of these existing regulatory mechanisms assumed that all would remain in place at their current levels. Numerous Federal and State governmental and non-governmental efforts at public education, protection and monitoring of green turtles contribute to the conservation of the Central North Pacific DPS. At least 16 international treaties and/or regulatory mechanisms apply to the conservation of green turtles in the Central North Pacific.

Nesting occurs exclusively within the United States. Monitoring and protective efforts are ongoing for both nesting areas (in the NWHI and where nesting is occurring in the MHI) and in nearshore waters. Regulatory mechanisms in U.S. jurisdiction are in place through the ESA, MSA and the State of Hawai'i that currently address direct and incidental take of Central North Pacific green turtles, and these regulatory mechanisms have been an important factor in the encouraging trend in this DPS.

The Pacific Remote Islands Marine National Monument was established in January 2009, and is cooperatively managed by the Secretary of Commerce (NOAA) and the Secretary of the Interior (USFWS), with the exception of Wake Island and Johnston Atoll, which are currently managed by the Department of Defense. The areas extend 92.6 km from the mean low water lines around emergent islands and atolls and include green turtle habitat. Commercial fishing is prohibited within the limits of the Monument, and recreational fishing requires a permit. On September 27, 2014, President Obama issued Presidential Proclamation 9173 to expand the Pacific Remote Islands Monument to incorporate waters and submerged lands at Jarvis Island, Wake Island, and Johnston Atoll to the seaward limit of the U.S. Exclusive Economic Zone (EEZ). Proclamation 9173 prohibits commercial fishing in expanded areas of the Monument, and directs the Secretaries of Interior and Commerce to ensure that recreational and non-commercial fishing continue to be managed as sustainable activities in the Monument. The protected areas provide some protection to sea turtles and their habitat through permitted access and its remoteness.

A commercial ban on turtle harvest was put into place by the State of Hawai'i in 1974, 4 years before the green turtle was listed under the ESA. Since 1978, green turtles have been protected by the ESA. They are also protected by the Hawai'i Revised Statutes, Chapter 195D (Hawai'i State Legislature, accessed Sept. 10, 2010) and Hawai'i Administrative Rules, 13–124 (Hawai'i Administrative Rules, accessed Sept. 10, 2010), which adopt the same definitions, status designations, and prohibitions as the ESA and carry additional penalties for violations at the State government level. These two statutes have been, and currently are, key tools in efforts to recover and protect this DPS, and both have provided for comprehensive protection and recovery activities that have been sufficiently effective to improve the status of green turtles in Hawai'i significantly. The ESA and Hawai'i statutes are not, however, redundant. For example, the ESA requires Federal agencies to consult with the Services on their actions that may affect green turtles.

Current monitoring, conservation efforts, and legal enforcement have been effective and promote the persistence of the Central North Pacific DPS, which occurs almost exclusively in U.S. waters. It is important to note, however, that the analysis by the SRT did not consider the scenario in which current laws or regulatory mechanisms were not continued. Under the ESA, regulatory measures provide protections that are not provided entirely by State protections. For instance, if the DPS was delisted and the protections of the ESA were no longer in place, many on-the-ground conservation and monitoring actions and, importantly, financial resources that are afforded by the ESA (*e.g.,* section 6) would not continue. In addition, the taking of green turtles in the United States requires authorization under sections 7 or 10 of the ESA and their implementing regulations. For example, activities that affect green turtles and do not involve Federal agencies, such as coastal development, construction, and research, must comply with section 10 of the ESA to avoid violating the statute. Section 10

permits require avoiding, minimizing, and mitigating impacts to green turtles to the extent possible. Federal actions (*i.e.,* those authorized, funded, or carried out by Federal agencies), are subject to consultation with the Services under section 7 of the ESA; those resulting in take of green turtles are required to minimize effects. These actions include, but are not limited to, federally regulated fisheries and management and research activities within the federally-protected Papahānaumokuākea Marine National Monument in the NWHI.

The threat of bycatch in international fisheries is not adequately regulated, although bycatch in domestic Federal fisheries has been addressed to a greater extent. In addition, some threats to the species, such as climate change, are either not able to be regulated under the ESA, or not regulated sufficiently to control or even slow the threat.

The Status Review did not reveal regulatory mechanisms in place to specifically address marine pollution, sea level rise, and effects of climate change that continue to contribute to the extinction risk of this DPS.

5. Factor E: Other Natural or Manmade Factors Affecting its Continued Existence

a. Incidental Bycatch in Fishing Gear

The SRT identified incidental capture in fisheries as a significant threat to green turtles of the Central North Pacific DPS. The primary gear types involved in these interactions include longlines and nets. These are employed by both artisanal and industrial fleets, and target a variety of species.

i. Longline Fisheries

Pacific longline fisheries capture green turtles as bycatch in longline gear (line, hooks), and these interactions can result in mortality (NMFS, 2012). U.S. longline fisheries are required to comply with sea turtle mitigation measures (50 CFR 665.812), including the use of circle hooks, dehookers, line clippers, and crewmember training, that have reduced green sea turtle interactions to negligible levels. However, while exact numbers are not available, it is estimated that, at a minimum, 100 green turtles from the Central North Pacific DPS are captured and killed annually by foreign longlines (NMFS, 2012).

ii. Gillnet Fisheries

Interactions between Central North Pacific green turtles and nearshore fisheries in the MHI can result in entanglement, injury, and mortality. Balazs *et al.* (1987) documented sea turtle mortality resulting from bycatch in fishing gear over 25 years ago in Hawai'i. While gill nets are regulated by the state of Hawai'i, fishers are only required to inspect them completely every two hours, so entanglement and drowning does occur (NMFS, 2012). Each year green sea turtles are incidentally entangled in net gear, some of these resulting in mortality (*e.g.,* Francke, 2013); however the reported strandings in the MHI are believed to be a smaller subset of the actual level of interaction with this gear.

iii. Other Gear Types

Hook-and-line fishing from shore or boats also hooks and entangles green turtles (Francke *et al.,* 2013; NMFS, 2012). Interactions with nearshore recreational fisheries are identified in the NMFS stranding database as those turtles that strand as a result of interactions with fish hooks and fishing line. Nearshore fishery interactions have increased over time (Francke, 2013; Francke et al., 2013; Ikonomopoulou *et al.,* 2013). While current public outreach efforts by NMFS and its partners attempt to reduce the magnitude of impact on green turtles from hook-and-line fishing, injury or mortality from the hooking or from the effects of line remaining on turtles that are cut free or break the line remains an issue (*http://pifscblog.wordpress.com/2013/06/07/marine-turtle-response-achieves-significant-milestone/*).

b. Marine Debris and Pollution

The ingestion of and entanglement in marine debris is another anthropogenic threat to Central North Pacific green turtles throughout their range. Marine debris is common in the MHI and a direct threat to sea turtles (Wedding and Friedlander, 2008). Stranding information for this DPS shows that entanglement in lost or discarded fishing line is one of the causes of green turtle strandings and mortality in the MHI. In the NWHI, marine debris is also a threat in the terrestrial and marine environment. In 1996, it was estimated that between 750 and 1,000 tons of marine debris were on reefs and beaches in the NWHI, and the source of much of the debris is fishing nets discarded or lost in the northeastern Pacific Ocean (Keller *et al.,* 2009). Turtles in the MHI encounter pollution as a result of coastal development, runoff, and waste water (point source and non-point source pollution; Friedlander *et al.,* 2008).

c. Vessel Interactions

As in other parts of the world, boating activities are a threat to turtles within this DPS (Francke *et al.,* 2013). Chaloupka *et al.* (2008b) report that 2.5 percent of green turtle strandings (N = 3,745) were caused by boat strike in the Hawaiian Archipelago from 1982 to 2003. Additionally, boat traffic has been shown to exclude green turtles from preferred coastal foraging pastures (Seminoff *et al.,* 2002c), which may negatively affect their nutritional intake.

Vessel groundings (mechanical damage to habitat and reef-associated organisms) and related release of contaminants (*e.g.,* fuel, hazardous substances, etc.) are a threat not only to Central North Pacific green turtle habitat, but directly to the turtles themselves. Thirteen reported vessel groundings have occurred in the NWHI in the last 60 years (Keller *et al.,* 2009). Vessel traffic and presence can also have negative effects through habitat damage from anchors, waste discharge, light and noise (Keller *et al.,* 2009).

d. Effects of Climate Change

As in other areas of the world, climate change and sea level rise have the potential to negatively affect green turtles in the Central North Pacific DPS. Climate change influences on water temperatures, ocean acidification, sea level and related changes in coral reef habitat, wave climate and coastal shorelines are expected to continue (Friedlander *et al.,* 2008). Keller *et al.* (2009) suggest that sea level rise, changing storm dynamics, sea surface temperatures, and ocean acidification are key threats for the NWHI, and that evidence of sea level rise has already begun to adversely affect terrestrial and ocean habitat. Tiwari *et al.* (2010) argued that East Island itself is still not yet at carrying capacity, in the sense of crude nesting area and current nesting densities. Yet entire islands have been submerged in recent history (*i.e.,* Whale-Skate in the late 1990s), resulting in the loss of a primary nesting site at FFS (Baker *et al.,* 2006). It is likely that sea level rise will lead to increased erosion of nesting beaches and significant loss of habitat (Baker *et al.,* 2006; IPCC, 2007); however, it remains unclear how nesting habitat loss and natal homing traits will influence future nesting in this DPS.

As temperatures increase, there is concern that incubation temperatures could reach levels that exceed the thermal tolerance for embryonic development, thus increasing embryo and hatchling mortality (Balazs and Kubis, 2007; Fuller *et al.,* 2010). Niethammer *et al.* (Niethammer 1997) note that given that the FFS nesting colony is on the northern extreme of green turtle breeding range, small changes in beach conditions (*e.g.,* microhabitats of nests) may have severe

consequences on nesting. Changes in global temperatures could also affect juvenile and adult distribution patterns. Possible changes to ocean currents and dynamics may result in negative effects to natural dispersal during a complex life cycle (Van Houtan and Halley, 2011), and possible nest mortality linked to erosion may result from increased storm frequency (Van Houtan and Bass, 2007) and intensity (Keller *et al.,* 2009).

While sea turtles have survived past eras that have included significant temperature fluctuations, future climate change is expected to happen at unprecedented rates, and if turtles cannot adapt quickly they may face local to widespread extirpations (Hawkes *et al.,* 2009). Impacts from global climate change induced by human activities are likely to become more apparent in future years (IPCC, 2007).

e. Effects of Spatial Structure

While the nesting population trajectory in the Central North Pacific DPS is positive and encouraging, the DPS exhibits moderately low levels of abundance (3,846 nesting females), and more than 96 percent of nesting occurs at one site in the NWHI (FFS). Therefore, survival of this DPS is currently highly dependent on successful nesting at FFS (Niethammer *et al.,* 1992). The concentrated nature and relatively small size of the nesting population make it vulnerable to random variation and stochasticities in the biological and physical environment, including natural catastrophes, as well as changes in climate and resulting effects such as sea level rise. This increases its risk of extinction, even though the DPS may currently have positive population growth (*e.g.,* Meffe *et al.,* 1994; Primack, 1998; Balazs and Kubis, 2007; Hunter and Gibbs, 2007). That said, aside from sea level rise, FFS is relatively isolated from anthropogenic threats, as it occurs within the Papahānaumokuākea Marine National Monument, a remote Monument that has controlled access for activities that occur within it. The regional range expansion into nesting areas in the MHI provide increased spatial diversity and may buffer against the loss of nesting sites at FFS; however, nesting areas in the MHI are exposed to anthropogenic threats.

Within Factor E, we find that incidental bycatch in fishing gear, marine pollution, interactions with recreational and commercial vessels, climate change, beach driving, and major storm events all negatively affect green turtles in the Central North Pacific DPS. The consideration of climate change, and the fact that the one isolated atoll, where approximately 96 percent of green turtles within this DPS nest, is extremely vulnerable to sea level rise, increase the risk of extinction for this DPS.

C. Conservation Efforts for the Central North Pacific DPS

The State of Hawai'i's efforts to conserve green turtles include: Wildlife regulations; coordination of stranding response and specimen storage on the islands of Maui, Hawai'i, and Kaua'i; issuance and management of special activity permits; statewide outreach and education activities; and nest monitoring on Maui (Department of Land and Natural Resources, 2013). Hawai'i Division of Aquatic Resources staff responds to stranded turtle reports and issues special use permits to researchers and educators. The Division of Conservation and Resources Enforcement investigates reports of illegal poaching, provides support and security at some nest sites and strandings, and addresses complaints from the public regarding turtle disturbances.

With regard to conservation areas, the Papahānaumokuākea Marine National Monument in the NWHI is a conservation area established in 2006 that encompasses coral reefs, islands and shallow water environments. It comprises several previously existing Federal conservation areas, including the NWHI Coral Reef Ecosystem Reserve, Midway Atoll National Wildlife Refuge, Hawaiian Islands National Wildlife Refuge, NWHI Marine Refuge, State Seabird Sanctuary at Kure Atoll and the Battle of Midway National Memorial. The Monument is administered jointly by three co-trustees: NOAA, the USFWS, and the State of Hawai'i. The Monument's mission is to carry out seamless integrated management to ensure ecological integrity and achieve strong, long-term protection and perpetuation of NWHI ecosystems, Native Hawaiian culture, and heritage resources for current and future generations. Commercial fishing is prohibited in the Monument and all other human activities require a permit.

Overall, conservation efforts have been successful in this DPS, as exhibited by the increasing trend in the green turtle population.

D. Extinction Risk Assessment and Findings for the Central North Pacific DPS

The Central North Pacific DPS is characterized by geographically concentrated nesting (96 percent of nesting occurs at one location) and moderately low levels of abundance (3,846 nesting females). Such a low number is the result of chronic historical exploitation, which extirpated 80 percent of historically major nesting grounds (Kittinger *et al.,* 2013). The DPS is geographically and chronologically well-sampled, with no sites where nesting is unquantified, and very little chance there are undocumented nesting locations. Time series analysis of nesting female abundance over 40 years at FFS shows a marked increase in nesting since surveys were initiated in 1973, with an encouraging annual rate of increase of 4.8 percent. However, 96 percent of nesting now occurs at one atoll (FFS)—where sea level rise is a significant concern—and no more than 40 females nest at any of the other 11 sites. Information on in-water abundance trends is consistent with the increase in nesting.

The Status Review indicates that the DPS shows strength in its population trend, but that there are concerns about overall abundance, spatial structure, and diversity/resilience. Indeed, in spite of the positive trends in the last few decades, the unprecedented concentration of nesting at one site and moderately low population size raise serious concerns about the resilience of this DPS, particularly its ability to adapt to future climate scenarios. Ninety-eight percent of the population nests are low lying atolls (96 percent nesting in a single low-lying atoll), making them extremely vulnerable to sea level rise—some effects of which have already been witnessed. Keller *et al.* (2009) suggest that sea level rise, changing storm dynamics, sea surface temperatures, and ocean acidification are key threats for the NWHI. Current and projected maps of four islands in the NWHI predicted a sea level rise ranging from 9 cm to 88 cm by 2100, with a projected loss of nesting beach at approximately 15 to 26 percent (IPCC, 2001). Further, sea level rise is expected to continue at a rate exceeding that observed during 1971–2010 as a result of increased ocean warming and increased loss of glacier and ice sheet mass (IPCC, 2013). Baker *et al.* (2006) examined the potential effects of sea level rise in the NWHI and found that the primary nesting area for the Central North Pacific population is threatened by sea level rise through possible loss of nesting habitat. They note that one formerly significant nesting site—Whale-Skate Island—is now completely submerged. They further note that the islets of Trig, Gin and Little Gin could lose large portions

of their area, concentrating nesting even further at East Island. In contrast, Tiwari *et al.* (2010) argued that East Island itself is still not yet at carrying capacity, in the sense of crude nesting area and current nesting densities. It remains unclear how catastrophic nesting habitat loss and natal homing traits will influence future nesting in this DPS. Habitat degradation resulting from the release of contaminants contained in landfills and other areas of the NWHI could also occur as the islands erode or are flooded from sea level rise (Keller *et al.,* 2009). Other effects of climate change include increasing temperatures at nesting beaches that may affect hatchling sex ratios and embryonic development (Balazs and Kubis, 2007; Fuller *et al.,* 2010b). Making this an even greater concern is that climate change and the resultant sea level rise are difficult to regulate and certainly cannot be sufficiently regulated through the ESA to slow its effects.

In summary, despite an upward trend in population abundance, the Central North Pacific DPS is characterized by geographically concentrated nesting and low levels of abundance (3,846 nesting females). The lack of redundancy in nesting sites and the low nesting numbers at these sites lead to low resilience within this DPS. The consideration of climate change, and the fact that the one isolated atoll, where approximately 96 percent of green turtles within this DPS nest, is extremely vulnerable to sea level rise, increase the risk of extinction.

For the above reasons, we propose to list the Central North Pacific DPS as threatened. We do not find the DPS to be in danger of extinction presently because of the increasing nesting trend; however, the continued threats coupled with a small and narrowly distributed nesting population are likely to endanger the DPS within the foreseeable future.

XVII. East Pacific DPS

A. Discussion of Population Parameters for the East Pacific DPS

The range of the East Pacific DPS extends from the California/Oregon border (41 °N) southward along the Pacific coast of the Americas to central Chile (40 °S). Green turtles originating from this DPS regularly strand along the shoreline of Oregon and Washington. The northern and southern boundaries of this DPS extend from the aforementioned locations in the United States and Chile to 142 °W and 96 °W, respectively. The offshore boundary of this DPS is a straight line between these two coordinates. This DPS encompasses the Revillagigedos Archipelago, Mexico and the Galápagos Archipelago, Ecuador (Figure 2). The East Pacific DPS also includes the Mexican Pacific coast breeding population, which is currently listed as endangered (43 FR 32800, July 28, 1978).

Green turtle nesting is widely dispersed in the Eastern Pacific Ocean. We identified 40 total nesting sites for which abundance information is available, although there are sporadic nesting events in other areas with undocumented abundance. The largest nesting aggregation is found in Colola, Michoacán, Mexico, with 11,588 nesting females, or nearly 58 percent of the total nesting population (Delgado-Trejo and Alvarado-Figueroa, 2012). The second largest site is in the Galápagos Islands, Ecuador, where nesting at the four primary nesting sites (Quinta Playa and Barahona (Isabela Island), Las Bachas (Santa Cruz Island), and Las Salinas (Baltras Island)) has been stable to slightly increasing since the late 1970s, and was last estimated at 3,603 nesting females in 2005 (Zàrate *et al.,* 2006; Zàrate, unpubl. data). Other nesting areas are found in Michoácan, including Bahia Maruata (1,149; Delgado-Trejo and Alvarado-Figueroa, 2012) and Motin de Oro (240; Delgado-Trejo and Alvarado-Figueroa, 2012); Clarion and Socorro Islands in the Revillagigedos Archipelago, Mexico (500; Blanco and Santidrián, 2011); and 26 sites throughout the Pacific Coast of Costa Rica, including Playa San Jose in the Bat Islands (498; L. Fonseca, unpubl. data), Playa Colorada (498; L. Fonseca, unpubl. data), Nombre Jesus (450; Blanco and Santidrián, 2011), Playa Cabuyal (273; P. Santidrián-Tomillo, Leatherback Trust, pers. comm., 2013), Playa Zapotillal (150; Blanco and Santidrián, 2011) and Playa Nancite (123; Fonseca *et al.,* 2011). Low level nesting (fewer than 100 nesting females) occurs elsewhere in Mexico, Costa Rica, mainland Ecuador, Colombia, Guatemala, and Peru, although the last two are unquantified (G. Tiburcios-Pintos, Minicipio de Los Cabos, pers. comm., 2012; S. Kelez, ecOceanica, pers. comm., 2012).

Nesting at the largest beach in the range of this DPS (Colola, Michoacán, Mexico) has shown an upward trend since 1996. The observed increase at Colola may have resulted from the onset of nesting beach protection in 1979—as is suggested by the similarity in timing between the onset of beach conservation and the age-to-maturity for green turtles in Pacific Mexico. The initial upward turn in annual nesting was seen in 1996, about 17 years after the initiation of a nesting beach protection program (Cliffton *et al.,* 1982; Alvarado-Díaz *et al.,* 2001), and growth data from the Gulf of California suggest that green turtles in this DPS mature at 15–25 years (Seminoff *et al.,* 2002a). Although not a clear cause of the increasing nesting trend, the consistency in timing is nonetheless compelling. The presidential decree protecting all sea turtles of Mexico (Pesca, 1990) certainly helped the situation, but this occurred much later than the start of nesting beach conservation. It is more likely that this national legislation has had its greatest positive impact at the foraging areas, where green turtle hunting was once rampant.

With regard to spatial structure, genetic sampling in the eastern Pacific has been extensive and the coverage in this region is substantial considering the relatively low population sizes of most eastern Pacific nesting sites. Within this DPS there is significant population substructuring. Four regional genetic stocks have been identified in the eastern Pacific (P. Dutton, NMFS, unpubl. data): Revillagigedos Archipelago (Mexico), Michoacán (Mexico), Costa Rica, and the Galápagos Islands (Ecuador). There is a relatively high level of spatial structure and the presence of rare/unique haplotypes at each nesting site stock. Green turtles from multiple nesting beach origins commonly mix at feeding areas in the Gulf of California (Nichols, 2003; P. Dutton, NMFS, unpubl. data). A recent study using nuclear single nucleotide polymorphisms (a DNA sequence variation occurring commonly within a population) and microsatellite markers investigated the genetic stock structure among five Pacific green turtle nesting populations. They found significant structure between their two eastern Pacific sample sites (Galápagos and Mexico), suggesting that male-mediated gene flow between regional nesting stocks is limited (Roden *et al.,* 2013).

Flipper tag recoveries show 94 tag returns from foraging areas that were applied at two primary nesting sites, Michoacán Mexico and the Galápagos Islands, Ecuador. Two apparent groupings suggest some North/South structure. Forty-nine satellite tracks of green turtles in the eastern Pacific show apparent track clustering in Northwest Mexico to Southern United States, and in the Southeast Pacific, from the Galápagos Islands to the high seas and to the Central American mainland. There are too few satellite tracks to provide solid information on spatial structure. Within-region variation in demographic features also suggests a level of spatial structure for the East Pacific DPS. Among all nesting

assemblages in the East Pacific DPS, the Revillagigedos Islands stands out as uniquely different from the remaining areas.

With regard to diversity and resilience, the East Pacific DPS has substantial nesting at both insular and continental nesting sites. The presence of year round nesting at some sites, and non-overlapping nesting seasons at others, suggest that the nesting phenology of green turtles in this DPS may help buffer in geologic time against climate change, both in terms of increased mean incubation temperatures on beaches and in terms of impact to storms and other seasonal events. The nesting season in Michoacán runs from October through January (Alvarado-Díaz and Figueroa, 1990); in the Revillagigedos Islands nesting occurs from March through November with a peak in April/May (Awbrey *et al.,* 1984; Brattstrom, 1982) and in the Galápagos, nesting occurs year-round with a peak from January to March (Zárate *et al.,* 2013). Year-round nesting has also been confirmed for some areas in Costa Rica.

There is a range of beach shade levels depending on the nesting beach. At some sites such as those in the Revillagigedos Islands and beaches in Mexico, the beaches have little vegetation and nests are commonly laid in full-sun areas. On the other hand, the beaches in Costa Rica are highly shaded and nests are commonly deposited deep in the coastal scrub bushes and trees. There are also intermediate sites, such as those in the Galápagos, which have a mix of full sun and shade sites on any given beach. While the exposed beaches are more likely to suffer from the impacts of climate change, those in shaded areas may be subjected to less heating.

B. Summary of Factors Affecting the East Pacific DPS

1. Factor A: The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

a. Terrestrial Zone

The largest threat on nesting beaches in the East Pacific DPS is reduced availability of habitat due to heavy armament and subsequent erosion. In addition, while nesting beaches in Costa Rica, Revillagigedos Islands, and the Galápagos Islands are less affected by coastal development than green turtle nesting beaches in other regions around the Pacific, several of the secondary green turtle nesting beaches in México suffer from coastal development. For example, effects of coastal development are especially acute at Maruata, a site with heavy tourist activity and foot traffic during the nesting season (Seminoff, 1994). Nest destruction due to human presence is also a threat to nesting beaches in the Galapágos Islands (Zárate *et al.,* 2006). However, such threats vary by site (Zárate, 2012). Insular sites have very low levels of human interference at nesting beaches, although turtles may be affected in foraging areas. The low impacts at insular nesting sites suggest that these areas may serve as nesting refugia if management regimes change and/or poaching at continental sites increases.

b. Neritic/Oceanic Zones

With respect to environmental degradation in the marine environment, coastal habitats along the continental and insular shores of the eastern Pacific are relatively pristine, although green turtles in San Diego Bay, at the north edge of their range, have high levels of contaminants (Komoroske *et al.,* 2011; 2012). However, the nutrient flow and structure within seagrass communities in many coastal areas are likely modified today due to the depletion of green turtles which, during times of higher abundance, would have been keystone consumers in these habitats (Bjorndal, 1980; Thayer *et al.,* 1992; Seminoff *et al.,* 2012b). Although the impacts of ongoing and proposed human activities are difficult to quantify, recent human population increases in many areas underscore the need to develop and implement management strategies that balance development and economic activities with the needs of green turtles.

In summary, within Factor A we find that the East Pacific DPS of the green turtle is negatively affected by ongoing changes in both its terrestrial and marine habitats as a result of land and water use practices. We also find that coastal development, beachfront lighting, and heavy foot traffic consistently affect hatchlings and nesting turtles on a small portion of this DPS.

2. Factor B: Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

In some countries and localities within the range of the East Pacific DPS, harvest of green turtle eggs is legal, while in others it is illegal but persistent due to lack of enforcement. The impact of egg harvest is exacerbated by the high monetary value of eggs, consistent market demand, and severe poverty in many of the countries in the Eastern Pacific Region where sea turtles are found. Egg harvest is a major conservation challenge at several sites in Costa Rica, including Nombre de Jesus and Zapotillal Beaches, where 90 percent of the eggs were taken by egg collectors during one particular study (Blanco, 2010). Egg harvest is also believed to occur at unprotected nesting sites in Mexico, Guatemala, El Salvador, and Nicaragua (NMFS and USFWS, 2007). Indeed, green turtles are hunted in many areas of northwest Mexico despite legal protection (Nichols *et al.,* 2002; Seminoff *et al.,* 2003; J. Seminoff, NMFS, pers. obs., 2012). Mancini and Koch (2009) describe a black market that killed tens of thousands of green turtles each year in the Eastern Pacific Region.

Sea turtles were, and continue to be, harvested primarily for their meat, although other products have served important non-food uses. Sea turtle oil was for many years used as a cold remedy and the meat, eggs and other products have been highly-valued for their aphrodisiacal qualities, beliefs that strongly persist in the countries bordering the East Pacific DPS.

3. Factor C: Disease or Predation

FP is virtually non-existent in green turtles within the East Pacific DPS (Koch *et al.,* 2007), and predation occurs at low levels. In the Galápagos Islands there is depredation on eggs and hatchlings by feral pigs (*Sus* sp.) and beetles (order Coleoptera), although predation levels are not reported (Zárate *et al.,* 2003; 2006). There are accounts of jaguars (*Panthera onca*) killing adult female green turtles (L. Fonseca, National University of Costa Rica, unpubl. data, 2009) at beaches in Costa Rica, but this is not a major problem for the DPS.

4. Factor D: Inadequacy of Existing Regulatory Mechanisms

The following countries have laws to protect green turtles: Chile, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Peru, and the United States. In addition, at least 10 international treaties and/or regulatory mechanisms apply to the conservation of green turtles in the East Pacific DPS. Overall, regulatory mechanisms for green turtles in the East Pacific DPS are inconsistent. While there are numerous substantive and/or improving conservation efforts, especially on the primary nesting beaches, and this may be reflected in the recent increases in the number of nesting females, many concerns remain due to limited enforcement of existing laws and marine protected areas as well as extensive fishery bycatch, especially in coastal waters. The analysis of existing regulatory mechanisms assumed that all would remain in place at their current

levels; however, some regulatory mechanisms, including laws and international treaties, are not realizing their full potential because they are not enforced adequately in all countries occupied by the DPS.

While most of the major nesting beaches are monitored, some of the management measures in place are inadequate and may be inappropriate. On some beaches, hatchling releases are coordinated with the tourist industry or nests are being trampled on or are unprotected. The largest threat on the nesting beaches, reduced availability of habitat due to heavy armament and subsequent erosion, is just beginning to be addressed, but without immediate attention may ultimately result in the demise of the highest density beaches. Further, it is suspected that there are substantial impacts from illegal, unreported, and unregulated fishing, which we are unable to mitigate without additional fisheries management efforts and international collaborations. While conservation projects for this population have been in place since 1978 for some important areas, efforts in other areas are still being developed to address major threats, including fisheries bycatch and long-term nesting habitat protection.

Bycatch has not been thoroughly evaluated but it is largely known that most fishermen either improperly implement TEDs or remove them entirely from their trawls. As was the case with sea turtle meat and egg collection, an almost total lack of enforcement of bycatch mitigation measures by local authorities only helps to confound the problem. Additionally, TEDs are not a requirement for artisanal shrimping boats which, with today's technology, are becoming more 'industrial' in ability and have been reported to catch large numbers of sea turtles. It is unlikely that bycatch mortality can be sufficiently reduced across the range of the DPS in the near future because of the diversity and magnitude of the fisheries operating in the DPS, the lack of comprehensive information on fishing distribution and effort, limitations on implementing demonstrated effective conservation measures, geopolitical complexities, limitations on enforcement capacity, and lack of availability of comprehensive bycatch reduction technologies.

The Status Review did not reveal regulatory mechanisms in place to specifically address impacts to the nesting beach, marine pollution, sea level rise, and effects of climate change that continue to contribute to the extinction risk of this DPS.

5. Factor E: Other Natural or Manmade Factors Affecting Its Continued Existence

a. Incidental Bycatch in Fishing Gear

Incidental capture in artisanal and commercial fisheries is a significant threat to the survival of green turtles throughout the Eastern Pacific Ocean. The primary gear types involved in these interactions include longlines, drift nets, set nets, and trawl fisheries. These are employed by both artisanal and industrial fleets, and target a wide variety of species including tunas (*Thunnus* sp.), sharks (class Chondrichthyes), sardines (*Sardinella* sp.), swordfish (*Xiphias gladius*), and mahi mahi (*Coryphaena hippurus*).

In the Eastern Pacific Ocean, particularly areas in the southern portion of the range of this DPS, significant bycatch has been reported in artisanal gill net and longline shark and mahi mahi fisheries operating out of Peru (Kelez *et al.,* 2003; Alfaro-Shigueto *et al.,* 2006) and, to a lesser extent, Chile (Donoso and Dutton, 2010). The fishing industry in Peru is the second largest economic activity in the country and, over the past few years, the longline fishery has rapidly increased. During an observer program in 2003/2004, 588 sets were observed during 60 trips, and 154 sea turtles were taken as bycatch. Green turtles were the second most common sea turtle species in these interactions. In many cases, green turtles are kept on board for human consumption; therefore, the mortality rate in this artisanal longline fishery is likely high because sea turtles are retained for future consumption or sale.

Koch *et al.* (2006) reported green turtle bycatch-related dead strandings numbering in the hundreds in Bahia Magdalena. In Baja California Sur, Mexico, from 2006–2009 small-scale gill-net fisheries caused massive green turtle mortality at Laguna San Ignacio, where Mancini *et al.* (2012) estimated that over 1,000 turtles were killed each year in nets set for guitarfish.

Bycatch in coastal areas occurs principally in shrimp trawlers, gill nets and bottom longlines (*e.g.,* Orrego and Arauz, 2004). However, since 1996, all countries from Mexico to Ecuador declared the use of TEDs as mandatory for all industrial fleets to meet the requirements to export shrimp to the United States under the U.S. Magnuson-Stevens Fishery Conservation and Management Act (Helvey and Fahy, 2012). Since then, bycatch has not been thoroughly evaluated but it is widely believed that most fishers either improperly implement TEDs or remove them entirely from their trawls.

Additionally, TEDs are not required for artisanal shrimping boats, which with today's technology, are becoming more 'industrial' in ability and have been reported to catch large numbers of sea turtles (A. Zavala, Universidad de Sinaloa, pers. comm., 2012). Bottom-set longlines and gill nets, both artisanal and industrial, also interact frequently with sea turtles, and can have devastating mortality rates, such as has been the case in artisanal fisheries of Baja California, Mexico (Peckham *et al.,* 2007). In purse seine fisheries, which typically target tuna and other large pelagic fish species, the highest rate of turtles are captured with ''log sets'' around natural floating objects or Fish Aggregation Devices (Hall, 1998).

b. Pollution

Other threats such as debris ingestion (Seminoff *et al.,* 2002c) and boat strikes (P. Dutton, NMFS, pers. comm., 2012; NMFS stranding records, unpubl.) also affect green turtles in the Eastern Pacific. Red tide poisoning is also a threat to this species (Delgado-Trejo and Alvarado-Figueroa, 2012).

c. Effects of Climate Change and Natural Disasters

Effects of climate change include, among other things, sea surface temperature increases, the alteration of thermal sand characteristics of beaches (from warming temperatures), which could result in the reduction or cessation of male hatchling production (Hawkes *et al.,* 2009; Poloczanska *et al.,* 2009), and a significant rise in sea level, which could significantly restrict green turtle nesting habitat. While sea turtles have survived past eras that have included significant temperature fluctuations, future climate change is expected to happen at unprecedented rates, and if turtles cannot adapt quickly they may face local to widespread extirpations (Hawkes *et al.,* 2009). Impacts from global climate change induced by human activities are likely to become more apparent in future years (IPCC, 2007). However, at the primary nesting beach in Michoacán, Mexico (Colola), the beach slope aspect is extremely steep and the dune surface at which the vast majority of nests are laid is well-elevated. This site is likely buffered against short-term sea level rise as a result of climate change. In addition, many nesting sites are along protected beach faces, out of tidal surge pathways. For example, multiple nesting sites in Costa Rica and in the Galápagos Islands are on beaches that are protected from major swell coming in from the ocean.

Within Factor E, we find that fishery bycatch that occurs throughout the eastern Pacific Ocean, particularly bycatch mortality of green turtles from nearshore gill net fisheries, is a significant threat to the persistence of this DPS.

C. Conservation Efforts for the East Pacific DPS

There are a multitude of NGOs and conservation networks whose efforts are raising awareness about sea turtle conservation.

Protection of green turtles is provided by local marine reserves throughout the region. In addition, sea turtles may benefit from the following broader regional efforts: (1) The Eastern Tropical Pacific (ETP) Marine Corridor (CMAR) Initiative supported by the governments of Costa Rica, Panama, Colombia, and Ecuador, which is a voluntary agreement to work towards sustainable use and conservation of marine resources in these countries' waters; (2) the ETP Seascape Program managed by Conservation International that supports cooperative marine management in the ETP, including implementation of the CMAR; (3) the IATTC and its bycatch reduction efforts that are among the world's finest for regional fisheries management organizations; (4) the IAC, which is designed to lessen impacts on sea turtles from fisheries and other human impacts; and (5) the Permanent Commission of the South Pacific (Lima Convention), which has developed an ''Action Plan for Sea Turtles in the Southeast Pacific.''

There are indications that wildlife enforcement branches of local and national governments are stepping up their efforts to enforce existing laws, although successes in stemming sea turtle exploitation through legal channels are few and far between.

D. Extinction Risk Assessment and Findings for the East Pacific DPS

The East Pacific DPS is characterized by moderate levels of green turtle nesting abundance (>20,000 nesting females) occurring in three primary regions, with Mexico having the largest number of nesting females at several sites (13,664 nesting females), followed by the Galápagos, Ecuador (3,603 nesting females), and Costa Rica (2,826 nesting females distributed among 26 nesting sites). Although trend information is lacking for the vast majority of sites, 25 years of monitoring at Michoacán, Mexico—the largest nesting aggregation in this DPS—shows an increasing trend since the population's low point in the mid-1980s. In addition to Mexico, data from the Galápagos Archipelago suggest a stable trend, and the largest-ever nesting numbers reported in Costa Rica suggest this site may be on the increase as well.

Genetic and demographic data show some substructuring among the populations, and nesting is well-distributed in the East Pacific DPS, occurring from the tip of the Baja California Peninsula to northern Peru. Such a broad latitudinal range may be advantageous to green turtles in this DPS in the face of global climate change. Likewise, with year round nesting at several sites and non-overlapping nesting seasons at others, it appears that this DPS may benefit from nesting season temporal diversity in relation to population resilience. Lastly, nesting at both continental and insular sites provides a degree of diversity as well as resilience, with some insular sites providing relatively threat-free nesting refugia within this DPS's range.

Nevertheless, green turtles continue to be affected by a variety of threats within the range of the East Pacific DPS. These include harvest of eggs and turtles for food and non-food uses, bycatch in coastal and offshore marine fisheries gear, coastal development, beachfront lighting, and heavy foot traffic. Although the situation has improved to some extent, the harvest of turtles and their eggs continues throughout much of the range, although more problematic outside of the Galápagos Islands, particularly in Central America (egg harvest) and Mexico (harvest of foraging turtles). Mortality from diseases such as FP is not a problem in the Eastern Pacific, but depredation by natural predators is a very large concern, particularly in the Galápagos and, to a lesser extent, in Costa Rica. Green turtle interactions and mortalities with coastal and offshore fisheries in the eastern Pacific region are of concern and are considered an impediment to green turtle recovery in the East Pacific DPS. Yet despite these concerns, the largest nesting sites appear to be increasing.

Conservation actions, national laws, and international instruments have provided the foundation for what appears to be an ongoing population recovery in the region, particularly in Mexico, although work remains to ensure continued recovery. Further, our analysis did not consider the scenario in which current laws or regulatory mechanisms were not continued. Given the conservation dependence of the species, without mechanisms in place to continue conservation efforts and funding streams in this DPS, some threats could increase and population trends could be affected.

For the above reasons, we propose to list the East Pacific DPS as threatened. We do not find the DPS to be in danger of extinction presently because of high nesting abundance and increasing trends; however, the continued threats from coastal and offshore fisheries are likely to endanger the DPS within the foreseeable future.

XVIII. Proposed Determinations

Section 4(b)(1) of the ESA requires that the Services make listing determinations based solely on the best scientific and commercial data available after conducting a review of the status of the species and taking into account those efforts, if any, being made by any state or foreign nation, or political subdivisions thereof, to protect and conserve the species (16 U.S.C. 1533(b)(1)). We have reviewed the best available scientific and commercial information, including information included in the petition, the status review report, and other published and unpublished information; and we have consulted with species experts and individuals familiar with green turtles and their habitat.

Based on the best available scientific and commercial information, we identify 11 green turtle DPSs: Central North Pacific, North Atlantic, Mediterranean, South Atlantic, Southwest Indian, North Indian, East Indian-West Pacific, Central West Pacific, Southwest Pacific, Central South Pacific, and East Pacific. We find that the purposes of the Act would be furthered by managing this wide-ranging species as separate units under the DPS authority, in order to allow for enhanced protections where needed. Based on a review of the five factors contained in ESA section 4(a)(1), we find that the best available science supports the listing status of ''endangered'' for three of the DPSs and therefore conclude that the species as a whole no longer meets the definition of a ''threatened species'' throughout its range. We propose to remove the current species-wide listing and to list 11 DPSs as threatened or endangered. We propose to list the North Atlantic, South Atlantic, Southwest Indian, North Indian, East Indian-West Pacific, Southwest Pacific, Central North Pacific, and East Pacific DPSs as threatened, and the Mediterranean, Central West Pacific, and Central South Pacific DPSs as endangered for the reasons described above for each DPS.

Regarding the February 16, 2012 petition from the Association of Hawaiian Civic Clubs to identify the Hawaiian green turtle population as a DPS and ''delist'' the DPS under the

ESA, as described above we conclude that the petitioned entity qualifies as a DPS (Central North Pacific DPS), but that the DPS should be listed as threatened for the reasons discussed above. We therefore deny the petition seeking its delisting.

XIX. Significant Portion of the Range

Under the ESA and our implementing regulations, a species may warrant listing if it is endangered or threatened throughout all or a significant portion of its range. See the Final Policy on Interpretation of the Phrase ''Significant Portion of Its Range'' in the Endangered Species Act's Definitions of ''Endangered Species'' and ''Threatened Species'' (79 FR 37577, July 1, 2014). Under that policy, we only need to consider whether listing may be appropriate on the basis of the ''significant portion of its range'' language if the rangewide analysis does not lead to a determination to list as threatened or endangered. Because we have determined that each DPS of green turtle is either threatened or endangered throughout all of its range, no portion of its range can be ''significant'' for purposes of the definitions of ''endangered species'' and ''threatened species.''

XX. Effects of Listing

Conservation measures provided for species listed as endangered or threatened under the ESA include, but are not limited to, recovery plans and actions (prepared pursuant to 16 U.S.C. 1536(f)) and the actions recommended in them; designation of critical habitat if prudent and determinable (16 U.S.C. 1533(a)(3)(A)(i)); Federal agency requirements to consult with the Services and to ensure its actions are not likely to jeopardize the continued existence of the species or result in the destruction or adverse modification of designated critical habitat (16 U.S.C. 1536(a)(2)); and prohibitions on taking (16 U.S.C. 1538). Recognition of the species' plight through listing promotes conservation actions by Federal and state agencies, foreign entities, private groups, and individuals. Should the proposed listings be made final, a recovery plan or plans may be developed, unless we find that such plan would not promote the conservation of the species.

A. Identifying Section 7 Conference and Consultation Requirements

Section 7(a)(4) (16 U.S.C. 1536(a)(4)) of the ESA and its implementing regulations (50 CFR 402) require Federal agencies to confer with the Services on actions likely to jeopardize the continued existence of species proposed for listing, or that result in the destruction or adverse modification of proposed critical habitat. If a proposed species is ultimately listed, section 7(a)(2) requires Federal agencies to consult with the Services on any action they authorize, fund, or carry out if those actions may affect the listed species or its critical habitat; Federal agencies must insure that such actions are not likely to jeopardize the continued existence of the species or result in destruction or adverse modification of designated critical habitat (16 U.S.C. 1536(a)(2); 50 CFR 402). Because green turtles are currently listed throughout their range, requirements for initiating consultation will not change if the current listing is reclassified and revised to reflect recognition of multiple DPSs. Examples of Federal actions that affect green turtles include, but are not limited to: Dredging and channelization, beach and nearshore construction, pile-driving, water quality standards, power plants, vessel traffic, military activities, and fisheries management practices.

B. Critical Habitat

Section 3(5)(A) of the ESA defines critical habitat as ''(i) the specific areas within the geographical area occupied by the species, at the time it is listed . . . on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed . . . upon a determination by the Secretary that such areas are essential for the conservation of the species (16 U.S.C. 1532(5)).'' Section 3(3) of the ESA also defines the terms ''conserve,'' ''conserving,'' and ''conservation'' to mean ''to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this chapter Act are no longer necessary (16 U.S.C. 1532(3)).''

Section 4(a)(3)(A)(i) of the ESA, as amended, and implementing regulations (50 CFR 424.12(a)), require that, to the maximum extent prudent and determinable, the Secretary shall designate critical habitat at the time the species is determined to be an endangered or threatened species. Designations of critical habitat must be based on the best scientific data available and must take into consideration the economic, national security, and other relevant impacts of specifying any particular area as critical habitat (16 U.S.C. 1533(b)(2)). The Services' regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

The identification and mapping of critical habitat is not expected to increase the degree of threat from human activity, such as take of turtles or eggs. In the absence of finding that the designation of critical habitat would increase threats to a species, a finding that designation may be prudent is warranted if there are any benefits to a critical habitat designation. Here, the potential benefits of designation would include (1) Triggering consultation under section 7 of the ESA for Federal actions in unoccupied designated critical habitat; (2) focusing conservation activities on the most essential features and areas; (3) providing educational benefits to State or county governments or private entities; and (4) preventing people from causing inadvertent harm to the species.

Because we have determined that the designation of critical habitat will not likely increase the degree of threat to the species and may provide some measure of benefit, we determine that designation of critical habitat may be prudent for the green turtle, subject to review of information in connection with the designation.

Our regulations (50 CFR 424.12(a)(2)) state that critical habitat is not determinable when one or both of the following situations exists: (1) Information sufficient to perform required analysis of the impacts of the designation is lacking; or (2) the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat. At this point, we are still in the process of acquiring the information needed to assess the critical habitat designation. Accordingly, we find designation of critical habitat to be not determinable at this time.

A final regulation designating critical habitat is generally due concurrently with a final regulation listing a species as endangered or threatened (16 U.S.C. 1533(b)(6)(C)). The statute does not mandate that the proposed rule to designate critical habitat has to be published concurrent with the proposed listing rule, and thus a proposed rule designating critical habitat may be

published following the proposed listing rule (but at least 90 days before the intended effective date of the rule (16 U.S.C. 1533(b)(5)(A)). Upon a finding that designation of critical habitat is not determinable, the Services have an additional year to finalize a proposed critical habitat designation (16 U.S.C. 1533(b)(6)(C)(ii)). In effect, then, the Services have up to one year following final listing of the species to finalize a critical habitat designation where such habitat is initially not determinable. To ensure that the Services may make a timely proposal based on the best scientific and commercial information available, we invite public input on features and areas that may meet the definition of critical habitat for the DPSs proposed for listing that occur in U.S. waters or its territories. These include the North Atlantic (southeastern United States and Puerto Rico), South Atlantic (U.S. Virgin Islands), Central South Pacific (American Samoa), Central West Pacific (CNMI and Guam), Central North Pacific, and East Pacific DPSs (California).

The Services previously designated critical habitat for green turtles in waters surrounding Culebra Island, Puerto Rico from the mean high water line seaward to 3 nautical miles (5.6 km; 63 FR 46693, September 2, 1998). These waters include Culebra's outlying Keys, including Cayo Norte, Cayo Ballena, Cayos Geniquí, Isla Culebrita, Arrecife Culebrita, Cayo de Luis Peña, Las Hermanas, El Mono, Cayo Lobo, Cayo Lobito, Cayo Botijuela, Alcarraza, Los Gemelos, and Piedra Steven, and are within the range of the North Atlantic DPS.

The ESA does not speak directly to the status of designated critical habitat when the agency later amends a species listing by dividing it into constituent DPSs. Notably, critical habitat does not lose its biological and conservation relevance to the relevant listed DPS (here, the North Atlantic) simply because the species listing is amended. Moreover, carrying forward an existing critical habitat designation can enhance the protection provided to the listed DPS because the carried-forward designation protects habitat features essential to the species' recovery from destruction or adverse modification in section 7 consultations. Given that Congress has not spoken directly to this issue in the statute, we find that the benefits of designated critical habitat, the ESA's broad purpose to conserve the ecosystems upon which endangered and threatened species depend, and taking a reasonable precautionary approach, the ESA should be construed to provide in these circumstances for keeping existing critical habitat designation in place as a transitional matter until the designation is re-promulgated or amended through a further rulemaking. Therefore, critical habitat remains in effect for the listed North Atlantic DPS in order to preserve its conservation value, as the designated critical habitat continues to support the DPS's important biological functions (*e.g.*, foraging habitat, developmental habitat, and shelter/refuge from predators). The Services have not designated critical habitat within the range of the other ten green turtle DPSs.

C. Take Prohibitions

All of the take prohibitions of section 9(a)(1) of the ESA (16 U.S.C. § 1538(a)(1)) will automatically apply to the three DPSs proposed to be listed as endangered, the Mediterranean, Central West Pacific and Central South Pacific, if the proposal to list them as endangered is finalized. These include prohibitions against importing, exporting, engaging in foreign or interstate commerce, or ''taking'' of the species. ''Take'' is defined under the ESA as ''to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct (16 U.S.C. § 1532(19)).'' These prohibitions apply to any ''person'' (as defined by the ESA) subject to the jurisdiction of the United States, including in the United States, its territorial sea, or on the high seas. Certain exceptions apply to employees of the Services, other Federal land management agencies, and State conservation agencies. In addition, 50 CFR part 224.104 would apply to the proposed endangered DPSs. Some of the current provisions apply only to areas in the Gulf of Mexico and U.S. Atlantic; however, future provisions may apply to any endangered DPS, without regard to its geographic boundaries.

In the case of threatened species, ESA section 4(d) authorizes the Secretary to issue regulations deemed necessary and appropriate for the conservation of species. The Services already have in place take prohibitions and exceptions that apply to threatened species of sea turtles, set forth at 50 CFR 17.42(b), 223.205, 223.206, and 223.207. These existing take prohibitions and exceptions will continue to remain in effect and apply to those DPSs listed as threatened, which are the North Atlantic, South Atlantic, Southwest Indian, North Indian, East Indian-West Pacific, Southwest Pacific, Central North Pacific, and East Pacific DPSs.

Pursuant to section 10 of the ESA, we may issue permits to carry out otherwise prohibited activities involving endangered and threatened wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 50 CFR 223.206. With regard to endangered wildlife, a permit may be issued for the following purposes: For scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities. There are also certain statutory exemptions from the prohibitions, which are found in sections 9 and 10 of the ESA.

D. Identification of Those Activities That Would Constitute a Violation of Section 9 of the ESA

On July 1, 1994, the Services published a policy (59 FR 34272) that requires us to identify, to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the ESA. The intent of this policy is to increase public awareness of the effect of a listing on proposed and ongoing activities within a species' range. We will identify, to the extent known at the time of the final rule, those specific activities that, although they may appear to pose impacts to the species, will not be considered likely to result in violation of section 9, as well as activities that will be considered likely to result in violation. Based on currently available information, we conclude that the activities most likely to violate the section 9 prohibitions against ''take'' of endangered green turtle DPSs include, but are not limited to, the following: (1) Importation or exportation of any part of a green turtle or green turtle eggs; (2) directed take of green turtles, including fishing for, capturing, handling, or possessing green turtles, eggs, or parts; (3) sale of green turtles, eggs, or parts; (4) destruction or modification of green turtle habitat, including nesting beaches, beaches used for basking, and developmental, foraging habitat, and migratory habitat that actually kills or injures green turtles (50 CFR 222.102); and (5) indirect take of green turtles in the course of otherwise lawful activities, such as fishing, dredging, coastal construction, vessel traffic, and discharge of pollutants. We emphasize that whether a violation results from a particular activity depends upon the facts and circumstances of each incident. The mere fact that an activity may fall within one of these categories does not mean that the specific activity will cause a violation; due to such factors as location and scope, specific actions may not result in direct or indirect adverse effects on the species. Further, an

activity not listed may in fact result in a violation. We also emphasize that because the green turtle is currently listed, we do not anticipate changes in the activities that would constitute a violation of section 9. Possible exceptions include those actions affecting the breeding populations in Florida and the Pacific coast of Mexico, which were heretofore listed as endangered. Under the final rule, these populations would become part of the threatened North Atlantic and East Pacific DPSs, respectively, and therefore will be protected by the existing protective regulations.

XXI. Peer Review

The intent of the peer review policy is to ensure that listings are based on the best scientific and commercial data available. In December 2004, the Office of Management and Budget (OMB) issued a Final Information Quality Bulletin for Peer Review establishing minimum peer review standards, a transparent process for public disclosure of peer review planning, and opportunities for public participation. The OMB Bulletin, implemented under the Information Quality Act (Public Law 106–554), is intended to enhance the quality and credibility of the Federal government's scientific information, and applies to influential or highly influential scientific information disseminated on or after June 16, 2005. To satisfy our requirements under the OMB Bulletin, we obtained independent peer review of the status review report from 15 independent specialists in the academic and scientific community. All peer reviewer comments were addressed prior to dissemination of the final status review report and publication of this proposed rule.

XXII. Classification

A. National Environmental Policy Act

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation* v. *Andrus*, 657 F. 2d 829 (6th Cir. 1981), NOAA has concluded that ESA listing actions are not subject to the environmental assessment requirements of the National Environmental Policy Act (See NOAA Administrative Order 216–6). Similarly, USFWS has determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act, need not be prepared in connection with regulations pursuant to section 4(a) of the ESA. USFWS published a notice outlining its reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

B. Executive Order 12866, Regulatory Flexibility Act, and Paperwork Reduction Act

As noted in the Conference Report on the 1982 amendments to the ESA, economic impacts cannot be considered when assessing the status of a species. Therefore, the economic analysis requirements of the Regulatory Flexibility Act are not applicable to the listing process. In addition, this proposed rule is exempt from review under Executive Order 12866. This proposed rule does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act.

C. Executive Order 13132, Federalism

In accordance with E.O. 13132, we determined that this proposed rule does not have significant Federalism effects and that a Federalism assessment is not required. In keeping with the intent of the Administration and Congress to provide continuing and meaningful dialogue on issues of mutual state and Federal interest, this proposed rule will be given to the relevant state agencies in each state in which the species is believed to occur, and those states will be invited to comment on this proposal. We have considered, among other things, Federal, State, and local conservation measures. As we proceed, we intend to continue engaging in informal and formal contacts with the State, and other affected local or regional entities, giving careful consideration to all written and oral comments received.

List of Subjects

50 CFR Part 17

Endangered and threatened wildlife and plants.

50 CFR Parts 223 and 224

Endangered and threatened species, Exports, Imports, Transportation.

Dated: March 11, 2015.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

Dated: February 25, 2015.

Stephen Guertin,

Acting Director, U.S. Fish and Wildlife Service.

For the reasons set out in the preamble, 50 CFR parts 17, 223, and 224 are proposed to be amended as follows:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. In § 17.11(h) revise the entry for ''Sea turtle, green'', which is in alphabetical order under REPTILES, to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) The ''List of Endangered and Threatened Wildlife'' is provided below:

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
REPTILES							
*	*	*	*	*	*	*	
Sea turtle, green (Central North Pacific DPS).	*Chelonia mydas*	Central North Pacific Ocean.	Green sea turtles originating from the Central North Pacific Ocean, bounded by the following coordinates: 41° N., 169° E. in the northwest; 41° N., 143° W. in the northeast; 9° N., 125° W. in the southeast; and 9° N., 175° W. in the southwest.	T	*[INSERT FR CITATION WHEN PUBLISHED AS A FINAL RULE].*	NA	17.42(b), 223.205, 223.206, 223.207

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Sea turtle, green (Central South Pacific DPS).	*Chelonia mydas*	Central South Pacific Ocean.	Green sea turtles originating from the Central South Pacific Ocean, bounded by the following coordinates: 9° N., 175° W. in the northwest; 9° N., 125° W. in the northeast; 40° S., 96° W. in the southeast; 40° S., 176° E. in the southwest; and 13° S., 171° E. in the west.	E	*[INSERT FR CITATION WHEN PUBLISHED AS A FINAL RULE].*	NA	224.104
Sea turtle, green (Central West Pacific DPS).	*Chelonia mydas*	Central West Pacific Ocean.	Green sea turtles originating from the Central West Pacific Ocean, bounded by the following coordinates: 41° N., 146° E. in the northwest; 41° N., 169° E. in the northeast; 9° N., 175° W. in the east; 13° S., 171° E. in the southeast; along the northern coast of the island of New Guinea; and 4.5° N., 129° E. in the west.	E	*[INSERT FR CITATION WHEN PUBLISHED AS A FINAL RULE].*	NA	224.104
Sea turtle, green (East Indian-West Pacific DPS).	*Chelonia mydas*	Eastern Indian and Western Pacific Oceans.	Green sea turtles originating from the Eastern Indian and Western Pacific Oceans, bounded by the following lines and coordinates: 41° N. Lat. in the north, 41° N., 146° E. in the northeast; 4.5° N., 129° E. in the southeast; along the southern coast of the island of New Guinea; along the western coast of Australia (west of 142° E. Long.); 40° S. Lat. in the south; and 84° E. Long. in the east.	T	*[INSERT FR CITATION WHEN PUBLISHED AS A FINAL RULE].*	NA	17.42(b), 223.205, 223.206, 223.207
Sea turtle, green (East Pacific DPS).	*Chelonia mydas*	East Pacific Ocean	Green sea turtles originating from the East Pacific Ocean, bounded by the following lines and coordinates: 41° N., 143° W. in the northwest; 41° N. Lat. in the north; along the western coasts of the Americas; 40° S. Lat. in the south; and 40° S., 96° W. in the southwest.	T	*[INSERT FR CITATION WHEN PUBLISHED AS A FINAL RULE].*	NA	17.42(b), 223.205, 223.206, 223.207
Sea turtle, green (Mediterranean DPS).	*Chelonia mydas*	Mediterranean Sea	Green sea turtles originating from the Mediterranean Sea, bounded by 5.5° W. Long. in the west.	E	*[INSERT FR CITATION WHEN PUBLISHED AS A FINAL RULE].*	NA	224.104
Sea turtle, green (North Atlantic DPS).	*Chelonia mydas*	North Atlantic Ocean	Green sea turtles originating from the North Atlantic Ocean, bounded by the following lines and coordinates: 48° N. Lat. in the north, along the western coasts of Europe and Africa (west of 5.5° W. Long.); north of 19° N. Lat. in the east; 19° N., 63.5° W. in the south; 10.5° N., 77° W. in the west; and along the eastern coasts of the Americas (north of 7.5° N., 77° W.).	T	*[INSERT FR CITATION WHEN PUBLISHED AS A FINAL RULE].*	226.208	17.42(b), 223.205, 223.206, 223.207
Sea turtle, green (North Indian DPS).	*Chelonia mydas*	North Indian Ocean	Green sea turtles originating from the North Indian Ocean, bounded by: Africa and Asia in the west and north; 84° E. Long. in the east; and the equator in the south.	T	*[INSERT FR CITATION WHEN PUBLISHED AS A FINAL RULE].*	NA	17.42(b), 223.205, 223.206, 223.207

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Sea turtle, green (South Atlantic DPS).	*Chelonia mydas*	South Atlantic Ocean	Green sea turtles originating from the South Atlantic Ocean, bounded by the following lines and coordinates: along the northern and eastern coasts of South America (east of 7.5° N., 77° W.); 10.5° N., 77° W. in the west; 19° N., 63.5° W. in the northwest; 19° N. Lat. in the northeast; 40° S., 19° E. in the southeast; and 40° S. Lat. in the south.	T	*[INSERT FR CITATION WHEN PUBLISHED AS A FINAL RULE].*	NA	17.42(b), 223.205, 223.206, 223.207
Sea turtle, green (Southwest Indian DPS).	*Chelonia mydas*	Southwest Indian Ocean	Green sea turtles originating from the Southwest Indian Ocean, bounded by the following lines: the equator to the north; 84° E. Long. to the east; 40° S. Lat. to the south; and 19° E. Long (and along the eastern coast of Africa) in the west.	T	*[INSERT FR CITATION WHEN PUBLISHED AS A FINAL RULE].*	NA	17.42(b), 223.205, 223.206, 223.207
Sea turtle, green (Southwest Pacific DPS).	*Chelonia mydas*	Southwestern Pacific Ocean	Green sea turtles originating from the Southwestern Pacific Ocean, bounded by the following lines and coordinates: along the southern coast of the island of New Guinea and the Torres Strait (east of 142° E Long.); 13° S., 171° E. in the northeast; 40° S., 176° E. in the southeast; and 40° S., 142° E. in the southwest.	T	*[INSERT FR CITATION WHEN PUBLISHED AS A FINAL RULE].*	NA	17.42(b), 223.205, 223.206, 223.207
*	*	*	*	*	*	*	

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

■ 3. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531–1543; subpart B, § 223.201–202 also issued under 16 U.S.C. 1361 *et seq.;* 16 U.S.C. 5503(d) for § 223.206(d)(9).

■ 4. Amend the table in § 223.102(e) by revising the entry ''Sea turtle, green'' under Sea Turtles to read as follows:

§ 223.102 Enumeration of threatened marine and anadromous species.

* * * * *

(e) The threatened species under the jurisdiction of the Secretary of Commerce are:

Species [1]			Citation(s) for listing determination(s)	Critical habitat	ESA Rules
Common name	Scientific name	Description of listed entity			
*	*	*	*	*	*
SEA TURTLES [2]					
Sea turtle, green (Central North Pacific DPS).	*Chelonia mydas*	Green sea turtles originating from the Central North Pacific Ocean, bounded by the following coordinates: 41° N., 169° E. in the northwest; 41° N., 143° W. in the northeast; 9° N., 125° W. in the southeast; and 9° N., 175° W in the southwest.	*[INSERT FR CITATION WHEN PUBLISHED AS A FINAL RULE].*	NA	17.42(b), 223.205, 223.206, 223.207.

Species [1]			Citation(s) for listing determination(s)	Critical habitat	ESA Rules
Common name	Scientific name	Description of listed entity			
Sea turtle, green (East Indian-West Pacific DPS).	*Chelonia mydas*	Green sea turtles originating from the Eastern Indian and Western Pacific Oceans, bounded by the following lines and coordinates: 41° N. Lat. in the north, 41° N., 146° E. in the northeast; 4.5° N., 129° E. in the southeast; along the southern coast of the island of New Guinea; along the western coast of Australia (west of 142° E. Long.); 40° S. Lat. in the south; and 84° E. Long. in the east.	*[INSERT FR CITATION WHEN PUBLISHED AS A FINAL RULE].*	NA	17.42(b), 223.205, 223.206, 223.207.
Sea turtle, green (East Pacific DPS).	*Chelonia mydas*	Green sea turtles originating from the East Pacific Ocean, bounded by the following lines and coordinates: 41° N., 143° W. in the northwest; 41° N. Lat. in the north; along the western coasts of the Americas; 40° S. Lat. in the south; and 40° S., 96° W. in the southwest.	*[INSERT FR CITATION WHEN PUBLISHED AS A FINAL RULE].*	NA	17.42(b), 223.205, 223.206, 223.207.
Sea turtle, green (North Atlantic DPS).	*Chelonia mydas*	Green sea turtles originating from the North Atlantic Ocean, bounded by the following lines and coordinates: 48° N. Lat. in the north, along the western coasts of Europe and Africa (west of 5.5° W. Long.); north of 19° N. Lat. in the east; 19° N., 63.5° W. in the south; 10.5° N., 77° W. in the west; and along the eastern coasts of the Americas (north of 7.5° N., 77° W.).	*[INSERT FR CITATION WHEN PUBLISHED AS A FINAL RULE].*	226.08	17.42(b), 2223.205, 223.206, 223.207.
Sea turtle, green (North Indian DPS).	*Chelonia mydas*	Green sea turtles originating from the North Indian Ocean, bounded by: Africa and Asia in the west and north; 84° E. Long. in the east; and the equator in the south.	*[INSERT FR CITATION WHEN PUBLISHED AS A FINAL RULE].*	NA	17.42(b), 223.205, 223.206, 223.207.
Sea turtle, green (South Atlantic DPS).	*Chelonia mydas*	Green sea turtles originating from the South Atlantic Ocean, bounded by the following lines and coordinates: along the northern and eastern coasts of South America (east of 7.5° N., 77° W.); 10.5° N., 77° W. in the west; 19° N., 63.5° W. in the northwest; 19° N. Lat. in the northeast; 40° S., 19° E. in the southeast; and 40° S. Lat. in the south.	*[INSERT FR CITATION WHEN PUBLISHED AS A FINAL RULE].*	NA	17.42(b), 223.205, 223.206, 223.207.
Sea turtle, green (Southwest Indian DPS).	*Chelonia mydas*	Green sea turtles originating from the Southwest Indian Ocean, bounded by the following lines: the equator to the north; 84° E. Long. to the east; 40° S. Lat. to the south; and 19° E. Long (and along the eastern coast of Africa) in the west.	*[INSERT FR CITATION WHEN PUBLISHED AS A FINAL RULE].*	NA	17.42(b), 223.205, 223.206, 223.207.
Sea turtle, green (Southwest Pacific DPS).	*Chelonia mydas*	Green sea turtles originating from the Southwestern Pacific Ocean, bounded by the following lines and coordinates: along the southern coast of the island of New Guinea and the Torres Strait (east of 142° E Long.); 13° S., 171° E. in the northeast; 40° S., 176° E. in the southeast; and 40° S., 142° E. in the southwest.	*[INSERT FR CITATION WHEN PUBLISHED AS A FINAL RULE].*	NA	17.42(b), 223.205, 223.206, 223.207.
*	*	*	*	*	*	*

[1] Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, see 61 FR 4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, see 56 FR 58612, November 20, 1991).

[2] Jurisdiction for sea turtles by the Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, is limited to turtles while in the water.

PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

■ 5. The authority citation for part 224 continues to read as follows:

Authority: 16 U.S.C. 1531–1543 and 16 U.S.C. 1361 *et seq.*

■ 6. Amend § 224.101(h) by revising the entry for ''Sea turtle, green'' under Sea Turtles to read as follows:

§ 224.101 Enumeration of endangered marine and anadromous species.

* * * * *

(h) The endangered species under the jurisdiction of the Secretary of Commerce are:

Species [1]			Citation(s) for listing determination(s)	Critical habitat	ESA rules
Common name	Scientific name	Description of listed entity			
*	*	* * *	*		*
SEA TURTLES [2]					
Sea turtle, green (Central South Pacific DPS).	*Chelonia mydas*	Green sea turtles originating from the Central South Pacific Ocean, bounded by the following coordinates: 9° N., 175° W. in the northwest; 9° N., 125° W. in the northeast; 40° S., 96° W. in the southeast; 40° S., 176° E. in the southwest; and 13° S., 171° E. in the west.	*[INSERT FR CITATION WHEN PUBLISHED AS A FINAL RULE].*	NA	224.104
Sea turtle, green (Central West Pacific DPS).	*Chelonia mydas*	Green sea turtles originating from the Central West Pacific Ocean, bounded by the following coordinates: 41° N., 146° E. in the northwest; 41° N., 169° E. in the northeast; 9° N., 175° W. in the east; 13° S., 171° E. in the southeast; along the northern coast of the island of New Guinea; and 4.5° N., 129° E. in the west.	*[INSERT FR CITATION WHEN PUBLISHED AS A FINAL RULE].*	NA	224.104
Sea turtle, green (Mediterranean DPS).	*Chelonia mydas*	Green sea turtles originating from the Mediterranean Sea, bounded by 5.5° W. Long. in the west.	*[INSERT FR CITATION WHEN PUBLISHED AS A FINAL RULE].*	NA	224.104
*	*	* * *	*		*

[1] Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, see 61 FR 4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, see 56 FR 58612, November 20, 1991).

[2] Jurisdiction for sea turtles by the Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, is limited to turtles while in the water.

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Part III

Environmental Protection Agency

40 CFR Parts 50, 51, and 93
Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 50, 51, and 93

[EPA–HQ–OAR–2013–0691; FRL–9916–08–OAR]

RIN 2060–AQ48

Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing requirements that state, local and tribal air agencies would have to meet as they implement the current and future national ambient air quality standards (NAAQS) for fine particulate matter ($PM_{2.5}$). Specifically, this notice provides details on how the EPA proposes that air agencies meet the statutory state implementation plan (SIP) requirements that apply to areas designated nonattainment for any $PM_{2.5}$ NAAQS, such as: general requirements for attainment plan due dates and attainment dates; emissions inventories; attainment demonstrations; provisions for demonstrating reasonable further progress; quantitative milestones; contingency measures; and nonattainment New Source Review (NNSR) permitting programs, among other things. This proposed rule clarifies the specific attainment planning requirements that would apply to $PM_{2.5}$ NAAQS nonattainment areas based on their classification (either Moderate or Serious), and the process for reclassifying Moderate areas to Serious. Additionally in this notice, the EPA is proposing to revoke the 1997 primary annual standard because the EPA revised the primary annual standard in 2012. The EPA first established the $PM_{2.5}$ NAAQS in 1997, completed a review of those standards in 2006, and most recently completed a review of the $PM_{2.5}$ NAAQS on December 14, 2012.

DATES: *Comments.* Comments must be received on or before May 22, 2015. *Public Hearing.* The EPA plans to hold one public hearing concerning the proposed rule in Washington, DC. The date, time and location will be announced separately. Please refer to **SUPPLEMENTARY INFORMATION** for additional information on the comment period and the public hearing. *Information Collection Request.* Under the Paperwork Reduction Act (PRA), comments on the information collection provisions are best assured of having full effect if the Office of Management and Budget (OMB) receives a copy of your comments on or before April 22, 2015.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2013–0691, by one of the following methods:

- *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov*.
- *Mail:* Air and Radiation Docket and Information Center, Attention Docket ID No. EPA–HQ–OAR–2013–0691, Environmental Protection Agency, Mailcode: 28221T, 1200 Pennsylvania Avenue NW., Washington, DC 20460. In addition, please mail a copy of your comments on the information collection (ICR) provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.
- *Hand Delivery:* Air and Radiation Docket and Information Center, Attention Docket ID No. EPA–HQ–OAR–2013–0691, Environmental Protection Agency in the EPA Headquarters Library, Room No. 3334 in the EPA Docket Center, located at William Jefferson Clinton Building West, 1301 Constitution Avenue NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for delivery of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2013–0691. 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 email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *http://www.regulations.gov*, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the 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 the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption and be free of any defects or viruses. For additional information about the EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*. For additional instructions on submitting comments, go to 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 Air and Radiation Docket and Information Center in the EPA Headquarters Library, Room No. 3334 in the William Jefferson Clinton Building West, located at 1301 Constitution Avenue NW., Washington, DC 20460. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The phone number for the Public Reading Room is (202) 566–1744.

FOR FURTHER INFORMATION CONTACT: For general information on this proposed rule, contact Mr. Rich Damberg, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, by phone at (919) 541–5592 or by email at *damberg.rich@epa.gov*; or Ms. Megan Brachtl, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, by phone at (919) 541–2648 or by email at *brachtl.megan@epa.gov*. For information on the public hearing, contact Ms. Pamela Long, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, by phone at (919) 541–0641 or by email at *long.pam@epa.gov*. For information on the ICR, contact Mr. Butch Stackhouse, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, by phone at (919) 541–5208 or by email at *stackhouse.butch@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Preamble Glossary of Terms and Acronyms

The following are abbreviations of terms used in the preamble.

AERR Air Emissions Reporting Rule
BACM Best Available Control Measures
BACT Best Available Control Technology
BART Best Available Retrofit Technology
BC Black Carbon
CAA Clean Air Act
CAIR Clean Air Interstate Rule
CAMx Comprehensive Air Quality Model with Extensions
CBI Confidential Business Information
CBSA Core-based Statistical Area
CDD Clean Data Determination
CFR Code of Federal Regulations
CMAQ Community Multi-Scale Air Quality Model
CSAPR Cross-State Air Pollution Rule
CSN Chemical Speciation Network
DOD Department of Defense
DOT Department of Transportation
EC Elemental Carbon
EGU Electric Generating Unit
EPA Environmental Protection Agency
Fe Iron
FEM Federal Equivalent Method
FIP Federal Implementation Plan
FRM Federal Reference Method
HCl Hydrogen Chloride
ICR Information Collection Request
LAER Lowest Achievable Emission Rate
MACT Maximum Achievable Control Technology
MATS Mercury and Air Toxics Standards
MSM Most Stringent Measures
MPO Metropolitan Planning Organization
NAAQS National Ambient Air Quality Standards
NAICS North American Industry Classification System
NAPAP National Acid Precipitation Assessment Program
NEI National Emissions Inventory
NESHAP National Emissions Standard for Hazardous Air Pollutants
NH_3 Ammonia
NH_4 Ammonium
NH_4NO_3 Ammonium Nitrate
NH_4HSO_4 Ammonium Bi-Sulfate
$(NH_4)_2SO_4$ Ammonium Sulfate
NNSR Nonattainment New Source Review
NO_X Nitrogen Oxides
NO_3 Nitrate
NSPS New Source Performance Standards
O_3 Ozone
OM Organic Mass
OMB Office of Management and Budget
PM Particulate Matter
$PM_{2.5}$ Particulate Matter Equal to or Less than 2.5 Microns in Diameter (Fine Particulate Matter)
PM_{10} Particulate Matter Equal to or Less than 10 Microns in Diameter
PRA Paperwork Reduction Act
PSD Prevention of Significant Deterioration
RACM Reasonably Available Control Measures
RACT Reasonably Available Control Technology
RFP Reasonable Further Progress
RICE Reciprocating Internal Combustion Engines
SIP State Implementation Plan
SOA Secondary Organic Aerosols
SO_2 Sulfur Dioxide
SO_4 Sulfate
TAR Tribal Authority Rule
TIP Tribal Implementation Plan
TIP Transportation Improvement Program
TSP Total Suspended Particles
µm Micrometer (Micron)
VMT Vehicle Miles Traveled
VOC Volatile Organic Compounds

B. Does this action apply to me?

Entities potentially affected directly by this proposed rule include state, local and tribal governments and air pollution control agencies responsible for attainment and maintenance of the NAAQS. Entities potentially affected indirectly by this proposed rule as regulated sources include owners and operators of sources that emit $PM_{2.5}$, sulfur dioxide (SO_2), oxides of nitrogen (NO_X), volatile organic compounds (VOC) and/or ammonia (NH_3). Others potentially affected indirectly by this proposed rule include members of the general public who live, work, or recreate in areas affected by elevated ambient $PM_{2.5}$ levels in areas designated nonattainment for a $PM_{2.5}$ NAAQS.

C. What should I consider as I prepare my comments for the EPA?

1. Submitting CBI. Do not submit this information to the EPA through *http://www.regulations.gov* or email. Clearly mark the specific information that you claim to be CBI. For CBI in a disk or CD–ROM that you mail to the 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.

2. *Tips for preparing comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions. The proposed rule may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree, suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used to support your comment.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns wherever possible, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

D. What information should I know about possible public hearings?

For information pertaining to the one public hearing on this document, contact Ms. Pamela Long, Air Quality Policy Division, Office of Air Quality Planning and Standards (C504–03), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number (919) 541–0641; fax number (919) 541–5509; email address: *long.pam@epa.gov*.

E. Where can I obtain a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this **Federal Register** document will be posted at *http://www.epa.gov/airquality/particlepollution/actions.html*.

F. How is this Federal Register document organized?

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II. Background for Proposal

A. Introduction

Ambient, or outdoor, air can contain a variety of pollutants, including particulate matter (PM). Airborne PM can be comprised of either solid or liquid particles, and can be a complex mixture of particles in both solid and liquid form. The most common constituents of airborne PM include: sulfate (SO_4); nitrate (NO_3); ammonium (NH_4); elemental carbon (EC); organic mass (OM); and inorganic material, generally referred to as ''crustal'' material, which can include metals, dust, sea salt and other trace elements. Airborne PM can be of different sizes, commonly referred to as ''coarse'' and ''fine'' particles. Fine particles, in general terms, are particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers (μm). For this reason, particles of this size are referred to as $PM_{2.5}$. $PM_{2.5}$ particles commonly include ''primary'' particles and ''secondary'' particles. Primary particles, or direct $PM_{2.5}$, are emitted by sources directly into the air as solid or liquid particles (*e.g.,* elemental carbon from diesel engines or wildfires, or condensable organic particles from gasoline engines). Secondary particles are formed in the atmosphere as a result of chemical reactions between specific pollutants known as $PM_{2.5}$ precursors (*e.g.,* reactions between NO_X and SO_2 emissions from mobile and stationary sources combined with ammonia to form NO_3 and SO_4).

The human health effects associated with long- or short-term exposure to $PM_{2.5}$ are significant and include premature mortality, aggravation of respiratory and cardiovascular disease (as indicated by increased hospital admissions and emergency room visits) and development of chronic respiratory disease. In addition, welfare effects associated with elevated $PM_{2.5}$ levels include visibility impairment as well as effects on sensitive ecosystems, materials damage and soiling and climatic and radiative processes.[1]

On December 14, 2012, the EPA made revisions to the suite of NAAQS for PM to provide requisite protection of public health and welfare with an adequate margin of safety. The EPA also made corresponding revisions to the data handling conventions for PM and the ambient air monitoring, reporting and network design requirements for PM. Specifically, the agency revised the primary annual $PM_{2.5}$ standard by lowering the level from 15.0 to 12.0 μg/m^3 to provide increased protection against health effects associated with long- and short-term $PM_{2.5}$ exposures. The EPA did not revise the secondary annual $PM_{2.5}$ standard which remains at 15.0 μg/m^3.[2] The EPA eliminated spatial averaging as part of the form of the $PM_{2.5}$ annual standards to avoid potential disproportionate impacts on at-risk populations. In addition, the EPA retained the level and form of the primary and secondary 24-hour $PM_{2.5}$ standards to continue to provide supplemental protection against health effects associated with short-term $PM_{2.5}$ exposures. Although not directly relevant to this rulemaking with respect to the $PM_{2.5}$ NAAQS, it should be noted that in December 2012, the EPA also did not revise the level or form of the

[1] For a complete discussion of the human health and welfare effects associated with exposure to elevated concentrations of particulate matter, *see generally* ''Integrated Science Assessment for Particulate Matter.'' U.S. Environmental Protection Agency, Office of Research and Development, National Center for Environmental Assessment-RTP Division, February 10, 2010. EPA/600/R–08/139F. Available at: *http://www.epa.gov/ttn/naaqs/standards/pm/s_pm_2007_isa.html. See* Chapter 2.

[2] 78 FR 3086 (January 15, 2013).

primary and secondary 24-hour PM_{10} standards, which remain at 150 μg/m³.[3]

Estimates show that attainment of the primary $PM_{2.5}$ standards will result in hundreds fewer premature deaths each year, prevent tens of thousands of hospital admissions each year and prevent hundreds of thousands of doctor visits, absences from work and school and respiratory illnesses in children annually.[4] Attainment of the primary $PM_{2.5}$ standards will have welfare co-benefits in addition to direct human health benefits. The term welfare co-benefits covers both environmental and societal benefits of reducing pollution, such as reductions in visibility impairment, materials damage and ecosystem damage.[5]

B. Atmospheric Chemistry of $PM_{2.5}$ and Its Precursors

1. Overview

In order to determine how to regulate sources of direct $PM_{2.5}$ and $PM_{2.5}$ precursors to attain the $PM_{2.5}$ NAAQS in a given nonattainment area, it is necessary to understand the basic chemical processes that cause or contribute to the formation of ambient $PM_{2.5}$. Accordingly, an understanding of these processes is necessary to design appropriate regulations for implementation of the $PM_{2.5}$ NAAQS. Properly designed regulatory requirements will help to assure that the $PM_{2.5}$ NAAQS are attained effectively and expeditiously in all areas.

As noted earlier, the term $PM_{2.5}$ refers to particles of solid and liquid material less than 2.5 microns in aerodynamic diameter.[6] ''Primary'' $PM_{2.5}$ is emitted directly from emissions sources or activities, such as from diesel fuel combustion, wood burning, construction activities or unpaved roads, and it includes both filterable and condensable particles.[7] ''Secondary'' $PM_{2.5}$ is formed as a result of emissions of certain precursor gases that undergo chemical reactions in the atmosphere. The principal precursor gases that contribute to secondary $PM_{2.5}$ formation are SO_2, from the combustion of coal or other high sulfur fuels; NO_X, from many types of fossil fuel combustion; VOC, from certain fuels, solvents and industrial processes; and ammonia, from sources such as animal feeding operations, wastewater treatment and fertilizer. Table 1 provides National Emissions Inventory (NEI) data for 2011 that represent nationwide anthropogenic emissions estimates for direct $PM_{2.5}$ and the four main $PM_{2.5}$ precursor gases from major source sectors.

TABLE 1—TOTAL EMISSIONS OF $PM_{2.5}$ AND PRECURSORS FOR MAJOR SECTORS (IN TONS/YEAR)

[Source: 2011 National Emissions Inventory (Version 1)[a]]

Category	Direct $PM_{2.5}$	SO_2	NO_X	VOC	NH_3
Chemical and allied products	16,464	125,768	49,867	79,236	23,044
Fuel combustion—electric generating utilities (EGUs)	196,685	4,612,641	2,031,855	40,597	24,968
Fuel combustion —other	628,199	987,552	1,856,716	588,346	79,679
Other industrial	273,857	185,859	348,561	328,222	53,039
Onroad mobile	208,629	28,969	5,785,570	2,413,026	119,654
Metals processing	48,451	144,630	70,655	34,277	1,140
Miscellaneous (mainly fire emissions, dust and some agricultural operations)	4,489,694	219,318	434,547	5,810,566	3,934,405
Offroad mobile	207,543	92,036	3,133,798	2,159,368	3,270
Petroleum & related industries	31,738	116,317	684,808	2,488,123	1,643
Solvent utilization	3,810	107	893	2,814,551	577
Storage and transport	20,098	9,109	19,079	1,221,185	5,734
Waste disposal and recycling	172,144	16,842	83,469	131,777	68,281

[a] For more details on the definitions of the emission categories listed in Table 1, *see* Sector/Tier crosswalk table for the 2011 NEI, available at: *ftp://ftp.epa.gov/EmisInventory/2011/doc/scc_eis_crosswalk_2011neiv1.xlsx*.

2. Composition and Sources of $PM_{2.5}$ Constituents

$PM_{2.5}$ is a complex and highly variable mixture of particles, but the majority of $PM_{2.5}$ by mass is often comprised of five constituents: (i) OM; (ii) EC; (iii) crustal material; (iv) ammonium sulfate ($(NH_4)_2SO_4$); and (v) ammonium nitrate (NH_4NO_3).[8] The discussion that follows provides an overview of each of the five major components of $PM_{2.5}$, all of which are known to contribute to ambient $PM_{2.5}$ levels in areas throughout the U.S.[9] Section II.B.3 provides more details on

[3] This proposed rulemaking is to develop implementation regulations with respect to the $PM_{2.5}$ NAAQS. For the PM_{10} NAAQS, states and the EPA will continue to implement those NAAQS in accordance with the applicable statutory requirements of the Clean Air Act (CAA) and the EPA's existing guidance in the ''The General Preamble for Implementation of Title I of the Clean Air Act (CAA) Amendments,'' 57 FR 13498 (April 16, 1992); and ''State Implementation Plans for Serious PM–10 Nonattainment Areas: Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act (CAA) Amendments,'' 59 FR 41998 (August 16, 1994). Throughout this preamble, these documents will be referred to as the ''General Preamble'' and the ''Addendum,'' respectively.

[4] ''Regulatory Impact Analysis for the Final Revisions to the National Ambient Air Quality Standards for Particulate Matter.'' U.S. Environmental Protection Agency, Office of Air Quality and Planning Standards, Health and Environmental Impacts Division, February 28, 2013. EPA–452/R–12–005. *See: http://www.epa.gov/ttn/naaqs/standards/pm/s_pm_2007_ria.html.*

[5] *Ibid.*

[6] The regulatory definition of $PM_{2.5}$ includes particles with an upper 50 percent cut-point of 2.5μm aerodynamic diameter (the 50 percent cut-point diameter is the diameter at which the sample collects 50 percent of the particles and rejects 50 percent of the particles). $PM_{2.5}$ particles have a penetration curve as measured by a reference method based on Appendix L of 40 CFR part 50 and designated in accordance with 40 CFR part 53, by an equivalent method designed in accordance with 40 CFR part 53, or by an approved regional method designated in accordance with Appendix C of 40 CFR part 58.

[7] Certain commercial or industrial activities involving high temperature processes (*e.g.,* fuel combustion, metal processing, cooking operations) emit gaseous pollutants into the ambient air which rapidly condense into particle form. These ''condensable'' PM emissions exist almost entirely in the 2.5 or less micron range and can consist of organic material, sulfuric acid and metals.

[8] Seinfeld J.H. and Pandis S.N., 2006. *Atmospheric Chemistry and Physics: From Air Pollution to Climate Change.* 2nd edition, J. Wiley, New York.

[9] U.S. 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, December 2004. Available at: *http://www.epa.gov/airtrends/reports.html.*

the atmospheric chemistry involved in the formation of sulfate, nitrate and OM, to illustrate the importance of controlling emissions of $PM_{2.5}$ precursors as part of any comprehensive strategy to reduce ambient $PM_{2.5}$ levels in excess of the NAAQS. Section II.B.4 presents a brief overview of $PM_{2.5}$ composition by region of the U.S.

OM is the fraction of ambient $PM_{2.5}$ with the most diverse chemical composition, containing potentially thousands of different organic compounds (*i.e.,* those compounds containing carbon) composed primarily of carbon, hydrogen, oxygen and nitrogen. Both primary particles and secondary particles contribute to ambient OM concentrations, with combustion sources being the dominant type of emissions sources. Another portion of primary OM particles results from direct emissions of organic compounds from sources of incomplete combustion, such as gas and diesel engines. Secondary OM particle formation involves oxidation of both anthropogenic and biogenic (plant-derived) VOC, and can involve other, more complex chemical reactions. Further details of the chemistry behind the formation of secondary OM, known more commonly as secondary organic aerosols (SOA), are described in Section II.B.3 of this preamble.

EC refers to particulate carbon that has a graphitic molecular structure, and is sometimes referred to as ''black carbon'' (BC). It is emitted directly from emission sources and does not undergo any significant reactions with other gases in the atmosphere. EC particles result from primary emissions involving combustion, especially from diesel-fueled vehicles, but also from other processes involving the burning of fossil fuels. The latter includes anthropogenic sources such as boilers and waste disposal. In addition, some EC particles originate from biomass combustion such as from prescribed fires, wildfires and residential wood combustion.

Crustal PM is comprised of particles of soil and oxides of metals from some industrial processes. Compounds comprised of elements such as silicon, aluminum, iron, calcium, titanium, magnesium and potassium, as well as oxygen, are major components.[10] Sources of crustal $PM_{2.5}$ include windblown dust, dust from mechanical resuspension (*e.g.* dust from construction activities or vehicles driving on unpaved roads) and some forms of combustion, especially of coal. Crustal $PM_{2.5}$ comprised of elements, like iron (Fe), and their oxides can also be emitted from industrial sources.

The remaining portion of ambient $PM_{2.5}$ is mostly composed of SO_4, NO_3 and NH_4, which react in the ambient air to form ammonium sulfate ($(NH_4)_2SO_4$) and ammonium nitrate (NH_4NO_3). Another common $PM_{2.5}$ particle is ammonium bi-sulfate (NH_4HSO_4). In some areas, less common ions such as chloride are also found in $PM_{2.5}$ samples in the form of particles that include sodium chloride and ammonium chloride. Particle-bound water is often also associated with this fraction of $PM_{2.5}$. Sulfate, nitrate and ammonium particles originate through both primary and secondary mechanisms, although the vast majority of these $PM_{2.5}$ particles are formed through secondary formation, as described in the following section.

3. Secondary Formation of $PM_{2.5}$ From Gaseous Precursors

a. *Overview.* The composition of $PM_{2.5}$ is complex and highly variable due in part to the large contribution of secondary $PM_{2.5}$ to total fine particle mass in most locations, and to the complexity of secondary particle formation processes. A large number of possible chemical reactions, often non-linear in nature, can convert the gases SO_2, NO_X, VOC and ammonia to $PM_{2.5}$. Thus, these gases are precursors to $PM_{2.5}$. A brief discussion of SO_4, NO_3 and SOA formation, as well as the role of ammonia in their formation, follows.

b. *SO_4 formation.* SO_2 is emitted mostly from the combustion of fossil fuels in boilers operated by electric utilities and other industries, with less than 10 percent of SO_2 emissions nationwide coming from other industrial sources, such as oil refining and pulp and paper production.[11] When SO_2 oxidizes it forms sulfuric acid, a highly corrosive compound toxic to humans and to ecosystems that contributes to acid deposition (acid rain). In the presence of ammonia, however, sulfuric acid will react to form $(NH_4)_2SO_4$, a less acidic compound and one of the five major components of $PM_{2.5}$. If there is not enough ammonia present to fully neutralize the sulfuric acid, part of it may convert to NH_4HSO_4, which is more acidic than $(NH_4)_2SO_4$, but less so than sulfuric acid. There is a large amount of emerging scientific evidence that SO_2 may also contribute to the formation of SOA from biogenic VOC emissions (*see* section later on SOA). Sulfate levels in the ambient air peak in summer months due to increased SO_2 emissions, generally from electricity generating units, and from meteorological conditions that are conducive to sulfate formation.

c. *NO_3 formation.* The main sources of NO_X emissions are combustion of fossil fuel in boilers and mobile sources, accounting for more than 80 percent of national anthropogenic NO_X emissions (based on the 2011 NEI), with boilers and electric generating units (EGUs) contributing about 27 percent and mobile sources contributing 56 percent. Oxides of nitrogen react in the atmosphere to form nitric acid, another prime contributor to acid deposition in the environment. Nitric acid converts to ammonium nitrate, one of the five main components of $PM_{2.5}$, in the presence of ammonia. Low temperatures and high relative humidity create ideal conditions for the formation of ammonium nitrate, typically leading to higher atmospheric levels in winter months and lower levels in summer months.[12]

d. *SOA formation.* As discussed earlier, the OM component of ambient $PM_{2.5}$ is a complex mixture of hundreds or even thousands of anthropogenic and biogenic organic compounds. These compounds are either emitted directly from sources (*i.e.,* as ''primary'' $PM_{2.5}$) or can be formed by reactions in the ambient air to make SOA (*i.e.,* as ''secondary'' $PM_{2.5}$).

VOC (both anthropogenic and biogenic) are key precursors to the SOA component of $PM_{2.5}$. The relative importance of these compounds in the formation of organic particles varies between geographic areas, depending upon local emission sources, atmospheric chemistry and season of the year. It should be further noted that not all inventoried VOC may be contributing to the formation of organic particles. For example, chemical reactions involving VOC are generally accelerated in warmer temperatures, and for this reason studies show that SOA typically comprises a higher

[10] Appel, K.W., Pouliot, G.A., Simon, H., Sarwar, G., Pye, H.O.T., Napelenok, S.L., Akhtar, F., and Roselle, S.J., 2013. Evaluation of dust and trace metal estimates from the Community Multiscale Air Quality (CMAQ) model version 5.0, Geoscientific Model Development Discussions 61859–1899; Sorooshian, A., Shingler, T., Harpold, A., Feagles, C.W., Meixner, T., and Brooks, P.D., 2013. Aerosol and precipitation chemistry in the southwestern United States: spatiotemporal trends and interrelationships, Atmospheric Chemistry and Physics 13, 7361–7379.

[11] U.S. Environmental Protection Agency, 2013. ''2008 National Emissions Inventory: Review Analysis and Highlights.'' Office of Air Quality Planning and Standards, Air Quality Assessment Division, May 2013. EPA–454/R–005. Available at: *http://www.epa.gov/ttn/chief/net/2008report.pdf.*

[12] Carlton, A.G., Pinder, R.W., Bhave, P.B., Pouliout, G.A., 2010. To What Extent Can Biogenic SOA Be Controlled, Environmental Science and Technology 44(9), 3376–80.

percentage of $PM_{2.5}$ in the summer than in the winter.[13]

Anthropogenic sources of VOC include mobile sources, petrochemical manufacturing, oil and gas emissions and solvents.[14] In addition, some biogenic VOC, emitted by vegetation such as trees, can also contribute significantly to SOA formation, especially in heavily forested areas, such as the southeastern U.S. It should be noted, however, that anthropogenic contributions to SOA are likely highest in the wintertime when biogenic SOA levels are lower; conversely, in the summertime, biogenic contributions to SOA are likely higher. Despite significant progress that has been made in understanding the origins and properties of SOA, it remains the least understood component of $PM_{2.5}$ and continues to be a significant topic of research and investigation.

e. *Role of ammonia in sulfate, nitrate and SOA formation.* Ammonia is a gaseous pollutant emitted by natural and anthropogenic sources. The EPA's 2011 NEI shows that the two main sources of ammonia emissions are fertilizer application (27 percent) and livestock raising (54 percent). It should be noted that the 2011 NEI indicates that mobile sources in the aggregate contribute about 3 percent of nationwide ammonia emissions. Much of those emissions comes from catalytic converters installed on light-duty gasoline vehicles, which are designed to convert NO_X to nitrogen (N_2); however, some ammonia is formed as a secondary product during this process.

As indicated earlier, ammonia plays an important role in neutralizing acids, such as sulfuric acid and nitric acid, in clouds, precipitation and particles. On the other hand, deposited ammonia can contribute to problems of eutrophication in water bodies due to its nutritive properties.[15] Ammonia would not exist in particles if not for the presence of acidic species with which it can combine to form a particle. In the eastern U.S., sulfate, nitrate and the ammonium associated with them can together account for between roughly 30 percent and 75 percent of the total $PM_{2.5}$ mass in a given area. The ammonium portion by itself roughly accounts for between 5 percent and 20 percent of the total $PM_{2.5}$ mass in the East.[16]

f. *Role of NO_X in sulfate, nitrate and SOA formation.* In addition to the contribution of NO_X emissions to secondary particulate nitrate formation, NO_X also reacts with anthropogenic and biogenic VOC that have an impact on secondary formation of organic compounds that make up SOA. NO_X is thus involved in all secondary PM chemistry, not just in particulate nitrate formation.[17]

4. Fine Particulate Composition By Location

Table 2 shows regional 3-year mean concentrations (2009–2011) of $PM_{2.5}$ and its main components at sites in the Chemical Speciation Network (CSN).[18] In addition to the mean values for all sites in each region, the table includes the minimum and maximum observed $PM_{2.5}$ and species concentrations for sites within each region. These data illustrate broad observed spatial patterns across the U.S. in $PM_{2.5}$ concentrations and its composition. For example, $PM_{2.5}$ concentrations are highest on average in the Central and West regions. Sulfate mass comprises a larger fraction of $PM_{2.5}$ than nitrate mass in the northeastern U.S., whereas nitrate has a greater contribution than that of sulfate in the West. OM is the dominant component in all regions, with the highest concentrations of OM on average found in the West, Northwest and Southeast. On a percentage basis, the concentrations of EC and crustal material are relatively low throughout all regions of the U.S. compared to the other major $PM_{2.5}$ components.

The composition of $PM_{2.5}$ also varies between urban and rural areas. This is reflective of the distribution of urban and regional emission sources, atmospheric reactions and transport of fine particles. More details about the spatial distribution and origins of $PM_{2.5}$ components can be found in the docket for this proposal.[19]

TABLE 2—$PM_{2.5}$ CHEMICAL COMPOSITION DATA AT 2009–2011 NONATTAINMENT SITES

[Source: EPA Speciation Trends Network]

Region	Statistic	Concentration (μg/m³)					
		SO_e	NO_3	OM	EC	CrM	$PM_{2.5}$
Central	Min (μg/m³)	1.46	0.3	2.73	0.31	0.01	8.92
	Mean (μg/m³)	2.69	1.49	3.57	0.68	0.26	11.63
	Max (μg/m³)	4.19	3.34	4.81	1.1	1.0	13.51
	N	61	61	50	50	61	42
East North Central	Min (μg/m³)	0.83	0.38	1.97	0.19	0.01	6.03
	Mean (μg/m³)	1.68	1.8	2.84	0.48	0.19	9.86
	Max (μg/m³)	2.51	3.57	3.69	0.79	0.61	11.87
	N	29	28	20	20	28	23
North East	Min (μg/m³)	0.58	0.12	1.74	0.14	0	4.42
	Mean (μg/m³)	2.06	0.97	3.14	0.69	0.17	9.33
	Max (μg/m³)	5.12	2.26	5.05	1.69	0.52	15.05
	N	59	59	39	39	59	46
North West	Min (μg/m³)	0.24	0.05	2.91	0.42	0.01	6.06
	Mean (μg/m³)	0.54	0.4	5.02	0.81	0.15	8.33

[13] Pandis S.N., Harley R.A., Cass G.R., and Seinfeld J.H., 1992. Secondary Organic Aerosol Formation and Transport, Atmospheric Environment, 26, 2266–82.

[14] Carlton, A.G., Bhave, P.B., Napelenok, S.L., Edney, E.O., Sarwar, G., Pinder, R.W., Pouliout, G.A., and Houyoux, M. (2010), Model Representation of Secondary Organic Aerosol in CMAQ4.7, Environmental Science and Technology 44(22), 8553–60.

[15] Seinfeld, J.H. and Pandis, S.N. (1998), *Atmospheric Chemistry and Physics: From Air Pollution to Climate Change,* 1st edition, J. Wiley, New York.

[16] NARSTO, 2003. Particulate Matter Science for Policy Makers. A NARSTO Assessment. Parts 1 and 2. NARSTO. Management Office (Envair), Pasco, Washington. Available at: *http://narsto.org/pm_science_assessment.*

[17] Carlton, A.G., Pinder, R.W., Bhave, P.B., and Pouliout, G.A., 2010. To what extent can Biogenic SOA be Controlled, Environmental Science and Technology 44(9), 3376–3380.

[18] The organic matter (OM) values in Table 2 were calculated by multiplying the measured organic carbon (OC) concentrations by 1.6 (Turpin and Lim (2001), Aerosol Science and Technology, 35, 602–610). $PM_{2.5}$ concentrations come from measurements of the Federal Reference/Equivalance Methods (FRM/FEM) rather than from the CSN $PM_{2.5}$ measurement.

[19] Reff and Rao, Memo to the docket, 2013.

TABLE 2—$PM_{2.5}$ CHEMICAL COMPOSITION DATA AT 2009–2011 NONATTAINMENT SITES—Continued

[Source: EPA Speciation Trends Network]

Region	Statistic	Concentration (μg/m³)					
		SO_e	NO_3	OM	EC	CrM	$PM_{2.5}$
	Max (μg/m³)	1.09	1.79	8.44	1.25	0.53	10.96
	N	33	33	13	13	33	14
South	Min (μg/m³)	0.88	0.18	1.36	0.12	0.02	5.22
	Mean (μg/m³)	2.06	0.8	3.32	0.57	0.5	10.05
	Max (μg/m³)	3.08	1.67	5.1	1.48	2.38	14.27
	N	36	27	23	23	36	23
South East	Min (μg/m³)	1.6	0.2	1.75	0.37	0.01	6.76
	Mean (μg/m³)	2.39	0.53	4.12	0.63	0.26	10.77
	Max (μg/m³)	4.33	1.51	5.71	1.2	0.85	13.38
	N	44	43	30	30	43	29
South West	Min (μg/m³)	0.34	0.07	2.34	0.46	0.02	5.3
	Mean (μg/m³)	0.63	0.49	3.01	0.7	0.5	7.93
	Max (μg/m³)	1.13	2.65	4.39	1.04	1.96	9.73
	N	46	46	11	11	46	12
West	Min (μg/m³)	0.33	0.08	1.79	0.52	0.01	6.84
	Mean (μg/m³)	0.9	1.4	5.22	0.85	0.32	11.49
	Max (μg/m³)	2.08	5.14	10.27	1.56	1.05	16.57
	N	44	44	20	20	44	21
West North Central	Min (μg/m³)	0.29	0.06	1.22	0.09	0	3.23
	Mean (μg/m³)	0.67	0.48	3.16	0.44	0.22	7.25
	Max (μg/m³)	1.79	2.02	8.28	1.21	0.53	13.72
	N	30	30	7	7	30	10

C. Historical Overview of $PM_{2.5}$ NAAQS Setting and Implementation

Sections 108 and 109 of the CAA govern the establishment, review and revision, as appropriate, of NAAQS for widespread pollutants emitted from numerous and diverse sources considered harmful to public health and the environment. The CAA requires two types of NAAQS: (i) *Primary* standards, which set limits to protect public health, including the health of at-risk populations; and (ii) *secondary* standards, which set limits to protect public welfare, including protection against visibility impairment, damage to animals, crops, vegetation and buildings.

The EPA first promulgated annual and 24-hour NAAQS for $PM_{2.5}$ in July 1997.[20] Prior to that time, the EPA had addressed ambient particulate matter through other means, first by regulating ''total suspended particles'' (TSP) and then later by regulating PM_{10}. After protracted litigation, the 1997 NAAQS for $PM_{2.5}$ were upheld by the U.S. Court of Appeals for the District of Columbia Circuit in March 2002.[21] The EPA subsequently promulgated designations for the 1997 $PM_{2.5}$ NAAQS nationwide, and designated a number of areas as nonattainment for the 1997 $PM_{2.5}$ NAAQS, effective April 2005.[22] In April 2007, the EPA issued a detailed implementation rule to assist states with the development of SIP submissions to meet attainment plan requirements for the 1997 NAAQS (the ''2007 $PM_{2.5}$ Implementation Rule'').[23] In May 2008, the EPA issued another rule to assist states with SIP submissions to meet the specific requirements for permitting programs for NNSR purposes in designated nonattainment areas (the ''2008 $PM_{2.5}$ NSR Rule'').[24] The EPA premised both the 2007 $PM_{2.5}$ Implementation Rule and the 2008 $PM_{2.5}$ NSR Rule on the EPA's interpretation of the statute that nonattainment areas for the $PM_{2.5}$ NAAQS were subject solely to the general nonattainment plan requirements of subpart 1, part D of title I of the CAA (''subpart 1'').

Section 109(d)(1) of the CAA requires the EPA periodically to review the science upon which the standards are based and the standards themselves, and to revise the standards as may be appropriate. In October 2006, the EPA promulgated revisions to the suite of NAAQS for PM, and in particular the EPA revised the 24-hour $PM_{2.5}$ standards.[25] In accordance with section 107(d), the EPA subsequently designated a number of areas as nonattainment for the revised 2006 24-hour $PM_{2.5}$ standards, effective December 2009.[26] In March 2012, the EPA issued a guidance document specifically to aid states in preparing their SIP submissions to meet attainment plan requirements for the 2006 24-hour $PM_{2.5}$ NAAQS in designated nonattainment areas.[27] The EPA's guidance for the 2006 $PM_{2.5}$ NAAQS was based, in large part, on the requirements finalized in the 2007 $PM_{2.5}$ Implementation Rule, which the EPA based solely upon the statutory requirements of subpart 1.

The EPA initiated a review of the $PM_{2.5}$ NAAQS in June 2007, proposing revisions to the primary and secondary $PM_{2.5}$ NAAQS on June 29, 2012.[28] The EPA issued its final rule on December 14, 2012, in which it lowered the primary annual $PM_{2.5}$ standard from 15.0 μg/m³ to 12.0 μg/m³ to provide increased protection against health effects associated with long- and short-term fine particle exposures.[29] The EPA also eliminated spatial averaging as part of the form of the annual standard to avoid potential disproportionate impacts on at-risk populations.[30] The

[20] 62 FR 38652 (July 18, 1997).

[21] For a complete summary of legal challenges and related court decisions on the PM NAAQS, *see generally* 78 FR 3086 (January 15, 2013).

[22] 70 FR 944 (January 5, 2005).

[23] 72 FR 20583 (April 25, 2007).

[24] 73 FR 28231 (May 16, 2008).

[25] 71 FR 61144 (October 17, 2006).

[26] 74 FR 58688 (November 13, 2009).

[27] Memorandum of March 2, 2012 (withdrawn June 6, 2013), from Stephen D. Page, Director, Office of Air Quality Planning and Standards, to EPA Regional Air Directors, Regions I–X, ''Implementation Guidance for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS).'' Available at: *http://epa.gov/ttn/naaqs/pm/pm25_guide.html*.

[28] 77 FR 38890 (June 29, 2012).

[29] 78 FR 3086 (January 15, 2013).

[30] Spatial averaging of monitored ambient air quality data was a feature of the prior $PM_{2.5}$ NAAQS

EPA retained the level (35 μg/m^3) and form (98th percentile, averaged over 3 years) of the primary 24-hour $PM_{2.5}$ standard, as revised in 2006, to provide supplemental protection against health effects associated with short-term $PM_{2.5}$ exposures, especially in areas with high peak $PM_{2.5}$ concentrations.[31] This suite of primary $PM_{2.5}$ standards provides increased public health protection, including the health of at-risk populations which include children, older adults, persons with pre-existing health and lung disease and persons of lower socioeconomic status, against a broad range of $PM_{2.5}$-related effects that include premature mortality, increased hospital admissions and emergency department visits and development of chronic respiratory disease.[32] With regard to the secondary (welfare-based) standards, the EPA retained the existing annual $PM_{2.5}$ standard of 15.0 μg/m^3 and the existing 24-hour $PM_{2.5}$ standard of 35 μg/m^3 to protect against PM-related non-visibility welfare effects including ecological effects, effects on materials and climate impacts. In addition, the secondary 24-hour $PM_{2.5}$ standard provides protection for PM-related visibility impairment.

On January 4, 2013, shortly after the EPA promulgated the 2012 revisions to the suite of PM NAAQS, the DC Circuit issued its decision in a challenge to the 2007 $PM_{2.5}$ Implementation Rule and the 2008 $PM_{2.5}$ NSR Rule. In *NRDC* v. *EPA,* the court held that the EPA erred in implementing the 1997 $PM_{2.5}$ NAAQS pursuant only to the general implementation requirements of subpart 1, rather than also to the implementation requirements specific to particulate matter (PM_{10}) in subpart 4, part D of title I of the CAA (''subpart 4'').[33] The court reasoned that the plain meaning of the CAA requires implementation of the 1997 $PM_{2.5}$ NAAQS under subpart 4 because $PM_{2.5}$ particles fall within the statutory definition of PM_{10} and are thus subject to the same statutory requirements. In addition, although the court stated that its decision that the EPA must implement the $PM_{2.5}$ NAAQS pursuant to subpart 4 requirements meant that it did not have to reach decisions on other issues concerning the regulation of precursors to $PM_{2.5,}$ the court nonetheless noted that subpart 4 has specific requirements with respect to regulation of such precursors. As a result, the court remanded to the EPA both the 2007 $PM_{2.5}$ Implementation Rule and the 2008 $PM_{2.5}$ NSR Rule, both of which were premised on the EPA's interpretation of the statute that subpart 1 was the only applicable subpart for the implementation of the 1997 $PM_{2.5}$ NAAQS. The court instructed the EPA ''to repromulgate these rules pursuant to Subpart 4 consistent with this opinion.'' Given the D.C. Circuit's opinion in *NRDC* v. *EPA,* the EPA withdrew its 2012 guidance document for the 2006 24-hour $PM_{2.5}$ NAAQS in June 2013. Because the court had concluded that the EPA and states must implement the $PM_{2.5}$ NAAQS consistent with the statutory requirements of subpart 4, the EPA 2012 guidance for attainment plans for the 2006 $PM_{2.5}$ NAAQS premised solely upon subpart 1 requirements was no longer appropriate.

The EPA intends to use this current rulemaking to accomplish multiple objectives. First, the EPA is taking this action to clarify how air agencies should meet the statutory SIP requirements that apply to areas designated nonattainment for any $PM_{2.5}$ NAAQS under subparts 1 and 4. To this end, the EPA is proposing regulatory requirements that will be applicable to attainment plans for the 2012 $PM_{2.5}$ NAAQS and any future revisions of the $PM_{2.5}$ NAAQS, subject to revisions that may be necessary for implementation purposes in the future. Second, the EPA is taking this action to provide guidance, in addition to regulatory requirements, to assist air agencies in developing attainment plans for the 2012 $PM_{2.5}$ NAAQS and any future revisions of the $PM_{2.5}$ NAAQS. Finally, the EPA is taking this action in response to the DC Circuit's remand of the 2007 $PM_{2.5}$ Implementation Rule and the 2008 $PM_{2.5}$ NSR Rule. Through this rulemaking, the EPA intends to address requirements associated with states' ongoing implementation efforts for the 1997 and 2006 $PM_{2.5}$ NAAQS. In the interim, the EPA will rely on the statutory attainment planning requirements[34] contained in subparts 1 and 4 and on the EPA's General Preamble and Addendum for guidance on how to apply those requirements to current $PM_{2.5}$ NAAQS nonattainment areas.

D. State Implementation Planning Process for $PM_{2.5}$ NAAQS

1. Overview

The CAA establishes important roles both for state and tribal governments and for the EPA in implementing the NAAQS. In accordance with the principle of cooperative federalism, both state and tribal governments and the EPA have respective authorities and responsibilities under the CAA. At the outset, the EPA has the authority and responsibility to promulgate the NAAQS. In turn, state, local and tribal air agencies have the authority and primary responsibility for developing and implementing attainment plans that contain emission control measures needed to achieve the air quality standards in each nonattainment area, consistent with the requirements of the CAA. The EPA often assists air agencies by promulgating regulations or providing guidance for meeting implementation requirements and technical tools, including information on control measures.[35] For example, the EPA intends this rulemaking to clarify the specific statutory requirements, and schedule for meeting those requirements, that state and tribal air pollution control agencies (''air agencies'') must address as they prepare SIP submissions for the $PM_{2.5}$ standards in future.[36]

The EPA also promulgates nationally applicable control requirements and emission limits for many sources such as new motor vehicles, certain categories of new and modified major stationary sources and existing stationary sources of toxic air pollutants. These federal actions assist state and tribal air agencies by achieving emission reductions from certain categories of sources nationwide, which can help with local attainment needs in a given nonattainment area. In addition, the EPA has authority to address

monitoring regulations which had the potential for masking particularly high $PM_{2.5}$ concentrations at certain monitored locations within nonattainment areas.

[31] 71 FR 61144 (October 17, 2006).

[32] General information regarding the health effects associated with $PM_{2.5}$ exposures is available at: *http://www.epa.gov/airquality/particlepollution/health.html.* Additional information, such as the EPA's technical documents supporting the latest review of the standards, is available at: *http://www.epa.gov/ttn/naaqs/standards/pm/s_pm_index.html.*

[33] *NRDC* v. *EPA,* 706 F.3d 428 (D.C. Cir. 2013).

[34] General Preamble, 57 FR 13498 (April 16, 1992).

[35] It is important to note that the EPA does not have a mandatory duty to promulgate an implementation rule for the $PM_{2.5}$ NAAQS, and the obligations of state and tribal air agencies to develop and submit an attainment plan are independent obligations and not conditioned upon the EPA promulgating an implementation rule for the $PM_{2.5}$ NAAQS.

[36] When the term ''state'' is used hereafter, it will refer generically to states, local air agencies, and tribal governments electing to be treated as states for the purposes of implementing the CAA. Of additional note is that the 1998 Tribal Authority Rule (TAR), which is found in 40 CFR part 49, which implements section 301(d) of the CAA, provides that tribes be treated in the same manner as a state when implementing certain sections of the CAA. It gives tribes the option of developing tribal implementation plans (TIPs), but unlike states, tribes are not required to develop implementation plans. Section IX.I of this preamble provides further discussion of tribal issues.

interstate transport of pollutants, in the event that states fail to do so. Through this authority, the EPA has addressed regional transport of pollutants from upwind states to downwind states, and has previously done so for purposes of the $PM_{2.5}$ NAAQS.[37] In addition, the EPA has the authority and responsibility to review and take action to approve or disapprove submitted attainment plans based upon whether they meet applicable statutory and regulatory requirements, to provide funding and technical assistance to states and to initiate the process for imposition of sanctions and/or issue federal implementation plans (FIPs) when states fail to fulfill their CAA obligations. More information on area designations, the role of ambient air monitoring, the SIP development process and the role of federal measures in bringing an area into attainment is presented below.

2. Initial Area Designations and Classifications

The NAAQS implementation planning process begins with initial area designations, through which states and the EPA identify areas of the country that either meet or do not meet the new or revised NAAQS, along with identifying the nearby areas contributing to violations of the NAAQS. Section 107(d)(1) of the CAA requires that: ''By such date as the Administrator may reasonably require, but not later than 1 year after promulgation of a new or revised national ambient air quality standard for any pollutant under section 109, the Governor of each state shall . . . submit to the Administrator a list of all areas (or portions thereof) in the State'' that designates those areas as nonattainment, attainment, or unclassifiable.[38] Thus, states are required to make their initial designation recommendations to the EPA by no later than 1 year after the promulgation of new or revised NAAQS. Section 107(d)(1)(B)(i) further provides: ''Upon promulgation or revision of a NAAQS, the Administrator shall promulgate the designations of all areas (or portions thereof) . . . as expeditiously as practicable, but in no case later than 2 years from the date of promulgation. Such period may be extended for up to 1 year in the event the Administrator has insufficient information to promulgate the designations.'' Thus, the EPA is required to promulgate the actual designations for all areas across the U.S. by no later than 2 years after the promulgation of any new or revised NAAQS, unless the EPA elects to take up to one additional year in situations where there is insufficient information. Under section 107(d)(1)(B)(ii), the EPA is authorized to modify the designations recommendations from the states, with respect to the designation of an area and the boundaries of an area, if the EPA deems that necessary. By no later than 120 days prior to promulgating final designations, the EPA is required to notify states of any intended modifications to their recommendations. States then have an opportunity to demonstrate to the EPA why the EPA's intended modification is inappropriate. Regardless of whether a state provides an initial designation recommendation for any area, the EPA must timely promulgate the designations it deems appropriate.[39]

Under subpart 4, the CAA provides for classification of $PM_{2.5}$ nonattainment areas as either ''Moderate'' or ''Serious.'' As provided in section 188(a) and reiterated in the General Preamble, all PM_{10} nonattainment areas and by extension all $PM_{2.5}$ nonattainment areas are initially classified as Moderate by operation of law at the time of designation. Initial classifications are not subject to public notice-and-comment pursuant to section 107(d)(2)(B), although the EPA may elect to take comment on designations and classifications and its recent practice has been to do so.

All areas designated as nonattainment for the 2012 $PM_{2.5}$ NAAQS and any future revised $PM_{2.5}$ NAAQS will be initially classified as Moderate nonattainment areas upon designation, regardless of the severity of the $PM_{2.5}$ problem in the area. This statutory approach to classifications for nonattainment areas under subpart 4 for the $PM_{2.5}$ NAAQS is notably different from the approach for ozone NAAQS nonattainment areas under subpart 2 (of part D, title I of the CAA), wherein the statute includes several area classifications, and initial classifications are based on monitored ozone levels. Thus, unlike for ozone nonattainment areas, all $PM_{2.5}$ nonattainment areas initially receive the same classification—Moderate—and the EPA only reclassifies such areas to Serious upon a showing by the state or a determination by the agency that the area cannot practicably attain by the statutory attainment date, or upon a finding that the area in fact failed to attain the NAAQS by the applicable Moderate area attainment date. The statute requires that Moderate nonattainment areas attain the NAAQS as expeditiously as practicable, but not later than the end of the sixth calendar year following designation. States have an incentive to avoid having a Moderate area reclassified to Serious because, as discussed later in this preamble, the specific subpart 4 requirements for areas classified as Serious include, among other things, a more stringent level of control for sources of direct $PM_{2.5}$ and $PM_{2.5}$ precursors than for Moderate areas.

As of the date of this proposal, the first round of initial designations for most areas for the 2012 primary annual $PM_{2.5}$ NAAQS has been completed, and those designations will become effective on April 15, 2015. All areas designated as nonattainment for the 2012 $PM_{2.5}$ NAAQS were classified as Moderate nonattainment areas.[40]

3. Ambient Air Monitoring for $PM_{2.5}$

Ambient air quality monitoring for $PM_{2.5}$ plays an integral role in implementation of a NAAQS, including identifying areas violating the NAAQS, control strategy development and tracking progress toward attainment. States are required to monitor $PM_{2.5}$ mass concentrations using approved methods to determine compliance with the NAAQS.[41] The locations of monitors are identified in states' Annual Monitoring Network Plans, which are required to be submitted to the EPA by July 1 of each year.[42] The EPA in turn reviews these annual plans for compliance with applicable regulations and consistency with relevant guidance. Currently there are more than 900

[37] *See* 70 FR 25162 (May 12, 2005) and 76 FR 48208 (August 8, 2011).

[38] While the CAA provides for ''designating'' with respect to the Governor's list, in the full context of the CAA section 107 it is clear that the Governor actually makes a recommendation, to which the EPA must respond using a specified process if the EPA does not accept the recommendation.

[39] While section 107 of the CAA specifically addresses states, the EPA is following the same process for tribes that choose to make a recommendation to the extent practicable, pursuant to section 301(d) of the CAA regarding tribal authority, and the TAR. 63 FR 7254 (February 12, 1998). To provide for clarity and consistency, the EPA issued a 2011 guidance memorandum for working with tribes during the designations process. Memorandum of December 20, 2011 from Stephen D. Page, Director, Office of Air Quality Planning and Standards, to EPA Regional Administrators, Regions I–X re: ''Guidance to Regions for Working with Tribes during the National Ambient Air Quality Standards (NAAQS) Designations Process.'' Available at: *http://www.epa.gov/ttn/oarpg/t1/memoranda/20120117naaqsguidance.pdf.*

[40] *See* the **Federal Register** notice for the first round of designations for the 2012 $PM_{2.5}$ NAAQS at 80 FR 2206 (January 15, 2015).

[41] The ambient air monitoring requirements that apply to the $PM_{2.5}$ NAAQS are detailed in 40 CFR part 58. These monitoring requirements are applicable to state and local air agencies.

[42] *See* 40 CFR 58.10.

monitoring locations across the country eligible for comparison to the $PM_{2.5}$ NAAQS. States are required to maintain monitors in designated nonattainment areas in order to track progress toward attainment and ultimately determine whether the area has attained the $PM_{2.5}$ standards. In addition to the approved monitors for comparison to the NAAQS, the EPA and states also maintain a chemical speciation network (CSN) of about 200 stations around the country to support analyses of chemical composition of $PM_{2.5}$ (*e.g.* sulfate, nitrate and organic carbon). The data provided by the CSN help states identify contributing source categories and develop control strategies to reach attainment.

In conjunction with the promulgation of the 2012 $PM_{2.5}$ NAAQS, the EPA finalized a schedule for deployment of $PM_{2.5}$ monitors at near-road monitoring locations. Under revised monitoring requirements, states are required to locate a minimum of one $PM_{2.5}$ monitor in each core-based statistical area (CBSA) with a population of 1 million or more, to be phased-in between January 2015 and January 2017.[43]

For initial area designations for any $PM_{2.5}$ NAAQS, the EPA relies on monitoring data to identify areas to be designated nonattainment due to violations of the standard(s). The EPA uses other information to identify areas contributing to the monitored violations in those areas.[44] The agency's protocol for designating areas and determining whether an area has attained the $PM_{2.5}$ NAAQS is based on monitored air quality data collected over a period of 3 calendar years. Data from the new $PM_{2.5}$ near-road monitors were not available for the EPA to consider within the timeframe for initial area designations provided by the CAA for the 2012 $PM_{2.5}$ NAAQS; the agency will not be able to consider data from a near-road monitor in the implementation process until 3 years of data are available. The initial set of near-roadway $PM_{2.5}$ monitors are to be fully deployed by January 2015, with the first 3 years of air quality data (2015–2017) available beginning in 2018; the second set of near-roadway monitors are to have the first 3 years of data available beginning in 2020.

4. SIP Development Process

In general terms, a SIP is the compilation of EPA-approved state statutes, regulations and programs that a state develops and relies upon to carry out its NAAQS implementation responsibilities under the CAA, including the attainment, maintenance and enforcement of NAAQS. States use the SIP development process to identify the emissions sources that contribute to the nonattainment problem in a particular area, and to select the required emissions reduction measures most appropriate for that area, considering factors such as technological and economic feasibility. As part of developing an attainment plan, the states must meet specific requirements of the CAA to attain the NAAQS, *e.g.,* a state with a Moderate $PM_{2.5}$ nonattainment area must impose RACM (including RACT) and additional reasonable measures on sources located in the nonattainment area. Under the CAA, states must develop attainment plans that ensure that areas reach attainment as expeditiously as practicable, but no later than the applicable statutory attainment date. In these attainment plans, states may take into consideration emission reductions resulting from federally applicable national programs (such as mobile source regulations, the national acid rain program, or maximum achievable control technology (MACT) standards for air toxics), as well as from state or local programs not directly mandated, but authorized, under the CAA, if such measures are incorporated into the SIP and thus are made federally enforceable.

5. Geographic Extent of $PM_{2.5}$ Problem

The EPA recognizes the significant variability in the nature and sources of $PM_{2.5}$ in different nonattainment areas and believes it is important to keep this variability in mind when providing guidance to states as they develop control strategies to bring their $PM_{2.5}$ nonattainment areas into attainment with the relevant NAAQS. The variability of $PM_{2.5}$ concentrations across the country has a substantial regional component because the formation and transport of secondarily formed particles, such as sulfates and nitrates, can extend over hundreds of miles. As a result, monitored violations of the $PM_{2.5}$ NAAQS can often reflect the impact of the combination of ''local'' sources of emissions located within the designated nonattainment area and ''regional'' sources of emissions that may be located much farther away.

In addition, data suggest that ambient $PM_{2.5}$ concentrations tend to rise and fall in a consistent manner across very large geographic areas. The transport phenomenon associated with $PM_{2.5}$ and its precursors has been well documented for many years. For example, one significant source of information on long-range transport is the National Acid Precipitation Assessment Program (NAPAP) research from the 1980s and its associated reports published in 1991.[45] Additional studies and air quality modeling analyses since that time have added to the body of information documenting the regional nature of $PM_{2.5}$.[46]

6. Strategies for Reducing Ambient $PM_{2.5}$

The control measures identified and adopted by a state through the SIP development process for bringing nonattainment areas into attainment constitute an important component of the CAA's overall strategy for meeting the $PM_{2.5}$ standards, but they are not the only component. The CAA also includes requirements for national rules or programs that will reduce emissions and help achieve cleaner air. Specifically, the EPA has adopted a number of national rules over the past few years that require or will require emission reductions from sources of both direct $PM_{2.5}$ and $PM_{2.5}$ precursors, especially of SO_2 and NO_X. The national rules that will help states meet their attainment dates include, but are not limited to: The Tier 2 Light-Duty Vehicle Rule; the Tier 3 Tailpipe and Evaporative Emission and Vehicle Fuel Standards; the Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements; the Clean Air Nonroad Diesel Rule; the Regional Haze Regulations and Guidelines for Best Available Retrofit Technology Determinations; the NO_X Emission Standard for New Commercial Aircraft Engines; the CSAPR; the Emissions Standards for Locomotives and Marine

[43] Near-road monitors for CBSAs larger than 2.5 million in population are to be operational by 1/1/2015; and monitors for CBSAs with population larger than 1 million but less than 2.5 million are to be operational by 1/1/2017. CBSA is defined by OMB as a statistical geographic entity consisting of the county or counties associated with at least one urbanized area/urban cluster of at least 10,000 population, plus adjacent counties having a high degree of social and economic integration.

[44] *See Catawba County* v. *EPA,* 571 F.3d 20 (D.C. Cir. 2009).

[45] National Acid Precipitation Assessment Program. Acid Deposition: State of the Science and Technology. Washington, DC 1991. *See also* Environmental Protection Agency. (2004) Air Quality Criteria for Particulate Matter. Research Triangle Park, NC: Office of Research and Development; report no. EPA/600/P–99/002a,bF. Available at: *http://www.epa.gov/ttn/naaqs/standards/pm/s_pm_cr_cd.html.*

[46] For example, *see* technical information for the Cross-State Air Pollution Rule (CSAPR) at: *http://www.epa.gov/airmarkt/programs/cair/index.html*; and the Clean Air Interstate Rule (CAIR) at: *http://www.epa.gov/airmarkt/programs/cair/index.html. See* also: NARSTO (2004) *Particulate Matter Assessment for Policy Makers: A NARSTO Assessment.* P. McMurry, M. Shepherd, and J. Vickery, eds. Cambridge University Press, Cambridge, England. ISBN 0 52 184287 5.

Compression-Ignition Engines; the Control of Emissions for Nonroad Spark Ignition Engines and Equipment; the C3 Oceangoing Vessels rule; area and major source Boilers NESHAPs, New Source Performance Standards and Emission Guidelines for Hospital/Medical/Infectious Waste Incinerators; the Reciprocating Internal Combustion Engines (RICE) NESHAPs; and the Mercury and Air Toxics Standards (MATS).[47]

Additionally, there are $PM_{2.5}$ reductions that will be achieved as a result of previously adopted state and local agency regulations and voluntary programs to the extent they can be relied on under the EPA's voluntary measures policies, such as the use of low sulfur fuel for home heating and industrial purposes, curtailment of residential wood burning and burn bans. Furthermore, under the voluntary PM Advance program, the EPA works with states, tribes and local governments to ensure they are aware of the advantages of early action and to provide assistance in taking steps to achieve emission reductions in areas currently attaining the $PM_{2.5}$ NAAQS but approaching levels that could lead to nonattainment in the future. Early reductions may help these areas maintain the annual and 24-hour $PM_{2.5}$ NAAQS over the long-term. Furthermore, there may be emissions controls that can be implemented to meet NAAQS for ozone (O_3) or SO_2 that may have co-benefits for meeting and continuing to meet the current $PM_{2.5}$ NAAQS and any future revised $PM_{2.5}$ NAAQS.

The EPA will continue to work closely with air agencies as they develop and use an appropriate combination of national, regional and local pollution reduction measures to meet the standards as expeditiously as practicable, as required by the CAA.

[47] Compliance with the MATS emission standard for acid gas hazardous air pollutants (HAP) is demonstrated by direct measurement of either hydrogen chloride (HCl) or SO_2 as surrogates for all acid gas HAP. Thus, compliance with MATS is expected to result in a substantial amount of new pollution controls (scrubbers and dry sorbent injection) and upgrading of existing acid gas controls that will significantly reduce acid gas emissions, including SO_2 emissions, from power plants. MATS implementation is projected to reduce nationwide SO_2 emissions from power plants to a level more than 40 percent lower than the SO_2 emissions projected under CSAPR without MATS in place. For more information, *see: http://www.epa.gov/mats.*

III. What is the EPA proposing with respect to the treatment of $PM_{2.5}$ precursors in nonattainment area planning and permitting?

A. Background

The EPA recognizes that a threshold question in developing $PM_{2.5}$ attainment plans and implementing NNSR programs is the question of which precursors must be regulated in a given nonattainment area in order to attain the relevant NAAQS and to meet the statutory requirements of part D, including subpart 4, of the CAA. Before discussing the specific CAA attainment plan and NNSR requirements in detail in Sections IV through IX of this preamble, the EPA discusses in this section how a state should evaluate $PM_{2.5}$ precursors in order to identify the specific precursors to which the $PM_{2.5}$ attainment plan and NNSR requirements will apply in a given nonattainment area. This section first provides a brief overview of the precursor policies that the agency included in the 2007 $PM_{2.5}$ Implementation Rule and in the 2008 $PM_{2.5}$ NSR Rule for the 1997 $PM_{2.5}$ NAAQS that were remanded by the court. It then describes the EPA's three proposed options for addressing $PM_{2.5}$ precursors under the attainment planning and NNSR programs to meet the statutory requirements of subpart 4. Lastly, this section discusses possible approaches for states to develop an adequate technical demonstration showing whether emissions of a given $PM_{2.5}$ precursor significantly contribute to ambient concentrations that exceed the standard. The EPA requests public comment on the options and information presented below.

The EPA's 2007 $PM_{2.5}$ Implementation Rule included regulatory presumptions concerning the need to address certain $PM_{2.5}$ precursors in attainment plans and through control measures related to those plans.[48] The EPA has long recognized the scientific basis for concluding that there are multiple scientific precursors to PM_{10}, and in particular to $PM_{2.5}$.[49] As described in Section II of this preamble (on technical background issues associated with $PM_{2.5}$ and $PM_{2.5}$ precursors), appropriate control of precursors is especially important because secondarily formed particles comprise a large fraction of ambient $PM_{2.5}$ concentrations in many nonattainment areas.

Section 302(g) of the CAA indicates that the term ''air pollutant'' includes ''any precursors to the formation of any air pollutant, to the extent the Administrator has identified such precursor or precursors for the particular purpose for which the term 'air pollutant' is used.'' In the 2007 $PM_{2.5}$ Implementation Rule and the 2008 $PM_{2.5}$ NSR Rule, the EPA recognized that the main scientific precursors of fine particle formation are SO_2, NO_X, VOC, and ammonia. Pursuant to the discretionary authority provided under section 302(g) to identify $PM_{2.5}$ precursors for a particular program, the EPA also included requirements describing which precursor gases states were to evaluate for potential emission reductions as part of the state's analysis of control measures to bring the area into attainment as expeditiously as practicable.

To facilitate the evaluation and identification of reasonable control measures, the 2007 $PM_{2.5}$ Implementation Rule included nationally applicable presumptions regarding the need to evaluate and potentially control emissions of certain precursors. Specifically, in 40 CFR 51.1002, the EPA provided that a state must evaluate sources of direct $PM_{2.5}$ and SO_2 for potential control measures; a state presumptively was required to evaluate sources of NO_X for potential control measures; and, a state was presumptively *not* required to evaluate sources of VOC and ammonia emissions for potential control measures. The EPA established these presumptions concerning VOC and ammonia in the 2007 $PM_{2.5}$ Implementation Rule because of factors such as uncertainties regarding the emissions inventories for ammonia, uncertainties concerning the role of some VOC in the formation of particles, and uncertainties regarding the effectiveness of specific precursor control measures in various regions of the country in reducing $PM_{2.5}$ concentrations. For example, in some areas of the U.S., emission reductions of a particular precursor may lead to large changes in $PM_{2.5}$ concentrations because there are relatively few tons of such precursor emissions in the area in the first place. In other areas, the opposite may be true, where emission reductions of a particular precursor may lead to small changes in $PM_{2.5}$ concentrations because the area has an abundance of emissions of that particular precursor.

The rule also included provisions for potentially reversing the EPA's initial presumptions for certain precursors in a nonattainment area where the state or

[48] *See* 2007 $PM_{2.5}$ Implementation Rule, 72 FR 20586, 20589, 20590, 20591, 20592, 20593, 20594, 20595, 20596 and 20597 (April 25, 2007).

[49] *Ibid.* For example, the EPA's 2007 $PM_{2.5}$ Implementation Rule discussed the fact that emissions of SO_2, NO_X, VOC and ammonia are factual and scientific precursors to $PM_{2.5}$.

the EPA had information demonstrating that the presumption was not valid for that area. The EPA left open the possibility in the 2007 $PM_{2.5}$ Implementation Rule for regulation of VOC and ammonia emissions as $PM_{2.5}$ precursors in any nonattainment area where regulation was necessary for purposes of attaining the 1997 $PM_{2.5}$ NAAQS. Similarly, the EPA left open the possibility for not regulating NO_X where NO_X sources from within the state did not have a significant contribution to $PM_{2.5}$ concentrations in the nonattainment area. The preamble to the 2007 $PM_{2.5}$ Implementation Rule discussed that to ''reverse'' the presumptions in the rule for NO_X, VOC or ammonia, the state would need to provide an appropriate technical demonstration, and it provided examples of the types of analyses that could be included in such a demonstration. The EPA intended these to be rebuttable presumptions that either the state or the EPA might reverse through notice-and-comment rulemaking. These presumptions were not limited to precursor emissions only from major stationary sources, but rather were presumptions applicable to precursor emissions from all sources of such emissions within the area.[50]

The 2008 $PM_{2.5}$ NSR Rule included similar policies for precursor presumptions in connection with the NSR requirements for nonattainment areas (the NNSR program).[51] That rule provided a discussion of the possibility for the state or the EPA to provide a technical demonstration to reverse the presumptions for NO_X, VOC or ammonia.[52] The one significant difference between the two rules was the geographic scope of the requirements. The 2008 $PM_{2.5}$ NSR Rule indicated that a precursor presumption could be rebutted if the emissions of that precursor *from sources within the nonattainment area* (emphasis added) did not significantly contribute to $PM_{2.5}$ concentrations in the nonattainment area. This distinction is logical because the requirements of the NNSR program apply only to sources located within a designated nonattainment area. Conversely, the 2007 $PM_{2.5}$ Implementation Rule indicated that the evaluation of whether a given precursor should be regulated should be based on emissions *from sources throughout the entire state* (emphasis added), because the state air agency has jurisdiction over sources throughout the entire state in developing strategies to improve air quality specifically in nonattainment areas. A more complete discussion of the 2008 NNSR program requirements for the $PM_{2.5}$ NAAQS and the proposed changes concerning the regulation of $PM_{2.5}$ precursors from new or modified major stationary sources of $PM_{2.5}$ precursors in $PM_{2.5}$ nonattainment areas is provided in Section VIII of this preamble.

The EPA's approach to the evaluation and regulation of $PM_{2.5}$ precursors in both the 2007 and 2008 rules for implementing the 1997 $PM_{2.5}$ NAAQS was called into question in the court's 2013 decision in *NRDC* v. *EPA.* As an example of the distinction between the divergent substantive requirements of subpart 1 and subpart 4, the court noted that subpart 4 has specific provisions related to regulation of precursors not present in subpart 1. Although the court stated that it was not reaching a decision on the issue of regulation of precursors, the court's decision specifically discussed both the approach to precursors in the 2007 $PM_{2.5}$ Implementation Rule and the 2008 $PM_{2.5}$ NSR Rule and compared those to section 189(e) of the CAA, which contains the sole explicit reference to the regulation of precursors in subpart 4. The court decision included the following statements with regard to precursors:

> Ammonia is a precursor to fine particulate matter, making it a precursor to both $PM_{2.5}$ and PM_{10}. For a PM_{10} nonattainment area governed by subpart 4, a precursor is presumptively regulated. *See* 42 U.S.C. 7513a(e) [section 189(e)]. But under the PM rules challenged here, the EPA established a rebuttable presumption against regulating ammonia unless a state or the EPA ''provides an appropriate technical demonstration'' that shows emissions from ammonia ''significantly contribute to PM concentration in the nonattainment area.'' 40 CFR 51.1002(c)(4)(i). When Congress enacted subpart 4, it sought to end this administrative gamesmanship.[53]
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> In light of our disposition, we need not address the petitioners' challenge to the presumptions in [40 CFR 51.1002] that volatile organic compounds and ammonia are not $PM_{2.5}$ precursors, as subpart 4 expressly governs precursor presumptions.[54]

Section 189(e) for PM_{10} precursors (which the court concluded expressly includes $PM_{2.5}$) provides that: ''The control requirements applicable under plans in effect under this part for major stationary sources of PM_{10} shall also apply to major stationary sources of PM_{10} precursors, except where the Administrator determines that such sources do not contribute significantly to PM_{10} levels which exceed the standard in the area.'' The court reasoned that the EPA's approach to precursors in the 2007 $PM_{2.5}$ Implementation Rule and 2008 $PM_{2.5}$ NSR Rule had the effect of reversing the presumption embodied within subpart 4 that a state should address all PM_{10} precursors unless the state has made a specific showing why regulation of a particular precursor is not necessary.[55]

The provisions of subpart 4 do not define the term ''precursor'' for purposes of PM_{10}, nor do they explicitly require the control of any specifically identified particulate matter precursor. However, as stated above, the statutory definition of ''air pollutant'' provides that the term ''includes any precursors to the formation of any air pollutant, to the extent the Administrator has identified such precursor or precursors for the particular purpose for which the term 'air pollutant' is used.'' CAA section 302(g). The EPA has determined that SO_2, NO_X, VOC and ammonia are factual and scientific precursors to PM, and thus the attainment plan requirements of subpart 4 initially apply equally to emissions of direct $PM_{2.5}$ and all of its identified precursors, except as otherwise provided in the statute (*e.g.* CAA section 189(e)). Section 189(e) explicitly requires the control of precursors from all major stationary sources, unless there is a demonstration to the satisfaction of the Administrator that such major stationary sources do not contribute significantly to PM levels that exceed the standards in the area.[56] Section 189(e) contains the only express exception to control requirements under subpart 4. The control requirements for major sources referred to in this exception include requirements for RACM and RACT, additional reasonable measures, BACM and BACT, most stringent measures (as applicable) and NNSR on all major sources of precursors in the nonattainment areas. The General Preamble indicates that consideration of precursors is necessary for attainment plans, and it recognizes the specific applicability of section 189(e) to both existing and new major stationary sources, including new and modified sources subject to NNSR permitting requirements. Even though section

[50] *Ibid.*

[51] *See* the **Federal Register** published on May 16, 2008 (73 FR 28321, 28326 and 28327).

[52] *Ibid.*

[53] *NRDC* v. *EPA,* 706 F.3d 428, 437, n.7 (D.C. Cir. 2013).

[54] *NRDC* v. *EPA,* 706 F.3d 428, 437, n.10 (D.C. Cir. 2013).

[55] *Ibid.*

[56] The EPA notes that it has already addressed the requirements of subpart 4 for precursors, specifically within the context of the requirements of section 189(e), in the General Preamble. *See* the **Federal Register** published on April 16, 1992 (57 FR 13498, 13539, 13541 and 13542).

189(e) only explicitly contemplates exceptions to control requirements for $PM_{2.5}$ precursors from major stationary sources, the EPA believes that by analogy it has authority to promulgate regulations that allow states to determine that it is not necessary to regulate $PM_{2.5}$ precursors from other source categories as well, under appropriate circumstances.

When Congress adopted the 1990 CAA Amendments, a NAAQS for PM_{10} was in effect, but no standard for $PM_{2.5}$ had yet been established. At that time, it was understood that the interaction of PM precursors in the atmosphere led to the formation of particulate matter in many areas. However, in some of the PM_{10} nonattainment areas, air quality problems were caused primarily by area sources emitting direct PM emissions (*e.g.,* a nonattainment area with numerous wood burning devices or with substantial sources of windblown coarse particles from construction sites), and precursor emissions from major stationary sources were not considered to make a significant contribution to the local nonattainment problem. For cases such as these, section 189(e) provided a possible exception to the requirement to control all $PM_{2.5}$ precursors from major sources in all nonattainment areas.

While section 189(e) expressly requires control of precursors from major stationary sources where direct PM from major sources is to be controlled unless certain conditions are met, as stated above, it is clear that subpart 4 and other CAA provisions collectively require the control of direct PM and all $PM_{2.5}$ precursors from all types of sources (*i.e.,* stationary sources, area sources, and mobile sources) as may be needed for the purposes of demonstrating attainment as expeditiously as practicable in a given area.[57] Long-standing EPA guidance for RACM has stated that the state should inventory all emissions of the relevant pollutants and precursors in the nonattainment area and evaluate all economically and technologically feasible control measures for the relevant pollutant and precursors, and that the state should adopt those measures that are deemed reasonably available and necessary in order to attain the NAAQS as expeditiously as practicable.[58] The state also must ensure that there is no other collection of available control measures that if adopted would advance the attainment date by at least one year.[59] Section IV.D of this preamble provides additional discussion on the development of emissions inventories and the identification, adoption and implementation of reasonable control measures for Moderate $PM_{2.5}$ nonattainment areas. [60]

B. Proposed Precursor Policy Options

The EPA is proposing this rule to address the attainment plan and certain NNSR requirements for $PM_{2.5}$ under subpart 4. In light of the court's decision in *NRDC* v. *EPA,* the EPA considers it necessary to address in this implementation rule how states must address regulation of $PM_{2.5}$ precursor gases in attainment plans and NNSR programs for the $PM_{2.5}$ NAAQS. As noted earlier, the court's decision made clear that appropriate regulation of all precursors is initially presumptively required under the CAA, and the regulation of precursors is a critical issue for attainment of the $PM_{2.5}$ NAAQS because secondarily formed particles are a substantial component of the $PM_{2.5}$ nonattainment problem in most areas of the U.S.

For the purposes of this implementation rule, the EPA considers that for all nonattainment areas, the $PM_{2.5}$ precursors for regulatory purposes are SO_2, NO_X, VOC and ammonia. This rule does not propose any national presumption that would simply allow a state to exclude sources of emissions of a particular precursor from further analysis for control requirements. However, the EPA's existing interpretation of subpart 4 requirements—with respect to precursors in attainment plans for PM_{10}, as set out in the General Preamble—contemplates that the state may develop an attainment plan that regulates only those precursors that are necessary to control for purposes of timely attainment in the area, *i.e.,* states may determine that only certain precursors need to be regulated for attainment purposes.[61] Courts have upheld this approach to the requirements of subpart 4 for PM_{10}.[62]

The EPA believes that application of a similar approach to $PM_{2.5}$ precursors under subpart 4 is appropriate and reasonable. Thus, this proposal describes three proposed precursor options that provide for the possibility that, with appropriate justification provided by the state, further evaluation and implementation of control strategies for one or more $PM_{2.5}$ precursors in a given nonattainment area may not be needed or required. Under each option, a state may provide a technical demonstration and reasoned justification for the exclusion of a $PM_{2.5}$ precursor or precursors from control requirements for a particular nonattainment area.

As explained above, the EPA interprets the CAA to require states to inventory and regulate all sources of $PM_{2.5}$ precursors from all sources in the area, including area sources, mobile sources and stationary sources. This interpretation is based on CAA provisions requiring adoption of all RACM needed to attain the standard as expeditiously as practicable; section 302(g), which defines an air pollutant as including all precursors contributing to the formation of that pollutant; and, the EPA's identification of the four main $PM_{2.5}$ precursors. For major stationary sources, section 189(e) requires that the control requirements applicable for major stationary sources of $PM_{2.5}$ must also apply to major stationary sources of $PM_{2.5}$ precursors, unless the state provides a showing that emissions of a particular precursor from major stationary sources do not contribute significantly to levels which exceed the standard in the area. Thus, the statute generally requires control of all $PM_{2.5}$ precursors, but it provides an express exception applicable to major stationary sources. Because the statutory provisions of subparts 1 and 4 are not explicit with respect to how states should address $PM_{2.5}$ precursors from non-major sources, the EPA is proposing regulations to assure proper evaluation and regulation of $PM_{2.5}$ precursor emissions in $PM_{2.5}$ nonattainment areas. Moreover, even with respect to regulation of precursor emissions from major stationary sources, section 189(e) contains ambiguities that require interpretation. For example, section

[57] *See* CAA requirements for states to demonstrate attainment ''as expeditiously as practicable'' (section 188(c)(1); section 172(a)(2)).

[58] 57 FR 13498 (April 16, 1992).

[59] In the context of the PM_{10} NAAQS, the EPA has concluded that ''advancement of the attainment date'' should mean an advancement of at least 1 calendar year. *See* State Implementation Plans; General Preamble for the Implementation of Title I of the CAA Amendments of 1990, 57 FR 13498 (April 16, 1992). *See also Sierra Club* v. *EPA,* 294 F.3d 155 (D.C. Cir. 2002).

[60] *See* Section IV of this preamble for a thorough discussion of past reasonably available control measures (RACM) and reasonably available control technology (RACT) policy and guidance. Section IV discusses the EPA's proposed policy that under subpart 4, for Moderate areas that demonstrate that attainment by the statutory attainment date is impracticable, RACM and RACT would constitute all those technologically and economically feasible measures available for sources in the area that can be implemented within 4 years of designation, but they would not constitute the complete set of measures required to demonstrate attainment as expeditiously as practicable.

[61] *See* the **Federal Register** published on April 16, 1992 (57 FR 13498, 13540 and 13541).

[62] *See, e.g., Assoc. of Irritated Residents* v. *EPA, et al.,* 423 F.3d 989 (9th Cir. 2005).

189(e) does not specify the method by which the EPA should determine whether precursor emissions from major stationary sources contribute significantly to levels which exceed the standard in a given nonattainment area. Given that the provisions of subpart 4 are ambiguous with respect to these issues, the EPA believes that it is necessary to interpret those requirements in this rulemaking.

The EPA is thus seeking comment on three potential approaches to address $PM_{2.5}$ precursors pursuant to the specific statutory requirements of subpart 4 and the overarching requirements of the CAA. In these proposed options, particular emphasis is given to the situations and circumstances under which the state would or would not be required to evaluate emission controls for a particular precursor and to adopt those controls that are necessary to demonstrate attainment of the NAAQS as expeditiously as practicable. Note that these options describe analyses that the state may choose to pursue to demonstrate that control requirements should not apply to a particular precursor. However, the state also may choose to require controls for all $PM_{2.5}$ precursors in attainment plans and in its NNSR permitting program, and choose not to conduct any analyses to eliminate one or more precursors from consideration for controls.

The descriptions of the three precursor policy options being proposed in this section discuss how $PM_{2.5}$ precursors would need to be addressed by the state with regard to three specific implementation situations: (1) A Moderate area for which attainment of the relevant NAAQS by the end of the sixth calendar year after designation can be demonstrated; (2) a Moderate area for which it can be demonstrated that the relevant NAAQS cannot practicably be attained by the end of the sixth calendar year after designation; and (3) an area that is reclassified to Serious and is obligated to develop a Serious area attainment plan to attain the relevant NAAQS. Additionally, the EPA describes how each of the proposed precursor policy options would apply to the implementation of NNSR in a Moderate or Serious $PM_{2.5}$ nonattainment area. Later in this section, the EPA discusses specific issues related to the technical ''precursor demonstrations'' that states could choose to develop. The technical demonstration section includes a discussion of several types of analyses that a state could provide to the EPA to show that control measures for a specific $PM_{2.5}$ precursor would not be needed for attainment or to expedite attainment, or to show that major stationary sources of a given precursor collectively do not significantly contribute to $PM_{2.5}$ levels that exceed the relevant NAAQS in a given area.

Before discussing the three precursor options, it is important to introduce a new term that is used throughout this section and other sections of the notice. Under subpart 4, RACM (including RACT) are those measures that can and must be implemented within 4 years of the area's designation as nonattainment (pursuant to section 189(a)(1)(C)). The EPA recognizes, however, that other, similarly reasonable emissions reduction measures could be implemented after this 4 year period, and as late as the end of the sixth calendar year following designation, to help an area attain as expeditiously as practicable. Therefore, in this proposal the EPA is proposing to define the term ''additional reasonable measures'' to describe those technologically and economically feasible control measures that could not be implemented within the 4 year period after designation, but could be implemented starting any time after that 4 year period through the end of the sixth calendar year after designation (note that this period could extend almost 3 additional years, depending on when during the year area designations are finalized). *See* proposed 40 CFR 51.1000. The EPA proposes to require implementation of these ''other'' control measures to the extent necessary to demonstrate attainment by the applicable attainment date pursuant to section 172(c)(6) of the CAA. That provision provides that nonattainment ''plan provisions shall include enforceable emissions limitations, and such other control measures . . . as may be necessary or appropriate to provide for attainment of such standard in such area by the applicable attainment date . . .'' Together, RACM and RACT and ''additional reasonable measures'' make up the set of control strategies referred to in this proposed rule as ''reasonable control measures.'' [63] (Section IV.D of this preamble provides a detailed discussion of how a state must determine reasonable control measures for a Moderate $PM_{2.5}$ nonattainment area.) The EPA requests comment on each of the three proposed options discussed below which describe how a state may demonstrate that additional emissions reductions of a particular precursor would not be needed or appropriate for an area's attainment plan, and how it could demonstrate that emissions control requirements for a particular precursor would not be needed in NNSR permits for new or modified sources in the area. In particular, the EPA requests comment on whether only one of these approaches should be included in the final rule, or whether it would be appropriate to include multiple approaches (*e.g.,* both Options 1 and 2), or only specific elements from the different options. The three proposed options are summarized as follows:

- Option 1: Two independent analyses: (a) An attainment planning analysis demonstrating that control measures for a particular precursor are not needed for expeditious attainment, meaning that the precursor can be excluded from measures needed to attain as expeditiously as practicable for all types of sources; and (b) a section 189(e) technical demonstration showing that major stationary sources of a particular precursor do not contribute significantly to levels that exceed the $PM_{2.5}$ standard, meaning that the precursor can be excluded from control requirements for major sources including NNSR permitting;
- Option 2: Single analysis demonstrating that all emissions of a particular precursor from within the area do not significantly contribute to $PM_{2.5}$ levels that exceed the standard, meaning that control requirements for emissions of the precursor from major stationary and area sources, as well as mobile sources, would not be required for expeditious attainment, control requirements for major sources, or for NNSR permitting;
- Option 3: An attainment planning analysis demonstrating that control measures for all types of sources of a particular precursor are not needed for expeditious attainment also would be deemed to meet the section 189(e) technical demonstration requirement, meaning that the state would not need to regulate emissions of the particular precursor from major stationary sources under the NNSR permitting program or other control requirements for major stationary sources.

Each of these proposed options is presented in greater detail below.

1. *Option 1:* Two independent analyses: (a) An attainment planning analysis demonstrating that control measures for a particular precursor are not needed for expeditious attainment, meaning that the precursor can be excluded from measures needed to attain as expeditiously as practicable for

[63] In Section VI.D, the EPA describes a parallel approach for distinguishing control measures required under sections 172(c)(6) and 189(b)(1)(B) for Serious nonattainment areas.

all types of sources; and (b) a section 189(e) technical demonstration showing that major stationary sources of a particular precursor do not contribute significantly to levels that exceed the $PM_{2.5}$ standard, meaning that the precursor can be excluded from control requirements for major sources and from NNSR permitting.

As with the other options discussed below, the critical first step in any precursor analysis is the development of a comprehensive inventory of all precursor emissions in the nonattainment area. A state will be unable to reasonably determine whether emissions of a given $PM_{2.5}$ precursor contribute significantly to the nonattainment problem in an area if the state has failed to account adequately for all such emissions in the area in its emissions inventory.

In general terms, Option 1 would require separate analyses for purposes of attainment planning and for NNSR. Section 189(a) of the CAA describes the requirements for Moderate nonattainment areas. Within 18 months of designation as nonattainment, the state is required to submit a Moderate area plan that either demonstrates attainment as expeditiously as practicable but by no later than the end of the sixth year following designation, or demonstrates that attainment by such date would be impracticable.

Under Option 1, the state would determine the precursors for which new control measures need to be adopted for a given nonattainment area through its determination of reasonable control measures needed for attainment. The state's analysis of reasonable measures for a given $PM_{2.5}$ NAAQS nonattainment area should begin by identifying potential control measures (and factors related to technological feasibility, economic feasibility, and time needed for implementation) for all precursors from all types of sources in the area (*i.e.,* stationary, area, mobile) included in the emissions inventory. The analysis of reasonable measures and selection by the state of those emissions reduction measures that would provide for attainment as expeditiously as practicable (but no later than the end of the sixth calendar year after designation) would determine which precursors must be regulated in the nonattainment area for purposes of attainment. Except for the requirement to determine whether implementation of all remaining reasonable measures could collectively advance attainment by a year, there would be no additional demonstration needed by the state to justify that attainment planning control requirements should not apply to a particular precursor. Therefore, the analysis of reasonable measures may result in the state controlling only a subset of the four main $PM_{2.5}$ precursors as part of the attainment demonstration.

a. *Moderate area for which the state can demonstrate attainment by the statutory attainment date.* For certain nonattainment areas, the state may be able to demonstrate that attainment of the standard ''as expeditiously as practicable'' is possible by the end of the sixth year after designation (the statutory Moderate area attainment date) or sooner, and could be achieved by adopting regulations to reduce emissions of only a subset of the four $PM_{2.5}$ precursors. Under this scenario, the state would be expected to provide analytical information showing that, even though new economically and technically feasible control measures may be available for one or more precursors, the reductions in emissions of the precursor(s) that could be achieved are not necessary for expeditious attainment and would not advance the attainment date by at least a year. Under Option 1, if the state determined that new emissions reductions of a particular precursor are not necessary for attainment and would not accelerate the attainment date by at least 1 year, then for the purposes of this particular $PM_{2.5}$ Moderate area attainment plan, the state would not need to adopt additional control measures for that $PM_{2.5}$ precursor. Given that additional regulation of that $PM_{2.5}$ precursor would not be necessary for attaining the standard as expeditiously as practicable, the EPA would be able to approve the attainment plan for the area as meeting the requirements of subpart 4.

b. *Moderate area for which the state can demonstrate that attainment by the statutory attainment date is impracticable.* Section 189(a)(1)(B) provides that for certain nonattainment areas, the state may demonstrate that, even with implementation of all reasonable control measures available for reducing emissions of all direct PM and $PM_{2.5}$ precursors, it would be impracticable to attain the standard by the end of the sixth calendar year after designation. In other words, the analysis would need to demonstrate that implementing all economically and technically feasible control measures that are available in the area, and the expected air quality change from such measures, would not be able to provide for attainment by the end of the sixth year after designation.

For states that can make the showing that they cannot attain the NAAQS by the end of the sixth calendar year after designation, the question arises as to whether the state should be required to adopt all reasonable measures (*i.e.* measures that represent RACM and RACT because they are technologically and economically feasible and can be implemented in 4 years and all additional reasonable measures that can be implemented within 6 years) through regulation as part of the Moderate area plan, even if a subset of these measures collectively would have a minimal effect on reducing ambient $PM_{2.5}$ concentrations. The EPA proposes two sub-options for areas that cannot demonstrate attainment during the Moderate area timeframe even with the implementation of all reasonable measures in the area. Under the first sub-option, the state would be required to adopt all available control measures for precursors through regulation as part of the Moderate area plan. The rationale supporting this approach would be that adopting all technologically and economically feasible measures would bring the area as close to attainment as possible during the timeframe prescribed for Moderate areas. Under this approach, if a measure can be implemented by the end of the sixth calendar year after the nonattainment designation and it meets the criteria for being considered ''reasonable,'' then the state must adopt and implement the measure.

Under the second sub-option, the state would be able to elect not to impose those technologically and economically feasible measures that collectively have minimal effect on ambient $PM_{2.5}$ levels in the area, based on the premise that such measures would be unreasonable to implement. To support this conclusion, the state would need to submit a technical demonstration showing that implementing available emissions controls for a particular precursor and/or a specific set of sources would provide only minimal changes in $PM_{2.5}$ concentrations in the area, and therefore such control measures should not be required during the timeframe prescribed for Moderate areas. The EPA requests comment on these two sub-options, including any technical information that would help support the commenter's position. Regarding the second sub-option, the EPA requests comment on what degree of air quality change should be considered minimal for purposes of this analysis.[64]

[64] Note that under either sub-option, the state would be able to show that control of precursor emissions from major stationary sources would not be required if it could be demonstrated that such emissions do not contribute significantly to $PM_{2.5}$

c. *Area reclassified to Serious.* A Moderate area can be reclassified to a Serious area under two scenarios. Under the first scenario, if a Moderate area fails to attain the standard by the applicable attainment date, it would then be reclassified by the EPA as a Serious area and the state would be required to develop and submit a Serious area attainment plan within 18 months of reclassification. Under the second scenario, the EPA could reclassify an area to Serious prior to the Moderate area attainment date if the EPA determines that it would be impracticable for the area to attain by the Moderate area attainment date. (Section V of this preamble provides additional detail on reclassifying a Moderate area to Serious under subpart 4.)

After an area has been reclassified to Serious, subpart 4 requires a state's Serious area attainment plan to include the imposition of more stringent control measures (best available control measures (BACM) and best available control technology (BACT)) intended to bring the area into attainment as expeditiously as practicable but no later than the end of the tenth calendar year after designation. Given that the CAA requires a more stringent new attainment plan for Serious areas, under Option 1 the state would be required to identify the best available measures for all sources of direct $PM_{2.5}$ emissions and emissions of $PM_{2.5}$ precursors and adopt those measures to attain the standard as expeditiously as practicable.[65]

The BACM and BACT determination requires a more rigorous analysis than the RACM and RACT analysis, and such measures collectively should lead to a greater degree of emission reduction in the area than the analysis of reasonable control measures for the Moderate area plan. For this reason, under Option 1, if the state's previous Moderate area attainment plan had indicated that new emissions reduction measures from sources of one or more precursors were not needed to attain by the end of the sixth calendar year after designation, then for the Serious area plan the state would need to reevaluate the best control measures addressing all $PM_{2.5}$ precursors (*i.e.* SO_2, NO_X, VOC, and ammonia) and require implementation of those ''best'' available control measures for all precursors in order to bring the area into attainment as expeditiously as practicable, but no later than the end of the tenth year after designation. Under Option 1, any precursor demonstration that excluded one or more precursors from regulation in the Moderate area plan would not by itself also be sufficient to exclude the precursors from regulation in the Serious area plan. Further analysis would be needed to determine if control measures for those precursors qualify as ''best'' control measures. The EPA has interpreted the starting point for considering ''best'' control measures as including those control measures to reduce emissions of direct $PM_{2.5}$ or $PM_{2.5}$ precursors that have been adopted by any state, particularly those states with the most severe $PM_{2.5}$ air quality problems. (Note that in Section VI.D of this preamble, more details are provided on BACM and BACT determination criteria. The EPA is taking comment on two options for BACM and BACT determinations—one that expresses it as a requirement independent of the attainment demonstration, and one that expresses it as only those ''best'' measures that are needed for expeditious attainment no later than the end of the tenth calendar year after designation. The BACM and BACT determination approach adopted in the final rule accordingly will determine whether all best available emission controls for a particular precursor must be adopted or not in a Serious area).

d. *NNSR.* Under Option 1, the initial expectation is that the state will need to address all four $PM_{2.5}$ precursors under the NNSR program pursuant to the CAA and as reinforced by the January 2013 *NRDC* v. *EPA* court decision. Pursuant to section 189(e), however, the state may provide a demonstration showing that emissions of a particular precursor from existing major stationary sources located in the nonattainment area do not contribute significantly to $PM_{2.5}$ levels that exceed the standard in the area. Under Option 1, this analysis under section 189(e) for major sources would be completed independently from the analysis of reasonable control measures conducted for attainment planning purposes. Such an analysis would involve assessing the potential addition of precursor emissions in the area due to potential new major stationary sources, and would likely involve air quality modeling and other technical analyses by the state, developed in consultation with the EPA (*see* Section III.C. of this preamble for further discussion on such technical demonstrations). Note that under this provision of the CAA, it might be possible that a precursor would be considered important for attainment planning purposes, but would not be regulated as a $PM_{2.5}$ precursor in NNSR permitting actions which, by definition, only apply to major sources of the nonattainment pollutant. For example, it might be possible that in a particular area the principal source of emissions of a certain precursor could be from mobile and area sources but not from major stationary sources of that precursor. The EPA requests comment on all aspects of proposed Option 1 as discussed above.

2. *Option 2:* Single analysis demonstrating that all emissions of a particular precursor from within the area do not significantly contribute to $PM_{2.5}$ levels that exceed the standard, meaning that control requirements for emissions of the precursor from stationary major and area sources, as well as mobile sources, would not be required for expeditious attainment, control requirements for major sources, or for NNSR permitting.

Option 2 would provide the state the opportunity to provide the EPA with a scientifically credible technical analysis that would demonstrate that one or more precursors do not contribute significantly to the $PM_{2.5}$ levels that exceed the standard, therefore controls on those emissions would not be effective in reducing $PM_{2.5}$ levels in the area. As noted earlier in this section of the preamble, section 302(g) of the CAA includes ''precursors'' in the definition of ''air pollutant,'' but provides the EPA with some discretion in defining how these terms should be interpreted. In subpart 4, the CAA does not explicitly address control of precursors, except with regard to major stationary sources in section 189(e). The EPA interprets subpart 4 to require states to address $PM_{2.5}$ precursors from all source categories in the evaluation of controls needed for attainment in a given area, *e.g.,* in the evaluation of RACM and RACT level controls. By analogy to section 189(e), the EPA also believes that there may be circumstances in which states may validly demonstrate that control of one or more $PM_{2.5}$ precursors is not needed to attain the relevant NAAQS expeditiously.

Section 189(e) provides that precursor control requirements apply to major stationary sources of precursors of $PM_{2.5}$ if major sources of PM are regulated under the attainment plan, unless it can be shown that such precursor emissions do not contribute significantly to exceedances of the relevant NAAQS in the area. Under Option 2, the EPA relies on the discretion provided in section 302(g) and the section 189(e) concept of precursor emissions in an area having a significant or insignificant effect on

levels that exceed the standard, consistent with section 189(e).

[65] The EPA's two proposed options for determining BACM and BACT are discussed in detail in Section VI.D of this preamble.

$PM_{2.5}$ concentrations that exceed the standard to propose two precursor technical demonstration suboptions. Option 2A would allow the state to provide a technical demonstration showing that all emissions (*i.e.,* from area, mobile and stationary sources in the area) of a particular precursor collectively do not provide a significant contribution to $PM_{2.5}$ levels that exceed the standard in the area. The kinds of analytical approaches that could be appropriate for this type of ''contribution demonstration'' are described later in this section.

For Option 2B, the EPA proposes to allow states to provide a technical demonstration showing that $PM_{2.5}$ concentrations in the area are not sensitive to potential reductions or increases in emissions of a particular precursor in the nonattainment area (*e.g.* because the particular precursor is not the limiting factor in secondary $PM_{2.5}$ formation). More information is provided later in this section about possible analytical approaches to assess precursor ''sensitivities'' in an area (the optional technical demonstration described for Options 2A and 2B hereafter will be referred to as a ''precursor demonstration''). The EPA requests comment on which of the two options (Option 2A or Option 2B) would be more preferable, and why. The EPA encourages commenters to provide examples of specific situations and areas in support of their recommendations.

These proposed options are consistent with the EPA's past practice for determining which technologically and economically feasible controls are necessary for expeditious attainment of the NAAQS. Specifically, the EPA has interpreted the RACM requirement in the CAA as requiring imposition of all reasonable controls as needed for expeditious attainment or to advance the attainment date by at least 1 year. The statute does not require imposition of additional controls if collectively such measures would not advance the attainment date. The EPA maintains it is reasonable to treat regulation of $PM_{2.5}$ precursors in a manner similar to the agency's treatment of direct pollutants and therefore concludes that states should not be required to implement control measures for a particular precursor or precursors if such measures will have little or no impact on $PM_{2.5}$ concentrations in the area or if the state demonstrates that all emissions of a given precursor or precursors do not contribute significantly to the $PM_{2.5}$ NAAQS exceedances in the area.

a. *Moderate area for which the state can demonstrate attainment by the statutory attainment date or for which the state can demonstrate that attainment by the statutory attainment date is impracticable.* An approved precursor demonstration under Option 2A would show that emissions of the particular precursor from all types of sources do not contribute significantly to $PM_{2.5}$ levels that exceed the standard. As proposed, this type of demonstration therefore by definition would also satisfy the section 189(e) provision (which allows the state to demonstrate that emissions from just major stationary sources are not significant and therefore should not be subject to control requirements, such as NNSR, that apply to major stationary sources of direct $PM_{2.5}$). Thus, the state could possibly develop one precursor demonstration analysis that would serve the purposes of both attainment planning and the section 189(e) insignificant major source contribution demonstration.

The sensitivity analyses required under Option 2B would need to assess a series of precursor emissions reductions and increases to determine the sensitivity to air quality in the area. For example, the analysis should evaluate the effect on $PM_{2.5}$ concentrations of various precursor emissions reduction scenarios appropriate to determine the sensitivity of precursors for the area (as would be relevant for an attainment plan); the analysis should also evaluate the effect on $PM_{2.5}$ concentrations of various precursor emissions increase scenarios appropriate to determine the sensitivity of precursors for the area, simulating the potential effect of the addition of potential new major stationary sources (or major modifications) to the nonattainment area under the NNSR program.

The EPA would evaluate the relevant analyses and other supporting information provided by the state. By submitting a ''precursor demonstration'' of this type, the state would not need to compile additional information on precursor control measures, or to proceed with actions to adopt and implement local or state regulations for the precursor. Precursor demonstrations as described in Options 2A or 2B could be conducted for Moderate areas for which the state can show that it can attain the standard by the end of the sixth calendar year after designation and for Moderate areas where the state's plan demonstrates that attainment by such date would be impracticable.

The EPA believes that general legal authorities under the CAA support the proposal of the overall precursor demonstration concept described above, and that requesting comment on these proposed options is appropriate from both a technical and a legal standpoint. This case specific approach is technically appropriate because the mix of $PM_{2.5}$ precursor emissions and other relevant technical factors varies from area to area. For example, in some areas, one precursor may be abundant while the main precursor with which it reacts may be less abundant. In such cases, reducing emissions of the less abundant precursor (the ''limiting'' precursor) is generally more effective for reducing $PM_{2.5}$ concentrations. In another type of area, the $PM_{2.5}$ concentrations that exceed the standard may be commonly dominated by primary $PM_{2.5}$ emissions rather than by secondarily formed $PM_{2.5}$. The emissions of the particular precursor from sources in the nonattainment area could be found to have an insignificant contribution to $PM_{2.5}$ levels that exceed the standard, and the potential air quality improvement from reducing emissions of the precursor in the area may be limited.

The EPA believes that proposing Options 2A and 2B is appropriate from a legal standpoint based on authority provided the Administrator in sections 302(g) and 301(a)(1) of the CAA. Section 302(g) includes in the definition of ''air pollutant'' all the precursors to that pollutant, and it allows the EPA Administrator to regulate precursors for ''the particular purpose for which the term 'air pollutant' is used.'' Under section 301(a)(1), ''[t]he Administrator is authorized to prescribe such regulations as are necessary to carry out his functions under this Act.'' Thus, with Option 2, the EPA proposes a framework by which the regulation of $PM_{2.5}$ precursors for a specific nonattainment area can be modified if the state provides the EPA with a credible technical demonstration for exempting a particular precursor which meets certain criteria and can be approved by the EPA. In addition, as noted earlier the set of analyses described under Option 2A could also satisfy the section 189(e) provision allowing the state to demonstrate that major stationary source emissions of a particular precursor do not significantly contribute to levels that exceed the standard. While this approach is not explicitly described in the statute, the EPA believes that the proposed Option 2 approach to precursor regulation is reasonable and allowed under the statutory authority provided in sections 302(g) and 301(a)(1) noted above.

The EPA anticipates that development of an approvable $PM_{2.5}$ precursor demonstration by the state at the

beginning of the attainment plan development process will require a substantial level of effort and consultation with the EPA. Such a demonstration by the state would likely involve a combination of technically rigorous and complex analyses, such as air quality modeling and ambient data analyses. The extensive nature of this type of a technical demonstration early in the attainment plan development process is necessary because the demonstration serves as the basis for limiting the applicability and associated control strategy decisions only to specific precursors for both the attainment plan and for the NNSR permitting program.

b. *Area reclassified to serious.* As noted earlier in this section, a Moderate area can be reclassified to Serious under two scenarios. Under the first scenario, if a Moderate area fails to attain the standard by the end of the sixth calendar year after designation, it would then be reclassified by the EPA as a Serious area, and the state would be required to develop and submit a Serious area attainment plan within 18 months of reclassification. Under the second scenario, EPA could reclassify an area to Serious prior to the Moderate area attainment date if it can be shown that it would be impracticable for the area to attain by the Moderate area attainment date.

Proposed Option 2 would allow a ''precursor demonstration'' approach for Serious area plans in the same manner as for Moderate area plans. However, if the state had previously submitted a precursor demonstration that the EPA approved for the Moderate area attainment plan, under either proposed Option 2A or 2B the state would be required to review and update the precursor demonstration, taking into account any changes in the emissions inventory and any other relevant information or advances in technical tools developed since the initial demonstration was approved. Examples of such information would be improved emission estimation methods or emission factors for key source categories; changes in precursor emissions inventories due to emissions control programs or new source growth; the development of more advanced technical tools to assess the effectiveness of precursor reductions; and, updated information about new or more effective control technologies or emission reduction techniques. Any precursor demonstration that is approved as part of the Serious area attainment plan would need to be revised and updated if the area cannot attain the standard by the end of the tenth calendar year after designation and seeks an extension under section 188(e) or does not attain the standard by the applicable Serious area attainment date and is subsequently subject to 5 percent annual emission reductions under section 189(d).

One other important factor to consider is the substantial amount of time that can elapse between the submission of a Moderate area attainment plan for a particular nonattainment area, and submission of a Serious area attainment plan. The plan for a Moderate area is due within 18 months of designation. Under the EPA's overall proposed approach to attainment plan development, the state would be required to evaluate control measures for all types of sources and for all $PM_{2.5}$ precursors in order to ensure attainment of the standard as expeditiously as practicable. The full assessment to identify reasonable control measures would involve a thorough compilation and analysis of information on control technologies and the technological feasibility of implementation of such measures for sources in the area; the assessment of associated control costs and economic feasibility of implementation; information on the time needed for deployment and implementation of such control measures; and, the resulting timeline for achieving emissions reductions.

If the Moderate area does not attain the standard by the end of the sixth calendar year after designation, then as required by to the CAA, the EPA would have 6 months to make a determination to that effect, and the area would be reclassified to Serious. The state would then have 18 months to submit, at a minimum, a new attainment demonstration and control strategy comprising BACM and BACT. Thus, under these circumstances, these key Serious area plan elements would be due at least 8 years after the EPA designated the area nonattainment, and more than 6 years after the state submitted the original Moderate area plan. Because of the potentially protracted timeline for developing, implementing and revising as necessary the SIP for a given $PM_{2.5}$ nonattainment area under subpart 4, the EPA believes it is reasonable for the state to be required to update any precursor demonstration it had previously developed for the area if the area is reclassified as Serious.

The EPA requests comment on the requirement for the state to review and update any previously approved ''precursor demonstration'' if the area fails to attain the standard by the applicable Moderate area attainment date. The EPA also requests comment on the requirement for the state to review and update any previously approved ''precursor demonstration'' if the area fails to attain the standard by the applicable Serious area attainment date.

c. *NNSR.* An approvable precursor demonstration under either Option 2A or Option 2B would evaluate emissions of a particular precursor from all types of sources. Accordingly, if the state provides an approvable precursor demonstration for all types of sources of a particular precursor as described above, then under Option 2A, the state would also be able to rely on the same technical demonstration to conclude that emissions of that precursor just from major stationary sources in the area do not provide a ''significant contribution'' to $PM_{2.5}$ concentrations in the area pursuant to section 189(e). Thus, under Option 2A, the state would not need to apply the NNSR control requirements for $PM_{2.5}$ to that precursor in the particular $PM_{2.5}$ nonattainment area(s) for which the EPA approves the demonstration.

Under Option 2B, the state would conduct analyses to determine the sensitivity of $PM_{2.5}$ levels in the area (that exceed the standard) to potential increases in emissions (relevant for NNSR) and decreases (relevant for attainment demonstrations). If the state provided an approvable precursor demonstration showing that $PM_{2.5}$ concentrations are insensitive to potential increases in emissions of a particular precursor in the area, then under Option 2B the state would be able to rely on this technical demonstration as the basis for not regulating that precursor for major stationary sources under NNSR.

Additionally, there could be a situation where the state finds that emissions of another precursor (*i.e.,* a precursor that was not the subject of the initial precursor demonstration) from only major stationary sources located in the nonattainment area could be considered to have an insignificant contribution to $PM_{2.5}$ levels that exceed the standard in the area (under Option 2A). For example, mobile and area source emissions of a $PM_{2.5}$ precursor could be determined to provide a larger contribution to $PM_{2.5}$ levels than major stationary sources in a given nonattainment area and would be the focus of the attainment strategy, and the major stationary source emissions of that same precursor might have only a minimal contribution to $PM_{2.5}$ levels. In this situation, the state could develop a separate demonstration under section 189(e) to support the exclusion of the

additional precursor from implementation requirements applicable to all major stationary sources, including NNSR program requirements (assuming the state analysis includes appropriate consideration of potential new sources of the relevant precursor). With an approved demonstration under section 189(e), major stationary sources of that precursor could also be excluded from the NNSR control requirements for $PM_{2.5.}$ The EPA seeks comment on all aspects of proposed Option 2.

3. *Option 3:* An attainment planning analysis demonstrating that control measures for all types of sources of a particular precursor are not needed for expeditious attainment also would be deemed to meet the section 189(e) technical demonstration requirement, meaning that the state would not need to regulate emissions of the particular precursor from major stationary sources under the NNSR permitting program or other control requirements for major stationary sources.

Under proposed Option 3, the consideration of precursors in the attainment planning process for Moderate and Serious areas would closely follow the approach described for Option 1 (*see* Sections III.B.1.a–c of this preamble). As described for Option 1, after developing a comprehensive emissions inventory, the state would conduct an analysis to identify the new reasonable control measures that need to be adopted and implemented in order for the Moderate area to attain the standard as expeditiously as practicable, but no later than by the end of the sixth calendar year after designation (this analysis is described in greater detail in Section III.B.1.a in this preamble). If the state determines that adoption of additional economically and technically feasible emission reduction measures for a particular precursor are not necessary for expeditious attainment by the end of the sixth calendar year after designation, and that such measures collectively would not accelerate the attainment date by at least a year, then for the purposes of this Moderate area attainment plan, the state would not need to adopt such additional measures because they would not be considered reasonable. (Note that the need for additional emissions reductions of the particular precursor would have to be re-evaluated if the area is reclassified to Serious, or if the area submitted a SIP revision requesting an extension of the Serious area attainment date under section 188(e)).

To clarify the intent of Option 3, unlike under Option 1, a separate analysis to show that major stationary sources of a particular precursor do not contribute significantly to $PM_{2.5}$ levels in a given $PM_{2.5}$ nonattainment area for purposes of section 189(e) would not be needed. If the state's single analysis shows that emission reduction measures are not needed from sources of a particular precursor in order to demonstrate expeditious attainment, then under proposed Option 3 the same analysis would also be considered adequate to meet the requirements of section 189(e). In effect, the attainment planning analysis would define the set of precursors that would be subject to control under both the attainment plan and the NNSR permitting program for the area.[66]

The rationale supporting the Option 3 approach focuses on the section 189(e) emphasis on precursor control requirements. If control measures are not needed in a Moderate nonattainment area to reduce emissions of a particular precursor from all types of sources in order to demonstrate attainment or to advance the attainment date, then under the rationale of proposed Option 3, it would follow that the state would not need to include any other control requirements that apply to major stationary sources of that precursor, including control requirements for $PM_{2.5}$ under the NNSR program. The theory for this option would be that if the state determines that new control requirements for emissions of the particular precursor are not needed for purposes of attainment planning because they would not contribute to reducing $PM_{2.5}$ levels that exceed the standard, then other control requirements to address emissions of that precursor also would not be needed. Note that under this option, the state also would not be required to analyze the potential effect of increases in emissions of the particular precursor (*e.g.,* from the possible permitting of new sources) on $PM_{2.5}$ concentrations in the area. The EPA requests comment on the rationale supporting Option 3.

Additionally, under Option 3, as was the case with Option 2, there could be a situation where the state determines that control measures for a particular precursor are generally needed in order to demonstrate attainment as expeditiously as practicable, but that the major stationary sources of that precursor that are located in the nonattainment area have an insignificant contribution to $PM_{2.5}$ levels that exceed the standard in the area. Under this Option 3, the EPA believes that section 189(e) provides the state with the authority to develop a separate demonstration to show that, even though control measures for a specific precursor emitted by sources other than major stationary sources are necessary to demonstrate expeditious attainment in an area, major stationary sources of that precursor have an insignificant contribution to $PM_{2.5}$ concentrations that exceed the standard in the area. Thus, controls from major stationary sources of that precursor would not be required for either the attainment plan or the NNSR program. More discussion on the potential options for precursor technical demonstrations is included in Section III.C of this preamble. The EPA seeks comment on all aspects of proposed Option 3.

The EPA also seeks comment on whether only one of these approaches should be included in the final rule, or whether it would be appropriate to include multiple approaches (*e.g.,* both Options 1 and 2) or a hybrid of two approaches by which a state could demonstrate that a particular precursor would not need to be addressed in the attainment plan or NNSR permitting program for a specific area.

C. Technical Approaches for Demonstrating That a Precursor Does Not Need To Be Subject to Control Requirements

As noted earlier, in the preamble to the 2007 $PM_{2.5}$ Implementation Rule, the EPA included a discussion allowing for the state to submit a technical demonstration to show to the satisfaction of the EPA that emissions of a particular precursor do not significantly contribute to $PM_{2.5}$ concentrations in the area. In that preamble discussion, the EPA indicated that such a demonstration should be based on the weight of evidence of available information, and that any such demonstration by the state must be approved by the EPA. The 2007 $PM_{2.5}$ Implementation Rule also discussed a number of types of analyses that could inform this precursor demonstration, such as speciation data analyses, air quality modeling studies, chemical tracer studies, emissions inventories, or special intensive measurement studies to evaluate specific atmospheric chemistry in an area. In the 2007 $PM_{2.5}$ Implementation Rule, the EPA intended to provide states with the flexibility to provide a range of different supporting analyses that would be appropriate for

[66] Note that while the NNSR program needs to be implemented from the effective date of an area's nonattainment designation, in some situations the state would implement either its existing NNSR program for $PM_{2.5}$ or, in the absence of such program, 40 CFR part 51 Appendix S, the default NNSR program, until the EPA approves the state's $PM_{2.5}$ attainment plan and revised NNSR regulations for $PM_{2.5}$.

the area, recognizing that nonattainment areas differed in terms of such factors as: (i) The mix of emissions sources located in the nonattainment area and outside the area that are contributing to $PM_{2.5}$ concentrations in the area; (ii) the levels of $PM_{2.5}$ species measured in the area; (iii) the times of year when highest $PM_{2.5}$ concentrations are observed; (iv) the topography of the area; (v) the severity of the nonattainment problem; and, (vi) the patterns of emissions and population growth in and around the nonattainment area. Under the 2007 $PM_{2.5}$ Implementation Rule, an important criterion for any technical precursor demonstration provided by a state, however, was that it had to fairly represent the information available to the state and the information made available to it by the public.

For this proposed implementation rule, the EPA similarly proposes that the state should have the flexibility to present multiple types of analyses to support any demonstration for exempting a precursor from control requirements as long as they fairly represent the available information, and accordingly proposes that the EPA should review any such demonstration based on the weight of evidence. Unlike in the prior implementation rule, however, later in this section the EPA raises the question of whether certain specific types of analyses should be included as minimum required components of any precursor demonstration that a state chooses to submit to the EPA for approval.

The preamble to the 2007 $PM_{2.5}$ Implementation Rule indicated that if a state developed a precursor demonstration as part of its draft SIP, then in accordance with the state rulemaking process, the demonstration would be subject to public review at the state level. It also stated that, as required under any rulemaking process, the state had to consider and provide a response in the rulemaking record to any information or evidence brought forward by commenters during the state's SIP planning, development and review process. By insuring that this important issue was explicitly addressed and supported in the attainment plan submitted to the EPA, the EPA could better evaluate the precursor demonstration in accordance with its obligations under the CAA. The EPA believes these are sound procedural steps for a state rulemaking process, and the regulations being proposed as part of this rule include similar language providing for public review of any proposed precursor demonstration.

The 2007 $PM_{2.5}$ Implementation Rule did not provide a specific due date for submittal of any precursor demonstration, although it was assumed that if a state were to pursue such a demonstration, it would need to be done early in the attainment plan development process and submitted to the EPA no later than the date of the attainment plan submission itself. It was recommended that the state develop any such demonstration in consultation with the appropriate EPA Regional Office. In this proposal, the EPA is proposing that if a state is interested in developing a $PM_{2.5}$ precursor demonstration to support not regulating one or more $PM_{2.5}$ precursors in the attainment plan for an area, it should consult with the EPA Regional Office as early as possible to discuss appropriate analyses to be included. In its review of any precursor demonstration provided by a state, the EPA will consider all currently available information.

Under all three proposed precursor policy options described above, the state would have the opportunity to provide a precursor demonstration to meet the requirements of section 189(e) of the CAA. Precursor demonstrations pursuant to section 189(e) should evaluate the significance of the contribution of emissions of a particular precursor from existing major stationary sources to fine particle concentrations that exceed the standard. However, Options 2A and 2B differ from the others in that they would provide the state with the ability to conduct a precursor demonstration that comprehensively assesses the contribution of a particular precursor from all types of sources in the nonattainment area (not just from major stationary sources as specifically addressed by section 189(e)) for the purposes of informing which precursors must be addressed in both the attainment plan and in the NNSR program for a particular $PM_{2.5}$ nonattainment area. (Note that Option 2 would not prevent the state from also conducting an additional analysis under section 189(e), if warranted, to further demonstrate that while all emissions of a particular precursor make a significant contribution to $PM_{2.5}$ levels that exceed the standard, the emissions from just the major stationary sources of that precursor collectively do not contribute significantly to $PM_{2.5}$ levels that exceed the NAAQS in the area.) The EPA has considered three important questions regarding the scope and the potential requirements associated with precursor demonstrations, and requests comment on the questions and technical analysis options presented below.

1. What is the geographic area from which precursor emissions should be assessed?

In the 2007 $PM_{2.5}$ Implementation Rule, the preamble indicated that a precursor demonstration analysis addressing all source types covered by the attainment plan should evaluate the impact of emissions from sources located throughout the entire state. In contrast, the 2008 $PM_{2.5}$ NSR Rule suggested that a precursor demonstration for NNSR purposes should evaluate emissions from major stationary sources of a particular precursor located within the nonattainment area only.

In determining which approach to include in the present proposal, the EPA believes that it continues to be reasonable that any precursor demonstration conducted to assess precursor significance for NNSR purposes should evaluate emissions from major stationary sources of the precursor from within the nonattainment area only. Section 189(e) is included in a part of the CAA that specifically sets forth nonattainment area requirements. For attainment planning purposes it is less clear that the evaluation of emissions should be limited only to sources from within the nonattainment area, because the state has jurisdiction over emissions sources located throughout the state, and can impose emission reduction requirements on contributing sources outside of nonattainment areas if necessary to help bring areas with violating monitors into attainment. At the same time, that argument would suggest that section 189(e) should be interpreted as requiring two different analyses of the impacts of precursors emitted from two different geographic scales (from within the nonattainment area, as well as from a broader area that influences air quality within the nonattainment area, which could include the entire state). The EPA does not believe such an interpretation is required, nor does it believe that such multiple analyses are warranted. The statute simply refers in general terms to precursor emissions from major stationary sources and does not differentiate between control requirements for attainment planning and control requirements for other purposes, such as NNSR permitting. The statute also does not indicate that multiple analyses must be done to assess major stationary source impacts from multiple geographic scales. For these reasons, the EPA is proposing that

any precursor demonstration must include an evaluation of emissions from sources located in the nonattainment area only. The EPA requests comment on this proposed approach.

2. Should the EPA's guidance provide a specific list of analyses as ''minimum requirements'' that must be included in any proposed precursor demonstration?

As noted above, the EPA encourages states to provide a range of analyses to thoroughly understand the effect of precursor emissions on $PM_{2.5}$ concentrations in an area. In past discussions with state representatives regarding potential approaches to regulating $PM_{2.5}$ precursors, some representatives have suggested that this $PM_{2.5}$ implementation rulemaking should include more specificity about the minimum requirements for technical demonstrations to support exclusion of $PM_{2.5}$ precursors from regulatory requirements in attainment plans, while others have recommended a less prescriptive approach. One overarching issue is how detailed the EPA's guidance should be with regard to the analytical requirements for any proposed precursor demonstration. As noted earlier, technical demonstrations can include data such as ambient speciation data analyses, air quality modeling studies, chemical tracer studies, emissions inventories, and/or special intensive measurement studies. Air quality modeling analyses are discussed in more detail below.

a. *Contribution analysis.* Based on the statutory language of section 189(e), it appears that, at a minimum, any precursor demonstration conducted specifically pursuant to section 189(e) must evaluate the contribution of current emissions of the relevant precursor from existing major stationary sources to current (or most recent) $PM_{2.5}$ concentrations observed in the nonattainment area (note that this type of analysis is possible under Option 1 and Option 3). In addition, as described above, any precursor demonstration under Option 2A must evaluate the contribution of emissions of the relevant precursor from all sources (not just major stationary sources) to current (or recent) $PM_{2.5}$ concentrations observed in the nonattainment area.

In light of the statutory language and the capabilities of existing technical tools, the EPA proposes to require that the state conduct such a contribution analysis at a minimum as part of any proposed precursor demonstration, and that the state conduct an analysis using an air quality modeling system that adequately accounts for the $PM_{2.5}$ pollution problem within the nonattainment area. Several photochemical air quality models (*e.g.,* Community Multi-Scale Air Quality Model (CMAQ) and the Comprehensive Air Quality Model with Extensions (CAMx)) can be used to quantify the contributions of precursor emissions to $PM_{2.5}$ concentrations in the area.[67] For example, states could compare base case conditions (at current precursor emissions levels) with a separate model simulation in which the relevant precursor emissions are reduced by a large percentage. The difference in the estimated $PM_{2.5}$ concentrations provides one indication of the relative significance of the precursor emissions to $PM_{2.5}$ concentrations in the area. This type of contribution analysis can also be accomplished by using existing advanced tools within photochemical air quality models, such as ''source apportionment'' capabilities which allow one to track precursor emissions as they ''form'' $PM_{2.5}$ (in the model) and then report their contributions separately. The EPA requests comment on including a contribution analysis as a minimum requirement in any proposed precursor demonstration under Option 2A.

b. *Sensitivity analysis.* The EPA notes that changes in $PM_{2.5}$ concentrations from current conditions in any area will not necessarily be linear with respect to changes in $PM_{2.5}$ precursor emissions. Therefore, another important question is whether any precursor demonstration should be required to include an assessment of how ''sensitive'' the area will be to potential reductions or increases in emissions of the relevant precursor. Sensitivity analyses of potential reductions in emissions would be most appropriate for attainment planning (and relevant to Option 2B), whereas sensitivity analyses of potential increases in emissions (*e.g.,* relevant to NNSR permitting) would be appropriate for all section 189(e) technical evaluations (possible under Options 1, 2B and 3). Sensitivity analyses are important because of the complexity and variability of the atmospheric chemistry affecting $PM_{2.5}$ concentrations in different areas across the country.

The principal $PM_{2.5}$ components that are secondarily formed in the atmosphere are the result of chemical reactions between various $PM_{2.5}$ precursors (*see* Section II of this preamble for more information on specific precursor reactions). Thus, the most effective precursor strategies for reducing $PM_{2.5}$ concentrations as part of attainment planning will vary from area to area, depending upon which specific precursors play a role in forming or limiting $PM_{2.5}$ formation in the particular area. Likewise, in evaluating which precursors would be appropriate to exclude from regulation for NNSR in an area, it is important to understand the current sensitivity of the atmosphere to potential increases in precursor emissions that could result from the addition of new sources to the nonattainment area.

One approach to assessing precursor sensitivities would be to conduct a model simulation that evaluates the effect on $PM_{2.5}$ concentrations in the area resulting from a given set of precursor emission reductions and emission increases. Simulations could be conducted to assess a set of emission reduction and emission increase scenarios deemed appropriate to determine the sensitivity of a particular precursor in a specific area. Another approach that could be used is a scientific technique called the ''decoupled direct method'' (DDM), which efficiently estimates the impacts on $PM_{2.5}$ concentrations as a result of reducing or increasing precursor emissions in the model.[68]

For the reasons discussed above, the EPA also proposes that any precursor demonstration conducted under proposed Option 2B must provide a set of sensitivity analyses that evaluate the effect of a range of emissions changes associated with measures considered economically and technically feasible in a particular nonattainment area. Analyses that reduce emissions of a particular precursor will help the state and the EPA to understand how ''responsive'' the atmosphere would be to control measures and how effective such reductions would be relative to other precursor reductions. Although not specifically required for other options under this proposed rule, precursor sensitivity analyses evaluating the effect of varying degrees of potential precursor reductions would provide meaningful information for any precursor demonstration intended to show that a particular precursor does not need to be addressed for attainment planning. Conversely, sensitivity analyses that consider the effect of a range of potential emissions increases in the nonattainment area will help the state and the EPA to understand the potential response of $PM_{2.5}$

[67] For more information on CMAQ, *see http://www.epa.gov/AMD/Research/RIA/cmaq.html.* For more information on CAMx, *seehttp://www.camx.com/.*

[68] *See* Simon et al., Memorandum to ozone NAAQS docket EPA–HQ–OAR–2008–0699, ''Model-based Rollback Using the Higher Order Direct Decoupled Method (HDDM),'' August 14, 2012.

concentrations to projected growth in the area, including potential increases in emissions associated with potential newly permitted sources that emit the precursor in question. Any precursor demonstration intended to show that a particular precursor does not need to be addressed for NNSR should include sensitivity analyses evaluating the effect of varying degrees of precursor emission increases in the area. The EPA recommends that the state conduct these analyses using air quality modeling tools, but the state could provide additional relevant analyses as well. The EPA requests comment on the proposed requirement for inclusion of sensitivity analyses in any precursor demonstration.

3. Should there be a ''bright line'' value to indicate that any estimated contribution to annual average or 98th percentile $PM_{2.5}$ concentrations in the nonattainment area that exceeds this value would be considered ''significant''?

In considering this question, it is helpful to first look to how the concept of a significant, or insignificant, contribution has been interpreted with regard to particulate matter in past PM_{10} guidance (Addendum to the General Preamble) and in other $PM_{2.5}$-related regulations, such as the CAIR. In the Addendum, the EPA introduced the concept of a ''*de minimis''* impact from a source category for the purposes of the identification and evaluation of BACM.[69] While a later discussion in this proposal addresses whether or not to maintain a similar *de minimis* source category-based policy approach for future BACM and BACT source category analyses, what is relevant for this precursor discussion is the EPA's guidance in the Addendum on what could be considered a ''*de minimis,''* or ''insignificant,'' ambient impact for purposes of PM_{10}. In the Addendum, the EPA indicated that a 1 $\mu g/m^3$ contribution to the annual PM_{10} standard of 50 $\mu g/m^3$ (equal to 2 percent of the applicable NAAQS at the time), or a 5 $\mu g/m^3$ contribution to the 24-hour PM_{10} standard of 150 $\mu g/m^3$ (equal to 3.3 percent of the applicable NAAQS at the time) presumptively would be considered ''*de minimis.''* The EPA set forth these levels in a **Federal Register** document, citing the discretionary authority of an administrative agency to exempt from regulation emissions (from source categories) ''which contribute only negligibly to ambient concentrations which exceed the NAAQS.''

Developed pursuant to subpart 4, this past guidance on what could be considered to be a *de minimis* or insignificant level of PM_{10} contribution from a source category can potentially inform this proposed rule for implementing the $PM_{2.5}$ NAAQS. Accordingly, this proposal includes two options: (i) A ''no-threshold'' option, and (ii) a proposed threshold option derived from the ambient levels relied on for the PM_{10} source category *de minimis* thresholds, but adjusted to account for the 2012 $PM_{2.5}$ NAAQS.

The concept of ''significant contribution'' also has been a central one with regard to interstate transport and the interpretation of section 110(a)(2)(D) of the CAA. In past programs to address interstate transport, such as the CAIR, an ''upwind'' state was identified as potentially subject to additional emission control requirements if the impact of SO_2 and NO_X emissions from the upwind state to any nonattainment area in a downwind state exceeded 1 percent of the relevant $PM_{2.5}$ standard at a violating monitor in another state. This was merely the first step of the analysis, but it provided an initial threshold for determining whether further analysis was warranted. In this proposal, the concept of a significant contribution refers to the effect of emissions of a particular precursor from sources within the state or nonattainment area to local $PM_{2.5}$ concentrations in the nonattainment area. The specific purpose and context for which the phrase ''contribute significantly'' is used in section 189(e) is very different from the purpose and context for which it is used in section 110(a)(2)(D). Thus, while a previous interstate transport rule under section 110(a)(2)(D) considered the combined impact of SO_2 and NO_X emissions from an upwind state on ambient $PM_{2.5}$ at a violating monitor to be insignificant if it was less than 1 percent (*i.e.,* 0.15 $\mu g/m^3$ on an annual average basis), it would not necessarily be appropriate to also consider the contribution from emissions of a specific precursor within a nonattainment area to be ''insignificant'' if it does not exceed a similar 1 percent ambient concentration level.[70]

There are a number of important distinctions between the section 110(a)(2)(D) interstate transport provision and the section 189(e) provision addressing contributions of major stationary sources in a nonattainment area which would indicate that the 1 percent of the NAAQS significant contribution thresholds that have been included in section 110(a)(2)(D) rulemakings may not be relevant for purposes of section 189(e) precursor demonstrations. Section 110(a)(2)(D) was designed to address the collective contribution of interstate transport of pollution from multiple upwind states, while section 189(e) addresses contributions from major stationary sources in a single nonattainment area. In addition, section 110(a)(2)(D) requires that SIPs contain provisions to eliminate the contributions that are deemed significant, whereas section 189(e) merely requires that the emissions be controlled. Given the differences in purpose, scale, and scope, the EPA does not believe it is necessary for a threshold for ''significant contribution'' to be the same for the two programs.

Based on the considerations discussed above regarding inclusion of a potential significance ''threshold'' for purposes of this $PM_{2.5}$ implementation rulemaking, the EPA proposes and seeks comment on two options. The first option would not specify a threshold for what is a significant contribution to levels that exceed the relevant NAAQS in a given area. Rather, the state would be required to conduct a contribution analysis and sensitivity analyses as described above to determine the estimated level of ambient impact from the relevant precursor, and to provide the analyses to the EPA as part of its precursor demonstration. The EPA would then consider these analyses in addition to the other analyses provided by the state in determining whether to approve the precursor demonstration. This option would provide greatest flexibility for the state and the EPA to consider the contribution analysis in combination with other information relevant to the unique $PM_{2.5}$ composition, source mix, and attainment needs of each individual nonattainment area. *See* proposed 40 CFR 51.1006.

The second option would specify a ''significance'' threshold of 3 percent, such that if contribution modeling indicated that base year emissions of the precursor from the relevant sources in the nonattainment area (*i.e.* from major stationary sources for all analyses pursuant to section 189(e); from all types of sources for the upfront analysis in Option 2) leads to an ambient impact that exceeds 3 percent of the $PM_{2.5}$ NAAQS (*e.g.,,* 0.36 $\mu g/m^3$ on an annual average basis for the 2012 primary annual $PM_{2.5}$ NAAQS) at monitors in

[69] Addendum to the General Preamble, 59 FR 41998 (August 16, 1994), at page 42011.

[70] *See* Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_X SIP Call, 70 FR 25162 (May 12, 2005).

the nonattainment area, then the precursor demonstration would not be approvable. The threshold equivalent to 3 percent of the relevant $PM_{2.5}$ NAAQS is proposed as reasonable because it is between the two *de minimis* ambient contribution levels included in previous PM_{10} guidance issued under subpart 4 to identify a *de minimis* level of ambient contribution from a group of emissions sources. The EPA acknowledges that the context in which the proposed threshold is used here is different from the context in which it was used in previous guidance. Absent any explicit language provided in the statute to define significant contribution in the context of section 189(e), however, the only other existing guidance that in some way addresses the concept of significant contribution for PM_{10} is the *de minimis* source category threshold values from the Addendum. One benefit of having a specific threshold in the rule is that states will have more concrete guidance on what could potentially be approvable in a precursor demonstration.

The EPA therefore seeks comment on: (1) Whether a specific significant contribution threshold should be included in the final rule or not; (2) if the commenter considers inclusion of a specific threshold to be appropriate, whether the proposed 3 percent of the relevant NAAQS threshold and its basis would be appropriate, and why; and (3) whether a threshold with an alternative level and supporting rationale would be more appropriate.

IV. What are the EPA's proposed requirements for Moderate area attainment plans?

Sections 189(a), (c), and (e) of the CAA require that Moderate area attainment plans contain the following: (i) An approved permit program for construction of new and modified major stationary sources (section 189(a)(1)(A)); (ii) a demonstration that the plan provides for attainment by no later than the applicable Moderate area deadline or a demonstration that attainment by that deadline is impracticable (section 189(a)(1)(B)); (iii) provisions for the implementation of RACM and RACT no later than 4 years after designation (section 189(a)(1)(C)); (iv) quantitative milestones that will be used to evaluate compliance with the requirement to demonstrate reasonable further progress (RFP) (section 189(c)); and, (v) evaluation and regulation of $PM_{2.5}$ precursors (in general to meet RACM and RACT and other attainment planning requirements, and as specifically required for major stationary sources by section 189(e)). Other subpart 1 requirements for attainment plans continue to apply to $PM_{2.5}$ nonattainment areas subject to subpart 4 and include the following: (i) a description of the expected annual incremental reductions in emissions that will demonstrate RFP (section 172(c)(2)); (ii) emissions inventories (section 172(c)(3)); (iii) other control measures (besides RACM and RACT) needed for attainment (section 172(c)(6); and, (iv) contingency measures (section 172(c)(9)).

Each of these statutory requirements is described more fully below. In certain cases, the EPA is proposing options for implementing a statutory requirement for purposes of the $PM_{2.5}$ NAAQS. Based on comments the agency receives, the EPA will then promulgate regulations to implement the statutory requirements in the final action on this proposal, as appropriate. The EPA notes that its longstanding guidance on these statutory requirements is embodied in the General Preamble and the Addendum.[71] Where appropriate, this proposal notes options that may vary from past EPA guidance and explains the EPA's reasons for considering an amended approach.

A. Plan Due Dates

Section 189 of the CAA specifies the schedule by which states must submit attainment plans for the $PM_{2.5}$ NAAQS. Specifically, CAA section 189(a)(2)(B) requires states to submit an attainment plan that meets Moderate area attainment plan requirements no later than 18 months from the date of a nonattainment designation.[72] To be consistent with this subpart 4 deadline for the attainment plan submission, the EPA is proposing that states must also submit those elements of the attainment plan required under subpart 1 (*i.e.,* emissions inventories and contingency measures) no later than 18 months from the date of designation of the area. The provisions of subpart 4 do not explicitly specify when states must submit these attainment plan elements that carry over from subpart 1, so the EPA needs to interpret the requirements of the CAA to meet the objectives of the attainment plan requirements. The EPA believes that requiring states to submit the necessary emissions inventory (or inventories) either before or at the same time as the other attainment plan elements due under subpart 4 is necessary, given that a state will need information contained in the emissions inventory for other elements of its Moderate area attainment plan, such as its precursor analysis, analysis of RACM and RACT and additional reasonable measures, and attainment demonstration modeling. The EPA also believes it is reasonable to require the state to submit contingency measures, which need to be adopted and ready for immediate implementation in the event a nonattainment area fails to meet RFP requirements or fails to attain the $PM_{2.5}$ NAAQS by the applicable attainment date, simultaneous with the other elements of the attainment plan. The state's evaluation of what emissions controls are appropriate to meet the contingency measure requirement is closely related to other aspects of the attainment plan, such as addressing the proper pollutants for control in a given area, the appropriate sources for controls beyond those already required for RACM and RACT for the area, and the amount of emission reductions that the contingency measures should achieve, based upon the facts and circumstances of the attainment plan for the area.

The EPA believes that the statutory deadline for submission of a Moderate area attainment plan for the $PM_{2.5}$ NAAQS is straightforward and, absent unusual circumstances, the statute requires states to make such attainment plan submissions within 18 months after the effective date of a nonattainment designation for an area. *See* proposed 40 CFR 51.1003(a). Although nothing in the CAA prohibits states from making separate attainment plan submissions to meet the individual statutory requirements for attainment plans in advance of the required date, the EPA presumes that development and submission of all of the attainment plan elements simultaneously will be most effective, both for the state in the first instance and for the EPA in reviewing the state's submission. For example, the EPA designated areas as nonattainment for the 2012 $PM_{2.5}$

[71] *See* the **Federal Register** published on April 16, 1992 (57 FR 13498, 13536, 13537, 13538, 13539, 13540, 13541, 13542, 13543, 13544 and 13545); and *see* the **Federal Register** published on August 16, 1994 (59 FR 41988).

[72] The EPA notes that Congress provided different statutory deadlines for submission of attainment plans under subpart 1 and subpart 4. Under section 172(b), the EPA is directed to establish the date for the attainment plan submission, but it can extend no later than 3 years from the date of a nonattainment designation. By contrast, under section 189(a)(2)(B), the statute provides that states must make the attainment plan submissions within 18 months after designation. Due to the December 2013 court decision in *NRDC* v. *EPA,* however, the EPA promulgated an alternative submission date of December 31, 2014 for attainment plans for the 1997 $PM_{2.5}$ and 2006 $PM_{2.5}$ NAAQS in order to provide a reasonable, prospective due date for attainment plans that must comply with subpart 4 requirements and to clarify the requirements that a state must meet prior to redesignation of a $PM_{2.5}$ nonattainment area. *See* 79 FR 31566 (June 2, 2014).

NAAQS with an effective date of April 15, 2015; states will thus be required by statute to submit Moderate area attainment plans for any nonattainment areas to the EPA no later than October 15, 2016.

B. Emissions Inventory Requirements

Pursuant to its authority under section 110 of title I of the CAA, the EPA has long required states to submit inventories of 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. Additionally, the 1990 CAA Amendments revised many of the provisions of the CAA related to attainment of the NAAQS and the protection of visibility in mandatory Class I federal areas (certain national parks and wilderness areas). These revisions established new emissions inventory requirements applicable to areas that were designated nonattainment for certain pollutants. In the case of particulate matter, Congress did not create a specific emissions inventory requirement in subpart 4 that would supersede the emissions inventory requirement under subpart 1. Thus, the section 172(c)(3) emissions inventory requirements continue to apply, and that provision explicitly requires ''a comprehensive, accurate, and current inventory of actual emissions of the relevant pollutants'' in the nonattainment area. In addition, the specific attainment plan requirements for the $PM_{2.5}$ NAAQS set forth in section 189(a) and associated modeling requirements make an accurate and up-to-date emissions inventory a critical element of any viable attainment plan. Because of the nature of $PM_{2.5}$, the EPA concludes that the statutory requirements for emissions inventories need further elaboration through additional regulatory requirements as described below.

Emissions inventory data serve as the foundation for various types of analyses that enable states to evaluate the degree to which different emissions sources contribute to the nonattainment problem in a given nonattainment area and enable states to estimate the air quality improvement that can be achieved through different control measures. States should use the best available, current emissions inventory information for attainment plan development, because high quality emissions inventory data are essential for the development of an effective control strategy. To assist states in preparing complete, high quality inventories, the EPA provides guidance for developing emissions inventories called ''Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze,'' which is available from *http://www.epa.gov/ttn/chief/eidocs/eiguid/index.html*. This guidance is commonly called the ''SIP Emissions Inventory Guidance.'' The EPA recommends that states consult this guidance while developing the emissions inventories to meet statutory and regulatory requirements.

1. How do states meet the inventory requirements for the $PM_{2.5}$ NAAQS?

Neither section 172(c)(3), nor the provisions specifically applicable to attainment plans for the $PM_{2.5}$ NAAQS in subpart 4, specify how states should meet statutory emissions inventory requirements. Although section 172(c)(3) explicitly requires that states submit only ''an'' emissions inventory in conjunction with other elements of an attainment plan, that term is ambiguous in the context of the $PM_{2.5}$ NAAQS, and the EPA is authorized to interpret that term and to impose additional requirements as necessary and appropriate. In addition, pursuant to section 301, the EPA has additional authority to promulgate regulations as necessary for the implementation of the $PM_{2.5}$ NAAQS, including requirements pertaining to emissions inventories. Accordingly, the EPA is proposing specific emissions inventory requirements it considers necessary to effectuate the attainment plan requirements of the CAA for the $PM_{2.5}$ NAAQS.

There are three key facets of the EPA's proposed emissions inventory requirements, as laid out below: (i) The type of inventories required; (ii) the timing of submittal of these inventories; and, (iii) the content of these inventories. These inventory requirements are being proposed to provide all of the requirements in a concise and direct way. In some cases, the EPA's rationale for the content requirements needs additional supporting description, which is provided in the subsequent text related to the use of seasonal inventories, required pollutants, etc.

First, the EPA believes that in order to implement the $PM_{2.5}$ NAAQS effectively, states will be required to submit at least two separate and distinct nonattainment area emissions inventories as elements of an attainment plan. The first emissions inventory is relevant for assessing the current or base year emissions in the nonattainment area; the second emissions inventory is a projected inventory relevant for assessing emissions in the target attainment year in the nonattainment area. The first type of inventory is expressly required by section 172(c)(3), and is called the ''base year inventory for the nonattainment area.'' The second type of inventory the EPA is proposing to require under section 301(a)(1) as necessary to implement the attainment demonstration requirement of section 189(a)(1)(B), and is called the ''attainment projected inventory for the nonattainment area.'' *See* proposed 40 CFR 51.1000. The need for this latter inventory stems from the need for both the EPA and the public to be able to compare, during their reviews of the plan, the base year inventory against the attainment projected inventory for the nonattainment area. For these reasons, the EPA is proposing to establish the regulatory requirement that attainment plans must include a base year inventory for the nonattainment area and an attainment projected inventory for the nonattainment area.

Second, as noted above, to meet the statutory requirements for submission of attainment plans under subpart 4, the EPA believes that states must meet the same submission schedule for these emissions inventories as for the other elements of an attainment plan, *i.e.,* within 18 months after the effective dates of the designation of the nonattainment area. This schedule must apply to both of these emissions inventories because they are necessary for effective evaluation of the attainment plan as a whole. Consequently, under the authority of section 172(b), the EPA is proposing to establish the regulatory requirement that emissions inventories be submitted by 18 months after designation.

Third, the EPA proposes to establish specific requirements for both the base year inventory for the nonattainment area and for the attainment projected inventory for the nonattainment area in order to implement the $PM_{2.5}$ NAAQS most effectively. Accordingly, the EPA proposes that the base year inventory for the nonattainment area must meet the following minimum criteria (a) through (g):

(a) The inventory year must be one of the 3 years used for designations or another technically appropriate inventory year. Another inventory year may be chosen under specific circumstances (*e.g.,* to account for a change in sources in the nonattainment area, changes in nonattainment area boundaries, or significant time lag between designations and preparation of the inventory) with consultation from the appropriate EPA Regional Office. This requirement is intended to ensure

that the inventory will represent the emissions sources whose contributions resulted in a nonattainment designation for the area.

(b) The inventory must include actual emissions of all sources within the nonattainment area. This requirement stems directly from the wording of section 172(c)(3). Sources outside of the nonattainment area are explicitly not included in the section 172(c)(3) requirement with the words ''in such area.'' Furthermore, the EPA interprets the Act requirement for ''actual emissions from all sources'' in section 172(c)(3) as intending to include all emissions that may contribute to the formation of $PM_{2.5}$ within the nonattainment area.

(c) The emissions values must either be annual total emissions or average-season-day emissions, as appropriate for the nonattainment problem. The rationale for providing annual or seasonal emissions must be included as part of the plan. A discussion of the EPA's rationale for proposing the option of seasonal or annual inventories is provided in Section IV.B.4 of this preamble.

(d) As discussed above and consistent with past implementation rule requirements, the inventory must include emissions of direct $PM_{2.5}$ (both filterable $PM_{2.5}$ and condensable $PM_{2.5}$), as well as all scientific $PM_{2.5}$ precursors (SO_2, NO_X, VOC and ammonia). A discussion of the EPA's rationale for proposing this requirement is provided in Section IV.B.5 of this preamble.

(e) The emissions thresholds for which emissions sources must be reported as point sources must be followed from the Air Emissions Reporting Rule (AERR), 40 CFR part 51, subpart A. This requirement is consistent with past implementation rules and is needed to define the data structure (as opposed to the emissions values themselves) of the emissions submitted to the EPA. A discussion of the use of 40 CFR part 51, subpart A, for the emissions thresholds and data reporting elements is provided in Section IV.B.6 of this preamble.

(f) The detail of the emissions included in the inventory must be consistent with the detail required by 40 CFR part 51, subpart A. For example, all emissions must be subdivided to individual emissions processes within a facility or county. While these details should underlie the inventory, the emissions included in the attainment plan can be summarized. This requirement is consistent with the 2007 $PM_{2.5}$ Implementation Rule and is needed to define the data structure (as opposed to the emissions values themselves) of the emissions submitted to the EPA.

(g) If the base year inventory for the nonattainment area is submitted to the EPA as a separate plan submission (*i.e.,* severed from the overall attainment plan and provided separately), the inventory must still meet all public review requirements associated with that plan. *See* proposed 40 CFR 51.1008(a)(1).

For the attainment projected inventory for the nonattainment area, the EPA also proposes to promulgate more specific requirements in order to implement the $PM_{2.5}$ NAAQS most effectively. Accordingly, the EPA proposes that the attainment projected inventory must meet the following minimum criteria (a) through (g):

(a) The year of the projected inventory must be the first year for which attainment is demonstrated by the modeled attainment plan.

(b) The emissions values must be projected emissions of the same sources included in the base year inventory for the nonattainment area (*i.e.,* only those located within the nonattainment area) and any new sources. The projected emissions values should be the best available representation of expected emissions, and thus should take into account emissions growth and contraction, facility closures, new facilities, new controls and other factors forecast to occur between the base year and the attainment year. In deciding what factors are relevant, states should consider factors affecting projected emissions that could significantly alter the conclusions of the attainment demonstration.

(c) The temporal period of emissions must be the same temporal period (annual or average-season-day) as the base year inventory for the nonattainment area.

(d) Consistent with the base year inventory for the nonattainment area, the inventory must include all emissions of direct $PM_{2.5}$ (both filterable and condensable $PM_{2.5}$), as well as all emissions of all scientific precursors (SO_2, NO_X, VOC and ammonia).

(e) The same sources reported as point sources in the base year inventory for the nonattainment area must also be provided as point sources in the attainment projected inventory for the nonattainment area. Likewise, nonpoint and mobile source projected emissions must also be provided using the same detail (*e.g.,* state, county and process codes) as the base year inventory.

(f) The detail of the emissions included must be consistent with the level of detail in the base year inventory (*i.e.,* as required by 40 CFR part 41, subpart A).

(g) If the attainment projected inventory for the nonattainment area is submitted to the EPA as a separate plan submission (*e.g.,* severed from the overall attainment plan and provided separately), the inventory must still meet all public review requirements associated with that SIP submission. *See* proposed 40 CFR 51.1008(a)(2).

2. Are there new inventory requirements in this proposed rule that have not been included in previous rules?

This proposed rule includes more specific requirements for emissions inventories than past implementation rules. First, the EPA proposes to require the attainment projected inventory for the nonattainment area. In practice, some states were providing this information at the request of their respective EPA Regional Offices, but it was not a specific requirement. The EPA believes that a specific requirement is necessary to ensure that the EPA and the public can reasonably assess the changes in emissions in the nonattainment area that the state maintains demonstrate that the area will attain the standard or that it is impracticable to attain the standard by the attainment date. Without such information, there is no way for the EPA to assess the projected emissions changes in the nonattainment area that the state asserts contribute to attainment. In addition, this proposed requirement would support the EPA's first proposed approach for conducting an RFP analysis as described in Section IV.F of this preamble.

This proposed rule also is more specific about the requirements for the emissions inventories submitted. While the various criteria (a) through (g) listed above have been implicit in prior rules and associated guidance, the EPA believes that not having these specific requirements has caused confusion and inconsistencies across attainment plan inventories in the past. Thus, the EPA is proposing to require these minimum criteria in this proposed rule. Furthermore, the option for using only seasonal inventories in some attainment plans is a new facet of this rule, further described in Section IV.B.5 of this preamble.

3. Are there other inventory requirements from earlier $PM_{2.5}$ implementation rules that the EPA is proposing to retain or change?

The 2007 $PM_{2.5}$ Implementation Rule required states to submit specific emissions inventories in connection with the RFP requirements of section 172(c)(2) under subpart 1. The EPA believes that a separate emissions

inventory will be important to illustrate how a nonattainment area may achieve incremental emissions reductions toward attainment, and would be appropriate in light of the agency's proposed approaches for states to meet the statutory RFP requirements. Past EPA guidance with respect to RFP requirements under subpart 4 has not required any explicit, separate emissions inventory for this purpose for PM_{10} NAAQS. For this reason, the EPA describes this issue and proposed approaches more fully in Section IV.F of this preamble.

The 2007 $PM_{2.5}$ Implementation Rule also required states to submit a statewide base year emissions inventory as part of the attainment plan. The EPA proposes not to include this statewide emissions inventory requirement in this rule. Subpart 4 does not expressly require such an inventory, and the EPA does not believe that it is needed for successful attainment of the $PM_{2.5}$ NAAQS. Furthermore, statewide inventories are already required as part of the AERR (40 CFR part 51, subpart A) on a triennial basis. While these inventories do not receive the same level of scrutiny as inventories associated with attainment plans, the EPA believes that this existing statewide requirement is sufficient for understanding the $PM_{2.5}$ nonattainment problems nationally and assessing the quality of inventories proposed to be required by this rule.

4. Why is the EPA proposing to permit seasonal inventories to meet the inventory reporting requirements?

The statute does not explicitly address whether the emissions inventory required under section 172(c)(3) should include emissions throughout an entire calendar year or emissions during some shorter portion of the year that may be appropriate for implementation of a particular NAAQS. In the case of the $PM_{2.5}$ NAAQS, the standards currently include both annual NAAQS and 24-hour NAAQS. With respect to the annual NAAQS, the form of the NAAQS includes monitored ambient $PM_{2.5}$ values at all times throughout the course of the year and thus an annual emissions inventory is necessarily required for development of an appropriate attainment plan for a given area. In the case of the 24-hour NAAQS, however, the form of the NAAQS is based upon monitored ambient $PM_{2.5}$ values on particular days with high levels of $PM_{2.5}$, and in some nonattainment areas those days may occur only during a distinct and definable season of the year. The EPA considers it appropriate to interpret the emissions inventory requirements of the CAA in light of the specific inventory needs that are relevant for the NAAQS in question, and in the case of the $PM_{2.5}$ NAAQS, the inventory requirement may thus include both an annual emissions inventory for the attainment area, and a seasonal emissions inventory for the area as appropriate for the attainment plan at issue.

In contrast with the annual $PM_{2.5}$ NAAQS, the 24-hour $PM_{2.5}$ NAAQS are designed to protect against peak exposures. Thus, for the 24-hour $PM_{2.5}$ NAAQS, there are circumstances in which the EPA believes that only seasonal emissions inventories may be required for attainment planning purposes. The EPA proposes to allow states to use only seasonal inventories for attainment plan development for attaining the 24-hour $PM_{2.5}$ standard in areas that are nonattainment for only the 24-hour standard. In the event that it is appropriate to rely on a seasonal emissions inventory, the state should confer with the EPA concerning the exact length of the season and the start and stop dates of the season. The duration and start and stop dates of the season will be an important component of the attainment plan and must be approved by the EPA along with other elements of the attainment plan for a given nonattainment area. The EPA further proposes to require that seasonal inventories must use average-season-day emissions values for this purpose. The average-season-day is defined as the sum of all emissions during the applicable season divided by the number of days in that season. The nature of some seasonal $PM_{2.5}$ emissions sources (*e.g.,* residential wood combustion) does not allow for only weekday emissions to be included in the inventory, therefore all days must be included. The state would need to explain the rationale for the duration of the season used for the inventory as part of the attainment plan submission. To justify the use of a seasonal inventory, the state must demonstrate why a seasonal attainment plan is appropriate for the particular $PM_{2.5}$ nonattainment area in question.

5. Why is the EPA requiring certain pollutants be included in the inventories?

The EPA is proposing that states must submit emissions inventories that include all emissions of direct $PM_{2.5}$ and all emissions of all $PM_{2.5}$ precursors: SO_2, NO_X, VOC and ammonia. Furthermore, the inventory must differentiate between the condensable and filterable portions of direct $PM_{2.5}$ emissions. Section II.B of this preamble describes the background needed to understand the importance of including these precursors in emissions inventories for attainment plan purposes for the $PM_{2.5}$ NAAQS. Emissions information about $PM_{2.5}$ and its precursors is a necessary precondition to meeting other core attainment plan requirements, such as effective evaluation of control measures and adequate demonstration of projected future attainment of the NAAQS through modeling. The EPA notes that with respect to requiring states to include emissions of direct $PM_{2.5}$ and $PM_{2.5}$ precursors in emissions inventories, the agency is following the requirements it established for the $PM_{2.5}$ NAAQS in the past. Section 172(c)(3) explicitly requires states to submit a ''comprehensive, accurate, and current inventory of actual emissions of the relevant pollutants'' and the EPA concludes that in order to meet these basic statutory requirements for the $PM_{2.5}$ NAAQS, states must address $PM_{2.5}$ and all $PM_{2.5}$ precursors in their emissions inventories.

The EPA requires air agencies to use the best available methodologies for estimating emissions of $PM_{2.5}$ and its precursors. It should be noted that for ammonia, in particular, updated emissions estimating methodologies for animal feeding operations are under development using data collected during the period 2007–2009 from representative operations pursuant to the National Air Emissions Monitoring Study.[73] The EPA is hopeful that such updated methodologies will help to reduce uncertainties in current ammonia inventories and will improve the quality of future emissions inventories needed for implementing the $PM_{2.5}$ NAAQS.

6. Why is the AERR used to define data elements and data methods that are required for the emissions inventories required by this rule?

Because the provisions of the CAA do not specifically state the form of the emissions information to be reported to the EPA for meeting their attainment plan inventory requirement, it is necessary for the EPA to prescribe specifically the data elements of those emissions inventories. Distinct from the emissions *values* (*i.e.,* how much emissions derive from each source or source category), the emissions *elements* (*i.e.,* how they are reported) refer to the reporting definitions, data codes and required data fields. The EPA proposes

[73] For more information on the NAEMS study, *see: http://www.epa.gov/agriculture/airmonitoringstudy.html.*

that states must use the emissions elements from 40 CFR part 51, subpart A, in preparing their inventories submitted to the EPA for implementing the $PM_{2.5}$ NAAQS. This is consistent with past requirements for the form of emissions inventories.

In addition to defining the data elements, 40 CFR part 51, subpart A also requires states to submit emissions information to the EPA. The EPA is not referring to those emissions submission requirements here, but rather the emissions elements—the definitions, data codes and required data fields. Below, the EPA addresses the issue of whether the emissions values submitted through the AERR are relevant to the inventory requirements of this proposed rule (*see* Section IV.B.8 of this preamble).

As noted earlier, the EPA recommends that states consult the SIP Emissions Inventory Guidance in preparing the inventories needed for this rule. In addition to the AERR, this guidance includes definitions for data fields that are not required by the AERR, such as seasonal emissions values and other fields that are optional in the data system that collects data submitted for the AERR. The EPA is updating the SIP Emissions Inventory Guidance in coordination with this proposal. It provides specific guidance to air agencies on how to develop base year inventories for the nonattainment area and attainment projected inventories for 8-hour ozone, $PM_{2.5}$, and regional haze SIPs. While the AERR sets forth requirements for data elements and definitions, the guidance complements these requirements, defines all data elements (even those that are voluntary AERR elements), and indicates how the data should be prepared, documented and publicly reviewed for attainment plan submissions.

7. How do emissions inventories support modeling for attainment demonstrations?

This section attempts to clarify the difference between the inventories required to be a part of a state's Moderate area attainment plan submission (as described earlier) and other modeling inventories that are also relevant for attainment planning. While the EPA is not proposing additional modeling inventory requirements in this rule (*i.e.,* for which a state must submit an emissions inventory to the EPA), to meet the attainment demonstration requirements of CAA sections 189(a)(1) and 189(b)(1), states will need to submit an attainment demonstration (which includes air quality modeling) to show how the area will either attain the NAAQS by the applicable attainment date or that the area cannot attain by the attainment date. The modeled attainment demonstration requirements for Moderate areas are described fully in Section IV.E of this preamble.

As part of this demonstration, the EPA presumes that states will need to prepare attainment demonstration modeling inventories for both a modeled base year and projected attainment year. Respectively, these are called the ''base year (baseline) inventory for modeling'' and the ''attainment projected inventory for modeling.'' These inventories contain emissions for all regions (*i.e.,* not just the nonattainment area) within the modeling domain being used for the attainment plan modeling demonstration, which typically includes counties and even states outside of the nonattainment area. They include detailed spatial and temporal elements needed to support air quality modeling. States should follow the requirements laid out in Section IV.E of this preamble and the procedures described in the SIP Emissions Inventory Guidance and the Air Quality Modeling Guidance to meet the minimum requirements for documentation and emissions summaries supporting modeling demonstrations.[74]

The base year inventory and projected attainment year inventory include emissions from only within the nonattainment area. The EPA expects that modeling inventories will be consistent with those nonattainment area inventories; however, some exceptions may exist. Where possible, the nonattainment area base year and projected attainment year inventories can be a sum (for annual data) or average (for $PM_{2.5}$ season-day data) of day-specific or hour-specific data used for modeling. In some cases, however, this approach may not be sufficient for modeling purposes. For example, greater spatial and temporal detail are needed for on-road mobile modeling inventories as compared to the base year inventory for the nonattainment area. For the nonattainment area base year inventory, one goal is to allow for the repeatability of the approach in order to create average, seasonal or annual inventories for use in rule requirements, such as reasonable further progress or conformity demonstrations. That goal is not necessarily compatible with the modeling need for greater spatial and temporal detail. In cases where some differences are unavoidable, air agencies should attempt to promote consistency where feasible.

The AERR includes both triennial and annual statewide reporting requirements, with more extensive reporting requirements for triennial inventory years. For the interim annual inventories, reporting is limited to emissions data from only the larger point sources (Type ''A'' sources), as defined by Appendix A of 40 CFR part 51, subpart A. For the triennial inventories, lower point source thresholds are given in Appendix A, consistent with the definition of major sources in 40 CFR part 70, and all other sources of emissions must be reported as nonpoint or mobile sources on a county basis.

In the past, some states have incorrectly asserted that their AERR submission meets the requirements for base year inventories required by past implementation rules. To avoid confusion, the EPA provides here the limited circumstances in which the AERR emissions inventories can meet the base year inventory for the nonattainment area requirement for Moderate areas. The following conditions must be met to use AERR inventories for attainment planning:

(a) The AERR emissions inventory must have gone through the public review process required for attainment plans.

(b) The AERR emissions inventory needs to include all sources of emissions and all pollutants required for the base year inventory for the nonattainment area. This is only possible if the inventory year for the base year inventory for the nonattainment area aligns with a triennial AERR year, because the data system implementing the AERR only accepts emissions from point sources and not other source categories in non-triennial years.

(c) The EPA must be accepting data for the inventory year. Inventories are allowed to be submitted to the AERR for a given year for only a limited time during the development cycle of the National Emissions Inventory.

(d) The AERR submission must include emissions from all relevant sources as described for the base year inventory for the nonattainment area requirements. In some cases, the AERR requirement can be met without electronically ''submitting'' emissions, which would not meet the requirements for the base year inventory for the nonattainment area. For example, states may elect to accept the EPA estimates for some nonpoint emissions sectors,

[74] The EPA encourages states to consider in any baseline, modeling, and SIP attainment inventory used and/or submitted to include emissions expected from projects subject to general conformity and emissions from wildland fire that reasonably may be expected in the area.

but this would not meet the requirements of section 172(c)(3). In addition, the AERR revision finalized in February 2015 replaces the prior requirement of reporting onroad mobile and nonroad mobile source emissions with a requirement for reporting the input parameters that can be used to run the EPA models to generate the emissions. If choosing to use an AERR submission to meet the base year inventory for the nonattainment area requirement, the state should submit the nonattainment area emissions, irrespective of the options provided to meet the AERR requirements. Since the ''statewide'' emissions are actually provided for individual point sources and counties, the EPA believes that these resolutions can be sufficient for most $PM_{2.5}$ nonattainment areas.

8. What models should be used for mobile source emissions?

A key part of emissions inventory development includes estimating mobile source emissions. For all of the mobile source inventories used for $PM_{2.5}$ NAAQS implementation, states should use the latest emissions models available at the time the attainment plan inventory is developed.[75] In general, the latest approved version of the MOVES model should be used by states other than California to estimate emissions from onroad transportation sources. States should use the latest available planning emission inputs including, but not limited to, vehicle miles traveled (VMT), speeds, fleet mix, SIP control measures and fuels. The current version of MOVES is available at *http://www.epa.gov/otaq/models/moves/index.htm*. The appropriate EPA-approved model(s) should similarly be used for California onroad source emissions.[76] When using MOVES, states should follow the most current version of the MOVES Technical Guidance, available at *http://www.epa.gov/otaq/models/moves/index.htm#sip*. MOVES includes multiple options for estimating and processing emissions that could result in different emissions inventories. The EPA recommends that states use the same approach in any analysis that compares two or more emissions cases (*e.g.,* different control scenarios, different years). If different approaches are taken for inventories that serve different purposes (for example between inventories developed for air quality modeling, which may require greater temporal and spatial detail, and inventories used as the motor vehicle emissions budget), states should seek to understand and minimize any differences in results. For example, an approach may be used for the modeled attainment demonstration that uses gridded temperatures and other meteorological data, but this approach could be too burdensome for use in the base year inventory for the nonattainment area. This is because emissions inventories created for purposes of RFP and transportation conformity analysis must use the same MOVES approach used in the base year inventory for the nonattainment area, and using a straightforward MOVES approach without gridded meteorology is more reasonable for that purpose.

The most current version of the NONROAD model should be used for estimates of nonroad mobile source emissions, preferably with state-supplied model input data. States can alternatively develop technologically equivalent or superior state-specific nonroad emissions estimates, but should explain why their approach gives a better estimate than the EPA model. For nonroad sources not estimated by the NONROAD model, the best available methods should be used, and the EPA recommends that states refer to the SIP Emissions Inventory Guidance for more information on emissions from these sources. Links to **Federal Register** documents and policy guidance memos on the latest approved versions of MOVES and NONROAD can be found at *http://www.epa.gov/otaq/models.htm*.

9. What special considerations exist for tribal areas?

In the past, there have been instances where portions of tribal areas have been included in designated nonattainment areas, but when the base year inventory for the nonattainment area was prepared, emissions from the tribal lands were not included. This has had the effect of preventing tribes from generating emissions reductions from existing sources to develop emissions offsets, as well as impairing the ability of the state to prepare as accurate a modeling demonstration as possible. It could also cause sources in tribal areas to remain uncontrolled even though they are contributing to violations in a given nonattainment area. The EPA encourages states and tribes to work together to ensure that the information used in developing the baseline emissions inventory is inclusive of all emissions from a designated nonattainment area, including emissions from sources in tribal areas located therein.

C. Pollutants To Be Addressed in the Plan

Under subpart 4 of the CAA, air agencies are initially required to analyze and evaluate emissions reduction measures for all sources of direct $PM_{2.5}$ and $PM_{2.5}$ precursors (*i.e.,* SO_2, NO_X, VOC and ammonia) in developing $PM_{2.5}$ attainment plans. As described in Section II of this preamble, and reiterated in the proposed emissions inventory requirements for Moderate area attainment plans under Section IV.B of this preamble, direct $PM_{2.5}$ includes both filterable and condensable $PM_{2.5}$ emissions. Thus, a state must evaluate control measures for sources of filterable and condensable $PM_{2.5}$ emissions as part of an approvable control strategy for a Moderate $PM_{2.5}$ nonattainment area.

In addition, while evaluating sources of direct $PM_{2.5}$ for reasonably available controls is an implicit requirement in the context of implementing the $PM_{2.5}$ NAAQS under any scenario, the EPA is proposing and seeking comment on several options for evaluating $PM_{2.5}$ precursors under the $PM_{2.5}$ NAAQS implementation program. The EPA interprets the requirements of the CAA to allow the air agency to provide a ''precursor demonstration'' to the EPA that supports a state's finding that one or more $PM_{2.5}$ precursors need not be subject to control requirements in a given nonattainment area. Section III of this preamble presents a complete discussion of the EPA's proposed options for states to address $PM_{2.5}$ precursors in attainment plans and in the NNSR permitting program. Specifically, the EPA is proposing and seeking comment on three options describing different approaches to such precursor demonstrations, and requests comment on each. In general terms, the three options can be summarized as follows:

- Option 1: Two independent analyses: (a) an attainment planning analysis demonstrating that control measures for a particular precursor are not needed for expeditious attainment, meaning that the precursor can be excluded from measures needed to attain as expeditiously as practicable for all types of sources; and, (b) a section 189(e) technical demonstration showing that major stationary sources of a particular precursor do not contribute significantly to levels that exceed the $PM_{2.5}$ standard, meaning that the precursor can be excluded from control requirements for major sources and from NNSR permitting;

[75] Section 172(c)(3) requires that SIP inventories and control measures be based on the most current information and applicable models that are available when a SIP is developed.

[76] At this time, the California onroad mobile model is called EMFAC.

• Option 2: Single analysis demonstrating that all emissions of a particular precursor from within the area do not significantly contribute to $PM_{2.5}$ levels that exceed the standard, meaning that control requirements for emissions of the precursor from major stationary and area sources, as well as mobile sources, would not be required for expeditious attainment, control requirements for major sources, or for NNSR permitting;

• Option 3: An attainment planning analysis demonstrating that control measures for all types of sources of a particular precursor are not needed for expeditious attainment also would be deemed to meet the section 189(e) technical demonstration requirement, meaning that the state would not need to regulate emissions of the particular precursor from major stationary sources under the NNSR permitting program or other control requirements for major stationary sources.

The EPA will finalize its approach to $PM_{2.5}$ precursors and clarify the implications for states conducting analyses to identify required control measures after considering public comment received on this proposal.

D. Attainment Plan Control Strategy

1. General Approach to Designing a Control Strategy for a Moderate Nonattainment Area

The statutory attainment planning requirements of subparts 1 and 4 were established to ensure that the following goals of the CAA are met: (i) That states implement measures that provide for attainment of the $PM_{2.5}$ NAAQS as expeditiously as practicable; and, (ii) that states adopt emissions reduction strategies that will be the most effective, and the most cost effective, at reducing $PM_{2.5}$ levels in nonattainment areas. In addition to having an obligation to meet the statutory requirements for specific control measures on sources located within a nonattainment area (*e.g.,* RACM and RACT), a state has discretion to require reductions from any source inside or outside of a $PM_{2.5}$ nonattainment area (but within the state's boundaries) in order to fulfill its obligation to demonstrate attainment in a $PM_{2.5}$ nonattainment area as expeditiously as practicable. A state may need to require emissions reductions on sources located outside of a $PM_{2.5}$ nonattainment area if such reductions are needed in order to provide for expeditious attainment of the $PM_{2.5}$ NAAQS.

With this in mind, the following sections describe the EPA's proposed approach for a state to follow in order to identify and select the complete suite of measures needed for an attainment plan submission for a Moderate $PM_{2.5}$ nonattainment area. The proposed process consists of identifying all technologically and economically feasible control measures, including control technologies, for all sources of direct $PM_{2.5}$ and $PM_{2.5}$ precursors in the emissions inventory for the nonattainment area which are not otherwise exempted from consideration for controls.[77] From that list of measures, the state must identify those that it can implement within 4 years of designation of the area (and which would thus meet the statutory requirements for RACM and RACT) and any ''additional reasonable measures,'' which the EPA proposes to define as those technologically and economically feasible measures that the state can only implement on sources in the nonattainment area after the 4 year deadline for RACM and RACT has passed. *See* proposed 40 CFR 51.1000. The state must also assess whether there are other measures that it can implement to control sources within the state but outside the nonattainment area that contribute to the $PM_{2.5}$ nonattainment status of the area in order to bring the area into attainment as expeditiously as practicable.

As discussed in Section II.D.6 of this preamble, one important component of a state's control strategy for a $PM_{2.5}$ nonattainment area is the suite of control measures that a state is already implementing or will be implementing to comply with national, regional, or state and local regulations already adopted or promulgated, as long as such measures will lead to permanent and enforceable reductions in emissions after the area is designated nonattainment. Such ''existing'' measures could apply to sources inside the nonattainment area, in which case the state must include them in the RACM and RACT and additional reasonable measures analysis for the area. The measures may also apply to sources located outside the nonattainment area but would achieve reductions in direct $PM_{2.5}$ emissions or emissions of $PM_{2.5}$ precursors to help bring the area into attainment. A state must evaluate the potential effects of all of these measures as part of its modeled attainment demonstration for the area, and must clearly indicate which of these measures will contribute toward timely attainment for the area in the attainment plan submission.

2. Identification and Selection of RACM and RACT and Additional Reasonable Measures

a. *Statutory requirements and existing guidance.* CAA section 172(c) under subpart 1 describes the general attainment plan requirement for RACM and RACT, requiring that attainment plan submissions ''provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology) and shall provide for attainment'' of the NAAQS. The attainment planning requirements specific to PM_{10}, including $PM_{2.5}$, under subpart 4 likewise impose upon states an obligation to develop attainment plans that impose RACM on sources of direct $PM_{2.5}$ and $PM_{2.5}$ precursors within a Moderate nonattainment area. CAA section 189(a)(1)(C) requires that states with areas classified as Moderate have attainment plan provisions to assure that RACM are implemented by no later than 4 years after designation of the area.[78] The EPA reads CAA sections 172(c)(1) and 189(a)(1)(C) together to require that attainment plans for Moderate nonattainment areas must provide for the implementation of RACM and RACT for existing sources of $PM_{2.5}$ and $PM_{2.5}$ precursors in the nonattainment area as expeditiously as practicable but no later than 4 years after designation.[79]

The terms RACM and RACT are not defined within subpart 4, nor do the provisions of subpart 4 specify how states are to meet the RACM and RACT requirements. However, the EPA's longstanding guidance in the General Preamble described in detail considerations for determining what control measures constitute RACM and RACT for purposes of subpart 4. The EPA's guidance for RACM for sources of PM_{10} and PM_{10} precursors under subpart 4 in the General Preamble included: (i) A list of some potential measures for states to consider; (ii) a statement of the EPA's expectation that the state will provide a reasoned explanation for a decision not to adopt

[77] Such exemptions could be due to a demonstrated lack of significant contribution of a certain $PM_{2.5}$ precursor to the area's elevated $PM_{2.5}$ concentrations or due to a presumptive determination that a certain source category contributes only a *de minimis* amount toward $PM_{2.5}$ levels in a nonattainment area.

[78] States with areas later reclassified as ''Serious'' nonattainment areas under subpart 4 must also develop and submit later plans to meet additional requirements for Serious areas.

[79] This interpretation is consistent with guidance described in the General Preamble. *See* 57 FR 13498 (April 16, 1992), at page 13540.

a particular control measure; (iii) recognition that some control measures might be unreasonable because the emissions from the sources that would be affected by the measure in the area are *de minimis* (*i.e.,* aggregate emissions from all sources in a particular source category do not contribute significantly to $PM_{2.5}$ concentrations in the area); (iv) an emphasis on state evaluation of potential control measures for reasonableness, considering factors such as technological and economic feasibility; and, (v) encouragement to states evaluating potential control measures imposed upon municipal or other governmental entities to include consideration of the impacts on such entities, and the possibility of partial implementation when full implementation would be infeasible (*e.g.,* phased implementation of measures such as road paving).[80] Thus, the RACM requirement under subpart 4 applies to all types of sources and is not necessarily focused upon forms of control that are strictly technology-based.

With respect to RACT requirements, the EPA's guidance in the General Preamble: (i) noted that RACT has historically been defined as ''the lowest emission limit that a source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility''; (ii) Noted that RACT generally applies to stationary sources, both stack and fugitive emissions; (iii) suggested that major stationary sources be the minimum starting point for a state's RACT analysis; and, (iv) recommended that states evaluate RACT not only for major stationary sources, but for other source categories as needed for attainment and considering the feasibility of controls.[81] Thus, the RACT requirement under subpart 4 is primarily focused on stationary sources and forms of emissions control that are technology-based.

In addition to the statutory requirements under sections 172(c)(1) and 189(a)(1)(C) for RACM and RACT, section 172(c)(6) requires that a state's attainment plan for a nonattainment area ''include enforceable emission limitations, and such other control measures, means or techniques (including economic incentives such as fees, marketable permits, and auctions of emission rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to provide for attainment of such standard in such area by the applicable attainment date specified in this part.'' The EPA interprets this statutory provision to require a state to identify, select and implement additional measures to those identified as RACM and RACT for the area if needed to provide for timely attainment of the area. In the EPA's proposed approach detailed in this section, the EPA describes criteria for identifying and selecting ''additional reasonable measures'' for sources of direct $PM_{2.5}$ and $PM_{2.5}$ precursors in a Moderate nonattainment area which may be necessary in order to bring the area into expeditious attainment.

b. *Proposed approach.* This section describes the EPA's proposed approach for determining what measures qualify as RACM and RACT or as additional reasonable measures for controlling sources contributing to nonattainment in a Moderate $PM_{2.5}$ nonattainment area. Under the proposed approach, the specific determination of RACM and RACT would be made within the broader context of assessing control measures for all stationary, area and mobile sources of direct $PM_{2.5}$ and $PM_{2.5}$ precursors that would collectively contribute to meeting the statutory Moderate area attainment date as expeditiously as practicable.[82] The proposed approach is designed to ensure that states consider and adopt control measures for sources in a way that is consistent with the statute's overarching requirement to attain the standards as expeditiously as practicable, yet to provide flexibility for states to focus regulatory resources on those sources of emissions whose control will most effectively and expeditiously contribute to attainment in a given area.

Specifically, the EPA proposes that a state must follow a process by which it would: (i) Identify all sources of emissions of direct $PM_{2.5}$ and all $PM_{2.5}$ precursors in the nonattainment area and all potential control measures to reduce emissions from those source categories not otherwise deemed *de minimis;* (ii) determine if any of the identified potential control measures are technologically infeasible; (iii) determine if any of the identified technologically feasible control measures are economically infeasible; (iv) determine which technologically and economically feasible measures can be implemented, in whole or in part, within 4 years from the date of designation of the area and which can be implemented, in whole or in part, by the end of the sixth calendar year following designation; and, (v) perform an analysis to determine the earliest practicable attainment date for the area and identify the control measures and control technologies that will be needed to achieve attainment by the demonstrated attainment date and to meet statutory control requirements.

The statutory attainment date for Moderate nonattainment areas is as expeditiously as practicable, but not later than the end of the sixth calendar year after designation of the area as nonattainment. In the case of Moderate areas that can reach attainment by the statutory attainment date, and consistent with existing policies, states would be required to evaluate the combined effect of reasonably available control measures that are not necessary to demonstrate attainment within the maximum statutory timeframe to determine whether implementation of the remaining measures could advance the attainment date by at least 1 year. The EPA has long applied this particular test—whether reasonably available control measures that were not necessary to demonstrate attainment within the maximum statutory timeframe, collectively can advance an area's applicable attainment date by at least 1 year—to satisfy the statutory provision related to an area demonstrating attainment ''as expeditiously as practicable.'' [83] The EPA continues to believe that this approach provides an appropriate degree of flexibility to a state to tailor its attainment plan control strategy to the needs of a particular $PM_{2.5}$ nonattainment area. In the case of Moderate areas that cannot practicably attain by the statutory attainment date, states would be required to implement all RACM and RACT, together with any additional reasonable measures on sources in the nonattainment area. In either case, the statute requires that a state's attainment plan provide for implementation of RACM and RACT within 4 years of designation.

The following discussion provides further detail on the specific steps and criteria that the EPA proposes states must apply when making their determinations for RACM and RACT and additional reasonable measures. The EPA seeks comment on the proposed steps, criteria and

[80] *See* 57 FR 13498 (April 16, 1992), at pages 13540–41.

[81] *Ibid.*

[82] In *Sierra Club* v. *EPA,* 294 F.3d 155 (D.C. Cir. 2002), the court stated, in upholding the EPA's statutory interpretation of RACM, that the CAA does not compel a state to consider a measure without regard to whether it would expedite attainment.

[83] The term ''expeditious attainment'' is used throughout this proposal to describe the ability of a nonattainment area to attain ''as expeditiously as practicable'' based on the test described here.

considerations described below. *See* proposed 40 CFR 51.1009(a).

Step 1: Identify sources to be controlled and existing and potential control measures

i. *Identify sources to be controlled.* As described more fully in Section IV.B of this preamble, section 172(c)(3) of the CAA requires that attainment plans for $PM_{2.5}$ nonattainment areas include a ''comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant or pollutants.'' As proposed, the inventory must include emissions information for all major stationary sources, nonpoint or area sources, and mobile sources of direct $PM_{2.5}$ and $PM_{2.5}$ precursors in the nonattainment area.

The EPA proposes to require that a state must look at all of the sources reflected in the nonattainment area's base year inventory as part of the first step in identifying reasonable control measures for the area, as each of these sources may play a role in the area's $PM_{2.5}$ problem and thus may be controlled currently or may need to be controlled to bring the area into attainment as expeditiously as practicable. Under this proposed approach, a state would need to consider all inventoried sources of direct $PM_{2.5}$ emissions and sources of all four scientific $PM_{2.5}$ precursors as it conducts its determination of reasonable control measures for an area. A possible exception to this comprehensive review requirement for all inventoried sources could arise if the EPA finalizes a precursor approach that would allow a state to demonstrate that one or more precursors in a nonattainment area do not significantly contribute to the $PM_{2.5}$ problem in the area and/or that reducing emissions of one or more precursors in an area would not be effective in reducing $PM_{2.5}$ concentrations in the area.[84] In such a case, a state could exempt sources of any precursor for which the state has made such a demonstration from further consideration for measures to control emissions of that precursor. Independent of whether or not the EPA finalizes such an approach to precursors, however, a state could still determine that it is not necessary to control emissions of direct $PM_{2.5}$ or any of the $PM_{2.5}$ precursors in order to attain the $PM_{2.5}$ NAAQS in a given area, or to advance the attainment date for that area, at a later point in this proposed process for determining RACM and RACT and additional reasonable measures.

ii. *De minimis source category exemptions.* The concept of exempting certain source categories from consideration for control measures due to their minimal (*i.e., de minimis*) contribution is discussed at length in the Addendum for sources located in Serious PM_{10} nonattainment areas that would otherwise be subject to BACM and BACT requirements. The EPA's guidance in the General Preamble on Moderate PM_{10} nonattainment area requirements also provided support for exempting *de minimis* source categories from RACM and RACT requirements: ''If it can be shown that one or more measures are unreasonable because emissions from the sources affected are insignificant (*i.e., de minimis*), those measures may be excluded from further consideration as they would not represent RACM for that area.'' [85] [86]

As with RACM for PM_{10}, the EPA proposes to allow states to exempt *de minimis* source categories from further consideration as they determine reasonable control measures for bringing a Moderate $PM_{2.5}$ nonattainment area into attainment with the relevant NAAQS. The EPA proposes that if a state can demonstrate that a particular source category does not contribute significantly to nonattainment of the $PM_{2.5}$ NAAQS in a Moderate nonattainment area, then the state may eliminate the source category from further consideration for control measures.[87] A state would be required to evaluate all other sources in the nonattainment area in source categories that do not qualify as *de minimis* for reasonable control measures.

The EPA notes that there are some challenges in establishing *de minimis* source categories for $PM_{2.5}$ sources in the same manner as was performed for PM_{10} sources and seeks comment on the following proposed options.

(1) Defining source categories. Source categories, in particular for stationary sources, can be defined very broadly or narrowly, and the definition could determine which sources are able to meet the thresholds for *de minimis* exemptions. The North American Industry Classification System (NAICS) is the standard industrial classification system used by federal agencies. NAICS codes are between 2 and 6 digits, with greater industrial source specificity with increased digits.[88] Each digit in the code is part of a series of progressively narrower categories, and the more digits in the code signify greater classification detail. The first two digits designate the economic sector, the third digit designates the subsector, the fourth digit designates the industry group, the fifth digit designates the NAICS industry, and the sixth digit designates the national industry. The 5-digit NAICS code is the level at which there is comparability in code and definitions for most of the NAICS sectors across the three countries participating in NAICS (the United States, Canada and Mexico). The 6-digit level allows for the United States, Canada, and Mexico each to have country-specific detail. A complete and valid NAICS code contains six digits.

Defining source categories by NAICS codes would still require a determination of how broadly to set the source category boundaries as NAICS codes with fewer digits represent larger source categories (*e.g.,* sector '21' is for mining processes, while a further specification of '2122' is for metal mining processes, and '212210' is for iron ore mining). If source categories are defined in a very narrow or specific way, it is possible that many source categories will be below a set *de minimis* threshold, and therefore potentially inappropriately exempted from consideration for reasonable control measures. For this reason, the EPA proposes and seeks comment on a requirement that a state would need to define any source category for which a NAICS code exists at the four-digit industry group level. The EPA believes that relying on the four-digit industry group level to define ''source category'' for this purpose would provide an appropriate degree of distinction between industrial processes, while not making the source category definition overly broad. The EPA also seeks comment on two other alternative approaches for defining source category for this purpose, at the six-digit level, and the two-digit level. The EPA notes that not all source categories have NAICS codes, and for these other categories, states would need to use the

[84] *See* Section III of this preamble for further details on the agency's proposed options for how to handle precursors in attainment planning.

[85] 57 FR 13498 (April 16, 1992), at page 13540.

[86] Where the sources at issue contribute only negligibly to ambient concentrations that exceed the NAAQS, the EPA's policy is that it would be unreasonable to regulate those sources, and, therefore, the sources would not be subject to RACM or other control requirements, unless it is determined that even sources identified as *de minimis* must be controlled in order for the area to attain the NAAQS. In this regard, it is worth noting that the inherent authority of administrative agencies to exempt *de minimis* situations from regulation has been recognized by courts as ''a tool to be used in implementing the legislative design'' (*see Alabama Power Co.* v. *Costle,* 636 F.2d 323, 360 (D.C. Cir. 1979)).

[87] *Ibid. See Alabama Power* v. *Costle,* 636 F.2d 323, 360–61 (D.C. Cir. 1979).

[88] More information on the NAICS is available at: *http://www.census.gov/eos/www/naics* (last accessed August 12, 2013).

appropriate recognized categories, *e.g.,* on-road mobile sources. The EPA also seeks comment on alternative source categorization approaches that would ensure that sources that could be controlled with reasonable control measures to achieve meaningful reductions are not inappropriately excluded from consideration for such control measures as *de minimis.*

(2) Determining the appropriate threshold for *de minimis* emissions. For the PM_{10} NAAQS, the EPA's guidance in the Addendum recommended that a source category is presumed not to be *de minimis* if the aggregate emissions from such source category have an impact that exceeds 5 μg/m^3 with respect to the then-applicable 24-hour PM_{10} NAAQS or an impact that exceeds 1 μg/m^3 with respect to the then-applicable annual PM_{10} NAAQS. The EPA designed these presumptive thresholds for *de minimis* source categories to apply to PM_{10} NAAQS nonattainment areas and to the level and form of the PM_{10} NAAQS at the time the Addendum was written. However, because of the differences in level and form of the PM_{10} and $PM_{2.5}$ NAAQS, the agency finds that those levels are not appropriate for current or future $PM_{2.5}$ NAAQS implementation.

The EPA therefore proposes two options regarding the threshold for *de minimis* emissions. Under the first proposed option, the EPA would not establish a nationally applicable ''bright line'' threshold for defining a *de minimis* source category for purposes of implementing the $PM_{2.5}$ NAAQS in a Moderate nonattainment area. Rather, under this option, the EPA proposes to allow a state to determine whether a particular source category should be considered *de minimis* given the particular facts and circumstances of a specific $PM_{2.5}$ nonattainment area and subject to approval by the EPA. *See* proposed 40 CFR 51.1007.

Under the second option, the EPA proposes to establish a nationally applicable *de minimis* source category threshold that would be a specific percentage of the level of the relevant $PM_{2.5}$ NAAQS. The EPA seeks comment on what value within the range of 1 and 3 percent of the relevant NAAQS would represent an appropriate threshold level. The 3 percent upper end of the proposed range is generally derived from the *de minimis* source category contribution levels for PM_{10} as described in the General Preamble. The EPA defined these PM_{10} *de minimis* levels as follows: (i) For the annual standard of 50 μg/m^3, a source category contribution of 1 μg/m^3 or less to the annual average design value (*e.g.,* a contribution of about 2 percent or less); and, (ii) for the 24-hour standard of 150 μg/m^3, a source category contribution of 5 μg/m^3 or less to the 24-hour design value (*e.g.,* a contribution of about 3 percent or less). The 1 percent lower end of the proposed range is consistent with the value that the EPA established in the CAIR as a preliminary threshold for further evaluation of a state's contribution to interstate transport. That is, under the CAIR, a state was identified as potentially subject to additional emission control requirements if the impact of SO_2 and NO_X emissions from sources in that state to any nonattainment or maintenance area in another state exceeded 1 percent of the relevant $PM_{2.5}$ standard at a receptor monitor in the other state. This value was merely the first step of the analysis, but it provided an initial threshold for determining whether further analysis was warranted.

The EPA is requesting comment on the appropriateness of including *de minimis* threshold options for exempting certain source categories from consideration for reasonable control measure determinations, and seeks input on several key questions: First, if a *de minimis* threshold is included, what is the appropriate definition for source categories? In addition, what are the appropriate thresholds for impacts on ambient $PM_{2.5}$ concentrations that would adequately reflect presumptive *de minimis* concentrations from a given source category comparable to those recommended for purpose of the PM_{10} NAAQS? Also, should the *de minimis* source category thresholds be a percentage of the relevant NAAQS (*i.e.,* similar to what was recommended for PM_{10}, but set at a level that is more appropriate for the level and form of the relevant NAAQS)? The EPA requests that commenters submit any relevant data or analyses to support their comments with respect to these issues. Furthermore, the EPA notes that even in the event the agency finalizes this rulemaking with a *de minimis* source category policy of any kind, states are obligated under the CAA to demonstrate how their $PM_{2.5}$ nonattainment area(s) will attain the standard as expeditiously as practicable. Accordingly, a state could not elect to treat source categories as *de minimis* if doing so would prevent the state from being able to demonstrate attainment for an area by the statutory attainment date.

iii. *Identify existing and potential control measures and technologies.* The state's compilation of existing and potential control measures must be sufficiently broad to provide a basis for identifying all technologically and economically feasible controls that may be RACM or RACT for sources of direct $PM_{2.5}$ and $PM_{2.5}$ precursor emissions in the nonattainment area at issue. Because RACM applies to area and mobile sources as well as stationary sources, the EPA proposes to require that states consider a variety of types of measures in conducting their control strategy analysis. As stated earlier, inherent to the concept of RACM and RACT is the basic premise that the measure be ''reasonable,'' thus the EPA believes that a state may decline to evaluate control measures that are plainly ''absurd, unenforceable, or impractical,'' for example, measures that would cause ''severely disruptive socioeconomic impacts, (*e.g.* gas rationing and mandatory source shutdowns).'' It is the agency's interpretation that evaluation of such measures is not required by the CAA.[89]

Furthermore, the EPA believes that reducing air emissions may not justify adversely affecting other resources, for example, by increasing pollution in bodies of water, creating additional solid waste disposal problems or creating excessive energy demands. An otherwise available control technology may not be reasonable if these other environmental impacts are sufficiently adverse and cannot reasonably be mitigated. The EPA proposes that a state may consider a control measure for direct $PM_{2.5}$ or a $PM_{2.5}$ precursor not reasonable if, considering the availability of mitigating adverse impacts of that control on pollution of other media, the control would not, in the state's reasoned judgment, provide a net benefit to public health and the environment. It should be noted that, in many past situations, states and owners of existing sources have adopted control technologies for direct $PM_{2.5}$ and/or $PM_{2.5}$ precursors with known energy penalties and some adverse effects on other media, based on the reasoned judgment that installation of such technology would result in a net benefit to public health and the environment. States should consider this before determining that a control technology is not reasonable because it may have other, negative environmental impacts that are, on balance, marginal.

Generally, this proposed approach allows states to apply reasoned judgment as they identify potential control measures for sources of direct $PM_{2.5}$ and $PM_{2.5}$ precursors in their respective nonattainment areas, and the EPA expects that a state will provide a complete and reasoned explanation to support its selection of potential control

[89] 55 FR 38327 and 57 FR 13560.

measures and control technologies as part of the attainment plan submission for any Moderate nonattainment area. The proposed regulations include language to require the inclusion of this explanation in a state's attainment plan submission.

(1) Existing control measures. The EPA proposes that, as a starting point, a state must include in its initial list of control measures those measures and technologies that are being implemented or will be implemented due to promulgated and/or adopted (*i.e.,* ''on the books'') regulations for sources of direct $PM_{2.5}$ and $PM_{2.5}$ precursors in its Moderate $PM_{2.5}$ nonattainment area. The EPA expects that the state will incorporate current or anticipated emissions reductions from these ''existing'' control measures (such as expected SO_2 reductions from the MATS; reductions of NO_X and direct $PM_{2.5}$ from engine and fuel standards to reduce emissions from on-road and nonroad mobile sources) into its attainment demonstration modeling for the nonattainment area, and therefore the EPA believes it is appropriate for the state to clearly indicate such measures in the attainment plan for the area.

The EPA recognizes that for some sources located in a Moderate $PM_{2.5}$ nonattainment area, a state may have previously conducted RACM and RACT analyses to address emissions for other statutory purposes. Some of the RACM and RACT determinations could be relatively recent, while other determinations may be 15 years old or older. The EPA proposes that a state may not simply rely on a previous RACM or RACT determination for a particular source or source category when developing the attainment plan for a $PM_{2.5}$ NAAQS, but rather that the state must consider all existing and potential new measures together as part of a comprehensive RACM and RACT analysis. In this way, the state's new RACM and RACT analysis will represent the most thorough, up-to-date review of control measures for its $PM_{2.5}$ nonattainment area. For example, the state would still need to provide a RACT analysis for a stationary source that has installed new emissions controls recently (*e.g.,* within the last 3 years), but the state's determination may consider that recent installation when determining whether additional control is technologically and economically feasible.

(2) Potential control measures. In addition to identifying existing control measures for sources in a Moderate $PM_{2.5}$ nonattainment area, a state must develop a comprehensive list of potential control measures for sources in the area. There are a number of resources available to assist states in identifying additional, potential control measures and control technologies for their RACM and RACT and additional reasonable measures determinations for their Moderate $PM_{2.5}$ nonattainment areas. First, the EPA's Office of Air Quality Planning and Standards maintains a Menu of Control Measures document, available online at *http://www.epa.gov/air/criteria.html.* This document was developed to provide information useful in the development of local emissions reduction and NAAQS SIP scenarios, and identifying and evaluating potential control measures. It provides a broad, though not comprehensive, listing of potential emissions reduction measures for direct $PM_{2.5}$ and precursors of ozone and $PM_{2.5}$ from stationary, area and mobile sources. More complete information on mobile source control measures can be found on the EPA's Office of Transportation and Air Quality Web site at *http://www.epa.gov/otaq.*

The RACT/BACT/LAER Clearinghouse (RBLC) provides a central database of air pollution technology information (including past RACT, BACT and LAER decisions contained in NSR permits) to promote the sharing of information among permitting agencies and to aid in future case-by-case control measure determinations. The RBLC permit database contains over 5,000 determinations that can help a state identify appropriate technologies to mitigate most air pollutant emission streams. The RBLC includes data submitted by several U.S. territories and all 50 states on over 200 different air pollutants and 1,000 industrial processes. The RBLC can be found at: *http://cfpub.epa.gov/rblc/.*

Additionally, the EPA maintains a Web site with links to other online sources of information on control measures for states to consider.[90] Again, the EPA recognizes that some control technology guidance for certain source categories has not been updated for many years, and, for this reason, the agency expects states to identify and consider new and updated information in their RACM and RACT determinations as it becomes available.

(3) RACM for managing emissions from wildfire and prescribed fire. Wildfire emissions account for a large portion of direct $PM_{2.5}$ emissions nationally and can significantly contribute to periodic high $PM_{2.5}$ levels.[91] Besides their effect on air quality, wildfires pose a direct threat to public safety—a threat that can be mitigated through management of wildland vegetation. Attempts to suppress wildfires have resulted in unintended consequences, including increased risks to both humans and ecosystems.[92] The use of wildland prescribed fire can influence the occurrence, behavior, and effects of catastrophic wildfires which may help manage the contribution of wildfires to background $PM_{2.5}$ levels and periodic peak $PM_{2.5}$ events. Additionally prescribed fires can have benefits to those plant and animal species that depend upon natural fires for propagation, habitat restoration, and reproduction, as well as myriad ecosystem functions (*e.g.,* carbon sequestration). The EPA understands the importance of prescribed fire which mimics a natural process necessary to manage and maintain fire-adapted ecosystems and climate change adaptation, while reducing risk of uncontrolled emissions from catastrophic wildfires, and is committed to working with federal land managers, tribes, and states to effectively manage prescribed fire use to reduce the impact of wildfire related emissions on $PM_{2.5}$.

If wildfire impacts are significant, contributing to exceedances of the standard, the EPA proposes that air agencies should consider RACM for this source. Fires play an important ecological role across the globe, benefiting those plant and animal species that depend upon natural fires for propagation, habitat restoration, and reproduction. Fires are one tool that can be used to reduce fuel load, unnatural understory, and tree density, helping to reduce the risk of catastrophic wildfires. Some wildfires and the use of prescribed fire can influence the occurrence of catastrophic wildfires which may reduce the probability of fire-induced smoke impacts and subsequent health effects. RACM must be determined for each area on a case-by-case basis. Possible RACM for wildfire may include measures that reduce wildland fuels through fuels management, including the use of prescribed fire and possibly allowing some wildfire to occur naturally in systems that are ecologically fire

[90] Links are provided to a number of national, state and local air quality agency sites from the EPA's $PM_{2.5}$ Web site: *http://www.epa.gov/pm/measures.html.*

[91] For example, *see* ''miscellaneous'' category of direct $PM_{2.5}$ emissions in Table 1.

[92] Indeed, ''fire policy that focuses on [wildfire] suppression only, delays the inevitable, promising more dangerous and destructive future . . . fires.'' Stephens, SL; Agee, JK; Fule, PZ; North, MP; Romme, WH; Swetnam, TW. (2013). Managing Forests and Fire in Changing Climates. Science 342: 41–42.

dependent. Where appropriate, states, land managers, and landowners may consider developing plans to ensure that fuel accumulations are addressed and fuels management efforts, including prescribed fire, are not delayed. The EPA also proposes that air agencies should consider RACM for managing emissions from prescribed fires (including those prescribed fires conducted to reduce future wildfire emissions). Information is available from the DOI and the USDA Forest Service on smoke management programs and basic smoke management practices. The EPA requests comment on the concept of, and practical considerations associated with, RACM for wildfire and prescribed fire, including such issues as how such measures can be characterized in the emissions inventory and attainment demonstration and made federally enforceable for adoption in a SIP.

(4) RACT for EGUs. Through guidance in the preamble to the 2007 $PM_{2.5}$ Implementation Rule, the EPA established a rebuttable presumption that compliance with the CAIR would satisfy RACM and RACT requirements for SO_2 and NO_X emissions from EGUs in states participating in the CAIR cap-and-trade program for such emissions.[93] The EPA indicated that states could presume that EGUs located within a given nonattainment area were meeting the RACM and RACT requirements, based solely upon a regional program that imposed controls for SO_2 and NO_X emissions from sources both within and outside designated nonattainment areas.

In June 2007, the EPA received a petition for reconsideration questioning the legality of this presumption, which the D.C. Circuit later found to be unlawful in the context of a similar presumption in the Phase 2 Ozone (NAAQS) Implementation Rule.[94] The agency granted the petition for reconsideration in 2011 and proposed to withdraw from the 2007 $PM_{2.5}$ Implementation Rule any presumption that compliance with the CAIR automatically satisfies RACM and RACT requirements for SO_2 and NO_X emissions from EGUs located in nonattainment areas for the 1997 $PM_{2.5}$ NAAQS.[95] [96] In that proposal, the EPA explained that given the explicit wording of section 172(c)(1) that sources ''in the area'' (*i.e.,* in the nonattainment area) must at a minimum adopt RACT controls for that area, the agency believes that it is no longer appropriate to presume that this requirement is satisfied merely based upon the participation of a source in a regional cap-and-trade program. Indeed, implicit in a regional cap-and-trade program is that some sources, including those located within nonattainment areas, may elect to buy allowances in lieu of controlling emissions in order to meet the regional emissions reductions requirements.

Accordingly, the EPA is not proposing any rebuttable presumption that the CAIR or any other regional control strategy constitutes RACM or RACT for EGUs or any other source category. Instead, the EPA is clarifying that in order to meet the RACM and RACT requirements for the $PM_{2.5}$ NAAQS, states should evaluate EGU sources for RACM and RACT level controls just like any other source category, and not merely presume for EGUs located in a nonattainment area that compliance with a cap-and-trade program, including the CAIR or any other program, would satisfy their obligation to implement RACM and RACT. As required by the CAA, states are required to analyze what constitutes RACM and RACT for EGUs in each nonattainment area.

Step 2: Determine whether an available control measure or technology is technologically feasible. Once a state has identified existing and potential control measures and technologies for sources of direct $PM_{2.5}$ and $PM_{2.5}$ precursors in the nonattainment area(s), it must evaluate these controls to determine if any of those controls would be technologically infeasible in the particular nonattainment area.

i. *Stationary sources.* With respect to the technological feasibility of control technologies for stationary sources, the EPA has a longstanding approach to evaluating facts relevant to this criterion under subpart 4.[97] The EPA interprets the term technological feasibility to include consideration of factors such as a source's processes and operating procedures, raw materials, physical plant layout, and potential environmental impacts such as increased water pollution, waste disposal and energy requirements. For example, the EPA recognizes that the process, operating procedures and raw materials used by a source can affect the feasibility of implementing process changes that reduce emissions and can also affect the selection of add-on emissions control equipment. The feasibility of modifying processes or applying control equipment also can be influenced by the physical layout of the particular plant, if the physical space available in which to implement such changes limits the choices. The EPA proposes to retain its longstanding practice that a state should be allowed to consider such factors in order to eliminate from consideration control measures that are not technologically feasible to implement.[98]

ii. *Area and mobile sources.* With respect to determining whether a given control measure might not be technologically feasible for an area or mobile source, the EPA also proposes to retain its longstanding practice that a state may consider relevant factors in conducting its analysis, such as the social acceptability of the measure (*e.g.,* residential woodstove change-out programs rely in large part on the willingness of individual citizens to participate in such a program) and local circumstances, such as the condition and extent of needed infrastructure, population size, or workforce type and habits, which may prohibit certain potential control measures from being implementable.

The EPA seeks comment on the factors described above for states to consider when determining whether a control technology or measure is technologically feasible.

Step 3: Determine whether an available control measure or technology is economically feasible. The EPA has a longstanding interpretation of the term ''economic feasibility'' in the context of evaluating potential RACM and RACT which involves considering the cost of reducing emissions and the difference between the cost of an emissions reduction measure at a particular source

[93] *See* the **Federal Register** published on April 25, 2007 (72 FR 20586, 20623, 20624 and 20625).

[94] *See* ''Petition for Reconsideration,'' filed by Paul Cort, Earthjustice, on behalf of the American Lung Association, Medical Advocates for Healthy Air, Natural Resources Defense Council, and the Sierra Club (June 25, 2007). A copy of the petition is in the docket for this action. The EPA's decision to grant the petition for reconsideration on the issue of the CAIR being presumptively equal to RACT for EGUs was in part based on a D,C. Circuit decision related to a similar issue. Specifically, the Court decided that the provisions in the Phase 2 Ozone Implementation Rule indicating that a state need not perform (or submit) a NO_X RACM/RACT analysis for EGU sources subject to a cap-and-trade program that meets the requirements of the NO_X SIP Call are inconsistent with the statutory requirements of section 172(c)(1). The Court concluded that the phrase ''in the area'' means that reductions must occur from sources within the area and ''reductions from outside the nonattainment area do not satisfy the requirement.'' *See NRDC* v. *EPA,* 571 F.3d 1245 (D.C. Cir. 2009).

[95] Letter dated April 25, 2011, from former Administrator Lisa Jackson to Paul Cort, Earthjustice. A copy of this letter is located in the docket for this action.

[96] 79 FR 32892 (June 9, 2013).

[97] *See* the **Federal Register** published on April 16, 1992 (57 FR 13498, 13540 and 13541).

[98] Addendum to the General Preamble, 59 FR 41998 (August 16, 1994), at page 42013. Guidance is provided in the context of Serious area BACM determination, but the EPA is proposing to apply it here for Moderate area RACM determinations.

and the cost of emissions reduction measures that have been implemented at other similar sources in the same or other areas.[99] Absent other indications, the EPA presumes that it is reasonable for similar sources to bear similar costs of emissions reductions. Economic feasibility of RACM and RACT is thus largely informed by evidence that other sources in a source category have in fact applied the control technology, process change or measure in question in similar circumstances.

In the preamble to the 2007 $PM_{2.5}$ Implementation Rule, the EPA provided guidance on how to interpret the term ''economic feasibility'' which deviated from the agency's longstanding interpretation of the term. After promulgating the final rule, the EPA received and granted a petition for reconsideration on issues related to the agency's revised approach to interpreting the term ''economically feasible.'' [100] [101] Consistent with the EPA's granting of that petition for reconsideration, the EPA is proposing in this action an interpretation of economic feasibility that is consistent with the EPA's longstanding interpretation of what factors are appropriate for consideration of economic feasibility in a RACM and RACT analysis, instead of that adopted in the 2007 $PM_{2.5}$ Implementation Rule.

Specifically, the EPA proposes that for each technologically feasible control measure or technology, a state must evaluate the economic feasibility of the measure or control, through consideration of the capital costs, operating and maintenance costs, and cost effectiveness (*i.e.,* cost per ton of pollutant reduced by that measure or technology) associated with such measure or control. Furthermore, the EPA proposes that a state may not reject a technologically feasible control measure or technology as being economically infeasible if such a measure or technology has been implemented at other similar sources (*i.e.,* at sources that would be included in the same source category in the emissions inventory data collection process), unless the state provides an adequate justification that clearly explains the specific circumstances of the source or sources in the nonattainment area that make such a measure or technology economically infeasible in that particular area.

The EPA believes that it is appropriate for states to give substantial weight to cost effectiveness in evaluating the economic feasibility of an emission reduction measure or technology. The cost effectiveness of a measure is its annualized cost ($/year) divided by the emissions reduced (tons/year) which yields a cost per amount of emission reduction ($/ton). Cost effectiveness provides a relative value for each emissions reduction option that is comparable with other options and, in the case of control technologies, other facilities.

The EPA also seeks comment on an alternative cost effectiveness metric that would allow a state to take into account the effect of controlling a particular precursor on reducing $PM_{2.5}$ concentrations in the area. Such a cost effectiveness metric would be the annualized cost ($/year) of a control measure divided by the emissions reduced (tons/year) multiplied by the amount of reductions needed in the precursor emissions to yield 1 $\mu g/m^3$ reduction in $PM_{2.5}$ ($/($\mu g/m^3$)). Such a metric would allow a state to compare the relative cost effectiveness associated with each measure toward the attainment goal for the nonattainment area. The EPA notes the difficulty in determining the appropriate value to relate precursor reductions to reductions in ambient $PM_{2.5}$ concentrations, and therefore seeks comment on the appropriateness of this approach and how a state might demonstrate the validity of the input values it chooses to use.

In considering what level of control is reasonable, the EPA is not proposing a fixed dollar per ton cost threshold for economic feasibility of controls identified as potential RACM and RACT. In addition, if a state contends that a source-specific control-level should not be established because the source(s) cannot afford the control measure or technology that is demonstrated to be economically feasible for other sources in its source category, the EPA proposes that the state must support the claim with information regarding the impact of imposing the identified control measure or technology on the following financial indicators, to the extent applicable:

1. Fixed and variable production costs ($/unit)
2. Product supply and demand elasticity
3. Product prices (cost absorption vs. cost pass-through)
4. Expected costs incurred by competitors
5. Company profits
6. Employment costs
7. Other costs (*e.g.,* for RACM implemented by public sector entities).[102]

The EPA seeks comment on the factors described above for states to consider when determining whether a control technology or measure is economically feasible.

Step 4: Determine the earliest date by which a control measure or technology can be implemented in whole or in part. CAA section 189(a)(1)(C) requires that the attainment plan for a Moderate $PM_{2.5}$ nonattainment area provide for the implementation of RACM and RACT no later than 4 years after designation. The agency has long interpreted the term ''implement'' to mean that a control measure or technology has not only been submitted to the EPA for approval as part of a SIP but has also been built, installed and/or otherwise physically manifested, and is achieving the intended emissions reductions, and the EPA proposes to retain such a definition in this rule. *See* proposed 40 CFR 51.1000. However, the EPA recognizes that a state may be able to implement a given control measure only partially within 4 years after designation. The EPA addressed this situation in the General Preamble, stating: ''It is important to note that a State should consider the feasibility of implementing measures in part when full implementation would be infeasible.'' [103] This guidance endorses the notion that a state should not reject an otherwise technologically and economically feasible control measure or technology as RACM or RACT even if it can be only partially implemented within the statutory 4-year timeframe following designation of the area. Instead, the EPA interprets the statute to require states to adopt as RACM and RACT that portion of a control measure or technology that can feasibly be implemented within 4 years of the effective date of designation. For instance, if paving unpaved roads is a control measure that is technologically and economically feasible in a nonattainment area but a state cannot pave all roads within 4 years of designation, the state must adopt as RACM a measure that requires paving of that portion of roads that the state could feasibly accomplish within 4 years if

[99] *See* the **Federal Register** published on April 16, 1992 (57 FR 13498, 13540 and 13541).

[100] ''Petition for Reconsideration,'' filed by Paul Cort, Earthjustice, on behalf of the American Lung Association, Medical Advocates for Healthy Air, Natural Resources Defense Council, and the Sierra Club (June 25, 2007). A copy of the petition is in the docket for this action.

[101] Letter dated April 25, 2011, from former Administrator Lisa Jackson to Paul Cort, Earthjustice. A copy of this letter is located in the docket for this action.

[102] These long-standing factors were established in EPA guidance in 1992 and are applicable to implementation programs for all NAAQS pollutants. *See* the appendices to the General Preamble, 57 FR 18070 (April 28, 1992).

[103] 57 FR 13498 (April 16, 1992), at page 13541.

such a measure is needed for timely attainment of the $PM_{2.5}$ NAAQS in the area.

The EPA thus proposes that a state must identify those technologically and economically feasible control measures and technologies that it can implement fully or partially within 4 years of designation of its Moderate $PM_{2.5}$ nonattainment area. Depending on the severity of the $PM_{2.5}$ nonattainment problem in the area, some or all of these measures identified as implementable within 4 years may be needed in order to bring the area into attainment as expeditiously as practicable. These measures will satisfy the EPA's criteria for RACM and RACT if the state determines, through its attainment demonstration that it needs to implement them to achieve timely attainment for the area.

In addition, the EPA proposes that a state must separately identify those technologically and economically feasible control measures that can only be implemented after the statutory window for implementing RACM and RACT. The statutory 4-year timing requirement for implementing RACM and RACT under section 189(a)(1)(C) limits the control measures and technologies that can qualify as RACM and RACT for a Moderate $PM_{2.5}$ nonattainment area. However, the statutory requirement of CAA 172(c)(6) also requires states to implement ''other measures'' necessary to provide for timely attainment in an area. The EPA proposes that among such other measures should be ''additional reasonable measures,'' which would be those measures and technologies that are otherwise technologically and economically feasible but can only be implemented in whole or in part later than 4 years after designation and initiated no later than the beginning of the sixth calendar year following designation of the area.[104] Such additional reasonable measures would necessarily be implemented on sources in the nonattainment area. However, the EPA interprets the ''other measures'' required under section 172(c)(6) to apply to stationary, area and mobile sources located outside of the nonattainment area but within the state if the application of reasonable control measures on such sources would facilitate attainment of the $PM_{2.5}$ NAAQS in the nonattainment area. *See* proposed 40 CFR 51.1009(b).

Step 5: Model to determine the attainment date that is as expeditious as practicable and select the control measures necessary to achieve attainment and meet statutory requirements for control measures. Section 189(a)(1) of the CAA establishes a requirement that the attainment plan for a Moderate $PM_{2.5}$ nonattainment area must demonstrate either that an area can attain the relevant NAAQS by the applicable attainment date or that it is impracticable for the area to do so. As noted previously, for Moderate $PM_{2.5}$ nonattainment areas, the ''applicable attainment date'' is as expeditious as practicable, but no later than the end of the sixth calendar year after designation as nonattainment. A complete discussion of the EPA's proposed requirements for attainment demonstration modeling is presented in Section IV.E of this preamble. However, one of the key features of attainment demonstration modeling is that it provides a means of synthesizing the effects of emissions reductions from all existing and potential new control measures identified for sources in a given nonattainment area on overall air quality in that area. States will be required to use the results of their attainment demonstration modeling to identify the appropriate combination of reasonable control measures for sources in their Moderate $PM_{2.5}$ nonattainment area and any other control measures needed on sources outside the nonattainment area to ensure expeditious attainment of the relevant NAAQS in the area and to meet the statutory requirements of sections 189(a)(1)(B) and 172(c)(6) as explained below.[105]

Step 5a: If the state can demonstrate attainment in the area by the statutory attainment date for a Moderate area, then the state must implement those control measures needed for expeditious attainment of the NAAQS in the area. If a state determines that a Moderate nonattainment area can attain the $PM_{2.5}$ NAAQS by the statutory attainment date, the state must adopt and implement any technologically and economically feasible control measures that are necessary to ensure that the area will attain the NAAQS as expeditiously as practicable. The EPA will consider any such measures that can be implemented within 4 years of designation of the area to fulfill the RACM and RACT requirements for the area. In addition, the EPA will consider any such measures that can only be implemented between 4 years and the sixth calendar year after designation to meet the requirements of section 172(c)(6) as ''additional reasonable measures'' for the area and necessary to demonstrate timely attainment under section 189(a)(1)(B).

Under this approach, the state may reject any otherwise technologically or economically feasible measures that are not needed to demonstrate attainment or that will not advance the attainment date by at least 1 year. That is, for a Moderate area that can demonstrate attainment by the statutory Moderate area attainment date, the EPA proposes to define as ''reasonable'' only those technologically and economically feasible measures that are necessary for expeditious attainment of the NAAQS, as the CAA does not require a state to adopt measures that are not needed for expeditious attainment in a Moderate $PM_{2.5}$ nonattainment area. Thus, a state may exclude those otherwise reasonably available measures that, if adopted and considered collectively, would not advance the attainment date for the area by at least 1 year, so long as the state can demonstrate attainment as expeditiously as practicable and no later than the statutory Moderate area attainment date. *See* proposed 40 CFR 51.1009(a)(4)(i).

The EPA recognizes that identifying which measures could not collectively advance the attainment date for a Moderate area by at least 1 year may be an iterative process that requires additional analysis and/or modeling. The agency believes that such effort is reasonable for a state seeking to demonstrate the lack of need for certain controls that are determined to be technologically and economically feasible in light of the requirement for expeditious attainment in a given Moderate nonattainment area. The basis for deciding that it would be reasonable not to require imposition of otherwise available and appropriate controls because they would not be needed for attainment, or would not advance attainment, requires a suitably robust analysis and explanation.

Step 5b: If the state cannot demonstrate attainment by the statutory attainment date for a Moderate area, then the state must adopt all reasonable control measures. As noted elsewhere in

[104] With respect to ''partial measures'' under this proposed approach, the EPA would require that a state implement as RACM that portion of any control measure determined to be technologically and economically feasible and implementable within 4 years after designation of a nonattainment area. The state would then be required to implement as an additional reasonable measure that portion of the same control measure that can be implemented starting 4 years from designation through the sixth calendar year following designation.

[105] Note that under section 110(l) of the CAA, after a state has adopted a control measure into the SIP for an attainment demonstration, it may remove or modify a measure if the state demonstrates to the satisfaction of the EPA that such removal or modification will not interfere with any applicable requirement of the CAA, such as attainment of the $PM_{2.5}$ NAAQS or meeting RFP requirements.

this section, section 189(a)(1)(B) of the CAA requires a state to submit as part of the attainment plan either a demonstration that the plan will provide for attainment of the relevant NAAQS by the applicable attainment date, or a demonstration that attainment by such date is ''impracticable.'' This subpart 4 requirement anticipates that not all nonattainment areas initially classified as Moderate will necessarily be able to attain by the latest statutory attainment date for Moderate areas, and it incorporates the concept of an ''impracticability demonstration'' for such areas.[106] The CAA is thus structured to provide that Moderate areas that cannot timely attain the NAAQS through the required elements of a Moderate area attainment plan will be reclassified to Serious and will have to meet additional control requirements beyond those that are ''reasonable'' to assure attainment of the NAAQS by a later date that is as expeditious as practicable.

Existing guidance in the General Preamble on implementing this section of the CAA states that ''the EPA believes it is reasonable for all available control measures that are technologically and economically feasible to be adopted for areas that do not demonstrate attainment [by the applicable attainment date].'' [107] The EPA maintains that it is reasonable to require a state to model the effects of emissions reductions from all technologically and economically feasible controls identified by the state for sources in a nonattainment area before asserting a claim that the area cannot practicably attain the relevant NAAQS by the Moderate area attainment date. However, the magnitude of certain $PM_{2.5}$ precursor emissions and/or local atmospheric conditions of some $PM_{2.5}$ nonattainment areas may render certain technologically and economically feasible control measures ineffective in reducing ambient $PM_{2.5}$ levels. Therefore, even in a Moderate $PM_{2.5}$ nonattainment area that cannot practicably attain the relevant NAAQS by the statutory attainment date, the EPA believes that it may not be reasonable in all cases to require that a state implement all technologically and economically feasible control measures identified for sources in the area.

Consistent with the EPA's long-standing interpretation that subpart 4 Moderate area control requirements must be reasonable, the EPA proposes that, for a Moderate $PM_{2.5}$ nonattainment area that cannot practicably attain the NAAQS by the statutory attainment date, a state must adopt and implement all technologically and economically feasible measures identified for sources in the area, except for any such measures that collectively will not effectively reduce ambient $PM_{2.5}$ concentrations. *See* proposed 40 CFR 51.1009(a)(4)(ii). The EPA views this approach as similar to the agency's approach of allowing states to reject any otherwise technologically or economically feasible measures that are not needed to demonstrate attainment and that will not advance the attainment date by at least 1 year for nonattainment areas for which states can demonstrate attainment by the statutory attainment date. Once again, the EPA recognizes that identifying which measures collectively will not effectively reduce ambient $PM_{2.5}$ concentrations will likely be an iterative process that requires specific analysis, potentially including modeling. However, the agency believes that such effort is appropriate for a state seeking to demonstrate the lack of need for certain controls that are determined to be technologically and economically feasible in a Moderate nonattainment area that cannot practicably attain the relevant $PM_{2.5}$ NAAQS by the latest statutory Moderate area attainment date. The basis for establishing that it would not be reasonable to require imposition of otherwise available and appropriate controls because they would not be effective in reducing ambient $PM_{2.5}$ concentrations requires an adequately robust analysis and explanation.

The EPA also proposes an alternative approach to identifying all reasonable control measures for a Moderate nonattainment area that cannot practicably attain the $PM_{2.5}$ NAAQS by the end of the sixth calendar year following designation. Under this alternative, states would be required to implement all technologically and economically feasible control measures that they have identified for sources of direct $PM_{2.5}$ emissions and sources of emissions of significant $PM_{2.5}$ precursors in the area. The EPA believes that this interpretation would be consistent with the agency's previous guidance in the General Preamble and is compelled by the language of section 189(a)(1)(C), which separately requires a state to submit a Moderate area attainment plan and meet the RACM and RACT requirement, even if the state submits a demonstration that it cannot attain the NAAQS through those measures by the applicable attainment date. In addition, as with a Moderate $PM_{2.5}$ nonattainment area which a state demonstrates can attain the NAAQS by the end of the sixth calendar year following designation, the EPA interprets the provisions of section 172(c)(6) to require that such an area must implement all additional reasonable measures that it can implement through the sixth calendar year following designation of the area, in addition to those measures meeting the definition of RACM and RACT, in order to make progress toward attainment after the end of the fourth year following designation.

As described in Section III of this preamble, the EPA is proposing three options for implementing CAA requirements applicable to $PM_{2.5}$ precursors in the context of attainment planning and NNSR permitting. Proposed precursor Options 2A and 2B would provide an opportunity for a state to demonstrate that emissions of a particular precursor from all sources located in a Moderate $PM_{2.5}$ nonattainment area do not contribute significantly to ambient $PM_{2.5}$ levels that exceed the standard in the area, or reductions of which will not be effective in reducing ambient $PM_{2.5}$ concentrations, in which case the state would not be required to identify or otherwise evaluate control measures for the particular precursor. Under proposed precursor Options 1 and 3, on the other hand, states would rely on their control strategy analyses (*e.g.,* for Moderate nonattainment areas, analyses to determine RACM and RACT and additional reasonable measures) to identify whether and/or which controls on sources of $PM_{2.5}$ precursors are ''reasonable.'' The EPA believes that if proposed precursor Option 1 or 3 is finalized, it would be most appropriate to finalize the first approach to identifying reasonable control measures for Moderate areas that cannot practicably attain the NAAQS by the statutory attainment date, since states would not have an opportunity prior to evaluating the specific control measures for sources of $PM_{2.5}$ precursors in the nonattainment area to demonstrate that controlling all sources of a particular precursor would not be effective in reducing ambient $PM_{2.5}$ levels in the area. Likewise, if the agency finalizes proposed precursor Options 2A or 2B, the EPA believes that it would be most appropriate to finalize the alternative

[106] The concept of an ''impracticability demonstration'' is established in section 188(b), which addresses reclassifying Moderate $PM_{2.5}$ areas to Serious. Section 188(b)(1) describes the EPA's discretionary authority to reclassify an area upon a determination that an area cannot practicably attain by the Moderate area attainment date. More relevant to this determination, however, section 189(a)(1)(B) specifically provides for submission of a demonstration addressing this concept in the case of Moderate areas that cannot attain the NAAQS by the applicable attainment date.

[107] 57 FR 13498 (April 16, 1992), at page 13544.

proposed approach of requiring a state to implement all technologically and economically feasible measures identified by the state for sources in the area that can be implemented by the end of the sixth calendar year following designation if the state demonstrates that the area cannot practicably attain the NAAQS by the statutory attainment date, since the ''measures identified by the state'' would already implicitly exclude control measures on sources of any ''insignificant'' precursor. The EPA seeks comment on the two proposed approaches to selecting RACM and RACT and additional reasonable measures for Moderate nonattainment areas that cannot practicably attain the NAAQS by the statutory attainment date, and on the EPA's evaluation of the compatibility of these proposed approaches with the agency's proposed precursor options.

The EPA's proposed analytical process for determining RACM and RACT is intended to result in a comprehensive list of such technologically and economically feasible controls that would include local and state measures that could achieve emissions reductions from sources within the area, beyond those that could or would be achieved through regional or national measures. Furthermore, the EPA is proposing to require that the Moderate area attainment plan must include modeling of all RACM and RACT and additional reasonable measures, and other state, regional and federal measures, to demonstrate that a state will not be able to attain the NAAQS by the end of the sixth calendar year after designation due to the severity of nonattainment in the area and/or due to the lack of availability or feasibility of implementing controls in the area by such date.

Subpart 4 requires that Moderate areas that cannot or do not meet the Moderate area attainment date be reclassified as Serious nonattainment areas, in which case sources in the areas are then subject to BACM and BACT requirements. In the General Preamble, the EPA indicated that ''it may be reasonable, in some limited circumstances, for States to consider the compatibility of RACM and RACT with the BACM and BACT that will ultimately be implemented under the Serious area plans for those areas.'' [108] Furthermore, for such areas that do not meet the Moderate area attainment date, the EPA indicated that ''in the case of RACM for area sources, EPA anticipates that any future implementation of BACM for these sources will be additive to, and hence compatible with, RACM. This is because BACM will generally consist of a more extensive implementation of the RACM measures . . . Since EPA anticipates that RACM and BACM for these sources will be compatible, the SIP's (*sic*) for these areas should reflect the application of available control measures to existing sources in moderate nonattainment areas as determined by the analysis described . . . for RACM.'' [109] The EPA believes that a state should consider selecting and implementing controls that may qualify as BACM or BACT in a Moderate nonattainment area as part of their RACM and RACT analysis if they have reason to suspect that the area may not be able to attain the NAAQS by the applicable Moderate area attainment date as long as the control can be implemented by the statutory Moderate area attainment date. Early adoption of controls that would constitute BACM or BACT could be more efficient and could further the objectives of attaining the NAAQS expeditiously to protect public health and the environment.

3. RACM and RACT and Additional Reasonable Measures Submission Requirements

To ensure that attainment plan submissions contain the necessary supporting information to enable the EPA to review and approve a state's evaluation and selection of measures that constitute RACM and RACT in a given nonattainment area, the EPA proposes to require under the authority of section 301(a) that a state must submit the following information as part of its submission:

- A list of all source categories, sources and activities in the nonattainment area that emit direct $PM_{2.5}$ or any $PM_{2.5}$ precursor (for multi-state nonattainment areas, this would include source categories, sources and activities from all states which make up the area);
- For each source category, source or activity in the nonattainment area, an inventory of direct $PM_{2.5}$ emissions and emissions of all $PM_{2.5}$ precursors;
- For each non-*de minimis* source category, source or activity in the nonattainment area, a comprehensive list of potential control measures considered by the state for the nonattainment area; [110] [111]
- For each potential control measure considered by the state but eliminated from further consideration due to a determination by the state that the control measure or technology was not technologically feasible, a narrative explanation and quantitative or qualitative supporting documentation to justify the state's conclusion;
- For each technologically feasible emission control measure or technology, the state must provide the following information relevant to economic feasibility: (1) The control efficiency by pollutant; (2) the possible emissions reductions by pollutant; (3) the estimated cost per ton of pollutant reduced; and, (4) a determination of whether the measure is economically feasible, with narrative explanation and quantitative supporting documentation to justify the state's conclusion.
- For each technologically and economically feasible emission control measure or technology, the date by which the technology or measure could reasonably be implemented.

Each of these elements will provide information needed by the EPA to evaluate correctly and efficiently whether the state is meeting the statutory requirements for an attainment plan, and in particular meeting the statutory requirement for states to implement RACM and RACT on sources within the nonattainment area. The EPA recognizes that the base year emissions inventory for the area that the state submits in conjunction with its attainment plan will likely contain some of the information proposed to be required under the first two items in this list. However, the EPA believes that it is incumbent on the state to ensure that the information needed for the EPA to evaluate the state's RACM and RACT analysis is presented more specifically as part of the RACM and RACT analysis and in a format that provides transparency, consistency and the ability for another party to evaluate the state's analysis effectively. For this reason, the EPA is including emissions inventory information specifically relevant to the RACM and RACT element of the state's attainment plan.

4. Criteria for Effective Regulations To Implement RACM and RACT and Additional Reasonable Measures

After a state has identified a particular control measure as RACM or RACT or additional reasonable measure for a particular nonattainment area, it must

[108] *Ibid. at* 13544.

[109] *Ibid.*

[110] If the EPA finalizes proposed precursor Option 2A or 2B, which would effectively allow a state to demonstrate that a given precursor does not contribute significantly to $PM_{2.5}$ concentrations in a nonattainment area, then this step would require potential control measures only for sources of direct $PM_{2.5}$ and precursors not exempted from further analysis.

[111] Menu of Control Measures document available at *http://www.epa.gov/air/criteria.html.*

then implement that measure through a legally enforceable mechanism that will be included in the SIP (*e.g.,* a state rule that the EPA will approve as a part of the federally enforceable SIP for the state). The EPA is proposing that in order for the EPA to be able to approve any such measure as part of the SIP, the state would have to provide information to meet the following four criteria. These criteria are similar to the criteria finalized as part of the remanded 2007 $PM_{2.5}$ Implementation Rule.

First, the base year emissions from the source or group of sources to which the control measure applies and the future year projected emissions from those sources once controlled must be quantifiable so that the projected emissions reductions from the sources can be attributed to the specific measures being implemented. It is important that the emissions from the source category in question are accurately represented in the base year inventory so that emissions reductions are properly calculated. In particular, it is especially important to ensure that both the filterable and condensable components of direct $PM_{2.5}$ emissions are accurately represented in the base year.

Second, the control measures must be enforceable. This means that they must specify clear, unambiguous and measurable requirements. The measurable requirements for larger emitting facilities must include periodic source testing, monitoring or other viable means to establish whether the affected source meets the applicable emission limit. Additionally, to verify the continued performance of the control measure, specific emissions monitoring programs appropriate for the type of control measure employed and the level of emissions must be included to verify the continued performance of the control measure. The control measures and monitoring program must also have been adopted according to proper legal procedures.

Third, the results of application of the control measures must be replicable. This means that where a rule contains procedures for interpreting, changing or determining compliance with the rule, the procedures are sufficiently specific and objective so that two independent entities applying the procedures would obtain the same result.

Fourth, the control measures must be accountable. This means, for example, that source-specific emission limits must be permanent and must reflect the assumptions used in the attainment plan for the area, including the modeling conducted in conjunction with the attainment demonstration. It also means that the attainment plan must establish requirements to track emissions changes at sources and provide for corrective action if emissions reductions are not achieved according to the plan.

The EPA seeks comment on these criteria for approval of any control measures adopted by a state for a Moderate area to assure that such measures are legally enforceable.

5. Determination of RACM and RACT and Additional Reasonable Measures in Multi-State Nonattainment Areas

States in multi-state nonattainment areas will need to consult with each other on appropriate control measures for the shared nonattainment area. The agency anticipates that states could decide upon RACM and RACT and additional reasonable measures that differ from state to state in a shared nonattainment area, based upon each state's determination of the most effective strategies given the relevant mixture of sources and potential controls in the respective states' portions of a shared nonattainment area. As long as each state can adequately demonstrate that its chosen attainment strategy, including its selection and adoption of RACM and RACT and additional reasonable measures, will provide for meeting RFP requirements and for attainment of the NAAQS as expeditiously as practicable for the nonattainment area at issue, the EPA anticipates being able to approve individual state plans that may elect to control a different mix of sources or to implement different controls, under the proper circumstances. Nevertheless, in evaluating RACM and RACT and additional reasonable measures for a particular nonattainment area, states must consider potential reasonable control measures developed for other areas or other states, and particularly for other portions of an interstate nonattainment area. In addition, states in multi-state nonattainment areas must evaluate whether the reasonable measures each state may have identified as not being necessary for attainment could collectively advance the attainment date for the area by at least 1 year. The EPA may consider such measures in assessing the approvability of each state's individual attainment plan for a multistate nonattainment area.

6. Environmental Justice Considerations in Developing the Attainment Plan Control Strategy for a Moderate $PM_{2.5}$ Nonattainment Area

The EPA strongly urges states to consider environmental justice concerns with respect to any control measures they have identified as potential RACM or RACT or additional reasonable measures in an area, particularly to the extent that control measures that a state may be considering are otherwise approximately equal (in terms of technological and economic feasibility) but unequal with respect to their direct or indirect impacts on overburdened populations.[112] In such cases, the EPA encourages the state to prioritize imposition of the control measures that will result in the least possible burden and greatest degree of health protection for overburdened populations in the nonattainment area. Section IX of this preamble discusses this and other possible approaches for states to incorporate ways to address environmental justice concerns associated with implementation of the $PM_{2.5}$ NAAQS in their attainment plans and SIP development process, and the EPA seeks comment on ways to more fully address such concerns.

E. Modeling for Attainment Demonstrations

1. Statutory Requirements

Section 189(a) generally requires a state with a designated Moderate nonattainment area to submit an attainment plan for such area. As discussed earlier, section 189(a)(1)(B) more specifically requires the state to submit an attainment demonstration including air quality modeling to establish either: (i) That the area will attain the relevant NAAQS by the applicable attainment date; or, (ii) that it is impracticable for the area to attain the relevant NAAQS by the applicable attainment date. For Moderate nonattainment areas, the attainment date is as expeditiously as practicable, but no later than the end of the sixth calendar year after designation as nonattainment. Section 189(a)(2)(B) of the CAA requires states with designated nonattainment areas to submit attainment plans no later than 18 months after designation.

[112] The term ''overburdened populations'' is defined in the EPA's ''Plan EJ 2014'' to describe the minority, low-income, tribal, and indigenous populations or communities in the U.S. that potentially experience disproportionate environmental harms and risks as a result of greater vulnerability to environmental hazards. This increased vulnerability may be attributable to an accumulation of both negative and lack of positive environmental, health, economic or social conditions within these populations or communities. For more information on Plan EJ 2014, *see: http://www.epa.gov/environmentaljustice/plan-ej/.*

2. What is an attainment demonstration?

Section 189(a)(2)(B) does not define the term ''demonstration'' and does not specify precisely how a state should make the required demonstration. Thus, the EPA believes it is necessary to provide more specific parameters for such demonstrations in order to assure that they contain the requisite information to allow for meaningful evaluation of the issues that the demonstrations are intended to address. An attainment demonstration is a set of analyses that provide an explanation of how a state will attain the $PM_{2.5}$ NAAQS by the applicable attainment date in a particular nonattainment area.[113] The EPA is proposing that the demonstration must contain: (i) Technical analyses such as base year and future year modeling of emissions which identify sources and quantify emissions that are contributing to violations of the $PM_{2.5}$ NAAQS; and, (ii) analyses of future year emissions reductions and air quality improvement resulting from existing (*i.e.,* already-adopted or ''on the books'') national, regional and local programs, and potential new local measures needed for attainment, including RACM and RACT controls for the area. Each state with a Moderate nonattainment area must submit an attainment plan with an attainment demonstration that includes analyses supporting the state's determination of its proposed attainment date. In all cases, the state must show that the Moderate area will attain the NAAQS as expeditiously as practicable, but not later than the end of the sixth calendar year after designation. In order to establish that the attainment date is as expeditious as practicable, the state must explain why any control measures adopted in the attainment plan provide for the most expeditious attainment and, specifically, must demonstrate that collectively the reasonable measures that were not adopted as RACM or RACT or additional reasonable measures will not advance the attainment date by at least 1 year if implemented. *See* proposed 40 CFR 51.1011(a).

A state may alternatively submit a demonstration that shows that attainment by the statutory attainment date for a Moderate area is impracticable.[114] The statute does not define the term ''impracticable'' in this context, so it is necessary for the EPA to interpret this term in the context of a submission from the state for this purpose. In order to support this type of demonstration, the EPA proposes to require that the state must show that, even if all technologically and economically feasible controls that can be implemented within 6 years were implemented, the state could not attain the NAAQS within the statutory timeframe for a Moderate area. A state could do this by performing a modeling analysis which projects emissions to the sixth year after designations in order to predict future year $PM_{2.5}$ design values in the area. The projected emissions would account for all existing federal and state SIP-adopted regulations on sources outside the nonattainment area that were in place at the time, plus all measures that were identified as technologically and economically feasible controls that can be implemented in the nonattainment area within 6 years of designation (*i.e.* all measures that would qualify as RACM or RACT or as additional reasonable measures), as well as any other reasonable measures available in the state that could aid in achieving timely attainment. If the modeling shows that attainment cannot be reached by the end of the sixth calendar year following designation, then the analysis could be used to demonstrate that it is impracticable for the area to attain the relevant NAAQS by the statutory attainment date. Other information can also be used to support the demonstration, including ambient data and emissions trends data. States are encouraged to work with their respective EPA Regional Office to identify appropriate information that could be used to support an impracticability demonstration. The EPA emphasizes that states that can make the required showing that a Moderate nonattainment area cannot attain the NAAQS by the statutory attainment date are nonetheless required to meet the substantive requirements for a Moderate area attainment plan, including the implementation of control measures that are RACM and RACT and additional reasonable measures in that area.

3. What modeling is required?

States are required to submit air quality modeling in support of an attainment demonstration for a Moderate $PM_{2.5}$ nonattainment area. Although air quality modeling is not expressly required for a Moderate area demonstration showing that attainment by the attainment date is impracticable (per section 189(a)(1)(B)(ii)), the EPA proposes to interpret the CAA to require air quality modeling similar to that required for an attainment demonstration in order to demonstrate that attainment of the relevant $PM_{2.5}$ NAAQS by the statutory attainment date is impracticable. Because air quality modeling is a required element of the attainment demonstration in section 189(a)(1)(B), the EPA believes that it logically follows that similar modeling should also be required to show that an area will not be able to attain by the attainment date contemplated by the statute.

There may be limited cases in which a state may be able to demonstrate through a rigorous technical analysis with supporting documentation that attainment by the statutory Moderate area attainment date is impracticable. Given that the statute may be interpreted as not requiring air quality modeling for an impracticability demonstration, the EPA proposes and seeks comment on an alternative option under which air quality modeling would not be a requirement for a Moderate area impracticability demonstration. The EPA would recommend that a state submit modeling as part of any Moderate area impracticability demonstration, but under this alternative option such modeling would not be a regulatory requirement.

Given that secondarily formed $PM_{2.5}$ (*e.g.* ammonium sulfate, ammonium nitrate and SOA) is a large fraction of the total measured $PM_{2.5}$ in most $PM_{2.5}$ nonattainment areas, the EPA assumes that photochemical grid modeling (which considers secondary $PM_{2.5}$ formation) will be needed for a state to demonstrate attainment with the NAAQS. Most previous $PM_{2.5}$ attainment demonstrations for both the 1997 and 2006 $PM_{2.5}$ NAAQS have utilized photochemical grid models. However, in some nonattainment areas that are dominated by primary $PM_{2.5}$ emissions (*e.g.* residential wood smoke), more simplistic dispersion models, such as a combination of dispersion, receptor and box airshed models, may suffice to demonstrate that the area will attain the NAAQS. Regardless of the modeling approach selected to support the attainment demonstration, the analyses must be based on technically credible methods and provide for the timely submittal of the attainment demonstration and implementation of control measures. States should consult with their respective EPA Regional

[113] An area is designated nonattainment for either the annual $PM_{2.5}$ NAAQS or the 24-hr $PM_{2.5}$ NAAQS or both. The attainment demonstration should show that the area is attaining the form of the NAAQS for which they have been designated nonattainment.

[114] Pursuant to section 188(b)(1)(B), upon an EPA determination that attainment by the Moderate date is impracticable, the EPA shall reclassify the area as Serious within 18 months after the Moderate area attainment plan due date.

Office to determine the appropriate type of modeling demonstration for the particular nonattainment area.

4. Do states need to develop new modeling for their attainment demonstrations?

The EPA believes that the statutory provision requiring attainment demonstrations for Moderate $PM_{2.5}$ nonattainment areas to include air quality modeling can be fulfilled in a variety of ways. Thus the EPA proposes to allow states to fulfill the statutory modeling requirement through either locally generated photochemical and/or dispersion modeling or, with proper justification, through appropriate regional or national modeling. The EPA seeks comment on what types of modeling demonstrations should be required to fulfill the CAA requirement to ''include air quality modeling'' as part of the attainment demonstrations for Moderate nonattainment areas.

New modeling analyses that follow the EPA modeling guidance, conducted by the state for implementing the $PM_{2.5}$ NAAQS, will presumably satisfy the attainment demonstration modeling requirement. However, many areas that were designated as nonattainment for the 1997 and/or 2006 $PM_{2.5}$ NAAQS have already invested considerable resources in local and/or regional $PM_{2.5}$ modeling analyses. Most states with potential $PM_{2.5}$ nonattainment areas are already participating in regional modeling analyses through multi-jurisdictional organizations (MJOs). These MJOs (*e.g.* SESARM, LADCO and WRAP) represent most states with $PM_{2.5}$ nonattainment areas in the country. There is ongoing $PM_{2.5}$ modeling that may provide useful information for state $PM_{2.5}$ NAAQS attainment demonstrations.

In addition to local and regional modeling, the EPA conducts nationwide modeling (generally limited to the contiguous 48 states) in support of various national rulemakings. The base and future modeling year for national rule modeling varies depending on compliance dates for the rule being analyzed and on when the modeling was conducted. For example, there are several analyses of recent and ongoing rules which may provide useful $PM_{2.5}$ modeling information for state attainment demonstrations. Among them are modeling to support the 2012 $PM_{2.5}$ NAAQS review, the final Tier 3 mobile source emissions standards, and the current ozone NAAQS review.[115] While the analyses in these rulemaking actions may not be precisely relevant for the purposes of a $PM_{2.5}$ attainment plan, they may nevertheless provide useful information or input relevant to states developing attainment plans for the $PM_{2.5}$ NAAQS. Similar nationwide modeling efforts may be helpful for purposes of future $PM_{2.5}$ NAAQS.

States may be able to use regional and/or EPA modeling to demonstrate that specific nonattainment areas will attain the relevant $PM_{2.5}$ NAAQS by the applicable attainment date, but states must evaluate the relevant modeling information to show that it is suitable for that purpose. For example, the modeling should be evaluated to show that it is performing adequately for the area; that the future modeling year is appropriate for the particular attainment demonstration; and that the base year emissions and projected emissions and controls adequately represent the base year conditions and emissions expected to occur in the area in the future. States should work closely with the appropriate EPA Regional Office to determine what (if any) existing modeling may be suitable for use in an attainment demonstration (or an impracticability demonstration) for a Moderate $PM_{2.5}$ nonattainment area.

The EPA requests comment on how states can use existing regional and/or national modeling to meet their attainment demonstration requirements. The agency also notes that even when regional or EPA modeling is available to show that an area is expected to attain the $PM_{2.5}$ NAAQS by the applicable attainment date, other CAA requirements may be difficult to satisfy through the use of regional or EPA modeling. For example, states may or may not be able to satisfy their CAA requirements for emissions inventory submittals or RFP demonstrations by using data derived from MJO or EPA modeling. The available regional/national modeling may not include an appropriate base year or future year, and the level of detail or how the emissions were derived may not be appropriate or compatible with inventories needed to satisfy specific CAA requirements. States may have to derive more local specific inventory data, for the appropriate years, to adequately satisfy these CAA requirements.

Because it will be challenging for states to prepare new modeling analyses to meet the submission deadline for the Moderate area attainment plans, the EPA encourages states to start work on modeling analyses as soon as possible, in order to ensure that adequate time is devoted to developing a technically credible attainment demonstration. States that have the most challenging $PM_{2.5}$ problems will likely need to develop new and/or updated photochemical modeling analyses for their nonattainment areas, with emissions (including potential new controls) projected to the appropriate future attainment year.

5. What guidance is available for using models to demonstrate attainment?

The procedures for modeling $PM_{2.5}$ as part of an attainment demonstration are described in the EPA's ''Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5,}$ and Regional Haze.'' [116] All modeling in support of an attainment demonstration should be consistent with the EPA's $PM_{2.5}$ photochemical modeling guidance (referenced above) as well as the Guideline on Air Quality Models (40 CFR part 51, Appendix W).

The $PM_{2.5}$ attainment demonstration modeling guidance describes how states can apply air quality models to generate results needed to demonstrate attainment. These recommendations include developing a conceptual description of the problem to be addressed; developing a modeling/analysis protocol; selecting an appropriate model to support the demonstration; selecting appropriate meteorological episodes or time periods to model; choosing an appropriate area to model with appropriate horizontal/vertical resolution; generating meteorological and air quality inputs to the air quality model; generating emissions inputs to the air quality model; and, evaluating performance of the air quality model. After these steps are completed, the state can apply a model to simulate effects of future year emissions and candidate control strategies.

The EPA is not requiring a specific model for use in the attainment demonstration for the $PM_{2.5}$ NAAQS. At present, there is no single model which has been extensively tested and shown to be clearly superior to other available models. The current modeling guideline, 40 CFR part 51, Appendix W, does not identify a preferred model for use in attainment demonstrations of the $PM_{2.5}$ NAAQS. Thus, states may choose from several alternatives so long as the

[115] Even though the ozone NAAQS modeling will be focused on ozone, $PM_{2.5}$ modeling results will likely be generated from the analysis in order to inform health benefits calculations.

[116] The 2007 modeling guidance can be found at the following Web site: *http://www.epa.gov/scram001/guidance/guide/final-03-pm-rh-guidance.pdf.* As noted, the EPA recently released revised draft modeling guidance.

alternative is appropriate for the nonattainment area under evaluation.

In some cases, a state may need to apply multiple models in the attainment demonstration. In most cases, a photochemical grid model is needed to predict base and future year concentrations of secondary $PM_{2.5}$. Photochemical grid models can also be used to predict concentrations of primary particulate and are useful in assessing steep concentration gradients arising from area sources. However, in areas with high concentrations of primary $PM_{2.5}$, or strongly stratified air at the surface, a Gaussian plume model or puff model may also be needed to more accurately represent steep concentration gradients (or lack of mixing to the surface) in locations with a large contribution from a single or multiple primary $PM_{2.5}$ point sources or locations in near-road areas. The EPA's attainment demonstration modeling guidance provides details and recommendations on using multiple models.

Models are used to test whether control measures in an attainment plan are likely to result in attainment of the relevant standard(s). The attainment demonstration modeling guidance recommends a modeled attainment test for the annual and 24-hour $PM_{2.5}$ NAAQS that uses a combination of ambient $PM_{2.5}$ and $PM_{2.5}$ species data and modeled $PM_{2.5}$ concentrations to estimate future year air quality. In the recommended attainment test, the state applies the test at each $PM_{2.5}$ ambient monitor location within or near a designated nonattainment area. Models are used in a relative sense to estimate the response of measured air quality to future changes in emissions. Future air quality is estimated by multiplying recent monitored $PM_{2.5}$ values by the modeled relative response (percent change) to projected future changes in emissions. If the future design value at all monitoring locations in the nonattainment area does not exceed the concentration of $PM_{2.5}$ specified in the NAAQS, the area is projected to attain the NAAQS.

Because $PM_{2.5}$ is a mixture of chemical components, states should use recent observations and modeled responses of major components of $PM_{2.5}$ (*i.e.* sulfate, nitrate, organic carbon, etc.) to estimate future concentrations of each component.[117] The predicted future concentration of $PM_{2.5}$ is the sum of the future year predicted component concentrations.

The attainment demonstration modeling guidance contains additional details regarding the treatment of $PM_{2.5}$ and speciation monitoring data. Because PM species data are not available at each $PM_{2.5}$ FRM site, the EPA recommends a methodology which interpolates species data to each FRM site in order to estimate the species concentrations in the area. This information, combined with modeling results, may be used to calculate future air quality at each FRM monitoring site. The EPA has developed software to perform both the annual and 24-hour $PM_{2.5}$ attainment test (including interpolating PM species data). The software is called the Modeled Attainment Test Software (MATS) and is available for no cost at: *http://www.epa.gov/scram001/modelingapps_mats.htm*. The software is provided to make it relatively easy for states to apply the recommended modeled attainment test. However, states are not required to use MATS and can develop their own post-processing software.

The modeling guidance also describes the opportunity for states to supplement their modeling with a ''weight of evidence'' demonstration. States may use other information and analyses, in addition to the modeled attainment test, to estimate whether future attainment of the NAAQS in an area is likely. Other analyses may include, but are not limited to, emissions trends, ambient data trends and analyses, other modeling analyses, and documentation of other non-modeled emissions control strategies, including voluntary programs.

The reliability of tests for estimating future attainment depends upon having reliable databases for inputs to those tests. The modeling guidance identifies and prioritizes key data-gathering activities and analytical capabilities that will increase credibility of analyses used to estimate if the NAAQS will be attained in the area by the statutory attainment date.

The EPA is considering updates to the modeling guidance to address $PM_{2.5}$ modeling for the 2012 $PM_{2.5}$ NAAQS. The agency released a revised draft modeling guidance for developing demonstrations to meet $PM_{2.5}$, ozone, and regional haze air quality goals in December 2014, and intends to revise the guidance after considering public comments received.[118]

The application of air quality models requires a substantial effort by state and local agencies. Therefore, states should work closely with their respective EPA Regional Office in executing each step of the modeling process. Doing so will ensure that states know what EPA analyses they can rely on, if they wish, to simplify this task, and it will increase the likelihood of the EPA's approval of a state's demonstration submitted at the end of the modeling and overall attainment plan development process.

6. Demonstrating Attainment at Near-Road Monitors

The 2012 $PM_{2.5}$ NAAQS final rule contains new requirements for operating near-road monitors in the largest metropolitan areas.[119] The first monitors were required to be in place as of January 1, 2015 (*see* Section II of this preamble for more details). These monitors will not have the requisite 3 years of monitoring data necessary to calculate a $PM_{2.5}$ design value until 2018 at the earliest. Therefore, these data were not available to inform the first round of initial designations for the 2012 $PM_{2.5}$ NAAQS and there will be less than 3 years of data available when the initial attainment demonstrations for Moderate areas are due in October 2016. As a result of this timing, the agency is proposing that the initial set of Moderate area attainment demonstrations will not need to include projected design values for near-road monitor locations. However, subsequent attainment demonstrations for the $PM_{2.5}$ NAAQS (after 2018, when 3 or more years of complete ambient data are available at near-road monitors) will need to address those monitor locations in attainment plans and will need to include a demonstration that those monitor locations will show attainment of the NAAQS by the applicable statutory attainment date. The revised modeling guidance document for the $PM_{2.5}$ NAAQS includes procedures for applying a dispersion model or a combination of photochemical grid models and dispersion modeling to demonstrate attainment at near-road monitor locations.

7. Demonstrating Attainment in Unmonitored Areas

As explained in the 2012 $PM_{2.5}$ NAAQS final rule and summarized in Section II of this preamble, the EPA's

[117] The exact years of the ''recent'' ambient data are defined by the base year selected for the modeling. The guidance recommends using 5 years of ambient data, centered about the base modeling year.

[118] *See* ''Draft Modeling Guidance for Demonstrating Attainment of Air Quality Goals for Ozone, PM2s, and Regional Haze,'' issued by Richard Wayland, Director of Air Quality Assessment Division, EPA Office of Air Quality Planning and Standards, to EPA Regional Air Division Directors, Regions I–X, December 3, 2014. Available at: *http://www.epa.gov/ttn/scram/guidance/guide/Draft_O3-PM-RH_Modeling_Guidance-2014.pdf*.

[119] 78 FR 3085 (January 15, 2013), at page 3283.

monitoring requirements for $PM_{2.5}$ are designed to ensure a robust nationwide monitoring network in both nonattainment and attainment areas. Air agencies have achieved this by maintaining their $PM_{2.5}$ networks in accordance with EPA's network design criteria. Historically, these criteria provided that CBSAs have at least one $PM_{2.5}$ monitoring site located in an ''area-wide'' location of expected maximum concentration (within the CBSA).[120] Thus, by assuring compliance with the NAAQS at the location of the expected highest area-wide concentration in the CBSA, air quality is protected throughout each CBSA. However, due to limited resources, there are limits to the number of air quality monitors that can be deployed and it therefore may be useful to consider what, if any, additional analysis needs there may be as agencies prepare their attainment plans.[121]

Under the 2007 $PM_{2.5}$ Implementation Rule, the EPA required states to follow existing modeling guidance, which suggested that a state's $PM_{2.5}$ attainment plan could be approved if it demonstrated attainment, through the modeled attainment test, at monitored locations only. But the guidance also recommended that states conduct further analyses based on the modeling results to determine whether there were unmonitored areas that merited additional analysis or investigation. The guidance further recommended that states either reduce emissions that, based on these recommended additional analyses, could cause violations in unmonitored areas, or that they place a new monitor in such an area. The EPA found that the minimum requirements for the unmonitored area analysis in the 2007 modeling guidance (and the 2007 $PM_{2.5}$ Implementation Rule) were not sufficiently clear. The EPA is therefore proposing several alternative options in order to clarify the appropriate treatment of model results in unmonitored areas for purposes of implementing current and future $PM_{2.5}$ NAAQS.

The EPA is proposing four possible approaches to demonstrating attainment in unmonitored areas. Option 1 would only require states to perform the attainment test at locations that have current or recent FRM and/or FEM monitoring data. The EPA would not require states to analyze areas that have no monitoring data with which to anchor the attainment demonstration modeling results. The EPA is proposing this approach to evaluating monitored and unmonitored areas in order to be consistent with how attainment of the $PM_{2.5}$ NAAQS is determined for purposes of designations and redesignations, and due to uncertainty in modeled projections in locations where there are no monitoring data to anchor the future year model results. As discussed in Section II of this preamble, the EPA promulgates designations for $PM_{2.5}$ NAAQS nonattainment areas based primarily on ambient data measured at FRM and FEM monitors.[122] Although the EPA considers other forms of information for purposes of evaluating areas with sources that contribute to those monitored violations for inclusion within the nonattainment area boundaries, the fundamental basis for designating an area as nonattainment for a $PM_{2.5}$ NAAQS is the presence of one or more FRM or FEM monitors with data showing violations of the NAAQS in question. Similarly, determinations of attainment of the $PM_{2.5}$ NAAQS for purposes of redesignation actions are based primarily on monitored data. When all FRM and FEM monitors in a nonattainment area measure attainment of the $PM_{2.5}$ NAAQS, the state is eligible to submit a redesignation request for the area, assuming that it has complied with all other applicable requirements for purposes of redesignation. Specifically, the EPA's approval of a redesignation request is subject to meeting the requirements of CAA section 107(d)(3)(E). Among those requirements is that the area has attained the NAAQS. For the $PM_{2.5}$ NAAQS, this determination is based on ambient data measured at the FRM and FEM monitors in the area in question. Thus, neither $PM_{2.5}$ designations nor redesignations currently take into account information regarding potential violations of the NAAQS at unmonitored locations throughout a given area. Therefore, consistent with how $PM_{2.5}$ areas are designated and redesignated, the EPA is first proposing to require that states only show attainment at $PM_{2.5}$ FRM and FEM monitoring locations as an element of their attainment demonstrations for the $PM_{2.5}$ NAAQS.

In addition, the ''relative'' attainment test for $PM_{2.5}$ uses FRM or FEM ambient monitoring data, combined with future year modeled percentage changes in $PM_{2.5}$ concentrations, to project future year design values. Since the attainment test relies on ambient monitoring data, an analysis of future year concentrations in unmonitored areas can only be accomplished by interpolating ambient data to a particular location where there is no existing monitor or recent monitoring data. Therefore, in the context of an attainment demonstration, the projection of future year $PM_{2.5}$ concentrations in unmonitored locations is inherently more uncertain than projections in monitored locations due to the fact that the ambient concentrations from which these projections are developed are unknown in the unmonitored locations.

Proposed Option 2 for unmonitored area analyses would require the state to conduct an unmonitored area analysis as part of all attainment demonstrations (for Moderate and Serious areas) and require the state to eliminate potential violations in unmonitored areas through enforceable emissions reductions in the SIP. The requirement would be based on a premise that states must demonstrate attainment of the NAAQS in all locations of a nonattainment area, and models can and should be used for that purpose. Modeled attainment demonstrations using photochemical grid models provide modeling results for all grid cells in the nonattainment area. Therefore, notwithstanding the uncertainty that is inherent to this approach as discussed above, model outputs (optionally combined with interpolated ambient data) could be used to derive estimates of $PM_{2.5}$ concentrations in unmonitored areas.

Proposed Option 3 would require states to show attainment at all current and recent monitoring locations. In addition, states would be required to provide an unmonitored area analysis as part of all attainment demonstrations (for Moderate and Serious areas). However, rather than requiring states to impose additional enforceable emissions reductions in the SIP to address potential violations in these locations, states would be required to use the unmonitored area analysis

[120] As explained in the final 2012 PM NAAQS rule, the EPA expects that each CBSA will maintain its existing highest concentration area-wide monitoring site (referred to as the design value site), *See* 78 FR 3085 (January 15, 2013), at page 3240. These sites were set up during the period of time when the network design criteria required having at least one site in an area-wide location of expected maximum concentration. The EPA intends to maintain the highest priority sites in the existing network, which are often at the neighborhood scale, as the largest part of the $PM_{2.5}$ monitoring network to continue to support a number of monitoring objectives, while also allowing lower value sites to move to near-road locations as that part of the network is phased in.

[121] Annual monitoring network plans and 5 year assessments are required by regulation in 40 CFR 58.10. The 5 year monitoring network assessment is a comprehensive evaluation of a monitoring agency's ambient air monitoring network, while the annual plan describes the existing network and changes being proposed to support implementing recommendations from the most recent 5 year assessment as well as any applicable changes finalized in association with NAAQS revisions.

[122] A monitor must have 3 years of quality-assured ambient data available to be used to calculate a $PM_{2.5}$ design value and determine compliance with the NAAQS.

results to develop an assessment of the likelihood of violations in unmonitored areas. This assessment may be especially important in areas with a relatively sparse $PM_{2.5}$ monitoring network or in locations where information such as modeling data, emissions inventories or non-FEM monitoring data (such as from special purpose monitors or saturation monitoring studies) may indicate potential high $PM_{2.5}$ concentrations in areas that are currently unmonitored.

The nature of the assessment of likelihood of violation that is required under proposed Option 3 would depend on local area modeling, but could include, as appropriate, elements such as an evaluation of the emissions inventory (particularly for local direct $PM_{2.5}$ sources), the existing ambient data for the area, and meteorological model inputs to determine if the modeled violations in unmonitored areas appear to be credible. If potential violations are found to be credible, additional steps may include imposition of enforceable emissions reductions at nearby emission sources or a commitment to deploy special purpose monitors and/or saturation monitors in the area (in order to further evaluate the problem). The state would be required to document the assessment, including analyses of emissions, meteorological inputs and ambient data and/or make a commitment to establish special purpose monitors as part of the attainment demonstration. Special purpose ambient air monitoring data that is collected after the attainment demonstration is submitted should be summarized for use in the area's 5-year monitoring assessment and, where appropriate, annual monitoring network plans.[123] Additionally, monitoring data that is collected as a result of the unmonitored area analysis assessment (after the attainment demonstration is submitted) must be reported as a quantitative milestone required under section 189(c)(1) (*see* Section IV.G of this preamble).

In summary, Option 3 would clarify that an unmonitored area analysis would be required in all attainment demonstrations, and an assessment of the unmonitored area analysis results would be required as part of the attainment demonstration documentation. In contrast to Option 2, however, the unmonitored area analysis results would not be used as part of the specific analytical approach for determining whether a particular control strategy will result in the area attaining the NAAQS.

Finally, proposed Option 4 would require states to show attainment at all current and recent monitoring locations. States would not be required to provide an unmonitored area analysis as part of the attainment demonstration. However, the EPA would encourage states to use information available to them to consider what, if any, impacts may be occurring in unmonitored areas. States could consider information such as modeling data, emissions inventories or non-FEM monitoring data (such as from special purpose monitors or saturation monitoring studies) which may indicate potential high $PM_{2.5}$ concentrations in areas that are currently unmonitored. Under this approach, states could consider model results to develop an assessment of the likelihood of violations in unmonitored areas. This proposed option differs from Option 3 in that it would not require an unmonitored area analysis. Rather, under proposed Option 4, an unmonitored area analysis would be recommended where the state and/or the EPA has reason to believe that potential violations may be occurring in unmonitored areas, or other available information indicates that further analysis is warranted. States would be expected to consult with the appropriate EPA Regional Office to evaluate available information to determine if an unmonitored area analysis is needed for a particular area.

The four options presented above would lead to a range of potential analysis costs by requiring attainment demonstrations at more locations and with varying degrees of specificity. To the extent that these analyses reveal additional locations with potential violations, the effort needed to address these violations could also be higher, and may ultimately lead to additional reductions, with their associated costs and benefits. In terms of analysis costs, Option 1 would be expected to be the least costly option, whereas Option 2 would be expected to be the most resource intensive. Option 3 is similar to Option 2, except that if a potential violation is indicated in an unmonitored area, there would not be a regulatory requirement for the air agency to identify enforceable controls to eliminate the potential violation. For example, the air agency could instead elect to site a new monitor to further characterize air quality in the area. The analysis costs associated with Option 3 would thus be similar to Option 2.

Option 4 most closely describes the current policy for the $PM_{2.5}$ NAAQS implementation program. Currently, the EPA recommends that air agencies conduct an unmonitored area analysis, but there is no regulatory requirement for the air agency to either perform an unmonitored area analysis or to impose control requirements if the analysis indicates potential violations. Thus, under Option 4, if an unmonitored area analysis is performed, the analysis costs associated with this option would be the same as for Options 2 and 3. Under Option 4, if it is determined by the EPA and the air agency to be unnecessary to perform an unmonitored area analysis, there would be no additional analysis costs beyond the monitor-only approach of Option 1. Regarding the costs and benefits of reductions resulting from additional efforts to address unmonitored locations (*i.e.,* to the extent that efforts necessary to address monitored locations do not also address unmonitored locations), the EPA does not have enough information to determine the extent of such areas or the measures that would be needed to address them, nor can the agency predict the extent to which such measures would be adopted under one option but not another.

The EPA's four proposed options reflect various combinations with respect to whether such an analysis is required and the purposes for which the state and the EPA might use the results of the analysis. The EPA requests comment on whether an unmonitored area analysis should be a required component of an attainment demonstration for a $PM_{2.5}$ nonattainment area and, if required, how the results of an unmonitored area analysis should be used. The EPA also requests comment on the potential costs and benefits of each of the four specific options, and on which of the options the commenter believes should be included in the final rule and why.

8. What future year(s) should states model in attainment demonstrations?

A state performing a modeling analysis for an attainment demonstration or impracticability analysis must select a future year for the analysis. For an attainment demonstration, a state should select the future modeling year such that all control measures relied on for attainment will have been fully implemented by the beginning of that year. To demonstrate attainment, the modeling results for the nonattainment area must predict that emissions controls implemented no later than the beginning of the last calendar year preceding the attainment date will

[123] All states are required to have an annual monitoring plan (*see* Section II of this preamble) which meets the siting criteria for $PM_{2.5}$ monitors (40 CFR 58.10).

result in $PM_{2.5}$ concentrations that meet the level of the standard.[124]

While states should choose the future modeling year based on a number of factors, the EPA recommends the last possible year permitted under the statute as a starting point for modeling. There are several reasons for this. First, states with Moderate areas that submit an impracticability demonstration must show that the area cannot attain the NAAQS by the end of the sixth calendar year following designation of the area. Therefore, the appropriate future modeling year for such a demonstration is the sixth calendar year after designation. Even if a state does not submit (or does not intend to submit) an impracticability demonstration, modeling the sixth calendar year is a logical starting point to determine if attainment by that year is likely. Second, even though attainment is determined based on 3 years of ambient data, states do not have to model 2 years before the attainment date to show modeled attainment. Since the design value is an average of the annual or 98th percentile value for 3 consecutive years of data, attainment can still be shown even if concentrations exceed the NAAQS in one or more of the 3 years used to determine attainment (as long as the average of the three annual values is below the level of the NAAQS). Therefore, it can be appropriate to model any of the 3 years used to determine attainment. Third, if ambient data show attainment level concentrations in the final statutory attainment year, a state may be eligible for up to two 1-year extensions of the attainment date, if the area meets the criteria for such extensions under CAA section 188(d). Therefore, modeling attainment level concentrations for the last year permitted by statute is acceptable.

For all of the reasons stated above, it is both acceptable, and will in fact be most efficient, for a state to begin the attainment demonstration process by modeling the last year permitted under the statute to determine future year modeled $PM_{2.5}$ concentrations in the sixth year after designations. Thus, in the attainment demonstrations for areas designated nonattainment in the first round of designations for the 2012 $PM_{2.5}$ NAAQS, it would be appropriate for states to model air quality for 2021.

Because an area must attain ''as expeditiously as practicable'' according to the CAA, additional considerations are necessary before an attainment date can be established for a Moderate $PM_{2.5}$ nonattainment area. For purposes of determining the attainment date that is as expeditious as practicable, the state must conduct future year modeling which takes into account expected growth and known controls. For example, for a Moderate nonattainment area for the 2012 $PM_{2.5}$ NAAQS, a future base case scenario for the year 2021 (6 years after designations) would project future air quality given implementation of existing federal, state and local measures. If this base case scenario demonstrates attainment, then the state must demonstrate whether attainment could be achieved in an earlier year. Therefore, the state needs to conduct an analysis to determine if, collectively, all technologically and economically feasible measures identified by the state for which the state can initiate implementation by the beginning of the sixth calendar year following designations, can advance the attainment date by at least 1 year. Results of this analysis may indicate attainment can be achieved earlier, through implementation of all reasonable control measures (*i.e.,* RACM and RACT and additional reasonable measures).

If the future base case scenario does not demonstrate attainment, then a control case scenario is needed to examine whether the implementation of all technnologically and economically feasible measures identified by the state would result in attainment in 2021 (for purposes of this example based on the 2012 $PM_{2.5}$ NAAQS). The control case scenario would add to the model potential control measures (*i.e.,* RACM and RACT and additional reasonable measures, plus any additional intrastate transport measures or other measures on sources outside of the nonattainment area that the state has identified as feasible to implement by the attainment date). This modeling, along with other relevant information, would inform a judgment as to whether attainment of the relevant NAAQS is practicable by the end of the sixth year after designation or earlier. In the case of areas designated nonattainment for the 2012 $PM_{2.5}$ NAAQS in the first round of designations, if the analysis does not demonstrate attainment by December 31, 2021, then the analysis could serve as the technical basis for the state to submit a demonstration that attainment by the latest statutory attainment date for Moderate areas is impracticable. This demonstration in turn could serve as the technical basis for the Administrator to reclassify the area to Serious.[125]

The EPA believes that it is not reasonable to require states to model each and every calendar year to determine the appropriate attainment date for a nonattainment area. Developing and modeling future year inventories is a time-consuming and resource intensive process. Multiple emissions models are needed in order to generate year-specific emissions for the various emissions sectors (*e.g.* mobile, non-road, non-EGU point and EGU point). In some cases it may be reasonable to model one additional interim year before the maximum statutory attainment date.[126] However, in most cases, the air quality benefits of an identified set of RACM and RACT and additional reasonable measures can be estimated through model sensitivity analyses and the development of transfer factors (factors to relate tons of emissions reductions in the area to $PM_{2.5}$ concentration changes in the area). For example, states can model across-the-board percentage reductions in direct $PM_{2.5}$ and/or precursor emissions (in separate model runs) to determine the impact of emissions reductions on $PM_{2.5}$ concentrations in the area. This modeling can be performed with a single attainment year modeling platform, which is much less resource intensive than modeling additional future years. The identified potential emissions reductions available from RACM and RACT and additional reasonable measures can be compared to the magnitude of the modeled $PM_{2.5}$ reductions from the sensitivity analyses to determine if all such controls will advance attainment by a year. The EPA strongly recommends that states discuss the selection of the future year(s) to model with their respective EPA Regional Office as part of the modeling protocol development process and before embarking on running the model(s).

9. Modeling Analysis of Controls That Have a De Minimis Impact on Ambient $PM_{2.5}$ Concentrations

In Section IV.D of this preamble, the EPA is proposing that if a state determines that a Moderate nonattainment area can attain the $PM_{2.5}$

[124] Note that for purposes of the $PM_{2.5}$ NAAQS, a determination of attainment (or failure to attain), which the EPA is required to make after the attainment date has passed, is based on an average of the most recent 3 years of ambient data prior to the area's attainment date.

[125] A demonstration that the area cannot practicably attain by the Moderate area attainment date would not be the only trigger for a discretionary reclassification to Serious. The Administrator maintains wide discretion in making such a determination, with an impracticability demonstration serving as one potential source of analysis to inform such a determination.

[126] If several future modeling years are available, in some cases it may be appropriate for states to interpolate $PM_{2.5}$ concentrations between years.

NAAQS by the statutory attainment date, the state must adopt and implement as reasonable control measures (*i.e.,* as RACM and RACT and additional reasonable measures) only those technologically and economically feasible control measures that are necessary to ensure that the area will attain the NAAQS as expeditiously as practicable. In a Moderate $PM_{2.5}$ nonattainment area that cannot practicably attain the relevant NAAQS by the statutory attainment date, the EPA similarly believes that it may not be reasonable in all cases to require that a state implement all technologically and economically feasible control measures. The EPA is thus proposing an option under which the state may evaluate the air quality impact of technologically and economically feasible control measures to determine if there is a subset of such measures that collectively will only achieve negligible reductions in ambient $PM_{2.5}$ concentrations in the area. Similar to the EPA's proposed approach, described earlier in this section, to determine if a set of technologically and economically feasible control measures can collectively advance the attainment date by a year for a Moderate nonattainment area for which a state can demonstrate attainment by the statutory attainment date, the state would be required under this proposed option (for a Moderate area that cannot practicably attain the NAAQS by the statutory attainment date) to use an air quality model to determine the impact on ambient $PM_{2.5}$ levels of the set of otherwise ''reasonable'' controls that it believes will not collectively reduce ambient $PM_{2.5}$ concentrations in the area. For this analysis, the state would have to show that the collective set of controls will have little to no effect on reducing $PM_{2.5}$ concentrations in the area.

10. Attainment Year Motor Vehicle Emissions Budgets

The transportation conformity rule requires that attainment plans establish motor vehicle emissions budgets for the area's attainment year. Therefore, once an area's attainment date has been established, the state would establish motor vehicle emissions budgets for direct $PM_{2.5}$ and any relevant $PM_{2.5}$ precursor for the attainment year.[127] A motor vehicle emissions budget for the purposes of a $PM_{2.5}$ attainment plan is that portion of the total allowable emissions within the nonattainment area allocated to on-road sources as defined in the submitted attainment plan.[128] Such motor vehicle emissions budgets would be calculated using the latest planning assumptions and the latest approved motor vehicle emissions model available at the time that the attainment plan is developed.[129]

F. RFP Requirements

1. Statutory Requirements and Existing Guidance

''Reasonable further progress'' (RFP) is a concept included in the CAA under part D, title I to assure that states make steady, incremental progress toward attaining air quality standards in the years prior to the attainment date for a nonattainment area, rather than merely deferring implementation of control measures and therefore emissions reductions until the date by which the standards are to be attained. As discussed elsewhere in this preamble, section 172 of the CAA addresses nonattainment plan provisions in general. Section 172(c)(2) requires attainment plans to provide for RFP, which is defined in section 171(l) as ''such annual incremental reductions in emissions of the relevant air pollutant as are required by [part D of title I] or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date.'' Section 172(c)(3) requires the state plan to include ''a comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant or pollutants *in such area* . . .'' Section 172(c)(1) requires the state plan to include ''all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources *in the area* as may be obtained through the adoption, at a minimum, of reasonably available control technology) . . .''

In general terms, the EPA interprets that the purpose of requiring RFP is to ensure that states with nonattainment areas develop attainment plans that achieve generally linear progress toward attainment, rather than deferring emissions reductions until the applicable attainment date for the area. In the context of implementing the $PM_{2.5}$ NAAQS, ''generally linear progress'' means that emissions of direct $PM_{2.5}$ and $PM_{2.5}$ precursors from controlled sources generally decrease year by year such that the area ultimately attains the relevant NAAQS by the applicable attainment date. In the Addendum, the EPA provided guidance and identified four specific situations in which ''linear progress'' in emissions reductions to meet RFP may be appropriate:

1. When pollutants are emitted by numerous and diverse sources.

2. Where the relationship between any individual source and the overall air quality is not explicitly quantified.

3. Where a chemical transformation is involved.

4. Where the emission reductions necessary to attain the standard are inventory-wide.[130]

For example, a state with an area whose nonattainment problem is caused primarily by area sources, such as residential wood combustion, should be able to demonstrate generally linear progress toward attainment in that area. In such an area, the state might be able to require the replacement of a specified percentage of the residential woodstoves on an annual basis for each year to assure RFP on an annual basis.

The EPA's guidance in the Addendum also provided examples of situations in nonattainment areas in which it might be less appropriate to expect RFP to be linear, including:

1. Where there are a limited number of sources.

2. Where the relationships between individual sources and air quality are relatively well defined.

3. Where the emission control systems utilized (*e.g.,* at major point sources) will result in swift and dramatic emission reductions.[131]

In nonattainment areas characterized by any of these circumstances, the EPA understands that RFP may be better represented as step-wise progress as controls are implemented and achieve significant reductions soon thereafter. For example, if an area's nonattainment problem can be attributed to a few major stationary sources, the EPA's guidance indicates that ''RFP should be met by 'adherence to an ambitious compliance schedule' which is likely to periodically yield significant emission reductions.'' [132] [133] While the EPA noted

[127] For more information on $PM_{2.5}$ precursor requirements, *see* section 93.102(b)(2)(iv) and (v) of the transportation conformity rule. *See* also the May 6, 2005, final transportation conformity rule that addressed requirements for $PM_{2.5}$ precursors. (70 FR 24280).

[128] A state would also establish motor vehicle emissions budgets for an area's attainment year. Those budgets would be the motor vehicle emissions that the SIP establishes as being necessary to attain the NAAQS.

[129] If an area includes re-entrained road dust in the motor vehicle emissions budget, the latest approved version of AP–42 should be used unless the EPA has approved an alternative model for the area.

[130] Addendum to the General Preamble, 59 FR 41998 (August 16, 1994), at page 42015.

[131] *Ibid.*

[132] USEPA, Office of Air Quality Planning and Standards, ''Guidance Document for Correction of

Continued

in the Addendum that adherence to such a schedule does not necessarily mean it would be unreasonable to achieve generally linear progress, the agency has long interpreted the language of section 171(1) not to require some specific level of emissions reductions in any given year. Unlike certain provisions under subpart 2 governing ozone NAAQS implementation, subpart 4 does not specify a set percentage of emissions reductions to be achieved over a certain period of time. Accordingly, the EPA believes that the facts and circumstances of each specific area will be relevant to whether the emissions reductions meet the agency's expectations for ''generally linear progress.''

With respect to implementation schedules, the EPA recommended in the Addendum that to meet the statutory RFP requirements, attainment plans must include ''detailed schedules for compliance with emission regulations in the [nonattainment] areas and accurately indicate the corresponding annual emission reductions to be realized from each milestone in the schedule. In reviewing the SIP, the EPA will determine whether the annual incremental emission reductions to be achieved are reasonable in light of the statutory objective to ensure timely attainment of the PM_{10} NAAQS. Additionally, the EPA believes that it is appropriate to require early implementation of the most cost-effective control measures . . . while phasing in the more expensive control measures.'' [134]

The EPA believes that these prior interpretations of the Act's provisions for RFP continue to be appropriate for the $PM_{2.5}$ NAAQS. Accordingly, the following section describes the EPA's proposal for requirements to ensure that states meet the statutory provisions for RFP for Moderate $PM_{2.5}$ nonattainment areas.

2. General Proposed Approach to RFP

To satisfy the statutory requirements for RFP at section 172(c)(2), the EPA proposes that a state must submit an RFP plan as part of its Moderate area attainment plan submission. The RFP plan must contain appropriate information to demonstrate that adequate emissions reductions will be achieved through control measures in the attainment plan in order to meet the statutory definition of RFP. The plan must include an implementation schedule for control measures on sources in the nonattainment area and an analysis that demonstrates when—and through what control measures—emissions will decline from the applicable baseline year to the attainment year. As part of the analysis, the RFP plan must include a projected inventory for sources in the area for one (or more) interim year(s). The EPA is proposing and seeking comment on two options for developing an RFP plan, as well as on related requirements, as described below. *See* proposed 40 CFR 51.1012. The EPA also notes that quantitative milestones required under section 189(c) are directly linked to the RFP plan, as interim quantifiable indicators intended to demonstrate that an area is making progress toward attaining the $PM_{2.5}$ NAAQS, and are therefore related to the implementation schedule of control measures for a $PM_{2.5}$ nonattainment area. Quantitative milestones are more fully discussed in Section IV.G of this preamble.

a. *Proposed Option 1.* Under the first option, the EPA proposes that the RFP analysis for any Moderate $PM_{2.5}$ nonattainment area that can demonstrate attainment by the statutory attainment date must demonstrate either: (i) Generally linear progress toward attainment by the applicable attainment date through emissions reductions to be achieved annually between a baseline year and the projected attainment date for the area; or, (ii) step-wise progress toward attainment by the applicable attainment date that will be achieved through adherence to an ambitious compliance schedule that would not necessarily achieve reductions on an annual basis. In the second case, the state would be required to submit a clear rationale and supporting information to explain why generally linear progress during the attainment period is not reasonable on an annual basis (*e.g.,* due to the nature of the nonattainment problem and the types of sources contributing to $PM_{2.5}$ levels in the area as discussed in Section IV.F.1 of this preamble). The EPA also proposes to require that RFP analyses need to show progress in achieving emissions reductions only for direct $PM_{2.5}$ and any precursors that are controlled in the attainment plan for the nonattainment area.

Note that the two approaches presented in Option 1 for demonstrating RFP within the nonattainment area are consistent with the pattern of emissions reductions of many nationally-applicable federal emissions reduction measures. For example, new emission standards for mobile sources may achieve reductions in a generally linear manner over time, as a portion of the existing vehicle fleet is replaced each year with new vehicles meeting the more stringent standards. On the other hand, regulations to reduce emissions from certain stationary source sectors often have a single compliance date by which controls must be in place, which typically result in a significant drop in emissions over a relatively short period (*i.e.,* yield step-wise reductions).

Because the statute does not clearly establish the applicable baseline year from which to begin calculating annual emissions reductions for purposes of demonstrating RFP, the EPA is proposing to require and seeks comment on a requirement that states use the same year as the base year inventory chosen for the area, as this inventory will serve as the basis for developing the control strategy necessary to bring the area into expeditious attainment. Furthermore, in developing their RFP analyses for specific nonattainment areas, the EPA expects that states will use the emissions inventories developed for those areas and air quality modeling they have completed for attainment planning purposes. This approach is consistent with the EPA's proposed approach, described later in this section, not to interpret the CAA as allowing states to take credit for emissions reductions from sources outside a nonattainment area when developing their plan to meet the statutory RFP requirements for $PM_{2.5}$ nonattainment areas.

For states with Moderate areas that cannot demonstrate attainment by the statutory Moderate area attainment date, the statutory RFP requirements still apply. However, the EPA proposes to require that, for such areas, the state must provide an analysis of the anticipated emissions reductions associated with implementing the control measures identified as RACM and RACT and additional reasonable measures for the area. The EPA notes that even if a state adequately demonstrates that it cannot attain the NAAQS in a given area by the statutory attainment date, the CAA still requires the state to submit a Moderate area attainment plan meeting the requirements for such attainment plans, including for RFP. An additional RFP analysis will be required as part of the Serious attainment plan for the area once the EPA reclassifies it to Serious.

Similar to the approach taken for RFP in the remanded 2007 $PM_{2.5}$ Implementation Rule, the EPA is proposing under this option that all states must follow one primary

Part D SIP's for Nonattainment Areas,'' Research Triangle Park, NC, January 24, 1984, page 25.

[133] Addendum to the General Preamble, 59 FR 41998 (August 16, 1994), at page 42015.

[134] *Ibid.* at 42016.

approach for conducting the RFP analysis, but that they also have an option to conduct a secondary analysis that will provide greater flexibility in setting RFP goals with alternative emissions reductions and air quality improvement scenarios. The primary approach would be to benchmark emissions reductions on a pollutant-by-pollutant basis starting from the pollutant's baseline emissions level. The state would then be required to calculate reductions in emissions of each pollutant on an annual basis that would be needed to bring the area into attainment by the projected attainment date.

The EPA recognizes that different control measures address different pollutants, and that states may be able to implement some measures more quickly than others. Thus, in the optional secondary analysis, the state could present a different combination of emissions reductions at similar time intervals that would provide an equivalent or better result in terms of net air quality improvement. This ''equivalency determination'' would allow states flexibility to address different pollutants (*i.e.,* direct $PM_{2.5}$ and $PM_{2.5}$ precursors regulated under the control strategy for the area) according to different schedules so long as the EPA finds the projected net air quality improvements to be achieved through this alternative combination of emissions reductions to be equivalent to or better than those that would be achieved through generally linear emissions reductions across all pollutants in the area. This proposed approach recognizes that an important element of establishing appropriate emissions reductions targets for meeting RFP requirements for $PM_{2.5}$ is quantifying the relative degrees of control of various pollutants.

As discussed above, the primary approach for ensuring that RFP is met in a $PM_{2.5}$ nonattainment area is to require that the state reduce each pollutant—that is, direct $PM_{2.5}$ and all precursors not otherwise eliminated from control requirements—by some amount on an annual basis. The EPA's primary proposed RFP analysis, an emissions benchmark analysis, would reflect generally linear progress (or step-wise progress if more appropriate and adequately justified) to reduce those pollutants that the state intends to control to attain the $PM_{2.5}$ NAAQS by the applicable attainment date. *See* proposed 40 CFR 51.1012(b). For example, a state that can demonstrate that their Moderate nonattainment area can attain the 2012 $PM_{2.5}$ NAAQS by an attainment date of December 31, 2021 would also need to achieve emissions levels that represent attainment in 2021. If the attainment plan requires a 10 percent reduction in NO_X emissions and a 14 percent reduction in $PM_{2.5}$ direct emissions from 2011 levels in order for the area to demonstrate attainment in 2021, then the RFP benchmark for NO_X would reflect roughly a 1 percent reduction in NO_X emissions per year, and the benchmark level for $PM_{2.5}$ would be roughly a 1.4 percent reduction per year.

The EPA proposes that states must provide an implementation schedule for control measures that would achieve emissions reductions consistent with those calculated as part of the RFP benchmark analysis. However, a state could choose to submit an ''equivalency'' analysis in addition to the RFP benchmark analysis and associated implementation schedule that presents an alternative combination of pollutant emission reductions (*i.e.,* alternative implementation schedule for control measures) that achieves air quality improvements that are equivalent to or better than the RFP benchmark analysis. In such a case, the state would need to make an adequate showing that the alternative schedule for implementing control measures will provide estimated air quality improvements that are roughly the same as, if not better than, those that the emissions reductions determined through the RFP benchmark analysis would provide. If a state elects to follow this approach, it must provide in its RFP plan the information necessary to assess whether an alternative schedule of emissions reductions is generally equivalent, in air quality terms, to the RFP benchmark analysis reduction levels, such as attainment demonstration modeling results that link emissions reductions of various precursor emissions with air quality improvements. Under this proposed approach, the EPA would require states to use this information to evaluate the equivalence of alternative combinations of pollutant emissions reductions. The EPA would recommend that states estimate air quality improvements associated with intermediate emissions control levels (*i.e.,* air quality improvement targets) by assuming that the same relationship between emissions and air quality applies at intermediate levels as would apply at attainment levels.

The EPA continues to recognize that because atmospheric processes are quite complex, a specific percent change in emissions of $PM_{2.5}$ precursors does not lead to an equivalent percent change in air quality, potentially creating uncertainty as to whether alternate emissions control scenarios will achieve equivalent benefits. Nevertheless, the EPA believes that it is important to provide the flexibility to address different pollutants on different timetables so long as the plan can reasonably be expected to achieve the intended air quality benefits represented by the RFP benchmark analysis. In general, the EPA would not expect a state to conduct dispersion modeling specifically to assess whether an alternative approach to meeting RFP will provide equivalent air quality benefits as the benchmark approach. Instead, the attainment plan modeling addresses the nonlinearities at attainment levels, and the EPA believes for RFP analysis purposes that the relationship between emissions and air quality at attainment levels provides an adequate approximation of the relationship at interim RFP levels.

b. Proposed Option 2. Under the second option, the EPA proposes a simplified approach to developing an RFP plan that focuses on the emissions reductions anticipated from each of the particular control measures identified by the state as part of the analysis to identify RACM and RACT and additional reasonable measures for sources in the nonattainment area. Under this option, the first step in developing the RFP plan would be for the state to establish the implementation schedule on a year-by-year basis for all control measures contained in the control strategy for sources in the area beginning with the date of designation of the area and ending with the projected attainment date of the area. The schedule would need to comply with the statutory requirement that all RACM and RACT must be implemented within the first 4 years following designation, but the state would have discretion beyond that requirement to schedule the implementation of any other measures necessary for expeditious attainment. Overall, the implementation schedule would need to demonstrate that control measures to bring the area into attainment will be implemented as expeditiously as practicable.

The second step in developing an RFP plan under this second proposed option would be for the state to calculate the emissions reductions that would be achieved by all measures implemented on sources in the area corresponding with quantitative milestone dates (*i.e.,* by 4.5 years and 7.5 years after designation of the area). These are the dates by which milestones for the area must be met, after which a report is due to the EPA from the state to verify that

the area has met the milestones identified for the area and thereby has also met the RFP requirements for the area. The EPA proposes that the state must calculate the emissions reductions to be achieved at each milestone year on a pollutant-by-pollutant basis.

The third step under this proposed option would be for the state to conduct modeling or employ another quantitative method to predict the overall $PM_{2.5}$ concentrations in the nonattainment area in each milestone year. This air quality target could simply be interpolated between the design value at the time of the area's designation and the design value in the projected attainment year. These air quality target values would serve as a points of comparison for the monitored ambient air data that the EPA is proposing that the state must submit as part of the milestone report due after the area reaches each milestone date.

This simplified approach to determining RFP for a Moderate nonattainment area could apply equally well to areas that can demonstrate attainment with the relevant NAAQS by the statutory attainment date and those that cannot. *See* proposed 40 CFR 51.1012(c). In addition, the EPA believes it offers a reasonable approach to ensure that RFP is generally being met in the area without requiring extensive quantitative analysis so long as it is generally linear for purposes of achieving annual emissions reductions. The EPA seeks comment on these two options proposed for states to meet the statutory RFP requirements.

3. RFP Inventories for RFP Analyses

The EPA proposes that a state with a Moderate $PM_{2.5}$ nonattainment area must submit one or more emissions projections as part of the RFP plan (the ''RFP inventory'') for the area that, at a minimum, includes projected emissions by different source types corresponding to the quantitative milestone date(s) for the area, described in greater detail in Section IV.H of this preamble. Specifically, the EPA proposes that the RFP plan for any Moderate area must contain a projected RFP inventory for each calendar year in which quantitative milestones for a Moderate nonattainment area must be met. For example, as explained in Section IV.H of this preamble, a state must identify as part of the attainment plan submission for a Moderate nonattainment area quantitative milestones to be achieved every 3 years from the Moderate area attainment plan due date, or 4.5 years from the effective date of designation of the area.[135] For example, the first round of designations for the 2012 $PM_{2.5}$ NAAQS become effective in April 2015; Moderate area attainment plans for these areas will thus be due 18 months later, or in October 2016. The first quantitative milestones for each of these areas would then have to be met in October 2019; the second quantitative milestones, in October 2022; and so on, until the area attains the NAAQS. Under the EPA's proposed approach for projected emissions inventories for RFP analyses, the state would be required to submit such inventories as part of the Moderate area attainment plan due in October 2016 that project emissions from sources in the nonattainment area for the same calendar years as those for which quantitative milestones would be due.

The transportation conformity rule requires that attainment plans establish motor vehicle emissions budgets. RFP plans submitted as part of an attainment plan submission would therefore be required to establish motor vehicle emissions budgets for direct $PM_{2.5}$ and any relevant $PM_{2.5}$ precursor.[136] A motor vehicle emissions budget for the purposes of a $PM_{2.5}$ RFP plan is that portion of the total allowable emissions allocated to on-road sources as defined in the submitted RFP plan for the relevant years as described above.[137] Such motor vehicle emissions budgets would be calculated using the latest planning assumptions and the latest approved motor vehicle emissions model available at the time that the attainment plan is developed.[138]

4. Geographic Coverage of Emission Sources for RFP

The EPA is proposing that the RFP demonstration to be included with a state's $PM_{2.5}$ nonattainment area plan must include emissions only for sources located in the nonattainment area, and not from an area larger than the nonattainment area. This policy approach differs from the remanded 2007 $PM_{2.5}$ implementation rule. This section describes the evolution of policy on a similar RFP issue in the ozone NAAQS implementation program, and it discusses the reasoning behind this revised approach for $PM_{2.5}$.

In the preamble to the remanded 2007 $PM_{2.5}$ Implementation Rule, the EPA allowed states to incorporate reductions of NO_X and SO_2 emissions up to 200 km from outside the nonattainment area (and potentially for reductions of VOC or ammonia) into their RFP plan when certain conditions were met. This policy was included in the 2007 $PM_{2.5}$ Implementation Rule in part to be consistent with a similar RFP policy for NO_X and VOC that was included in the November 2005 Phase 2 ozone NAAQS implementation rule which provided guidance for states on implementing the 1997 ozone NAAQS.[139]

Under the policy in the 2007 $PM_{2.5}$ NAAQS implementation rule, if a state intended to include emissions reductions from outside the nonattainment area in the RFP plan, the state would need to take on the additional work associated with developing: (i) An expanded baseline emissions inventory for the entire geographic area (*i.e.,* the nonattainment area plus the additional area outside the nonattainment area) that characterizes emissions for all stationary, area and mobile sources (rather than for just a select few stationary sources) in the overall area; and, (ii) a projected attainment year inventory for this expanded area outside the boundaries of the designated nonattainment area. By requiring inclusion of all types of sources in these ''expanded area'' emissions inventories, the EPA intended for this approach to reflect the projected net emissions reductions in this area (the difference between the ''expanded area'' base year inventory and the projected attainment year inventory). However, it should be noted that development of these more extensive inventories would likely have involved a substantial amount of additional time and resources. In addition, the state would have needed to have provided information supporting its decision regarding how far outside the nonattainment area the RFP inventory should extend. While this ''outside the nonattainment area'' RFP approach was theoretically available to states in developing their $PM_{2.5}$ attainment plans due in 2008, there were no states to the agency's knowledge that elected to follow this approach.

[135] According to section 189(a)(2)(B), Moderate area attainment plans are due to the EPA 18 months after designation.

[136] For more information on $PM_{2.5}$ precursor requirements, *see* section 93.102(b)(2)(iv) and (v) of the transportation conformity rule. *See* also the May 6, 2005, final transportation conformity rule that addressed requirements for $PM_{2.5}$ precursors. (70 FR 24280).

[137] A state would also establish motor vehicle emissions budgets for an area's attainment year. Those budgets would be the motor vehicle emissions that the SIP establishes as being necessary to attain the NAAQS.

[138] If an area includes re-entrained road dust in the motor vehicle emissions budget, the latest approved version of AP–42 should be used unless the EPA has approved an alternative model for the area.

[139] *See* Phase 2 Ozone Implementation rule, 70 FR 71612 (November 29, 2005).

Both the 2005 Phase 2 ozone implementation rule and the 2007 $PM_{2.5}$ Implementation Rule were challenged on several issues. With regard to the Phase 2 ozone implementation rule, the EPA granted a petition for reconsideration and ultimately issued a final notice of reconsideration in June 2007. In November 2008, the U.S. Court of Appeals for the DC Circuit heard oral argument concerning multiple petitions for judicial review of the Phase 2 ozone rule and the notice of reconsideration. One of the issues in this case involved whether compliance by EGUs with a regional emissions trading program could be considered to meet the RACT requirement for those sources located in a nonattainment area. In its July 2009 decision, the court emphasized that: ''the RACT requirement calls for reductions in emissions from sources in the area; reductions from sources outside the nonattainment area do not satisfy the requirement . . . Accordingly, participation in the NO_X SIP call would constitute RACT only if participation entailed at least RACT-level reductions in emissions from sources within the nonattainment area.''

In light of this court decision, the EPA has determined that the best reading of the statute would be to interpret the term ''sources in the area'' in the same manner where it appears in different nonattainment provisions for ozone. The term appears in CAA section 182 (requirements for ozone nonattainment areas) with regard to RFP as well as RACT. The decision on the Phase 2 ozone rule found that section 182(b)(2) requires that a SIP must provide for implementation of RACT (under section 172(c)) for emissions sources ''in the area,'' meaning in the nonattainment area. Similarly, the EPA believes that when section 182(b)(1)(A)–(B) defines baseline emissions for RFP as ''the total amount of actual VOC or NO_X emissions from all anthropogenic sources in the area,'' this also means sources in the nonattainment area.

With regard to the 2007 $PM_{2.5}$ Implementation Rule, the EPA received a petition for reconsideration in June 2007 that raised objections on several issues. One such issue dealt with the EPA's interpretation of the statutory RFP requirements to allow a state to take ''credit'' for emissions reductions from outside the nonattainment area when addressing RFP in its attainment plan.[140] The EPA granted the petition for reconsideration on this issue in 2010, after the D.C. Circuit issued its decision on the Phase 2 Ozone Implementation Rule.[141] [142]

Specifically, the EPA believes that the DC Circuit's interpretation of the phrase ''sources in the area'' applies to RACT and RFP requirements for both the ozone NAAQS and the $PM_{2.5}$ NAAQS. In particular, for $PM_{2.5}$, the statutory language at section 171(1) defines RFP in terms of ''reductions in emissions'' required in an attainment plan, which the EPA interprets as being directly linked to the baseline emissions inventory for sources located in a $PM_{2.5}$ nonattainment area. The baseline emissions inventory is the foundation for the attainment plan. The emissions inventory requirement of section 172(c)(3) explicitly requires that the attainment plan inventory include all sources of the relevant pollutants ''in such area,'' which is a clear reference to the designated nonattainment area. Given that the baseline inventory must reflect the emissions ''in such area,'' and that this inventory provides the starting point for a state's RFP analysis, in which the state must calculate generally linear progress in emissions reductions that will lead to attainment of the NAAQS in the area, the EPA believes it is appropriate that a state should focus on sources located within the nonattainment area when conducting its analysis to determine the annual emissions reductions necessary for demonstrating RFP.

The EPA believes that the most appropriate approach with regard to the geographic area required to be covered for demonstrating RFP in a $PM_{2.5}$ attainment plan also should be limited to the nonattainment area for two other reasons. First, EPA believes that it makes policy sense for the $PM_{2.5}$ implementation rule approach to be consistent with the approach in the ozone implementation rule. In the past, a number of areas have been designated as nonattainment for both standards, and the nonattainment area boundaries often are the same. For such areas, a common policy approach for the geographic area covered by the RFP plan will be more efficient to implement and would be expected to be less burdensome for the air agency than if the geographic areas covered by RFP plans for the two pollutants differed.

Second, a policy allowing the geographic area of the RFP plan to be larger than the nonattainment area would conflict with a key provision of subpart 4 which requires annual incremental reductions in emissions from sources within the nonattainment area. Under subpart 4, an area that fails to attain the standard by the Serious area attainment date is then subject to the provisions of section 189(d). Section 189(d) specifies that the state must submit a plan revision within 12 months which provides for ''an annual reduction in PM_{10} or PM_{10} precursor emissions *within the area* of not less than 5 percent of the amount of such emissions as reported in the most recent inventory prepared *for such area''* (emphasis added). The EPA does not believe the rule should include an RFP policy approach which would not be consistent with section 189(d).

After reconsideration of the approach to RFP that was opposed in the petition for reconsideration of the 2007 $PM_{2.5}$ Implementation Rule, and in light of the DC Circuit decision on the Ozone Phase 2 Implementation Rule, the EPA believes the best reading of the statute is that the CAA does not allow for a state to include emissions reductions from sources outside a nonattainment area when developing the plan to meet the CAA section 172(c)(2) RFP requirements for a $PM_{2.5}$ nonattainment area. The EPA seeks comment on this proposed approach.

5. Other RFP Considerations

In general, the EPA seeks to ensure that $PM_{2.5}$ nonattainment areas that are shared by more than one state or tribe meet RFP requirements as a whole. States and tribes that share a nonattainment area should therefore consult with one another to develop the RFP analysis and control strategy implementation schedule for the area as a whole. Such states and tribes should work with the EPA region or regions that oversee them to confirm that their collective approach is appropriate for RFP.

The EPA's proposed approach for states to meet the RFP requirement is designed to ensure emissions reductions will yield incremental improvements in air quality on the path to attainment, while being sufficiently flexible to accommodate the range of control strategies necessary to address the complex mixtures of pollutants comprising $PM_{2.5}$ in different areas. The EPA seeks comment on all of its proposed requirements and options for

[140] This same petition raised concerns regarding the criteria used to determine the economic feasibility of controls being considered for RACT for the 1997 $PM_{2.5}$ NAAQS. *See* ''Petition for Reconsideration,'' filed by Paul Cort, Earthjustice, on behalf of the American Lung Association, Medical Advocates for Healthy Air, Natural Resources Defense Council, and the Sierra Club (June 25, 2007). A copy of the petition is in the docket for this action.

[141] Letter dated May 13, 2010, from Gina McCarthy to David S. Baron and Paul Cort, Earthjustice. A copy of the letter is located in the docket for this action.

[142] *See NRDC* v. *EPA,* 571 F.3d 1245 (D.C. Cir. 2009).

RFP plans and analyses for Moderate $PM_{2.5}$ attainment plans.

G. Quantitative Milestones

1. Statutory Requirements and Existing Guidance

Section 189(c)(1) requires that a PM_{10} NAAQS attainment plan submission has ''quantitative milestones which are to be achieved every 3 years until the area is redesignated to attainment and which demonstrate reasonable further progress . . . toward attainment by the applicable date.'' Section 189(c)(2) further requires that, within 90 days of each milestone, each affected state must submit a demonstration that all measures to assure RFP have been implemented and that the quantitative milestone has been met. Thus, the CAA imposes requirements upon states not only to make ''reasonable further progress'' toward attainment, but also to identify objective means (*i.e.,* quantitative milestones) by which to measure this reasonable further progress every 3 years, and to submit them as part of the attainment plan for the nonattainment area. In addition, according to section 189(c)(2), states must, within 90 days of the passage of each such milestone, submit to the EPA a demonstration that control measures have been implemented according to the approved RFP plan schedule and the milestone has been met.

The EPA has previously described its interpretation of the requirements under section 189(c) for the PM_{10} NAAQS in the General Preamble and the Addendum and believes that these interpretations should also apply both in developing plans that demonstrate RFP and include appropriate quantitative milestones, and in demonstrating that those milestones have been met for the $PM_{2.5}$ NAAQS.[143] [144] The EPA's guidance in the Addendum also noted that: ''Section 189(c) provides that the quantitative milestones submitted by a State for an area also must be consistent with RFP for the area. Thus, EPA will determine an area's compliance with RFP in conjunction with determining its compliance with the quantitative milestone requirement. Because RFP is an annual emission reduction requirement and the quantitative milestones are to be achieved every 3 years, when a state demonstrates an area's compliance with the quantitative milestone requirement, it should also demonstrate that RFP has been achieved during each of the relevant 3 years.'' [145]

The EPA's existing guidance in the Addendum with respect to the quantitative milestone requirements of CAA section 189(c) thus includes several important features: (i) That the control measures comprising the RFP plan should be implemented and in place to meet the statutory quantitative emissions reductions milestone requirement; (ii) that it is reasonable for the 3-year periods for quantitative milestones to run from the statutory due date for the Moderate area attainment plan submission; and, (iii) that the precise form that the quantitative milestones should take is not specified, but the state must choose milestones that will allow it to quantify or measure, track and report progress adequately and objectively.

The EPA's proposed approach to identifying quantitative milestones for any Moderate $PM_{2.5}$ nonattainment area and demonstrating compliance with the milestones is generally consistent with the existing guidance, as described in the following sections.

2. Proposed Approach

The statute at section 189(c) is clear that quantitative milestones must be achieved every 3 years, however it does not make clear the starting date for counting the 3 year periods. In the General Preamble, the agency proposed that quantitative milestones must be achieved every 3 years starting from the attainment plan submission due date (*i.e.,* because the Moderate area attainment plan is due no later than 18 months after designation of the area, the first set of milestones would need to be achieved 4.5 years after the area's designation) until the attainment date.[146] The EPA proposes to maintain this approach for the $PM_{2.5}$ NAAQS. Specifically, the EPA proposes that the attainment plan for a Moderate area that can demonstrate attainment by the statutory Moderate area attainment date must identify appropriate quantitative milestones to be achieved by 4.5 years following designation of the area. For a Moderate area that cannot practicably attain the relevant $PM_{2.5}$ NAAQS within the statutory timeframe for a Moderate area, the EPA proposes that a state must submit two sets of quantitative milestones—one set to be achieved at year 4.5 from designation and the second set to be achieved at year 7.5 from designation. The EPA believes that this proposed requirement will help to ensure that the state maintains progress toward bringing the area into attainment during the period in which such area is reclassified to Serious, the state works to develop a Serious area attainment plan for the area, and the EPA approves it. Pursuant to the statute, the EPA must reclassify a Moderate area for which a state submits an attainment impracticability demonstration within 18 months after the Moderate area attainment plan due date, or no later than 3 years after the date of designation of the area. Even under a scenario in which the state develops and submits a Serious area attainment plan 18 months after being reclassified to Serious, the milestone date of 4.5 years after designation would likely come and go before the area had a new set of approved quantitative milestones with which to demonstrate compliance. Similarly, the milestone date of 7.5 years after designation could also come and go before the EPA is able to fully approve the Serious area plan and any quantitative milestones contained therein. Because of the timing of the various steps involved in reclassifying a Moderate area to Serious and a state developing a new Serious area plan, the EPA believes that requiring a state to identify quantitative milestones that the area must achieve 4.5 years and 7.5 years after designation as elements of its Moderate area attainment plan is reasonable and seeks comment on this proposed requirement.

The EPA is also proposing that the quantitative milestones contained in the attainment plan for a Moderate nonattainment area must be constructed such that they can be tracked, quantified and/or measured adequately in order for the state to meet its milestone reporting obligations, which come due 90 days after a given milestone date. In the Addendum, the EPA suggested some possible metrics that ''support and demonstrate how the overall quantitative milestones identified for an area may be met,'' such as percent implementation of control strategies, percent compliance with implemented control measures, and adherence to a compliance schedule. This list was not exclusive or exhaustive but reflected the EPA's view that the purpose of the quantitative milestone requirement is to provide an objective way to assess that the state is making the necessary progress towards attainment in the area by the applicable attainment date.[147] The EPA continues to believe that the quantitative milestone requirement

[143] *See* the **Federal Register** published on April 16, 1992, General Preamble (57 FR 13498 and 13539).

[144] *See* the **Federal Register** published on August 16, 1994, Addendum to General Preamble (59 FR 41998, 42015, 42016 and 42017).

[145] *Ibid.*

[146] General Preamble, 57 FR 13498 (April 16, 1992), at page 13539.

[147] Addendum to the General Preamble, 59 FR 41998 (August 16, 1994), at page 42016.

should be interpreted to allow states to devise milestones that are suitable for the specific facts and circumstances of the attainment plan for a particular area, so long as they provide an objective means to measure RFP.

The EPA therefore proposes to require that states select the quantitative milestones that are appropriate and quantifiable and that will provide for objective evaluation of progress toward attainment in their Moderate $PM_{2.5}$ nonattainment area, whether the area can practicably attain the $PM_{2.5}$ NAAQS by the statutory attainment date or not. For this approach, the EPA is not proposing to require that such quantitative milestones must take any particular form, merely that they provide a means to evaluate progress (*i.e.,* demonstrate RFP) meaningfully. The EPA, in its attainment plan approval process, will determine if the specific quantitative milestones developed by the state for a specific nonattainment area satisfy the statutory requirements. The EPA recommends that states confer with their respective EPA regional office to develop appropriate quantitative milestones. *See* proposed 40 CFR 51.1013(a)(1).

In addition to this general proposed approach for selecting quantitative milestones for a Moderate nonattainment area, the EPA is proposing and seeks comment on a requirement that, at a minimum, states must include in all attainment plans for Moderate $PM_{2.5}$ nonattainment areas a metric to confirm that all control measures identified and adopted as RACM and RACT for the area have been fully implemented within 4 years of designation. This metric specifically derives from the statutory provision that applies to all Moderate areas and thus represents a milestone that all Moderate areas must meet regardless of whether it is listed explicitly as an individual milestone. The EPA believes it would be appropriate to include it as a metric that any state with a Moderate nonattainment area would need to demonstrate compliance with when they submit their milestone report as described below, and thus seeks comment on this proposal.

3. Milestone Report Submittal

Under the quantitative milestone requirement of section 189(c)(2), a state must demonstrate to the EPA that the RFP plan for the area and its approved milestones are being met within 90 days after the milestone due date. The EPA then has 90 days to determine whether or not a state's demonstration is adequate. Specifically, section 189(c)(2) requires that: ''Not later than 90 days after the date on which a milestone applicable to the area occurs, each State in which all or part of such [nonattainment] area is located shall submit to the Administrator a demonstration that all measures in the plan approved under this section have been implemented and that the milestone has been met. A demonstration under this subsection shall be submitted in such form and manner, and shall contain such information and analysis, as the Administrator shall require.''

In the event a state fails to submit a milestone demonstration report by the due date or the EPA determines that a milestone was not met, the state must submit a SIP revision within 9 months of either the missed reporting deadline or the EPA's determination of the state's failure to meet a milestone. According to the statutory requirements of section 189(c)(3), the new SIP revision must assure ''that the State will achieve the next milestone (or attain the national ambient air quality standard . . ., if there is no next milestone) by the applicable date.'' If a state fails to make a SIP submission to correct a failure to meet RFP expeditiously, sanctions under sections 110(m) and 179(b) may apply. If a state is unable to correct a failure to meet RFP, this may be evidence that the state cannot practicably attain the NAAQS by the applicable attainment date and may serve as a basis for reclassification of the area to Serious under the agency's discretionary authority. *See* proposed 40 CFR 51.1013(c).

Because the statute does not define the parameters of these demonstrations, the statute grants the EPA discretion to determine the components of the required demonstration and the form and manner for submission. In the Addendum, the EPA offered guidance about what the milestone report should contain: ''This report must contain technical support sufficient to document completion statistics for appropriate milestones. For example, the demonstration should graphically display RFP over the course of the relevant 3 years and indicate how the emission reductions achieved to date compare to those required or scheduled to meet RFP and the required [quantitative] milestones. The calculations (and any assumptions made) necessary to determine the emission reductions to date should also be submitted. The demonstration should also contain an evaluation of whether the PM_{10} NAAQS will be attained by the projected attainment date.'' [148] The EPA believes this guidance is still appropriate for states demonstrating compliance with RFP and quantitative milestones for $PM_{2.5}$ NAAQS and hereby proposes under the authority of section 301(a) to require that the milestone report submission must include the following four components:

First, the report must include a certification by the Governor or Governor's designee that the state's attainment plan control strategy, including the RFP plan, is being implemented as described in the applicable attainment plan. Second, as described in the Addendum, the report must contain technical support, including calculations, sufficient to document completion statistics for appropriate milestones and to demonstrate that the quantitative milestones have been satisfied and how the emissions reductions achieved to date compare to those required or scheduled to meet RFP. Third, the state must submit an air quality screening analysis to determine if measured air quality progress is consistent with the expected air quality improvement target correlated with the RFP emissions reductions for the previous 3-year period. Fourth, the report must contain an evaluation of whether the $PM_{2.5}$ NAAQS will be attained by the projected attainment date for the area. In addition, the EPA proposes that the milestone report must include a description and schedule for any remedial actions the state has taken or will take to address any failure to meet a quantitative milestone, including the implementation status of contingency measures for failing to meet RFP in the area. *See* proposed 40 CFR 51.1013(b). The EPA seeks comment on these proposed components to a milestone report.

The EPA stated in the Addendum that the milestone report must be submitted from the Governor or Governor's designee to the Regional Administrator of the respective EPA Regional Office serving the submitting state, and that the EPA will notify the state of its determination (regarding whether or not the state's report is adequate) by sending a letter to the appropriate Governor or Governor's designee. The EPA believes that it would be appropriate for states to submit milestone reports, including supporting documents, through the agency's electronic SIP (eSIP) submission system in order to simplify the process and reduce resource burden on all sides. The EPA seeks comment on how electronic reporting could facilitate a state's submittal of the required milestone report, how it could accommodate the various narrative and

[148] *Ibid.* at 42017.

data-dependent components that the EPA is proposing be part of such a submittal, and what particular system features might be desirable to accommodate milestone report submissions through the eSIP system.

H. Contingency Measures

States with $PM_{2.5}$ nonattainment areas must include contingency measures in their attainment plans consistent with section 172(c)(9). Contingency measures are additional control measures to be implemented in the event that an area fails to meet RFP requirements or fails to attain the $PM_{2.5}$ standard by the applicable attainment date. These measures must be fully adopted rules or control measures that are ready to be implemented quickly upon failure to meet RFP or failure of the area to meet the standard by its attainment date, and such measures are required to take effect without further action by the state or the EPA. The EPA provided extensive guidance on contingency measures in the General Preamble and Addendum, including the following: ''States must show that their contingency measures can be implemented with minimal further action on their part and with no additional rulemaking actions such as public hearings or legislative review. After the EPA determines that a moderate PM_{10} nonattainment area has failed to attain the PM_{10} NAAQS, the EPA generally expects all actions needed to effect full implementation of the measures to occur within 60 days after the EPA notifies the state of the area's failure. The state should ensure that the measures are fully implemented as expeditiously as practicable after they take effect.'' [149]

The EPA does not believe that the D.C. Circuit's decision in *NRDC* v. *EPA* affects the overall contingency measure requirements that were finalized in the remanded 2007 $PM_{2.5}$ Implementation Rule, because section 172(c)(9) imposes the contingency measure requirement for attainment plans for the $PM_{2.5}$ NAAQS and it is not superseded or subsumed by any specific contingency measure requirements under subpart 4. Although section 172(c)(9) requires contingency measures, the provision does not specify exactly what parameters such measures must meet. The EPA has longstanding interpretations of the statute with respect to the contingency measure requirement, both for PM and for other pollutants, in the General Preamble and Addendum. The EPA proposes to adopt an approach to contingency measures for the $PM_{2.5}$ NAAQS similar to that recommended in earlier EPA guidance, but seeks comment on particular proposed approaches that differ in important ways from earlier guidance on contingency measures for the $PM_{2.5}$ NAAQS. The EPA believes that it may be necessary to adopt a different approach to contingency measures for $PM_{2.5}$ attainment plans due to proposed changes in determining RFP for a $PM_{2.5}$ nonattainment area and in order to accommodate Moderate $PM_{2.5}$ nonattainment areas that cannot practicably attain the standard by the statutory Moderate area attainment date.

The EPA is proposing and seeking comment on the following general requirements for contingency measures to be approvable as part of a state's Moderate area attainment plan submission for the $PM_{2.5}$ NAAQS:

1. Contingency measures must be fully adopted rules or control measures that are ready to be implemented quickly upon a determination by the Administrator of the nonattainment area's failure to meet RFP or failure to meet the standard by its attainment date.

2. The state's attainment plan submission must contain trigger mechanisms for the contingency measures, specify a schedule for implementation, and indicate that the measures will be implemented with minimal further action by the state or by the EPA.

3. Contingency measures must consist of control measures that are not otherwise included in the control strategy for the attainment plan.

4. Contingency measures must provide for emissions reductions approximately equivalent to 1 year's worth of reductions needed for RFP, based on the overall level of reductions needed to demonstrate attainment divided by the number of years from the base year to the attainment year, or approximately equivalent to 1 year's worth of air quality improvement or emissions reductions proportional to the overall amount of air quality improvement or emissions reductions to be achieved by the area's attainment plan. *See* proposed 40 CFR 51.1014.

The EPA interprets the contingency measure requirement of section 172(c)(9) to require control measures that are not already included in the attainment plan for other purposes, such as to meet RACM and RACT requirements. However, suitable contingency measures may be measures that were technologically and economically feasible for the area, but did not qualify as RACM or RACT or additional reasonable measures for one or more reasons. For example, a candidate contingency measure may have been deemed technologically and economically feasible, but it was not needed to achieve expeditious attainment in a Moderate area for which the state could demonstrate attainment by the statutory attainment date and therefore was not included as part of the attainment demonstration for the area. The agency believes it is important that states make decisions concerning contingency measures in conjunction with their determination of the overall control strategy for bringing the area into expeditious attainment, and that states first must identify those control measures needed in order to demonstrate expeditious attainment of the standards; any remaining measures should then be considered as candidates for contingency measures.

For Moderate areas that cannot practicably attain the NAAQS by the statutory attainment date, the EPA is proposing that states must implement all control measures that they determine to be reasonable for sources in the area. In such cases, the EPA expects that contingency measures for such nonattainment areas would necessarily exceed the criteria for determining whether a measure is reasonable (*i.e.,* technologically and economically feasible) as described in Section IV.D of this preamble. Such contingency measures would only be triggered in the event the area fails to meet RFP; the EPA does not interpret the requirement for contingency measures for failing to attain the NAAQS by the applicable attainment date to apply to a Moderate area that a state demonstrates cannot practicably attain the NAAQS by the statutory attainment date. Rather, the EPA believes it is appropriate for the state to identify and adopt contingency measures for failing to attain the NAAQS in a timely way as part of the Serious area attainment plan that it will develop once the EPA reclassifies such an area.

The EPA proposes that for any Moderate $PM_{2.5}$ nonattainment area, contingency measures can include measures that achieve emissions reductions on sources located outside the nonattainment area as well as from sources within the nonattainment area, provided that the measures are factually demonstrated to produce the appropriate air quality impact within the nonattainment area. The EPA continues to believe it appropriate that a state might choose to rely on federal measures (*e.g.* federal mobile source measures based on the incremental turnover of the motor vehicle fleet each year) and local measures already scheduled for implementation for

[149] *Ibid.* at 42015.

purposes other than meeting attainment plan requirements, such as RACM and RACT, as meeting part or all of the contingency measure requirements, as the purpose of the contingency measures is to provide a cushion while the attainment plan for the area is being revised to meet the missed attainment milestone. The EPA has approved numerous attainment plans under an interpretation that one or more federal or local measures that are in place and provide reductions in the year following a failure to attain the relevant NAAQS or meet RFP in excess of the reductions required by the attainment demonstration or RFP plan can meet the contingency measure requirements.[150] [151]

The EPA recognizes that some states have historically relied on emissions reductions achieved through the implementation of control measures in excess of what was determined to be necessary to meet RFP in certain $PM_{2.5}$ nonattainment areas in order to satisfy the contingency measure requirement in such areas. The EPA believes that this approach is reasonable for Moderate $PM_{2.5}$ nonattainment areas that can demonstrate attainment by the statutory attainment date, as the state would calculate the emissions reductions needed for RFP separately from the control strategy determination for such an area. However, crediting an area for ''excess'' emissions reductions to satisfy the contingency measure requirement would not be possible for a Moderate area that cannot practicably attain by the statutory attainment date under the EPA's proposed approach for calculating RFP for such areas, as RFP would be calculated directly from the projected emissions reductions from all control measures identified for the area (as RACM and RACT or additional reasonable measures), such that there would be no difference between emissions reductions estimated from control measures and those estimated for demonstrating RFP.

As mentioned earlier, contingency measures should represent a portion of the actual emissions reductions necessary to bring about attainment in the area. Consistent with the EPA's past approach for contingency measures for $PM_{2.5}$ nonattainment areas, the EPA proposes to require that the emissions reductions anticipated by imposition of the contingency measures must be equal to approximately 1 year's worth of emissions reductions while the state is revising its attainment plan for the area. The EPA has historically applied a policy of equating 1 year's worth of emissions reductions for contingency measures with those annual reductions determined to be necessary to achieve RFP for the area, unless the state demonstrates that some smaller reduction is appropriate. As described in Section IV.F of this preamble, the EPA is proposing an approach for interpreting the statutory RFP requirement that would require demonstrating RFP based on reductions from sources located inside the nonattainment area. Keeping with the historic linkage between RFP and contingency measures, the EPA is also proposing and seeking comment on a similar approach for calculating 1 year's worth of emissions reductions for purposes of adopting appropriate contingency measures. That is, the EPA's proposed approach for determining the level of emissions reductions for contingency measure purposes is to calculate the annual reductions in emissions of direct $PM_{2.5}$ and $PM_{2.5}$ precursors needed from sources located inside the nonattainment area. The EPA seeks comment on this proposed approach.

The CAA requires that states must implement contingency measures after the EPA determines that the area has either failed to meet RFP requirements, or failed to attain the standards by the applicable attainment date. The purpose of the contingency measure provision is to ensure that corrective measures are put in place automatically at the time that the EPA makes its determination that an area has either failed to meet RFP or failed to meet the standard by its attainment date. The EPA is required to determine within 90 days after receiving a state's milestone demonstration, and within 6 months after the attainment date for an area, whether these requirements have been met. The consequences for states with areas that fail to attain the NAAQS or to meet RFP are described in section 179(d) of the CAA and discussed in Section V of this preamble.

As noted earlier in this section, the EPA proposes to require that states must submit contingency measures at the same time as the rest of the Moderate area attainment plan elements, *i.e.,* within 18 months after designation. Section 172(b) requires the Administrator to ''establish a schedule according to which the State containing such [nonattainment] area shall submit a plan or plan revision (including the plan items) meeting the applicable [subpart 1 nonattainment plan] requirements. . . . Such schedule shall, at a minimum, include a date or dates, extending no later than 3 years from the date of the nonattainment designation . . .'' The EPA believes it is reasonable to require the submittal of contingency measures for Moderate $PM_{2.5}$ nonattainment areas on the same schedule as the other Moderate area attainment plan requirements because of the close relationship between an area's control strategy, RFP analysis and selection of quantitative milestones, and contingency measures. The EPA seeks comment on this proposed due date for submission of contingency measures.

I. Attainment Dates

1. Statutory Requirements

Section 188 establishes the attainment dates for Moderate and Serious PM_{10} nonattainment areas, which also apply to Moderate and Serious $PM_{2.5}$ nonattainment areas. Section 188(c)(1) provides that for a Moderate area, ''the attainment date shall be as expeditiously as practicable but no later than the end of the sixth calendar year after the area's designation as nonattainment.'' The EPA has the responsibility for determining whether a nonattainment area has attained the standard by its applicable attainment date. Section 179(c)(1) requires the EPA to make determinations of attainment no later than 6 months following the attainment date for the area. Under section 179(c)(2), the EPA must publish a notice in the **Federal Register** identifying those areas which failed to attain by the applicable attainment date. The statute further provides that the EPA may revise or supplement its determination of attainment for the affected areas based upon more complete information or analysis concerning the air quality for the area as of the area's attainment date.

Section 179(c)(1) provides that the EPA is to base the attainment determination for an area upon an area's ''air quality data as of the attainment date.'' The EPA will make the determination of whether an area's air quality is meeting the $PM_{2.5}$ NAAQS by the applicable attainment date based upon data gathered from the air quality monitoring sites which have been entered into the EPA's Air Quality System (AQS) database. No special or additional attainment plan submission will be required from the state for this determination.

A Moderate $PM_{2.5}$ nonattainment area's air quality status is determined in accordance with Appendix N of 40 CFR

[150] *See,* e.g., 62 FR 15844 (April 3, 1997); 62 FR 66279 (December 18, 1997); 66 FR 30811 (June 8, 2001); 66 FR 586 and 66 FR 634 (January 3, 2001).

[151] A court ruling upheld contingency measures for ozone attainment plans that were previously required and implemented where they were in excess of the attainment demonstration and RFP SIP. *See LEAN* v. *EPA,* 382 F.3d 575 (5th Cir., 2004).

part 50. To show attainment of the current 24-hour and annual standards for $PM_{2.5}$, the most recent 3 consecutive years' data prior to the area's attainment date must show that $PM_{2.5}$ concentrations over the prior 3-year period are at or below the levels of the standards. A complete year of air quality data, as described in part 50, Appendix N, is comprised of all 4 calendar quarters with each quarter containing data from at least 75 percent of the scheduled sampling days.

The EPA will begin processing and analyzing data related to the attainment of Moderate $PM_{2.5}$ nonattainment areas after the applicable attainment date for the affected areas. Current EPA regulations, under 40 CFR part 58, set the deadline for the state to submit air quality data into the AQS database as no later than 90 days after the end of the calendar year.

While the EPA may determine that an area's air quality data indicates that an area may be meeting the $PM_{2.5}$ NAAQS for a specified period of time, this does not eliminate the state's responsibility under the Act to adopt and implement an approvable attainment plan. If the area's monitored data indicates that the area is factually attaining the NAAQS, however, the EPA may issue a ''clean data determination'' which will suspend the obligation of the state to submit the elements of the attainment plan for the area that are related to planning requirements, as discussed in Section IX.C of this preamble. If the EPA determines that an area has attained the standard as of its attainment date, the area will remain classified as nonattainment until the state has requested, and the EPA has approved, redesignation to attainment for the area.

In order for an area to be redesignated as attainment, the state must comply with the five requirements listed under section 107(d)(3)(E) of the CAA. Briefly, this section requires that:

- The EPA has determined that the area has met the $PM_{2.5}$ NAAQS;
- The EPA has fully approved the applicable state implementation plan;
- The improvement in air quality is due to permanent and enforceable reductions in emissions;
- The EPA has fully approved a maintenance plan for the area; and,
- The state(s) containing the area or portions of the area have met all applicable requirements under section 110 and part D.

2. Proposed Approach

As noted earlier, section 188(c)(1) states that for a Moderate area, ''the attainment date shall be as expeditiously as practicable but no later than the end of the sixth calendar year after the area's designation as nonattainment.'' For purposes of clarity, the EPA proposes to interpret the reference to ''the area's designation'' in this provision as meaning ''the area's effective date of designation,'' consistent with the agency's approach for implementing the 1997 and 2006 $PM_{2.5}$ NAAQS and with its approach for implementing NAAQS for other criteria pollutants under part D, title I of the CAA. *See* proposed 40 CFR 51.1000. As discussed elsewhere in this preamble, the effective date of designation is April 15, 2015, for areas designated nonattainment in the first round of designations for the 2012 $PM_{2.5}$ NAAQS. For these areas, the Moderate area attainment date would be as expeditious as practicable, but no later than December 31, 2021 (*i.e.,* the end of the sixth calendar year after designation). The EPA seeks comment on this proposed interpretation of the date of designation of a $PM_{2.5}$ NAAQS nonattainment area and the resulting attainment date for such areas.

As described in Sections IV.D and IV.E of this preamble, in the case of a Moderate $PM_{2.5}$ nonattainment area for which a state can demonstrate attainment by the end of the sixth calendar year following designation, the state must follow a two-step process for determining the appropriate attainment date for the area. First, the state must demonstrate through air quality modeling that the area can attain the relevant NAAQS by the latest statutory attainment date and determine which control measures and technologies are needed for the area to attain by that date. Second, the state must determine whether implementing other reasonable controls (*i.e.,* those not needed for attainment by the latest possible date but that are technologically and economically feasible) can cumulatively advance the attainment date for the area by at least 1 year. In the event that a state determines that the area can attain the relevant NAAQS earlier through the application of other measures, the state must propose the earlier date as part of the attainment plan submission for the area. When the EPA takes action to approve the different elements of the attainment plan for the area, one of the elements that the agency will take action on will be the state's proposed attainment date for the area. If the EPA approves an attainment date for the area that is earlier than the latest date allowed by statute, then the applicable attainment date for the area will be the approved date. *See* proposed 40 CFR 51.1004(a)(1)(i). If the area ultimately needs additional time to attain the relevant NAAQS, the state may request an attainment date extension for the Moderate nonattainment area under section 188 as long as certain conditions are met, as described in Section IV.J.

The EPA's approach to approving an attainment date for a $PM_{2.5}$ nonattainment area will be different for a Moderate area that cannot practicably attain the relevant $PM_{2.5}$ NAAQS by the end of the sixth calendar year after designation. Given that the agency will reclassify any such area to Serious and thereby trigger additional Serious area requirements for the area, the EPA will approve an attainment date for the area when it takes action on the Serious area attainment plan submitted for the area. In the interim, before the EPA takes action to reclassify the area, the statutory Moderate area attainment date will continue to apply to such an area. *See* proposed 40 CFR 51.1000 and 51.1004(a)(1)(ii). When the EPA reclassifies the area, then the presumptive attainment date for the area will be as expeditious as practicable, but no later than the end of the tenth calendar year following designation. A complete discussion of Serious area attainment dates is provided in Section VI.H of this preamble.

J. Attainment Date Extensions

1. Statutory Requirements

The CAA under subpart 4 provides the EPA with authority to grant extensions of the attainment date for a Moderate area that otherwise could be found to have failed to attain the relevant $PM_{2.5}$ NAAQS, if the area can meet specific statutory criteria related to the implementation of measures contained in the attainment plan for the area, and to monitored air quality in the area. Specifically, under section 188(d), a state may apply to the EPA for an extension of a Moderate area's attainment date of one additional year (the ''Extension Year'') if ''(1) the state has complied with all requirements and commitments pertaining to the area in the applicable implementation plan; and (2) no more than one exceedance of the 24-hour [NAAQS] level for PM_{10} has occurred in the area in the year preceding the Extension Year, and the annual mean concentration of PM_{10} in the area for such year is less than or equal to the standard level.'' Section 188(d) limits the number of 1-year extensions that the EPA may grant for a Moderate nonattainment area to two.

The provisions of section 188(d) thus allow a state an opportunity to demonstrate that a Moderate area should continue to be classified as

Moderate and not be reclassified to Serious even if the area exceeded the level of the applicable $PM_{2.5}$ NAAQS in one or both of the 2 calendar years preceding the year in which the area is otherwise required to attain the NAAQS. Although section 188(d) provides the criteria for such an extension, the EPA believes that there are some ambiguities in the statutory language that warrant interpretation and clarification through regulations for the $PM_{2.5}$ NAAQS. The EPA is thus proposing a preferred interpretation of section 188(d) to provide clarity to states about how and when they may qualify for a Moderate area attainment date extension for purposes of the $PM_{2.5}$ NAAQS.

2. Proposed Interpretations of Attainment Date Extension Criteria

With respect to the criterion in section 188(d)(1) that requires that ''the state has complied with all requirements and commitments pertaining to the area in the applicable implementation plan,'' the EPA proposes to interpret this provision to mean that the state has implemented the control measures in the SIP submission it made to address the attainment plan requirements for the applicable $PM_{2.5}$ NAAQS, and not to require the area to have a fully approved attainment plan that meets all of the CAA's requirements for Moderate areas. This proposed interpretation is based on the plain language of section 188(d) that does not explicitly require that the state comply with all requirements pertaining to the area in the CAA, but merely requires that the state comply with all requirements in the applicable SIP.[152] In other words, the EPA believes that section 188(d)(1) should be interpreted to mean that so long as the state has submitted the necessary attainment plan for the area for the applicable $PM_{2.5}$ NAAQs and is implementing the control measures in the submission, the fact that the EPA has not yet acted on such submission to make it an approved part of the applicable SIP should not be a barrier to the state obtaining an extension of the attainment date under section 188(d)(1). For the same reason, the EPA also proposes to read this provision not to bar an extension if all or part of an area's Moderate area plan is disapproved or has been promulgated by the EPA as a federal implementation plan (FIP). In the case that the ''applicable implementation plan'' is a FIP (or combination of SIP and FIP), then the EPA proposes that the state must have implemented the control measures contained therein in order to meet the statutory criteria at section 188(d)(1) for a Moderate area attainment date extension. The EPA seeks comment on this proposed interpretation of section 188(d)(1). *See* proposed 40 CFR 51.1005(a)(2).

The EPA also proposes and seeks comment on an alternative interpretation of section 188(d)(1) that would require a state to have a Moderate area attainment plan fully approved by the EPA as meeting the applicable attainment plan requirements under sections 172 and 189 for a Moderate $PM_{2.5}$ nonattainment area before the state obtains an extension. Given that Moderate area attainment plans are due 18 months from the date of designation, and that RACM and RACT must be implemented within 4 years after designation, states should have sufficient time under the statutory schedule to satisfy all applicable requirements in advance of seeking a Moderate area attainment date extension. Under this alternative approach, the EPA proposes that a state subject to a FIP (or SIP and FIP) for a Moderate $PM_{2.5}$ nonattainment area could qualify for an attainment date extension for the area if it had implemented all requirements and commitments of the FIP (or SIP and FIP), as the FIP (or SIP and FIP) would be the ''applicable implementation plan'' for the area. Although this alternative interpretation could also be a reasonable reading of this criterion of section 188(d)(1), the EPA considers it less appropriate than the preferred interpretation because this approach could foreclose states from obtaining an otherwise appropriate extension merely because of logistical and timing considerations that might have prevented the EPA from acting on the state's attainment plan by the requisite point in time. Nevertheless, the EPA seeks comment on this alternative interpretation of section 188(d)(1).

The second criterion that states must meet to qualify for an extension relates to the monitored ambient air in a nonattainment area in the year prior to the attainment date for the area. If a state has met the requirements of section 188(d)(1), the EPA may grant an extension of a Moderate area's attainment date if the state also satisfies the requirements of section 188(d)(2) that ''no more than one exceedance of the 24-hour national ambient air quality standard level for PM_{10} has occurred in the area in the year preceding the Extension Year, and the annual mean concentration of PM_{10} in the area for such year is less than or equal to the standard level.'' Again, the EPA may grant up to two such 1-year extensions and thus this criterion would apply to the calendar year prior to the applicable attainment date and to the Extension Year, in the case of a second extension.

The EPA believes that the references to the ambient air quality standards in section 188(d)(2) are ambiguous in two significant ways in the context of the $PM_{2.5}$ NAAQS implementation. First, the statutory language explicitly sets ambient air quality conditions for an attainment date extension in terms that relate factually to the 24-hour PM_{10} NAAQS that was in effect at the time of the 1990 Amendments of the CAA, which has a statistical form that is substantially different from the 24-hour $PM_{2.5}$ NAAQS. Specifically, the form of the 24-hour PM_{10} NAAQS allows for no more than one ''exceedance'' of the standard per year on average over 3 years, and if there is more than one such exceedance on average over 3 years the area is violating the NAAQS. Thus, as a means of limiting extensions to areas that are close to attaining the NAAQS in the calendar year prior to the applicable attainment date, section 188(d)(2) imposes the criterion of having ''no more than one exceedance of the 24-hour . . . standard level'' as a way of demonstrating that a nonattainment area has ''clean data'' for the year prior to the attainment date.[153] This statutory language does not translate readily to the $PM_{2.5}$ NAAQS, which postdate the creation of section 188(d) and are not structured with the same mathematical form. For example, the 2006 24-hour $PM_{2.5}$ NAAQS incorporates a 3-year average of the 98th percentile form, which means that an area with valid monitored ambient readings every day (or almost every day) could have seven readings above the numerical level of the standard (*i.e.,* ''exceedances'') in any given year and still have ''clean data'' for that year. A literal interpretation of section 188(d)(2) to permit only one exceedance of the 24-hour $PM_{2.5}$ NAAQS, rather than the number of exceedances that is relevant for purposes of determining attainment of such NAAQS, is illogical. In light of the different form of the $PM_{2.5}$ NAAQS, the statutory language of section 188(d)(2) is thus ambiguous in how it should apply to implementation of the 24-hour $PM_{2.5}$ NAAQS.

Additionally, the language of section 188(d)(2) may be considered ambiguous

[152] This interpretation as applied to section 188(e) for Serious area attainment date extensions was upheld by the Ninth Circuit Court of Appeals in *Vigil* v. *Leavitt,* 366 F.3d 1025, amended at 381 F.3d 826 (9th Cir. 2004).

[153] The 24-hour PM_{10} NAAQS, set at 150 $\mu g/m^3$, cannot be exceeded more than once per year on average, over 3 years.

as to how it should apply to the $PM_{2.5}$ NAAQS to the extent that it does not specify whether the air quality criteria for an attainment date extension apply equally for a Moderate area designated nonattainment for both the 24-hour and annual standards, or for just one of the standards. In practice, most areas designated nonattainment for the PM_{10} NAAQS following passage of the 1990 CAA Amendments were designated nonattainment only for the 24-hour PM_{10} NAAQS, with a few designated for only the annual PM_{10} NAAQS or for both the 24-hour and the annual PM_{10} NAAQS. The 24-hour NAAQS has served as the ''controlling'' (*i.e.,* functionally more stringent) PM_{10} standard, such that the agency's experience to date in granting PM_{10} Moderate area attainment date extension requests has been limited to extending the attainment date for the 24-hour PM_{10} NAAQS.[154]

The situation is distinctly different for $PM_{2.5}$ nonattainment areas, as the specific facts and circumstances of a particular area may warrant a nonattainment designation for either the 24-hour standard or the annual standard, but often not both. In most cases, for instance, the current nonattainment areas for $PM_{2.5}$ are designated either for the 1997 annual NAAQS or for the 2006 24-hour NAAQS, but not both.[155] For example, the EPA recently promulgated designations for areas violating only the annual $PM_{2.5}$ NAAQS revised in 2012, not the 24-hour NAAQS which was retained at the level established during the 2006 p.m. NAAQS review. If a $PM_{2.5}$ nonattainment area is designated only for the 24-hour or only for the annual $PM_{2.5}$ NAAQS, this situation raises the question of how section 188(d)(2) air quality criteria for both standards should apply to such a $PM_{2.5}$ NAAQS nonattainment area if the state seeks an extension of the applicable attainment date for such area.

Due to the ambiguities associated with applying this subpart 4 requirement to current and future $PM_{2.5}$ NAAQS, the agency believes it is important to propose a reasonable interpretation of the statutory requirement and seek public comment on this preferred interpretation as well as two alternative interpretations specifying the $PM_{2.5}$ standard or standards for which a state would need to demonstrate a Moderate nonattainment area met the air quality criteria of section 188(d)(2) in order to qualify for an attainment date extension. The agency also believes it is important to clarify how the air quality criteria of section 188(d)(2) apply specifically for the 24-hour $PM_{2.5}$ NAAQS. For this reason, the EPA is proposing a preferred interpretation of section 188(d)(2) for application to current and future $PM_{2.5}$ NAAQS, and is seeking comment on two alternative interpretations that the agency considers less appropriate.

The preferred proposed approach would only require a state to demonstrate that in the year prior to the applicable attainment date for the area, a Moderate area did not exceed the level of (*i.e.,* had clean data for) the specific $PM_{2.5}$ NAAQS for which the area is designated nonattainment (the ''applicable NAAQS'') and for which the state is seeking the extension of the attainment date. The second approach, on which the EPA seeks comment, would require that a state demonstrate that in the year prior to the applicable attainment date for an area, the Moderate area did not exceed the level of the specific $PM_{2.5}$ NAAQS for which the area is designated nonattainment (the applicable NAAQS), and did not exceed the most stringent level of any other $PM_{2.5}$ NAAQS in effect nationally at the time the area was designated for the applicable NAAQS. The third approach, on which the EPA also seeks comment, would require that a state demonstrate that in the year prior to the applicable attainment date for an area, the Moderate area did not have more than one exceedance of the level of the 24-hour $PM_{2.5}$ standard, and that the annual mean concentration of $PM_{2.5}$ in the area for the attainment year was less than or equal to the annual standard, regardless of the NAAQS for which the state is seeking an attainment date extension.

The EPA prefers the proposed interpretation (described in more detail later in this section) for implementing the Moderate area attainment date extension criteria of section 188(d)(2) considering the fact that, due to the specific atmospheric conditions and source-dependent nature of $PM_{2.5}$ problems in different areas around the country, the EPA has historically designated, and may continue to designate, $PM_{2.5}$ nonattainment areas for either the annual or the 24-hour NAAQS. As discussed earlier, the agency's designations processes for the 2006 revised 24-hour $PM_{2.5}$ NAAQS and the 2012 revised annual $PM_{2.5}$ NAAQS have each been conducted to address only one standard individually. In addition, the current 24-hour $PM_{2.5}$ NAAQS does not have a ''one exceedance'' form of the standard, as cited in section 188(d)(2). Nevertheless, the EPA requests comment on the second and third interpretations of section 188(d)(2) described later in this section because they more closely reflect the specific statutory wording.

a. *Proposed approach: the EPA preferred option.* The EPA's proposed interpretation of section 188(d)(2) would simply require that a state demonstrate that in the year prior to the applicable attainment date for the area, a Moderate nonattainment area had clean data for the specific $PM_{2.5}$ NAAQS for which the state was seeking an attainment date extension (the applicable NAAQS). Under this proposed approach, a state seeking an attainment date extension for a Moderate nonattainment area for a 24-hour $PM_{2.5}$ NAAQS would be required to demonstrate that the area had clean data for that particular standard in the calendar year prior to the applicable attainment date for the area, rather than demonstrating that the area necessarily had no more than one exceedance of the 24-hour $PM_{2.5}$ NAAQS.

For example, under this proposed interpretation of section 188(d)(2), in the case of a state seeking an extension of the attainment date for a Moderate area designated nonattainment for the 2006 24-hour $PM_{2.5}$ NAAQS, the state would need to demonstrate that the area had no more than the allowable number of valid monitored readings exceeding 35μg/m^3 to meet the 98th percentile statistical form of the standard in the year prior to the area's attainment date. The state would not have to demonstrate that the area also had clean data for any other $PM_{2.5}$ NAAQS, including any annual $PM_{2.5}$ NAAQS or later revision of the 24-hour $PM_{2.5}$ NAAQS.

Likewise under the EPA's preferred approach, a state seeking an attainment date extension for a Moderate nonattainment area for an annual $PM_{2.5}$ NAAQS would be required to demonstrate that the area had clean data for that particular standard in the calendar year prior to the applicable attainment date for the area. For example, in the case of a state seeking an extension of the attainment date for a Moderate area designated nonattainment for the 2012 annual $PM_{2.5}$ NAAQS, the state would need to demonstrate that the annual mean concentration of $PM_{2.5}$ at each monitor in the area as analyzed in accordance with Appendix N to 40 CFR part 50 for the year prior to the area's attainment date was less than or equal to 12.0 μg/

[154] For examples of the EPA actions to extend attainment dates for Moderate PM_{10} areas, *see* 61 FR 20730 (May 8, 1996), 61 FR 66602 (December 18, 1996), and 66 FR 32752 (June 18, 2001).

[155] Nonattainment areas designated for both the 24-hour and annual $PM_{2.5}$ NAAQS are located in central and southern CA.

m^3. Again, under this proposed approach, the state would not have to demonstrate that the area had clean data for any other $PM_{2.5}$ NAAQS.

Under the EPA's preferred approach, if a state were to have an area that is designated nonattainment for both the 24-hour and the annual $PM_{2.5}$ NAAQS, with the same applicable attainment date, then a state seeking attainment date extensions for both NAAQS would need to meet the ambient air quality criterion for both NAAQS. The EPA notes that this would not be a common occurrence, but under this interpretation, these would be the only circumstances under which a state should be required to have clean data for both NAAQS in order to qualify for an extension of the applicable attainment date under section 188(d)(2). If a state has a nonattainment area that is only designated for either the 24-hour or the annual $PM_{2.5}$ NAAQS, the EPA believes that the state need only meet the air quality criterion of section 188(d)(2) for the NAAQS relevant to the attainment date at issue. *See* proposed 40 CFR 51.1005(a)(1)(ii) and (iii).

The EPA believes this preferred interpretation of section 188(d)(2) is appropriate for two reasons. First, as discussed above, while most PM_{10} nonattainment areas were designated nonattainment for either just the 24-hour PM_{10} NAAQS or for both the 24-hour and annual PM_{10} NAAQS, the majority of current $PM_{2.5}$ nonattainment areas are designated for either the 24-hour or the annual $PM_{2.5}$ NAAQS, and should arguably only need to demonstrate clean data for the NAAQS for which the area is designated nonattainment. For those few $PM_{2.5}$ nonattainment areas designated for 24-hour and annual $PM_{2.5}$ NAAQS, the EPA believes it may also be appropriate that a state must only demonstrate clean data for the specific NAAQS for which the state is seeking an attainment date extension because such an approach is consistent with the statute's overall approach to designating nonattainment areas and implementing control strategies for each separate $PM_{2.5}$ NAAQS.

Second, as discussed earlier, the statutory language that requires that a nonattainment area have ''no more than one exceedance of the 24-hour'' NAAQS level reflects a statistical form for the 24-hour PM_{10} standard that is different from the current form of the 24-hour $PM_{2.5}$ NAAQS. This difference, and the fact that the form could be subject to further revision in the future, leads the EPA to conclude that it is appropriate to describe this particular criterion more broadly so that it can apply to any 24-hour $PM_{2.5}$ NAAQS, now or in the future regardless of the specific statistical form any such NAAQS may take. The EPA seeks comment on this preferred proposed approach.

b. *Alternative approach 1.* The EPA also seeks comment on two alternative interpretations of section 188(d)(2). The EPA's first alternative interpretation of section 188(d)(2) would require that a state seeking an attainment date extension for a Moderate $PM_{2.5}$ nonattainment area would have to demonstrate that the area met the level of the $PM_{2.5}$ NAAQS for which it is seeking the attainment date extension, as well as met the numerical level of the most stringent $PM_{2.5}$ NAAQS in effect at the time the area was designated nonattainment. That is, under this approach, the area would need to have clean data for the year preceding the attainment date for the $PM_{2.5}$ NAAQS for which the state is seeking an attainment date extension and for the other $PM_{2.5}$ NAAQS that were part of the same suite of $PM_{2.5}$ standards (*i.e.,* both the 24-hour and the annual $PM_{2.5}$ NAAQS) in effect at the time the EPA designated the area nonattainment.

For example, if a state seeks an extension of the attainment date for an area designated nonattainment only for the 2012 annual $PM_{2.5}$ NAAQS, it would have to demonstrate that the annual mean concentration of $PM_{2.5}$ at each monitor in the Moderate area as analyzed in accordance with Appendix N to 40 CFR part 50 in the attainment year was less than or equal to 12.0 $\mu g/m^3$. Additionally, the state would have to demonstrate that the 98th percentile of valid 24-hour monitored readings in the area for the year preceding the attainment date did not exceed 35 $\mu g/m^3$, the level of the 24-hour $PM_{2.5}$ NAAQS set in 2006 and retained with the 2012 p.m. NAAQS review as part of the suite of PM NAAQS, even if the area was not designated nonattainment for the 2006 24-hour $PM_{2.5}$ NAAQS.[156] As with the agency's preferred approach, a state seeking an attainment date extension for a Moderate nonattainment area for a 24-hour $PM_{2.5}$ NAAQS would be required to demonstrate that the area had clean data for that particular standard in the calendar year prior to the applicable attainment date for the area in accordance with the statistical form of the 24-hour $PM_{2.5}$ NAAQS, rather than demonstrating that the area had no more than one exceedance of the 24-hour $PM_{2.5}$ NAAQS.

The EPA presents this first alternative interpretation of the statute for two reasons. First, as noted earlier, the statute at section 188(b)(2) does not specify whether the air quality criteria for an attainment date extension apply for Moderate areas designated nonattainment for both the 24-hour and annual PM_{10} standards, or for just one of the standards. Read literally, however, the statute seems to require that an area seeking an extension of a Moderate area attainment date for any PM_{10} NAAQS must be meeting the level of both the 24-hour standard and the annual standard, even if it was only designated for just one of the standards. Under this interpretation of the statute for purposes of implementing the $PM_{2.5}$ NAAQS, even though an area may be designated nonattainment for only one $PM_{2.5}$ NAAQS and therefore seeking an attainment date extension only for that particular NAAQS, it would also have to meet the level of the other $PM_{2.5}$ standards. As explained above, the EPA does not consider this the most appropriate interpretation of section 188(d). However, under this alternative interpretation the agency would take the position that the other $PM_{2.5}$ standards whose level the state must show the Moderate nonattainment area met in the year preceding its attainment date would be the most stringent $PM_{2.5}$ NAAQS in effect nationally at the time the area was designated nonattainment. For example, if the EPA were to strengthen the 24-hour $PM_{2.5}$ standard below the current 35 $\mu g/m^3$ prior to December 31, 2021 (the anticipated statutory Moderate area attainment date for the 2012 $PM_{2.5}$ NAAQS), then an area seeking an extension of the Moderate area attainment date for the 2012 $PM_{2.5}$ NAAQS would have to demonstrate that the area met the most stringent 24-hour $PM_{2.5}$ NAAQS that applied at the time it was designated (35 $\mu g/m^3$), and not the less stringent 24-hour NAAQS set in 1997 (65 $\mu g/m^3$) or any more stringent standard set after designation but before the attainment date.

Second, as with the proposed approach to interpreting section 188(d)(2), the EPA believes it is appropriate to interpret the statutory language regarding ''no more than one exceedance of the 24-hour'' NAAQS level broadly to mean that the area had clean data for the 24-hour $PM_{2.5}$ NAAQS, consistent with the form of the NAAQS at issue, so that the requirement can apply to any 24-hour $PM_{2.5}$ NAAQS, now or in the future. Even if it were appropriate to interpret section

[156] Given the rounding provisions specified in 40 CFR part 50, Appendix N, these criteria would be satisfied if the concentrations before final rounding are less than an annual average of 12.05 $\mu g/m^3$ and a 24-hour value of 35.5 $\mu g/m^3$.

188(d)(2) to require that a state meet the air quality criterion for both the 24-hour and the annual $PM_{2.5}$ NAAQS, the EPA believes that the statutory provision concerning the number of exceedances must still be read in light of the different form of the 24-hour $PM_{2.5}$ NAAQS. The EPA seeks comment on this first alternative interpretation of section 188(d)(2).

c. *Alternative approach 2.* The EPA's second alternative interpretation of section 188(d)(2) would require that a state demonstrate that a Moderate area did not have more than one exceedance of the applicable 24-hour $PM_{2.5}$ standard level, and the annual mean concentration of $PM_{2.5}$ in the area was less than or equal to the applicable annual $PM_{2.5}$ standard level, in the year preceding the applicable attainment date for the area. In other words, the EPA would not interpret the air quality criterion with respect to the 24-hour $PM_{2.5}$ NAAQS in light of the significantly different form of the $PM_{2.5}$ NAAQS. Furthermore, as with the first alternative interpretation, the ''applicable'' $PM_{2.5}$ standards would be those that applied at the time the Moderate area was designated for a given $PM_{2.5}$ NAAQS, even if the area was not designated nonattainment for all of them. This interpretation would mean that regardless of the form of the applicable 24-hour $PM_{2.5}$ standard, the Moderate area seeking an attainment date extension could not have more than one exceedance of the numerical level of the applicable 24-hour standard in order to qualify for a Moderate area attainment date extension. This requirement would be more stringent—and in some cases considerably so—than under the preferred proposed and first alternative interpretations, given the current statistical form of the 24-hour $PM_{2.5}$ NAAQS. Additionally, under this reading of section 188(d)(2), any future changes to the $PM_{2.5}$ NAAQS in terms of form or averaging time would also not be addressed, potentially creating confusion with respect to how a $PM_{2.5}$ Moderate area could qualify for an attainment date extension in the future.

The EPA believes that, while this interpretation of section 188(d)(2) may appear to be a straightforward reading of the statutory language, it does not reasonably account for the important differences between the statistical form of the PM_{10} and $PM_{2.5}$ NAAQS or between the EPA's longstanding convention for designating PM_{10} and $PM_{2.5}$ nonattainment areas generally. The EPA therefore seeks comment on its preferred proposed approach and two alternative approaches for interpreting the air quality criteria of section 188(d)(2) that a state would need to demonstrate compliance with in order for the EPA to consider granting an extension of a Moderate $PM_{2.5}$ area attainment date.

3. Proposed Process for Attainment Date Extension Request Submittals

Regardless of which interpretation of section 188(d)(1) the EPA finalizes as part of this rulemaking, the EPA proposes to require states to submit sufficient information to demonstrate that they have complied with applicable requirements and commitments in the applicable implementation plan. This information would be needed in order for the EPA to make a decision on whether to grant a 1-year attainment date extension. The EPA would not be authorized to grant an attainment date extension to an area unless the state can demonstrate that it has met all of the requirements and commitments contained in the state's applicable implementation plan for the area. Under the EPA's first proposed approach for interpreting section 188(d)(1), a state would have to demonstrate that control measures have been submitted in the form of a SIP revision and that RACM and RACT and additional reasonable measures for sources in the area have been implemented. Under the agency's alternative proposal for interpreting section 188(b)(1), the attainment plan submitted by the state would have to have been fully approved by the EPA and the state would have to be in compliance with any elements required under any applicable FIP for the area. In addition, under the EPA's second proposed approach, the state would have to demonstrate that: (i) RACM and RACT and additional reasonable measures for sources in the area have been implemented, and (ii) the area has made emissions reductions progress that represents RFP toward attainment of the NAAQS and has met its quantitative milestones, and the state has submitted a milestone compliance demonstration (milestone report) to that effect if due. Any decision made by the EPA to extend the attainment date for an area would be based on facts specific to the nonattainment area at issue.

Section 188(d) does not specify the process by which the EPA should evaluate and act upon requests from states for an extension of the Moderate area attainment date. However, the EPA proposes that an attainment date extension would only be granted after the agency provides notice in the **Federal Register** and an opportunity for the public to comment. This notice-and-comment process would allow for appropriate evaluation of the relevant criteria and facts in order to assure that the extension is granted or denied after full evaluation. This process also is consistent with past practice by the EPA in granting attainment date extensions, most recently for ozone nonattainment areas. In addition, for ease of implementation, the EPA proposes to interpret section 188(d) to authorize the EPA to stipulate that any extension would begin on January 1 and end on December 31 of the extension year and these dates would not depend on when the state submitted its request for an extension or was granted the extension by the EPA. The EPA believes this is a reasonable approach as the applicable attainment date for the area will either be the end of the sixth calendar year following designation of the area, or the end of an earlier calendar year if the state could advance attainment of the area by at least 1 year through the implementation of extra control measures. In addition, compliance with the relevant NAAQS will be evaluated based on monitored data collected over a full calendar year (*i.e.,* over the period beginning January 1 and ending December 31), so starting the extension year on January 1 is logical.

Because air quality criteria are part of the conditions that must be met in order for the EPA to grant a Moderate area attainment date extension, the EPA proposes to require that a state seeking such an extension must submit its complete attainment date extension request, including any available preliminary data for the year preceding the area's applicable Moderate attainment date, on or before the area's attainment date. The EPA also proposes to require that the state requesting such an extension must submit to the respective EPA Regional Office certified ambient $PM_{2.5}$ monitoring data for the year preceding the attainment date for the area in question by no later than February 28 of the year following the area's attainment date. Submission of the necessary data by this date will allow the EPA to review the state's request and take appropriate action on the request prior to the date by which the EPA is required to make a determination that the area failed to attain by its Moderate area attainment date, *i.e.,* within 6 months of the applicable attainment date (*see* the discussion of reclassification in Section V of this preamble). The EPA seeks comment on these proposed deadlines for a state to request an extension of a Moderate area's attainment date and submit certified air quality data as required under CAA section 188(d)(2).

As noted earlier in this discussion of Moderate area attainment date extensions, the statute at section 188(d) provides that a state may seek up to two 1-year extensions of the Moderate area attainment date if it meets the applicable criteria of sections 188(d)(1) and 188(d)(2). The statute makes no distinction between the criteria that must be met for the first 1-year extension and the criteria for the second 1-year extension, therefore the EPA plans to apply the same interpretations of the statutory criteria proposed throughout this section, including the proposed deadlines for the state to submit the extension request and the certified air quality data, for purposes of a state seeking a second 1-year attainment date extension for a Moderate nonattainment area.

The EPA seeks comment on the proposed approaches described above for interpreting the criteria of section 188(d)(1) and 188(d)(2) and establishing a process for states to request attainment date extensions for Moderate areas.

V. How would a $PM_{2.5}$ Moderate nonattainment area be reclassified to Serious?

As discussed elsewhere in this preamble, subpart 4, part D of title I of the CAA establishes a two-tier classification system for areas designated nonattainment for the $PM_{2.5}$ NAAQS. While all areas designated nonattainment are initially classified as Moderate, section 188(b) describes two pathways by which the EPA has the authority or the duty to reclassify a Moderate nonattainment area to a Serious nonattainment area. Pursuant to section 188 (b)(1), the EPA has general discretionary authority to reclassify from Moderate to Serious any area that the Administrator determines cannot practicably attain the NAAQS by the applicable Moderate area attainment date. Pursuant to section 188(b)(2), the EPA has a mandatory duty to reclassify from Moderate to Serious any area that fails to attain the NAAQS by the applicable Moderate area attainment date. Both of these pathways are more fully described below.

A. Discretionary Authority

The EPA's discretionary authority to reclassify a Moderate area to Serious derives from language in section 188(b)(1) of the CAA which provides that: ''The Administrator may reclassify as a Serious PM_{10} nonattainment area . . . any area that the Administrator determines cannot practicably attain the [NAAQS] . . . by the attainment date . . . for Moderate Areas.'' The use of this discretionary authority thus would be triggered by the EPA making a determination that the Moderate area in question could not practicably attain by its statutory attainment date.

The CAA does not specify the basis on which the EPA may make the determination that the area cannot practicably attain by the applicable attainment date. In the General Preamble, the EPA explained that the agency could base this determination upon whatever factors are pertinent and do so whether or not the state in question has submitted a Moderate area attainment plan, and whether or not the state has made the demonstration contemplated in section 189(a)(1)(B).[157] The EPA may make such a determination based on evaluation of the attainment plan for the Moderate area in question or other facts known to the agency. As discussed earlier in this preamble, the attainment plan that a state would submit for a Moderate nonattainment area must include either a demonstration that the area will attain the NAAQS by the statutory Moderate area attainment date or a demonstration that attaining by the statutory Moderate area attainment date is impracticable. If the state makes and the EPA concurs with an impracticability demonstration submitted as part of the attainment plan, then the demonstration could serve as the basis for the EPA initiating a notice-and-comment rulemaking to reclassify the area to Serious. However, the CAA does not specify the basis for the EPA's exercise of its discretionary authority and does not require the EPA to make its determination based on a submission from the state. Indeed, such a prerequisite would be illogical in the case of a state that fails to make any attainment plan submission or fails to address the issue of the need for reclassification in such submission.

Section 188(b)(1)(B) does establish mandatory timeframes by which EPA must act if it intends to exercise its discretionary authority to reclassify areas as appropriate following the Moderate area attainment plan due date, stating that ''the Administrator shall reclassify appropriate areas within 18 months after the required date for the state's submission of a SIP for the Moderate Area.'' In the case of areas designated nonattainment for the 2012 $PM_{2.5}$ NAAQS in the first round of designations, states will be required by statute to submit a Moderate area attainment plan within 18 months of the date of designation (April 2015), or no later than October 2016. Pursuant to section 188(b)(1)(B), the EPA would then have until April 2018 (18 months following the Moderate area attainment plan submission deadline) to use its discretionary authority to reclassify any area that the EPA determines at that time cannot practicably attain by the Moderate area attainment date of December 2021.

As noted above, the EPA believes that while a Moderate area impracticability demonstration as contemplated in section 189(a)(1)(B) is desirable in order to help the agency make a determination that the area cannot practicably attain by its attainment date, such a demonstration is not necessary to trigger action by the EPA to reclassify a Moderate area to Serious. The statute does not prohibit the EPA from using the weight of available evidence, including information available in the public record of a state, to make such a determination, even in the absence of a complete attainment plan submission. Thus, the EPA expressed in the General Preamble that:

> . . . under the plain meaning of the terms of section 188(b)(1) EPA has general discretion to reclassify at any time before the applicable attainment date any area EPA determines cannot practically attain the standards by such date. Accordingly, CAA section 188(b)(1) is a general expression of delegated rulemaking authority. In addition, subparagraphs (A) and (B) of CAA section 188(b)(1) mandate that the EPA reclassify at specified timeframes any areas it determines appropriate for reclassification at those dates. These subparagraphs do not restrict the general authority but simply specify that, at a minimum, it must be exercised at certain times.[158]

The EPA continues to consider this the correct interpretation of the statutory requirements concerning its authority to reclassify a Moderate nonattainment area to Serious at any time prior to the area's Moderate area attainment date, if the agency determines that the area cannot practicably attain the relevant $PM_{2.5}$ NAAQS by that date.

The EPA emphasizes that states with an area designated as nonattainment for the $PM_{2.5}$ NAAQS are required to meet all Moderate area attainment plan requirements, even after the EPA reclassifies the area to Serious. Section 189(b)(1) states clearly that ''in addition to'' the Moderate area attainment plan requirements, states with areas reclassified to Serious must also meet Serious area attainment plan requirements, *i.e.,* the reclassification does not eliminate the statutory obligation to meet Moderate area

[157] *See* the **Federal Register** published on April 16, 1994 (57 FR 13498, 13537 and 13538).

[158] *Ibid.* at 13537.

attainment plan requirements.[159] Thus, the EPA believes that reclassifying Moderate areas to Serious at any time under its discretionary authority does not reward areas who delay development and implementation of control measures by excusing states from meeting substantive Moderate area attainment plan requirements or by extending the applicable attainment date. The EPA articulated this position in the General Preamble, explaining that this interpretation:

. . . creates an incentive for the timely submittal and effective implementation of moderate area SIP requirements and facilitates the PM_{10} attainment objective. For example, if an area that fails to submit a timely moderate area SIP is reclassified, this does not obviate the requirement that the area submit and implement RACM consistent with the moderate area schedule. Accordingly, the area could be subject to sanctions for its delay in submitting the RACM SIP requirement . . . Further, reclassification before the applicable attainment date will ensure that additional control measures (*i.e.,* in addition to RACM, serious areas must implement best available control measures (BACM)), are implemented sooner and will expedite the application of more stringent new source review requirements to the area . . . Similarly, where an area submits a timely moderate area SIP, EPA may not discover that the area cannot practicably attain until sometime after it begins implementing its moderate area control measures. The EPA then may want to reclassify the area in order to facilitate the development and implementation of BACM.[160]

The EPA considers this the correct interpretation of the statutory requirements and proposes to apply this longstanding interpretation of section 188(b)(1) to nonattainment areas for the $PM_{2.5}$ NAAQS.

B. Mandatory Duty

In addition to the EPA's discretionary authority to reclassify a Moderate area to Serious under certain circumstances, the CAA also directs the EPA to do so under other circumstances. The alternative circumstances under which the EPA will reclassify an area from Moderate to Serious are if that area fails to attain the relevant NAAQS by the applicable Moderate area attainment date, including any extension of that date under section 188(d) for which the area qualifies. Under such circumstances, the EPA has a mandatory duty to identify any area that fails to attain the $PM_{2.5}$ NAAQS by the applicable Moderate area attainment date. Reclassification under such circumstances would happen by operation of law when the EPA determines that the area failed to attain the NAAQS by the applicable attainment date, in accordance with section 188(b)(2)(A). Section 188(b)(2) requires that ''within six months following the applicable attainment date for a PM_{10} nonattainment area, the Administrator shall determine whether the area attained the standard by that date'' and publish its determination in the **Federal Register**. The EPA proposes that the date of reclassification for an area reclassified under the EPA's mandatory duty to reclassify an area would be the effective date of the **Federal Register** document announcing that the area had not attained the relevant $PM_{2.5}$ NAAQS and is therefore reclassified by operation of law. Thus, for example in the case of the 2012 $PM_{2.5}$ NAAQS, assuming a Moderate $PM_{2.5}$ nonattainment area fails to attain the standard by its approved attainment date of December 31, 2021, the EPA would be required to publish in the **Federal Register** no later than June 30, 2022 its determination that the area failed to attain the NAAQS and is therefore reclassified as Serious by operation of law. The date of reclassification for the area would be the effective date of the **Federal Register** document, or sometime after June 30, 2022. To meet the requirements of section 189(b)(2), the Serious area attainment plan for the area would be due within 18 months thereafter, or no later than December 2023.

An alternative approach for setting the date of reclassification for an area reclassified to Serious under the EPA's mandatory authority could be to make it the same date as the missed attainment date for the area. Applying this approach in the example above would yield an earlier date of reclassification of December 31, 2021, and an earlier Serious area attainment plan due date of June 30, 2023.

Although section 188(b)(2) does not explicitly address this issue, the EPA believes that its proposed approach is a reasonable interpretation of statutory ambiguity in section 188(b)(2) and preferable over the alternative approach for two reasons. First, the statute at section 189(b)(2) gives a state 18 months from the date of reclassification of an area to submit for the EPA's approval an attainment demonstration with air quality modeling and provisions to assure timely implementation of BACM and BACT on sources in the nonattainment area. The EPA believes that it is reasonable for a state with a Serious $PM_{2.5}$ nonattainment area to have 18 months plus the additional time needed by the EPA to issue a **Federal Register** document announcing the area's failure to attain by the applicable Moderate area attainment date and subsequent reclassification (up to 6 additional months) to ensure that the state has time to develop and submit a thorough, complete and accurate Serious area attainment plan that will provide for timely attainment of the NAAQS. Second, the statutory attainment date for a Serious area reclassified under any circumstances is as expeditious as practicable but no later than the end of the tenth year following designation of the area, and is thus independent of the date of reclassification of the area. Allowing a state some additional amount of time beyond 18 months from the missed attainment date to develop and submit a complete Serious area attainment plan, including adopting BACM and BACT, will not change the statutory obligation on the state for the area to attain the relevant NAAQS by the applicable attainment date. On the contrary, the EPA believes that the extra time may in fact help the area timely attain the relevant NAAQS by allowing the state to develop a more effective attainment plan for the area.

The EPA seeks comment on its proposed approach of basing the date of reclassification for an area reclassified under the agency's mandatory duty in section 188(b)(2) on the effective date for the **Federal Register** document in which the EPA announces that the area failed to attain the $PM_{2.5}$ NAAQS by the applicable Moderate area attainment date and is reclassified by operation of law. The EPA intends to make determinations of whether or not an area attained the relevant NAAQS pursuant to section 188(b)(2) via notice-and-comment rulemaking.

VI. What are the EPA's proposed requirements for Serious area attainment plans?

Sections 189(b) and (c) of the CAA include the following requirements for Serious area attainment plan submissions: (i) An attainment demonstration (section 189(b)(1)(A)); (ii) provisions for the implementation of best available control measures (BACM) no later than 4 years after reclassification of the area to Serious (section 189(b)(1)(B)); (iii) quantitative milestones that will be used to evaluate compliance with the requirement to

[159] *See, Vigil* v. *Leavitt,* 366 F.3d 1025, amended at 381 F.3d 826 (9th Cir. 2004).

[160] 57 FR 13498 (April 16, 1992), at page 13537.

demonstrate RFP (section 189(c)); and, (iv) regulation of $PM_{2.5}$ precursors (in general to meet attainment and control strategy requirements and as specifically required for major stationary sources by section 189(e)). Other subpart 1 requirements for attainment plans not otherwise superseded under subpart 4 also apply to Serious areas for the $PM_{2.5}$ NAAQS, including: (i) A description of the expected annual incremental reductions in emissions that will demonstrate RFP (section 172(c)(2)); (ii) emissions inventories (section 172(c)(3)); (iii) other control measures (besides BACM and BACT) needed for attainment (section 172(c)(6)); and, (iv) contingency measures (section 172(c)(9)).

Additionally, section 189(b)(1) requires that ''in addition'' to the attainment plan requirements specific to Serious areas, states must also meet all Moderate area attainment plan requirements. The EPA interprets the statutory language of section 189(b)(1) to require states with areas that are reclassified to Serious to meet Moderate area attainment plan requirements, including any areas that the EPA reclassifies through rulemaking under its discretionary authority, even if that occurs before the area has met all of its Moderate area attainment plan requirements.[161]

The remainder of this section presents the EPA's proposed regulatory approaches to implement the requirements for attainment plan submissions for Serious areas.

A. Plan Due Dates

The timing of Serious area attainment plan elements is dictated by two provisions of the CAA: Section 189(b)(2) for certain subpart 4 elements and section 172(b) for subpart 1 elements not superseded by subpart 4 requirements. Section 189(b)(2) addresses the due dates for Serious area attainment demonstrations due under section 189(b)(1)(A) and provisions for BACM and BACT implementation under section 189(b)(1)(B). Specifically, section 189(b)(2) stipulates two alternative schedules for states to submit Serious area attainment demonstrations, depending upon the statutory authority invoked by the EPA to reclassify the area from Moderate to Serious. For an area reclassified to Serious by operation of law under section 188(b)(2) upon a determination by the EPA that the area failed to attain the relevant NAAQS by the applicable Moderate area attainment date, a state must submit a new attainment demonstration for the area no later than 18 months after reclassification. For an area reclassified to Serious pursuant to the agency's discretionary authority provided under section 188(b)(1), a state must submit a new attainment demonstration no later than 4 years after reclassification of the area.[162] For all Serious nonattainment areas, section 189(b)(2) requires a state to submit within 18 months of an area's reclassification ''provisions to assure that the best available control measures [BACM] for the control of PM_{10} shall be implemented no later than 4 years after the date the area is classified (or reclassified) as a Serious Area.''

In contrast, section 172(b) provides the EPA discretion to set a due date for subpart 1 attainment plan elements that is no later than 3 years after designation of the area. In the Addendum, the EPA interpreted the date of reclassification of an area to Serious to be analogous to the date of designation of the area to nonattainment generally.[163] If the EPA selects the proposed option, discussed later in this section, to adopt this convention, the subpart 1 attainment plan elements of provisions to demonstrate RFP, emissions inventories, additional control measures beyond BACM and BACT needed for expeditious attainment of the $PM_{2.5}$ NAAQS, and contingency measures could in theory be due as late as 3 years after reclassification of an area to Serious. For the reasons discussed below, the EPA believes that it is necessary to harmonize the submission dates of the various elements of a Serious are attainment plan for the $PM_{2.5}$ NAAQS to provide for more effective evaluation of such attainment plan submissions by states, the EPA and members of the general public.

As with Moderate area attainment plans consisting of both subpart 1 and 4 elements, the EPA presumes that simultaneous development and submission of most, if not all, of the Serious area attainment plan elements will be most effective, both for the state in developing the plan and for the EPA in reviewing the state's submission, given the interplay between all plan elements in the formation of a successful control strategy for the area. Just as importantly, a complete attainment plan submission facilitates the general public's review of the entire control strategy adopted by the state. Therefore where there is ambiguity in the statutory provisions, the EPA is proposing one or more approaches to schedule submission of the various elements of Serious area attainment plans in a way that will facilitate better development and evaluation of such attainment plan submissions. The EPA's proposed options for due dates for specific elements of a Serious area attainment plan are described below.

1. Area Reclassified to Serious After Failing To Attain the $PM_{2.5}$ NAAQS

If the EPA reclassifies a Moderate area to Serious because of a failure to attain the relevant NAAQS by the applicable attainment date, section 189(b)(2) requires that the state must submit both the attainment demonstration for the area and provisions to ensure timely BACM and BACT implementation to the EPA within 18 months after reclassification. Because an up-to-date base year emissions inventory, required under section 172(c)(3), will serve as the foundation of a state's BACM and BACT determination, and additional control measures (beyond BACM and BACT) that are necessary for expeditious attainment of the $PM_{2.5}$ NAAQS as required under section 172(c)(6) will need to be identified in order to complete the control strategy for the area, the EPA proposes that both the base year inventory and additional control measures (beyond BACM and BACT) needed for expeditious attainment must also be submitted within 18 months after reclassification of the area to Serious by operation of law.

The EPA also proposes and seeks comment on two possible due dates for the remaining Serious area attainment plan elements for areas that failed to attain the NAAQS by the applicable Moderate area attainment date. Those plan elements are provisions for RFP, quantitative milestones and contingency measures. The first proposed due date for these remaining Serious area attainment plan elements would be no later than 18 months after reclassification of the area, consistent with the due date for the plan elements already described above. As noted above, the EPA maintains that requiring states to submit all elements of an attainment plan by the same date is reasonable because it allows for a complete review of the state submission by the EPA, regulated entities, and the general public, and it also may prove most efficient for states. *See* proposed 40 CFR 51.1003(b)(2)(ii).

The alternate proposed due date for the remaining elements would be 3 years following reclassification to

[161] *See Vigil* v. *Leavitt,* 366 F.3d 1025, amended at 381 F.3d 826 (9th Cir. 2004).

[162] Section V of this preamble provides a more detailed discussion of the process for reclassifying areas with severe nonattainment problems to Serious.

[163] Addendum to the General Preamble, 59 FR 41998 (August 16, 1994), at page 42015.

Serious, which would be consistent with guidance the EPA provided in the Addendum specific to the due date for contingency measures for Serious areas.[164] This guidance references the EPA's discretion under section 172(b) to establish due dates up to 3 years after designation for attainment plan elements required under section 172(c), which also include RFP provisions. Subpart 4 meanwhile requires quantitative milestones to demonstrate RFP but does not specify a due date for submitting such milestones as part of the attainment plan for the area (as separate and distinct from the clear statutory requirements related to demonstrating compliance with those milestones established in the attainment plan). When taken together, the EPA believes that these statutory provisions may be read to permit a state to submit these three elements of the plan as late as 3 years after reclassification of the area. While the EPA does not believe that such a reading is as logical as the agency's first proposed approach, the EPA seeks comment on this alternative proposed approach to setting due dates for a state to submit an RFP plan, quantitative milestones and contingency measures for a Serious area reclassified under the EPA's mandatory authority.

2. Area Reclassified to Serious Due to an Inability To Practicably Attain the NAAQS by the Statutory Moderate Area Attainment Date

If the EPA determines that a Moderate area cannot practicably attain the relevant NAAQS by the applicable attainment date and reclassifies the area to Serious pursuant to its discretionary authority under section 188(b)(1), section 189(b)(2) requires the state to submit provisions to ensure timely implementation of BACM and BACT to the EPA within 18 months after reclassification. As stated earlier, because an up-to-date emissions inventory serves as the foundation for a state's BACM and BACT determination and pursuant to the authority granted to the EPA under section 172(b), the EPA proposes that the state must meet the emissions inventory requirement under section 172(c)(3) also within 18 months after reclassification of the area by submission of an up-to-date emissions inventory.

With respect to the attainment demonstration requirement for Serious areas reclassified pursuant to section 188(b)(1), section 189(b)(2) allows the state up to 4 years after reclassification to submit a new attainment demonstration for an area reclassified to Serious because it cannot practicably attain the $PM_{2.5}$ NAAQS by the applicable Moderate area attainment date. This due date could generally be appropriate, notwithstanding the related issues discussed in the following paragraphs, if the EPA finalizes an approach for determining the overall control strategy for the area in which BACM and BACT are identified independent of the attainment demonstration for the area (*see* proposed Option 1 for BACM and BACT determinations described in Section VI.D of this preamble).

However, the EPA is also proposing an alternative approach for determining the control strategy for a Serious area, under which BACM and BACT and additional feasible measures would be identified in conjunction with the attainment demonstration for the area (*see* proposed Option 2 for BACM and BACT determinations described in Section VI.D of this preamble). Under such an approach, the EPA proposes that the due date for the Serious area attainment demonstration would be no later than 18 months after reclassification if the EPA finalizes its proposed Option 2 for determining BACM and BACT for the area, as the attainment demonstration would be necessary in order for the EPA and the public to determine whether the control strategy identified for the area is adequate, and the statute requires that a state submit its BACM provisions within 18 months after reclassification of an area.

With respect to other elements of a Serious area attainment plan, under the EPA's prior interpretation as described in the Addendum, the EPA had suggested that states could submit contingency measures no later than 3 years after reclassification of an area to Serious because of the language of section 172(b).[165] The EPA believes it may be appropriate to extend a similar approach to establishing due dates for some other attainment plan elements required under subpart 1. Therefore, the EPA proposes to provide a state with the maximum time permitted under section 172(b)—3 years from the date of reclassification of the area—to submit the following plan elements: Provisions to demonstrate RFP, other control measures (beyond BACM and BACT) needed to bring the area into expeditious attainment, and contingency measures. The EPA proposes that quantitative milestones, required under subpart 4 but linked to RFP which is required under subpart 1, would also be included with the plan elements due 3 years following reclassification.

The EPA believes that this proposed due date for certain attainment plan elements required under subparts 1 and 4 would be most appropriate if finalized in conjunction with proposed Option 2 for BACM and BACT, which would require the state to submit the attainment demonstration for the area within 18 months after reclassification of the area to Serious. However, in the event the EPA finalizes proposed Option 1 for determining BACM and BACT for a Serious nonattainment area independent of the attainment demonstration for the area, the attainment demonstration for the area would be due no later than 4 years after the date of reclassification of the area to Serious. Given the integral role that the attainment demonstration plays in helping to identify additional feasible measures (beyond BACM and BACT) that an area may need to attain the relevant standard expeditiously (and which are required under section 172(c)(6)), to calculate emissions reductions needed on an annual basis to demonstrate RFP, and to calculate the emissions reductions that contingency measures need to achieve and identify what controls could constitute such measures, the EPA is proposing and seeking comment on an alternative submittal deadline for provisions for RFP and quantitative milestones, additional control measures needed for expeditious attainment, and contingency measures that would align their due date with the statutory Serious area attainment demonstration due date, no later than 4 years from the date of reclassification. *See* proposed 40 CFR 51.1003(b)(2)(i). The EPA believes that coordinating submission of attainment plan elements so that they may be developed and reviewed together can prove most efficient for the submitting state, the EPA, and the general public, and therefore this proposed alternative is the agency's preferred approach. However, the EPA seeks comment on all of its proposed due date options for the various elements of a Serious area attainment plan.

B. Emissions Inventory Requirements

1. What emissions inventory requirements apply to Serious area attainment plans?

As with $PM_{2.5}$ nonattainment areas classified as Moderate, Congress did not create a specific emissions inventory requirement in subpart 4 that would supersede the emissions inventory requirement under subpart 1 for Serious areas. Thus, the statutory emissions

[164] *Ibid.* at 42015.

[165] *Ibid.* at 42015.

inventory requirements that apply for Serious area attainment plans continue to be those of section 172(c)(3), which explicitly requires ''a comprehensive, accurate, and current inventory of actual emissions of the relevant pollutants'' in the nonattainment area. In addition, the specific attainment plan requirements for the $PM_{2.5}$ NAAQS set forth in section 189(a) and associated modeling requirements make an accurate and up-to-date emissions inventory a critical element of any viable attainment plan. Finally, the additional attainment plan requirements for the $PM_{2.5}$ NAAQS for Serious areas contained in subpart 4 at section 189(b) have additional requirements that affect the emissions inventory requirements for Serious areas.[166]

As noted earlier in this preamble, states must use the best available, current emissions inventory information for attainment plan development, because complete, high quality emissions inventory data are essential for the development of an effective control strategy. To assist states in preparing complete, high quality inventories, the EPA provides guidance for developing emissions inventories in its SIP Emissions Inventory Guidance, available at *http://www.epa.gov/ttn/chief/eidocs/eiguid/index.html*. The EPA recommends that states consult this guidance while developing emissions inventories to meet requirements for Serious area attainment plans.

2. How do states meet the inventory requirements for the $PM_{2.5}$ NAAQS for areas classified as Serious?

As with Moderate $PM_{2.5}$ nonattainment areas, neither section 172(c)(3) nor the provisions specifically applicable to attainment plans for the $PM_{2.5}$ NAAQS in subpart 4 specify how states should meet statutory emissions inventory requirements for Serious $PM_{2.5}$ nonattainment areas. Section 172(c)(3) requires that states submit ''a comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant or pollutants in such area, *including such periodic revisions as the Administrator may determine necessary to assure that the requirements of this part are met''* (emphasis added). The EPA interprets this provision to authorize the agency to require states to revise their base year emissions inventories whenever the state is required to submit a new attainment plan because of a change in the nonattainment area's status (*e.g.* failure to attain by the applicable attainment date resulting in reclassification). In addition, pursuant to CAA section 301, the EPA has additional authority to promulgate regulations as necessary for the implementation of the $PM_{2.5}$ NAAQS, including requirements pertaining to emissions inventories. Accordingly, the EPA is proposing specific emissions inventory requirements it considers necessary to effectuate the attainment plan requirements of the CAA for the $PM_{2.5}$ NAAQS.

Like Moderate areas, there are three key facets of the EPA's proposed emissions inventory requirements, as laid out below: (i) The types of inventories required; (ii) the content of these inventories; and, (iii) the timing of submittal of these inventories. The three facets are addressed in the following paragraphs.

First, the EPA proposes that the same two types of inventories required for Moderate areas are also required for Serious areas. While these inventories are the same types and names of inventories as for Moderate areas, they must be created specifically for Serious area attainment plans in accordance with the applicable Serious area requirements. The first type of inventory, the ''base year inventory for the nonattainment area,'' is expressly required by section 172(c)(3). The second type of inventory the EPA is proposing to require under section 301(a)(1) is necessary to implement the attainment demonstration requirement of section 189(a)(1)(B). This second inventory is called the ''attainment projected inventory for the nonattainment area.'' *See* proposed 40 CFR 51.1008(b)(1) and (2).

Second, the EPA proposes that the content of the inventories will follow the content requirements for Moderate area inventories, with one exception needed to meet the requirements of section 189(b)(3). For Serious areas, section 189(b)(3) defines a separate emissions threshold for major sources in Serious nonattainment areas (70 tpy potential to emit of PM_{10}), and this major source threshold is used in 40 CFR part 51, subpart A (the AERR) to define which sources must be reported as point sources for PM_{10}. This threshold is lower than the 100 tpy potential to emit general requirement for major sources of PM_{10}, $PM_{2.5}$ or one of its precursors that is used for Moderate area emissions inventories. Inventories for Serious area attainment plans must include these smaller sources as point sources (rather than the nonpoint source category that would apply for these in Moderate area plans) using the lower threshold specified in the CAA and codified in 40 CFR part 51, subpart A. Also as described above and in 40 CFR part 51, subpart A, this means that all other smaller stationary sources must be included in the inventory as nonpoint sources.

Third, Section VI.A of this preamble describes the EPA's proposal to require that a state submit the base year inventory for a Serious nonattainment area at the same time that it submits provisions to implement BACM and BACT on sources in the area (due no later than 18 months from reclassification of the area pursuant to section 189(b)(2)) as the base year inventory serves as the starting point for conducting a BACM and BACT determination. On the other hand, because the attainment projected inventory is more closely related to the Serious area attainment demonstration, the EPA believes that a state should be required to submit its attainment projected inventory with the attainment demonstration for a given Serious area in order to allow effective evaluation of the attainment plan as a whole. Consequently, the EPA is proposing to establish the regulatory requirement that attainment projected emissions inventories be submitted at the same time as the Serious area attainment demonstration, which would mean no later than 18 months after reclassification for areas reclassified after failing to attain the NAAQS by the applicable Moderate area attainment date, or no later than 4 years after reclassification for areas reclassified by the EPA because the area cannot practicably attain the NAAQS by the statutory attainment date if the EPA finalizes proposed Option 1 for determining BACM and BACT for area. *See* proposed 40 CFR 51.1008(b)(3) and (4). If the EPA finalizes an approach for determining BACM and BACT that links the control strategy analysis to the attainment demonstration, then the attainment demonstration including the attainment projected emissions inventory would be due no later than 18 months after reclassification (*i.e.,* at the same time BACM provisions are due under the statute).

The EPA seeks comment on these proposed requirements and due dates for emissions inventories for Serious area attainment plans.

C. Pollutants To Be Addressed in the Plan

Section III of this preamble includes a detailed discussion about how states should address $PM_{2.5}$ precursors in attainment plans and in the NNSR

[166] All definitions described in Section IV.B of this preamble for areas classified as Moderate apply in this section.

program for purposes of implementing current and future $PM_{2.5}$ NAAQS. While evaluating sources of direct $PM_{2.5}$ for BACM and BACT is an implicit requirement in the context of implementing the $PM_{2.5}$ NAAQS under any scenario, the EPA is proposing and seeking comment on several options for addressing $PM_{2.5}$ precursors under the $PM_{2.5}$ NAAQS implementation program. The EPA interprets the requirements of the CAA to allow an air agency to provide a ''precursor demonstration'' that can seek to make a technical case to the EPA that one or more $PM_{2.5}$ precursors need not be subject to control requirements in a given nonattainment area, whether from sources in general or from major stationary sources. Section III presented three options describing different proposed approaches to such precursor demonstrations, and requested comment on each. The discussion for each option described how precursors would be addressed for Moderate areas and for Serious areas.

In general terms, the three options can be summarized as follows:

- Option 1: Two independent analyses: (a) An attainment planning analysis demonstrating that control measures for a particular precursor are not needed for expeditious attainment, meaning that the precursor can be excluded from measures needed to attain as expeditiously as practicable for all types of sources; and, (b) a section 189(e) technical demonstration showing that major stationary sources of a particular precursor do not contribute significantly to levels that exceed the $PM_{2.5}$ standard, meaning that the precursor can be excluded from control requirements for major sources and from NNSR permitting. For an area reclassified to Serious, the state would once again need to evaluate potential control measures for all sources of direct $PM_{2.5}$ and all $PM_{2.5}$ precursor emissions as part of the control strategy determination process (described more fully in Section VI.D of this preamble).
- Option 2: Single analysis demonstrating that all emissions of a particular precursor from within the area do not significantly contribute to $PM_{2.5}$ levels that exceed the standard, meaning that control requirements for emissions of the precursor from major stationary and area sources, as well as mobile sources, would not be required for expeditious attainment, control requirements for major sources, or for NNSR permitting. For an area reclassified to Serious for which a precursor had previously been demonstrated to not significantly contribute to $PM_{2.5}$ levels that exceed the standard, the air agency would be required to update the precursor demonstration taking into account any relevant information or technical tools that had been developed since the initial demonstration was approved, but could still conclude that control requirements are not required for Serious area attainment planning if the updated demonstration still shows that all source emissions of a precursor do not significantly contribute to $PM_{2.5}$ levels that exceed the standard.
- Option 3: An attainment planning analysis demonstrating that control measures for all types of sources of a particular precursor are not needed for expeditious attainment also would be deemed to meet the section 189(e) technical demonstration requirement, meaning that the state would not need to regulate emissions of the particular precursor from major stationary sources under the NNSR permitting program or other control requirements for major stationary sources. As under proposed precursor Option 1, for an area reclassified to Serious, the state would once again need to evaluate potential control measures for all sources of direct $PM_{2.5}$ and all $PM_{2.5}$ precursor emissions as part of the control strategy determination process (*see* Section VI.D of this preamble).

The EPA will finalize its approach to $PM_{2.5}$ precursors and clarify the implications for states conducting analyses to determine the appropriate control strategy for a Serious area after considering public comment received on this proposal.

D. Attainment Plan Control Strategy

1. General Approach To Designing a Control Strategy for a Serious Nonattainment Area

As noted in Section IV.D of this preamble, the statutory attainment planning requirements of subparts 1 and 4 were established to ensure that states meet the following goals of the CAA: (i) Implement measures that provide for attainment of the $PM_{2.5}$ NAAQS as expeditiously as practicable, and (ii) adopt emission reduction strategies that will be the most effective, and the most cost effective, at reducing $PM_{2.5}$ levels in nonattainment areas. A state has discretion to require reductions from any source inside or outside of a $PM_{2.5}$ nonattainment area (but within the state's boundaries) in order to fulfill its obligation to demonstrate attainment in a $PM_{2.5}$ nonattainment area as expeditiously as practicable, in addition to having an obligation to meet the statutory requirements for specific control measures on sources located within a nonattainment area (*e.g.,* BACM and BACT). A state may need to require emissions reductions on sources located outside of a $PM_{2.5}$ nonattainment area if such reductions are needed in order to provide for expeditious attainment of the $PM_{2.5}$ NAAQS.

The following sections describe the EPA's proposed approach for a state to follow in order to identify and select the complete suite of measures needed for an approvable attainment plan submission for a Serious $PM_{2.5}$ nonattainment area.

2. Identification and Selection of BACM and BACT and Additional Feasible Measures

a. *Statutory requirements and existing guidance.* As discussed earlier, a state must prepare a new attainment plan for any Moderate area reclassified to Serious. Such a plan must include provisions to implement BACM on sources in a Serious nonattainment area, as provided by section 189(b)(1)(B), no later than 4 years after reclassification. Under section 189(b)(2), a state has 18 months following reclassification to submit these BACM provisions.

Section 189(b)(1)(B) refers only to BACM, but the EPA has long interpreted this term to include BACT, just as the analogous term for RACM includes RACT for Moderate areas. The legislative history for the 1990 Amendments to the CAA supports this interpretation, as the EPA has explained in past guidance.[167] Additionally, the requirement for BACT in the context of $PM_{2.5}$ NAAQS implementation in nonattainment areas is separate and distinct from the requirement for BACT under the Prevention of Significant Deterioration (PSD) permitting program for new stationary sources in areas designated as attainment or unclassifiable for the $PM_{2.5}$ NAAQS. As described later in this section, the process and criteria that states have historically used to determine BACT for PSD have been applied to determine BACT for PM_{10} NAAQS implementation, but these requirements are otherwise unrelated.

Longstanding guidance in the General Preamble and Addendum, together with past practice associated with implementing the PM_{10} NAAQS under subpart 4, have helped to establish a general approach for states and the EPA to determine BACM and BACT for Serious PM_{10} nonattainment areas. This approach has served as the basis for developing a more stringent control strategy for a Serious PM_{10} nonattainment area than that developed

[167] *Ibid.* at 42008–09.

for such area when it was classified as Moderate. Indeed, as BACM and BACT are required to be implemented when a Moderate nonattainment area is reclassified as Serious due to its actual or projected inability to attain the relevant NAAQS by the Moderate area attainment date through the implementation of ''reasonable'' measures, it is logical that ''best'' control measures should represent a more stringent and potentially more costly level of control.[168] The level of stringency generally refers to the overall level of emissions reductions of a control measure or technology, or of such measures and technologies combined.

Congress first defined BACT in CAA section 169(3) for the PSD permitting program as: ''an emission limitation based on the maximum degree of reduction of each pollutant . . . which the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such facility through application of production processes and available methods, systems, and techniques . . .''

In the Addendum, the EPA provided guidance concerning the requirements for BACM and BACT for Serious area attainment plan requirements for the PM_{10} NAAQS.[169] The EPA discussed in the Addendum that when Congress amended the CAA, Congress selected the same ''best'' terminology for PM_{10} nonattainment areas as they did for the language selected for the PSD program in 1977. The EPA interpreted this word choice at the time to mean that PSD BACT and PM_{10} nonattainment area BACM should be generally analogous in definition and implementation, but with some differences due to different end policy goals between the PSD and nonattainment area programs.[170] The EPA thus defined BACM for PM_{10} Serious nonattainment area planning to be the maximum degree of emission reduction achievable from a source or source category which is determined on a case-by-case basis, considering energy, economic and environmental impacts and other costs.[171]

The EPA has described BACM as a generally independent requirement, to be determined without regard to the specific attainment analysis (*i.e.,* attainment demonstration) for the area.[172] The EPA established that such an interpretation is in accordance with the structural scheme of the CAA, which by its definition requires that when an area is classified as Serious, BACM are implemented in addition to RACM. Because of the two types of measures employed, the EPA found it reasonable in the past to interpret the statute as requiring a different analysis for determining BACM, *i.e.,* that while RACM has been interpreted as those reasonable measures necessary to bring a nonattainment area into expeditious attainment, BACM has been interpreted as those measures that best control sources' emissions without regard to whether such measures are needed for purposes of attainment of the relevant NAAQS in the area. The view that BACM and BACT measures are generally independent of the attainment needs of the area is also consistent with the statutorily specified submission date for BACM and BACT control measures, versus the statutorily specified submission date for the attainment demonstration for Serious areas. Specifically, states with Serious nonattainment areas must submit BACM and BACT measures within 18 months of reclassification of areas to Serious, whereas they are given up to 4 years from reclassification to submit the attainment demonstration for such areas.

In addition, the EPA has historically provided an exemption from BACM and BACT for source categories that contribute only *de minimis* levels to ambient PM_{10} concentrations in a Serious nonattainment area. In the Addendum, the EPA proposed that all sources in a Serious area are subject to BACM unless ''the state adequately demonstrates that a particular source category does not contribute significantly to nonattainment of the NAAQS.''[173] Because the language regarding BACM implementation in section 189(b)(1)(B) of the CAA requires ''provisions to assure that best available control measures (BACM) for the control of PM_{10} shall be implemented . . .'' without stating that ''all'' BACM must be implemented, the EPA has interpreted this language as providing the EPA discretion to exclude from BACM requirements source categories that do not contribute significantly to an area's nonattainment status. Additionally, in the Addendum, the EPA argued that based on the decision in *Alabama Power Co.* v. *Costle,* the courts have supported the interpretation that sources that contribute negligibly to an area's nonattainment status can be excluded from regulation.[174] The EPA further indicated that the same criteria used in the NSR permitting program at the time to determine if a source category contributes significantly to an area's nonattainment status should apply, such that a source category would be considered a significant contributor to an area's nonattainment status if its emission contribution was expected to exceed 5 $\mu g/m^3$ for the 24-hour PM_{10} NAAQS (150 $\mu g/m^3$ at the time), or 1 $\mu g/m^3$ for the annual PM_{10} NAAQS (50 $\mu g/m^3$ at the time).

A discussion of the EPA's existing process and criteria for determining BACM and BACT for Serious PM_{10} nonattainment areas and the agency's proposed options for defining the criteria by which a state must determine BACM and BACT and additional feasible measures for a Serious $PM_{2.5}$ nonattainment area are presented in the sections that follow.

In accordance with the PM_{10} guidance in the Addendum, the EPA has applied a four-step process for states to use to identify measures that constitute BACM or BACT for sources located in PM_{10} Serious areas. The four-step BACM selection process was designed to take into account the local facts and circumstances and the nature of the air pollution problem in a given nonattainment area. The BACM determination process for PM_{10} Serious nonattainment areas has historically entailed: (i) Developing a comprehensive inventory of sources and source categories of directly emitted PM_{10} and PM_{10} precursors; (ii) evaluating source category impact and determining if any source categories are *de minimis* and thus do not need further evaluation for emission controls; (iii) evaluating alternative control measures available for significant source categories for technological feasibility; and, (iv) evaluating costs (*i.e.,* economic feasibility) of the technologically

[168] *Ibid.* at 42009.

[169] *Ibid.* at 42009.

[170] *Ibid.* at 42010. ''EPA will interpret PSD BACT and PM–10 BACM as generally similar because, despite the similarity in terminology, certain key differences exist between control measures applicable in the PSD and PM–10 serious nonattainment area programs. The BACT under the PSD program applies only in areas already meeting the NAAQS, while PM–10 applies in areas which are seriously violating the NAAQS. The difference in policy goals, arguably, suggests that the PM–10 BACM control standard should be more stringent than that for PSD BACT. . . . EPA considers it reasonable to use the approach adopted in the PSD BACT program as defined in section 169(3) of the Act as an analogue for determining appropriate PM–10 nonattainment control measures in serious areas, while at the same time retaining the discretion to depart from that approach on a case-by-case basis as particular circumstances warrant.''

[171] *Ibid.*

[172] *Ibid.* at 42011.

[173] *Ibid.* at 42011.

[174] *See Alabama Power Co.* v. *Costle,* 636 F.2d 323, 360–61 (D.C. Cir. 1979).

feasible control measures.[175] [176] These steps are described more fully below.

Step 1: Inventory sources and precursors. As with any control strategy analysis for a nonattainment area, the EPA recommended that a state begin with a current emissions inventory as the first step toward determining what constitutes BACM or BACT for a particular Serious PM_{10} nonattainment area. The EPA expected that a state would start with the base year emissions inventory submitted with the Moderate area attainment plan for the area as required under section 172(c)(3), and update it as necessary to reflect new source construction, facility shutdowns, growth in certain source categories, and any other relevant changes. The EPA reiterated in the Addendum that the emissions inventory for the area must identify both nonanthropogenic and anthropogenic emissions sources.[177]

Step 2: Evaluate source category impact. The next step in the BACM analysis for PM_{10} Serious areas was for the state to identify source categories having significant (*i.e.,* non-*de minimis*) impacts on air quality in the Serious area. The EPA suggested in the Addendum that receptor modeling, screening modeling, or refined dispersion modeling would likely be necessary to identify key source categories, which the state may have performed during the development of the Moderate area attainment plan.[178]

Step 3: Evaluate alternative control techniques. Once the significant source categories were identified for a PM_{10} Serious nonattainment area, the state was expected to evaluate the technological and economic feasibility of control measures ''discussed in the BACM guidance documents and other relevant materials for all source categories impacting the nonattainment area except those with a *de minimis* impact considering emission reductions achieved with RACM.'' [179] Control measures were supposed to be expanded to include options not previously considered RACM as well as consider additional measures not previously evaluated in the RACM analysis.

Under the Addendum, the test for determining technological feasibility could differ depending on the type of source category evaluated. For area sources, the EPA's guidance suggested that technological feasibility depended on the ability to alter the characteristics that affect emissions from the sources, such as the size or extent of the area sources and operation procedures. The EPA's guidance suggested that for specific point sources, technological feasibility should consider factors such as layout of the plant, space available to make changes in the plant, energy requirements, operating procedures, and materials used, among others.[180]

Step 4: Evaluate costs of control. The EPA's previous guidance recommended that a control should be considered economically feasible by the state when ''the control technology in question has previously been implemented at other sources in a similar source category without unreasonable economic impacts.'' [181] Feasibility of public funding for BACM could have been a consideration that states evaluated for all of the technologically feasible control measures determined in Step 3. Other costs that could be considered included capital costs, operating and maintenance costs, and the cost effectiveness of a particular control measure or technology.[182]

The EPA believes that the difference between RACM and BACM primarily lies in the extent of the actual emissions reductions achieved through the application of a given suite of candidate measures. For example, a state may have deemed a candidate RACM or RACT measure economically infeasible because its cost effectiveness (dollar per ton of pollutant reduced) was high relative to other measures, but the same measure could qualify as BACM if, for the increased cost, it would ultimately provide substantial $PM_{2.5}$ attainment benefits. An example of RACM might be to implement a particular control in a limited way, while BACM could mean a more widespread implementation of that same measure, even though wider implementation would incur greater cost. In the PM_{10} context, states and the EPA have determined that BACM have sometimes been measures that were first implemented as RACM, but were then later implemented on a broader scale as BACM in the nonattainment area after it was reclassified as Serious.[183]

While the proposed approaches and criteria for identifying appropriate control measures for a Serious area are necessarily different than for a Moderate area, it is important to note two similarities: first, that the EPA interprets the requirement under section 172(c)(6) for a state to adopt ''other measures'' needed for attainment to apply to sources located inside and outside of any $PM_{2.5}$ nonattainment area (but within the state's boundaries), whether the area is classified as Moderate or Serious; and, second, similar to the RACM requirement for Moderate nonattainment areas under subpart 4, section 189(b)(1)(B) requires that BACM must be implemented no later than 4 years after a Moderate area is reclassified to Serious.

Taking these two statutory provisions together, the EPA proposes that the other measures required under section 172(c)(6) must include ''additional feasible measures,'' which would be those measures and technologies that otherwise meet the criteria for BACM and BACT but that can only be implemented in whole or in part beginning 4 years after reclassification of an area, but no later than the statutory attainment date for the area. *See* proposed 40 CFR 51.1000. Such measures would necessarily be implemented on sources in the nonattainment area, and a state would only be required to implement them if they were needed in addition to BACM and BACT to bring the area into expeditious attainment. The state must

[175] For additional information, *see ibid.* at 42012–13.

[176] For examples of how states have applied these steps and criteria for Serious PM_{10} nonattainment areas and how the EPA has evaluated them, s*ee generally* Approval and Promulgation of Implementation Plans for California—San Joaquin Valley PM–10 Nonattainment Area; Serious Area Plan for Attainment of the 24-Hour and Annual PM–10 Standards, 69 FR 5412 (February 4, 2004); Approval and Promulgation of Implementation Plans for California—San Joaquin Valley PM–10 Nonattainment Area; Serious Area Plan for Attainment of the 24-Hour and Annual PM–10 Standards, 69 FR 30006 (May 26, 2004); Approval and Promulgation of Implementation Plans for Arizona; Maricopa County PM—10 Nonattainment Area; Serious Area Plan for Attainment of the 24-Hour and Annual PM–10 Standards, 73 FR 45542 (August 14, 2008); Approval and Promulgation of Implementation Plans; Arizona—Maricopa County PM–10 Nonattainment Area; Serious Area Plan for Attainment of the Annual PM–10 Standard, 65 FR 19964 (April 13, 2000), at page 19972.

[177] Addendum to the General Preamble, 59 FR 41998 (August 16, 1994), at page 42012.

[178] *Ibid.*

[179] *Ibid.* at 42012. At the time of publication of the Addendum, the EPA had already issued BACM guidance documents pursuant to section 190 for residential wood combustion, prescribed burning, and fugitive dust. The agency referred to these documents as establishing the control measures that a state should consider, at a minimum, as BACM for those PM_{10} sources in Serious PM_{10} nonattainment areas.

[180] *Ibid.* at 42013 (discussing in detail factors which affect the selection of mobile, area, and point source alternative control techniques for particulate matter).

[181] *Ibid.* at 42013.

[182] EPA Air Pollution Control Cost Manual, Sixth Edition, (EPA/452/B–02–001), July 2002 (explaining how to determine costs under a BACT analysis).

[183] Addendum to the General Preamble, 59 FR 41998 (August 16, 1994), at page 42014. The Addendum provides one example of RACM to reduce PM_{10}, to ''[p]ave 4 miles of unpaved city streets.'' *Ibid.* BACM for PM_{10} for the same nonattainment area could later mean to ''[p]ave 10 miles of the most heavily-traveled, unpaved county roads.'' *Ibid.* Therefore, the measure itself was not necessarily changed, but the extent to which the measure was implemented was significantly expanded. Such a measure would also contribute to more expeditious attainment of the NAAQS.

also assess whether there are other control measures that it can implement to control sources within the state but outside the nonattainment area that contribute to the $PM_{2.5}$ nonattainment status of the area in order to bring the area into attainment as expeditiously as practicable, and may consider existing measures that, applied more extensively, could meet the more stringent criteria for control measures that must be adopted to bring a Serious nonattainment area into expeditious attainment.

These ''additional feasible measures'' would be analogous to the ''additional reasonable measures'' in the proposed RACM and RACT analysis process, which are technologically and economically feasible measures that cannot qualify as RACM or RACT because they cannot be implemented within 4 years of designation of a Moderate nonattainment area. Under either of the two proposed approaches for determining BACM and BACT for sources in a Serious nonattainment area descrfibed later in this section, a state would identify additional feasible measures as part of the BACM and BACT determination process, just as additional reasonable measures would be identified as part of the state's RACM and RACT determination process.

The EPA recognizes that only a nonattainment area that is reclassified under the agency's discretionary authority might have sufficient time between the required date for implementing BACM and BACT and the statutory Serious area attainment date to implement additional measures beyond BACM and BACT. BACM and BACT must be implemented no later than 4 years after reclassification of the area; areas reclassified to Serious because they cannot practicably attain the relevant NAAQS by the applicable attainment date could potentially have significantly more than 4 years between the date of reclassification and the statutory Serious area attainment date, during which time the area could continue to implement additional measures to bring the area into attainment. By way of illustration, for areas designated in the first round of designations for the 2012 $PM_{2.5}$ NAAQS, the statutory Moderate area attainment date will be no later than December 31, 2021. If a state submits a Moderate area attainment plan by the statutory attainment plan due date (18 months after designation, or in this example, October 2016) and the plan demonstrates that the area cannot practicably attain the NAAQS by December 31, 2021, then the EPA has a statutory duty to reclassify such an area within 18 months of the attainment plan due date (*i.e.,* by April 2018). The statutory Serious area attainment date would be the end of the tenth year following designation, or December 31, 2025. In such a case, the state would need to implement BACM for the area within 4 years of reclassification, or by April 2022, leaving over 3.5 years between the statutory deadline for implementing BACM and the statutory attainment date for the area. The EPA's proposal to require the state to identify and adopt additional feasible measures for the area would mean that the state would need to identify those control measures and technologies that are feasible (according to the proposed BACM and BACT criteria described later in this section) and that can be implemented between April 2022 and December 2025. The EPA expects that while such a long span of time may be available only to a very few Serious nonattainment areas, it would be appropriate to require such areas to implement measures in addition to BACM and BACT if, taken together, they can advance the attainment date for the area by at least 1 year. The EPA seeks comment on its proposal to require additional feasible measures for Serious nonattainment areas as described here.

b. *Proposed approaches for determining BACM and BACT and additional feasible measures for Serious $PM_{2.5}$ nonattainment areas.* The EPA proposes and seeks comment on two approaches for a state to meet the statutory control requirements that apply for Serious nonattainment areas. The EPA is first proposing an approach consistent with prior guidance summarized in the preceding section of this preamble which would center on determining BACM and BACT and additional feasible measures ''generally independent'' of whether such measures are needed for expeditious attainment of the relevant NAAQS in a Serious $PM_{2.5}$ nonattainment area. Under this first proposed approach, states would have the option, with the proper evidence and justification, to eliminate *de minimis* source categories from consideration for controls.

The EPA's second proposed approach would require states to identify BACM and BACT and additional feasible measures simply within the context of what is necessary to bring an area into attainment as expeditiously as practicable. In other words, the second proposed option would take a different approach to determining Serious area control measures from the approach included in prior EPA guidance, in that it would allow states not to impose specific measures that would otherwise be BACM or BACT (or additional feasible measures) in the area, if those measures would not be necessary to bring the area into attainment with the relevant NAAQS by the statutory attainment date, and the collective emissions reductions from such measures would not be sufficient to advance the attainment date by at least 1 year in the area. A discussion of the proposed options follows.

i. *Proposed Option 1.* The EPA seeks comment on a proposed approach to maintain, with some modifications, the existing approach to determining BACM and BACT for Serious PM_{10} nonattainment areas to BACM and BACT determinations for Serious $PM_{2.5}$ nonattainment areas. Under this approach, a state would be required to determine BACM and BACT and additional feasible measures for a Serious $PM_{2.5}$ nonattainment area independent of an analysis of the specific attainment needs of the Serious area; in other words, the BACM and BACT analysis would need to be conducted without regard to whether all such controls are needed to bring the area into expeditious attainment. Keeping in mind that the overall objective of the implementation of BACM and BACT and additional feasible measures is to bring a Serious $PM_{2.5}$ nonattainment area into attainment as expeditiously as practicable, this option would continue to provide that the test for BACM puts a ''greater emphasis on the merits of the measure or technology alone,'' rather than on ''flexibility in considering other factors,'' in contrast to the approach for determining RACM and RACT described in both the EPA's past guidance and in this proposal in Section IV.D.[184] This Option 1 is consistent with the statutory provisions governing the timing for submission of BACM and BACT measures versus the timing for attainment demonstrations for Serious areas. By interpreting the statutory requirement for BACM and BACT for Serious $PM_{2.5}$ nonattainment areas as a requirement that a state must meet independent of the attainment planning needs of the area, the EPA would not consider such requirement to be a ''planning'' requirement tied to the actual attainment status of the area, and thus would not suspend such a requirement in the event the agency determines that a Serious area is attaining the relevant $PM_{2.5}$ NAAQS and

[184] *Ibid.*

in turn grants a clean data determination for the area.[185]

Under the EPA's first proposed approach, a state would be required to follow a multi-step process similar to the existing BACM process for PM_{10} (outlined earlier in this section) to identify and select control measures and technologies more stringent than RACM and RACT and additional reasonable measures for non-*de minimis* source categories in the nonattainment area. This process would involve analyzing the impact of the different source categories identified in the up-to-date base year emissions inventory for the area to identify those with a significant contribution to the area's $PM_{2.5}$ concentrations. Any source categories found not to have such an impact would be considered *de minimis* and therefore exempt from further consideration. The specific steps the EPA is proposing for this approach are explained below. *See* proposed 40 CFR 51.1010(a) for proposed Option 1.

Step 1: Update base year emissions inventory for the area. The first step under this proposed approach would be for the state to develop a detailed emissions inventory of the various sources and source categories that emit direct $PM_{2.5}$ and $PM_{2.5}$ precursors in the Serious area. This inventory should be the most comprehensive and accurate inventory available. The EPA expects that the work for this step would be completed in order to meet the emissions inventory requirements for Serious area plans as described in Section VI.B, and would start with reviewing and updating the emissions inventory submitted as part of the Moderate area attainment plan for the area.

Step 2: Evaluate source category impacts. As with BACM for $PM_{10,}$ the EPA proposes to allow states to exempt from further consideration *de minimis* source categories in Step 2 of the agency's first proposed approach for determining BACM and BACT for a Serious $PM_{2.5}$ nonattainment area. The EPA proposes to apply the same overarching test for identifying *de minimis* source categories as that described in the Addendum.[186] That is, if a state can demonstrate that a particular source category does not contribute significantly to nonattainment of the $PM_{2.5}$ NAAQS after the application of any RACM or RACT controls on the sources in the source category, then the state may eliminate the source category from further consideration for BACM or BACT.[187] A state would be required to evaluate for BACM and BACT controls all other sources in the nonattainment area in source categories that do not qualify as *de minimis.*

This option could be beneficial for some states that may already exclude *de minimis* PM_{10} source categories from BACM in Serious PM_{10} nonattainment areas or that may exclude *de minimis* $PM_{2.5}$ source categories from RACM and RACT and additional reasonable measures in Moderate $PM_{2.5}$ nonattainment areas. As discussed earlier, a state may rely on receptor or dispersion modeling conducted for the area as part of its Moderate area attainment plan. Alternative or additional modeling, including screening modeling, or filter analysis may also be necessary to identify significant contributors to $PM_{2.5}$ levels in the area. More discussion on the EPA's proposal regarding how to evaluate source category impacts and identify those that are *de minimis* can be found in Section IV.D of this preamble. The EPA notes that a state may face the same challenges in establishing *de minimis* source categories for $PM_{2.5}$ sources in a Serious nonattainment area as it did in establishing *de minimis* source categories for $PM_{2.5}$ sources when the area was classified as Moderate. Therefore, the EPA seeks comment on its proposed options, described in Section IV.D, for defining source categories and determining the appropriate threshold for *de minimis* emissions. The EPA requests that commenters submit any relevant data or analyses to support their comments. In the absence of compelling evidence to support establishing a nationally-applicable ''bright line'' threshold for defining a *de minimis* source category for purposes of implementing the $PM_{2.5}$ NAAQS in a Serious nonattainment area, the EPA would apply a presumptive approach allowing a state to apply its own reasoned judgment to determine whether a particular source category should be considered *de minimis* in the event the EPA finalizes proposed Option 1 for BACM and BACT determinations.

Step 3: Identify existing and potential control measures. After evaluating source category impacts to eliminate *de minimis* source categories from further consideration, the state would identify all existing and potential measures (including those measures that were rejected in the RACM and RACT determination and additional new potential measures) for reducing emissions from the remaining (*i.e.,* non-*de minimis*) source categories listed in the latest base year emissions inventory for the area. For purposes of identifying new measures to consider in its BACM and BACT analysis, the EPA proposes to require that the state conduct a survey of other nonattainment areas for the $PM_{2.5}$ NAAQS and other NAAQS (*i.e.,* PM_{10}, ozone, SO_2 and NO_X) both in the same state and in other states to identify potential control measures that other air agencies are implementing, and the state must incorporate such measures into the list of potential control measures for the source categories in the Serious nonattainment area. The EPA would expect the state to identify an array of existing and potential new measures at least as broad as that identified for the same area as part of the RACM and RACT analysis, in order to ensure that the state has a sufficiently expansive and comprehensive set of potential measures to evaluate. Therefore, at a minimum, the EPA proposes that the list of potential measures must include all measures identified as potential control measures for the nonattainment area when it was classified as Moderate or, for a given source category, one or more alternative control measures or technologies that would control emissions even more stringently than the measures and technologies included in the RACM and RACT analysis. In this way, the state will begin its BACM and BACT determination with a list of potential control options that is as complete and up-to-date as possible.

In addition to identifying existing control measures for sources in a Serious $PM_{2.5}$ nonattainment area, a state must develop a comprehensive list of potential control measures for sources in the area. The EPA's RACT/BACT/LAER Clearinghouse provides a central data base of air pollution technology information that may be highly relevant to states seeking information on stationary source control technology that may qualify as BACT for $PM_{2.5}$ NAAQS implementation, and is available online at *http://cfpub.epa.gov/RBLC/.* There are also other resources available to assist states in identifying other potential control measures and control technologies for their BACM and BACT determinations. The EPA encourages states with Serious $PM_{2.5}$ nonattainment areas to visit the agency's Web site to find links to other online sources of information on potential

[185] For a complete discussion of the EPA's Clean Data Policy and the EPA's proposal for applying this policy for purposes of implementing the $PM_{2.5}$ NAAQS, *see* Section IX.C of this preamble.

[186] Addendum to the General Preamble, 59 FR 41998 (August 16, 1994), at page 42011.

[187] *Ibid. See also Alabama Power* v. *Costle,* 636 F.2d 323, 360–61 (D.C. Cir. 1979).

control measures for states to consider.[188]

Specific to potential control measures for mobile source emissions, the EPA's past guidance has indicated that where mobile sources contribute significantly to $PM_{2.5}$ violations, ''the state must, at a minimum, address the transportation control measures listed in CAA section 108(f) to determine whether such measures are achievable in the area considering energy, environmental and economic impacts and other costs.'' [189] The EPA proposes to retain this guidance and require that a state include for evaluation as BACM for mobile sources those measures listed in section 108(f), and the agency seeks comment on this specific requirement.

Step 4: Determine whether an available control measure or technology is technologically feasible. After developing a list of existing and potential new measures to evaluate for BACM and BACT, the state would then need to determine the technological feasibility of each identified control measure in light of a number of considerations, including each measure's individual energy and environmental impacts.[190]

(1) Stationary sources. As described under the technological feasibility criteria for the control measures analysis for Moderate area attainment plans in Section IV.D, the EPA's prior guidance on factors to consider for judging whether a particular control technology is technologically feasible should include a source's processes and operating procedures, raw materials, physical plant layout and potential environmental impacts such as increased water pollution, waste disposal and energy requirements. For example, the EPA recognizes that the process, operating procedures and raw materials used by a source can affect the feasibility of implementing process changes that reduce emissions and can also affect the selection of add-on emission control equipment. The feasibility of modifying processes or applying control equipment also can be influenced by the physical layout of the particular plant, if the physical space available in which to implement such changes limits the choices.[191]

(2) Area and mobile sources. With respect to determining whether a given control measure might not be technologically feasible as BACM for an area or mobile source, the EPA proposes that a state may consider factors in conducting its analysis that are similar to factors the state may have considered during the RACM and RACT determination process, such as the social acceptability of the measure, and local circumstances, such as the condition and extent of needed infrastructure, population size or workforce type and habits, which may prohibit certain potential control measures from being implementable. However, in the instance where a given control measure has been applied in another NAAQS nonattainment area (for $PM_{2.5}$ or other pollutant), the EPA proposes that the state will need to provide a detailed justification for rejecting any potential BACM measure as technologically infeasible. Furthermore, if the state identifies a certain control measure for area or mobile sources that has been implemented in another nonattainment area and may qualify as BACM or BACT for the state's Serious nonattainment area, the state must provide a reasoned justification if it deems it technologically infeasible to implement the same control measure to the same extent or magnitude as it was applied in the other nonattainment area.

The EPA seeks comment on the factors described above for states to consider when evaluating the technological feasibility of a control measure or technology for BACM and BACT.

Step 5: Determine whether an available control technology or measure is economically feasible. The fifth step under this proposed approach is to evaluate the costs of implementing each of the technologically feasible control measures and technologies in order to eliminate from further consideration any measures determined to be economically infeasible. As discussed elsewhere in this proposal, in assessing ''best'' control measures and technologies, states with Serious $PM_{2.5}$ nonattainment areas must identify a control strategy for the area that overall is more stringent than that identified for the area when the state considered only the ''reasonableness'' of potential control measures. Thus the EPA is proposing to require states to consider emission reduction measures with higher costs per ton when assessing the economic feasibility of BACM and BACT controls (and, where applicable, additional feasible measures) as compared to the economic feasibility criteria applied in their RACM and RACT analysis (and analysis for additional reasonable measures) for the same nonattainment area.

Indeed, consistent with prior guidance on evaluating costs of a potential BACM or BACT control, the EPA maintains that while the economic feasibility of a control measure is as important as its technological feasibility under the RACM and RACT determination process, economic feasibility is a less significant factor in the BACM and BACT determination process. In other words, a state must apply a higher standard for eliminating a technologically feasible control measure from further consideration as BACM due to cost alone.

In the Addendum, the EPA stated that ''for PM_{10} BACM purposes, it is reasonable for similar sources to bear similar costs of emission reduction.'' [192] Additionally, the EPA indicated that ''economic feasibility for PM_{10} BACM purposes should focus upon evidence that the control technology in question has previously been implemented at other sources in a similar source category without unreasonable economic impacts.'' [193] Thus, a state may not eliminate a particular control measure from further consideration as potential BACM if similar sources have successfully implemented such a measure. That is, a state must at a minimum continue to consider as potential BACM any technologically feasible control measures or technologies implemented by similar sources.

In addition, the EPA seeks to clarify that a state may not automatically eliminate a particular control measure merely because other sources have not implemented the measure. In other words, a state must continue to consider technologically feasible measures that have not been implemented by similar sources but that can nonetheless effectively reduce emissions from the source category in question at a cost that is not wholly cost prohibitive.

As with the EPA's proposed approach for evaluating economic feasibility of potential reasonable measures for Moderate area attainment plans, the EPA proposes that for each technologically feasible control measure or technology, a state must evaluate the economic feasibility of the measure or control through consideration of the capital costs, operating and maintenance costs, and cost effectiveness (*i.e.,* cost per ton of pollutant reduced by that measure or technology) associated with such measure or control. While the EPA is

[188] Links are provided to a number of national, state and local air quality agency sites from the EPA's $PM_{2.5}$ Web site: *http://www.epa.gov/pm/measures.html.*

[189] Addendum to the General Preamble, 59 FR 41998 (August 16, 1994), at page 42013.

[190] *Ibid.* at 42012.

[191] *Ibid.* at 42013.

[192] *Ibid.*

[193] *Ibid.*

not proposing a fixed dollar per ton cost threshold for economic feasibility of controls identified as potential BACM and BACT, the EPA proposes that the threshold should be higher for the BACM and BACT analysis than it was for the RACM and RACT analysis for the same nonattainment area. In addition, if a state contends that a source-specific control-level should not be established because the source(s) cannot afford the control measure or technology that is demonstrated to be economically feasible for purposes of BACM for other sources in its source category, the state must support the claim with information regarding the impact of imposing the identified control measure or technology on the following financial indicators, to the extent applicable:

1. Fixed and variable production costs ($/unit);
2. Product supply and demand elasticity;
3. Product prices (cost absorption vs. cost pass-through);
4. Expected costs incurred by competitors;
5. Company profits
6. Employment costs;
7. Other costs (*e.g.,* for BACM implemented by public sector entities).

The EPA seeks comment on the factors described above for states to consider when determining whether a control measure or technology is economically feasible as BACM or BACT.[194]

Step 6: Determine the earliest date by which a control measure or technology can be implemented in whole or in part. Section 189(b)(1)(B) requires that Serious area attainment plans provide for the implementation of BACM no later than 4 years after reclassification of the area to Serious. As with the EPA's proposed approach to RACM and RACT, the EPA proposes the term ''implement'' to mean that the control measure or technology has not only been adopted into the SIP for the area but has also been built, installed and/or otherwise physically manifested and the affected sources are required to comply. *See* proposed 40 CFR 51.1000. The EPA thus expects a state with a Serious nonattainment area to take deliberate and timely action to implement BACM and BACT in the area. The EPA proposes that if a state evaluates a potential BACM or BACT measure and determines that it can be implemented only partially within 4 years after reclassification, the state must adopt the partial measure as BACM.

The EPA proposes that a state must identify those technologically and economically feasible control measures and technologies that it can implement fully or partially within 4 years of reclassification of its Serious $PM_{2.5}$ nonattainment area. These measures will be considered BACM and BACT for the area. ''Additional feasible measures'' would be ''best''-level, feasible measures that a state could implement in whole or in part on sources in the area sometime after the fourth year following reclassification and prior to the statutory attainment date for the area.

ii. *Proposed Option 2.* The second proposed approach for evaluating control measures and technologies and determining which qualify as BACM or BACT or additional feasible measures for a Serious $PM_{2.5}$ nonattainment area would directly link the control strategy determination process with the attainment demonstration for the area, allowing a state to eliminate potential measures that are not necessary to demonstrate attainment of the relevant NAAQS in the area and would not collectively advance the attainment date for the area by at least 1 year. For this second proposed approach, the EPA proposes a process similar to the one proposed for Moderate area control strategy determinations. However, the specific potential control measures to be evaluated as BACM and BACT and additional feasible measures would continue to be distinguished by stricter criteria to yield a set of control measures that reflects an overall higher level of stringency in the control strategy for the nonattainment area than that provided by the implementation of reasonable control measures (*i.e.,* RACM and RACT and additional reasonable measures).

Under the EPA's second proposed approach for determining which measures must be part of the control strategy for a Serious $PM_{2.5}$ nonattainment area, a state would follow many of the same steps as described under the EPA's first proposed approach for the such determinations, with two important differences. First, Step 2 as described above would be eliminated from the process. That is, after a state updates the baseline emissions inventory for sources located in the area, the state would be required to identify existing and potential new measures for all sources in the inventory for evaluation as potential BACM and BACT and additional feasible measures without exempting any source categories as *de minimis.* Second, Step 6 as described above would not be the last step in the control strategy determination process, but rather would serve as another interim step in the process prior to making a final determination of what constitutes BACM and BACT and additional feasible measures for the area through modeling for the attainment demonstration. The EPA's proposed requirements for what the state would need to evaluate during this step under this second proposed approach are described in greater detail in the following section.

The EPA emphasizes that proposed Option 2 for determining BACM and BACT and additional feasible measures depends on the state submitting its attainment demonstration earlier than may otherwise be required under the statute so that it can be contemporaneous with the submission of BACM and BACT measures, due 18 months after the date of reclassification of a $PM_{2.5}$ nonattainment area to Serious.

Given all of the above, the EPA is proposing and seeking comment on a second approach for determining BACM and BACT and additional feasible measures for a Serious $PM_{2.5}$ nonattainment area comprised of the following steps. *See* proposed 40 CFR 51.1010(a) for proposed Option 2. Note that Steps 1 through 5 would incorporate the same considerations and requirements as those in the equivalent steps described in the EPA's first proposed approach with the two important exceptions discussed in the preceding section:

Step 1: Update base year emissions inventory for the area.

Step 2: Identify existing and potential control measures for all emissions sources in the emissions inventory for the area.

Step 3: Determine whether an available control measure or technology is technologically feasible.

Step 4: Determine whether an available control measure or technology is economically feasible.

Step 5: Determine the earliest date by which a control measure or technology can be implemented in whole or in part.

During this step in the process, the state would be required to identify two groups of measures. The first group of measures would be potential BACM and BACT; that is, ''best''-level, feasible measures that the state could implement in whole or in part within 4 years of reclassification. The second group of measures would be additional feasible measures, defined as ''best''-level, feasible measures that a state could implement in whole or in part on sources in the area sometime after the fourth year following reclassification

[194] These long-standing factors were established in EPA guidance in 1992 and are applicable to implementation programs for all NAAQS pollutants. *See* the appendices to the General Preamble, 57 FR 18070 (April 28, 1992).

and prior to the statutory attainment date for the area.

Step 6: Model to determine the attainment date that is as expeditious as practicable. As with the proposed Moderate area attainment plan control strategy analysis, the EPA proposes that states would need to model air quality impacts to determine the Serious area attainment date that is as expeditious as practicable for the area. After developing an inventory, identifying potential measures, determining economic and technological feasibility, and determining whether a measure would be able to be implemented in 4 years or between 4 years from reclassification and the statutory attainment date for the area, the state would conduct modeling that shows the combined air quality impact of all BACM and BACT measures and additional feasible measures as applicable. The purpose of this modeling would be to determine the attainment date that is as expeditious as practicable and to identify whether there are certain control measures that a state could eliminate from the Serious area attainment plan because they cannot collectively expedite attainment of the area by 1 year or more. A complete discussion of the EPA's proposed modeling requirements for Serious area attainment demonstration is presented in Section VI.E below.

Step 6a: If area can demonstrate attainment by the statutory attainment date, then select only those control measures needed for expeditious attainment as BACM or BACT or additional feasible measures. Under this second proposed approach to BACM and BACT determinations, the EPA proposes that if a Serious area will be able to demonstrate attainment by the statutory Serious area attainment date, then the state must adopt all measures identified as potential BACM and BACT, and additional feasible measures if applicable, that will ensure that the attainment date is as expeditious as practicable. The state may, however, reject those potential BACM and BACT and additional feasible measures that would not collectively contribute to emissions reductions that could advance the attainment date for the area by at least 1 year.

The EPA recognizes that identifying the measures that would not collectively advance the attainment date for a Serious area by at least 1 year will likely be an iterative process that requires additional modeling. As with modeling for Moderate area attainment demonstrations, the EPA believes that such extra effort is reasonable for a state seeking to reject certain potential BACM or BACT or additional feasible measures from implementation in a given Serious nonattainment area.

One notable point of discussion in the Addendum indicates that short-term BACM measures are not preferred by the EPA unless such a measure is the only way to implement BACM within 4 years.[195] This is because the ultimate goal of selection of BACM controls is that those measures will prevent future emissions, rather than a temporary reduction of emissions. Therefore, consistent with this previous guidance, the EPA proposes that those measures that a state must reject first under this proposed approach would be those that offer only short-term emissions reductions.

Step 6b: If an area cannot demonstrate attainment by the statutory attainment date, then submit request for Serious area attainment date extension including adopting MSM. Section 189(b)(1)(A) of the CAA requires a state to submit as part of its Serious area attainment plan either a demonstration that the plan will provide for attainment by the statutory Serious area attainment date, or a demonstration that attainment by such date is ''impracticable.'' If the state cannot demonstrate attainment based on the implementation of all BACM and BACT and additional feasible measures by the end of the tenth calendar year following designation of the area, then under sections 189(b)(1)(A)(ii) and 188(e), the state must submit as part of its Serious area attainment plan a complete request to extend the attainment date for the area that meets the statutory provisions of section 188(e) and meets all of the regulatory criteria proposed under Section VII in this preamble, including the evaluation and adoption of MSM.

The EPA acknowledges that this second proposed approach for determining BACM and BACT and additional feasible measures for a Serious area, which would authorize states to link the attainment control strategy to the attainment needs for an area, is different from the approach the agency has historically applied to BACM determinations for PM_{10}. The EPA believes that effectively eliminating the step of exempting *de minimis* source categories the beginning of the control strategy determination process and linking the determination of BACM and BACT and additional feasible measures with the attainment analysis for a Serious area would not be a relaxation of the statutory requirement for implementation of ''best'' measures in Serious $PM_{2.5}$ nonattainment areas as Congress required in section 189(b)(1)(B), however. Rather, the agency believes that in order to ensure that a state develops an appropriately stringent control strategy for a Serious $PM_{2.5}$ nonattainment area, it is appropriate to require that state to identify and evaluate potential control measures for all sources of direct $PM_{2.5}$ emissions and emissions of any $PM_{2.5}$ precursors not otherwise found to contribute insignificantly to $PM_{2.5}$ levels in the area. Eliminating the possibility for *de minimis* source category exemptions means that a state's evaluation of potential control measures and technologies will be more thorough and comprehensive and potentially lead to the implementation of controls on a wider variety of source categories. Additionally, the test of whether the potential BACM and BACT and additional feasible measures not needed for an area to attain the NAAQS by the outside statutory attainment date could collectively advance the attainment date for the area by at least 1 year could result in a state implementing such measures on source categories which, if they had each been evaluated separately for purposes of a *de minimis* source category analysis, might have been exempted from control. Furthermore, as noted earlier in this section, in order for the state, the EPA, and the general public to be able to fully evaluate whether the selected control strategy (*i.e.,* BACM and BACT and additional feasible measures) will provide for expeditious attainment of the NAAQS in a Serious $PM_{2.5}$ nonattainment area, the state would be required to submit the attainment demonstration for the area at the same time as it submits provisions to meet the BACM and BACT requirement under section 189(b)(1)(B), 18 months after reclassification of the area to Serious. This date would be stricter than the statutory due date for a Serious area attainment demonstration for areas reclassified to Serious under the EPA's discretionary authority of section 188(b)(1), which is no later than 4 years from the date of reclassification of the area.

By defining a process for determining BACM and BACT and additional feasible measures in a way that is similar to the process for determining RACM and RACT and additional reasonable measures for the same area, the EPA believes that a state with a Serious $PM_{2.5}$ nonattainment area may be able to conserve resources by relying in part on the analytical work performed for the RACM and RACT analysis for the area when it was classified as Moderate. Furthermore, the challenges associated

[195] *Ibid.*

with properly identifying *de minimis* source categories as described earlier in this section may be avoided. Finally, the EPA believes that tying the final selection of BACM and BACT and additional feasible measures to the specific attainment needs of a nonattainment area could help to focus limited air agency resources on control measures that are most needed to bring a Serious area into expeditious attainment for the $PM_{2.5}$ NAAQS.

The EPA seeks comment on all aspects of both proposed approaches and criteria for determining BACM and BACT and additional feasible measures for a Serious nonattainment area. The agency may finalize either of the proposed approaches or various elements of each after analyzing submitted comments.

3. BACM and BACT Submittal Requirements

To ensure that attainment plan submissions contain the necessary supporting information for EPA review and approval of the state's selected BACM and BACT and additional feasible measures as applicable, the EPA proposes to require under the authority of section 301(a) that a state must submit the following information as part of its Serious area attainment plan submission:

- A list of all emissions source categories, sources and activities in the nonattainment area that emit direct $PM_{2.5}$ or any $PM_{2.5}$ precursor (for multi-state nonattainment areas, this would include source categories, sources and activities from all states which make up the area);
- For each source category, source or activity in the nonattainment area, an inventory of direct $PM_{2.5}$ and all $PM_{2.5}$ precursor emissions;
- For each source category, source or activity in the nonattainment area, a comprehensive list of potential control measures considered by the state for the nonattainment area; [196] [197]
- For each potential control measure considered by the state but eliminated from further consideration due to a determination by the state that the control measure or technology was not technologically feasible, a narrative explanation and quantitative or qualitative supporting documentation to justify the state's conclusion;
- For each technologically feasible emission control measure or technology, the state must provide the following information relevant to economic feasibility: (i) The control efficiency by pollutant; (ii) the possible emission reductions by pollutant; (iii) the estimated cost per ton of pollutant reduced; and, (iv) a determination of whether the measure is economically feasible, with narrative explanation and quantitative supporting documentation to justify the state's conclusion;
- For each technologically and economically feasible emission control measure or technology, the date by which the technology or measure could be implemented.

As with a Moderate area attainment plan submission, the EPA recognizes that the base year emissions inventory for the area that the state submits in conjunction with its Serious area attainment plan will likely contain the information proposed to be required under the first two items in this list. However, the EPA believes that it is incumbent on the state to ensure that the information needed for the EPA to evaluate the state's BACM and BACT and additional feasible measures analysis is presented as part of that analysis and in a format that provides transparency, consistency and the ability for another party to evaluate the state's analysis effectively and to duplicate the state's results. For this reason, the EPA is proposing to require the state to include the base year emissions inventory information with the BACM and BACT submittal and as one element of the state's attainment plan due 18 months after reclassification of the area to Serious.

4. Criteria for Effective Regulations To Implement BACM and BACT and Additional Feasible Measures

As with control measures identified as part of a Moderate area's attainment control strategy, after a state has identified its BACM and BACT and additional feasible measures for a particular nonattainment area, it must implement those measures through a legally enforceable mechanism to be included in the SIP. As with Moderate area control measures, the EPA is proposing that in order for the agency to be able to approve any Serious area control measure and approve it as part of the SIP, the state will have to provide information to meet the following four criteria.

First, the base year emissions from the source or group of sources to which the control measure applies and the future year projected emissions from those sources once controlled must be quantifiable so that the projected emissions reductions from the sources can be attributed to the specific measures being implemented. Once again, it is important that the emissions from the source category in question are accurately represented in the base year inventory so that emissions reductions are properly calculated. In particular, it is especially important to ensure that both the filterable and condensable components of $PM_{2.5}$ are accurately represented in the base year.

Second, the control measures must be enforceable, meaning that they must specify clear, unambiguous and measurable requirements. The measurable requirements for larger emitting facilities must include periodic source testing to establish the capability of such facilities to achieve the required emission level. Additionally, to verify the continued performance of the control measure, specific emissions monitoring programs appropriate for the type of control measure employed and the level of emissions must be included to verify the continued performance of the control measure. The control measures and monitoring program must also have been adopted according to proper legal procedures.

Third, the results of application of the control measures must be replicable. This means that where a rule contains procedures for interpreting, changing or determining compliance with the rule, the procedures are sufficiently specific and objective so that two independent entities applying the procedures would obtain the same result.

Fourth, the control measures must be accountable. For example, source-specific emission limits must be permanent and must reflect the assumptions used in the attainment plan for the area, including the modeling conducted in conjunction with the attainment demonstration. The attainment plan must establish requirements to track emissions changes at sources and provide for corrective action if emissions reductions are not achieved according to the plan.

The EPA seeks comment on these criteria for approval of any control measures adopted by a state for a Serious area to assure that such measures are legally enforceable.

[196] The EPA believes that it is not necessary to identify every possible variation of every type of control measure, or all possible combinations of technologies and measures that would apply to a given source or activity, as long as the state has properly characterized the potentially available emissions reductions and their costs. For example, the EPA believes that the state can conduct a thorough analysis of VMT reduction measures without including every possible level or stringency of implementation of certain possible measures or combinations of measures for reducing VMT, so long as those measures would not affect the overall assessment of VMT reduction capabilities and the associated costs.

[197] The Menu of Control Measures document is available at: *http://www.epa.gov/air/criteria.html.*

5. Relevance of Prior BACT, LAER and BART Determinations

The EPA believes that BACT or lowest achievable emission rate (LAER) provisions for new sources (as distinct from BACT for existing sources), or best available retrofit technology (BART) for existing sources, could qualify as BACM or BACT for purposes of meeting the Serious area attainment plan requirements. However, the EPA does not believe it is appropriate for a state to assume that just because a certain control technology was determined to meet BACT, LAER, or BART criteria for a new source, such a control will also automatically meet the criteria for BACM or BACT or additional feasible measures for attainment planning purposes because the regulated pollutant or source applicability may differ and the analyses may be conducted many years apart. Thus, a state may not simply rely on prior BACT, LAER or BART analyses for the purposes of showing that a source has also met BACT for the relevant $PM_{2.5}$ NAAQS. Rather, the EPA expects that in Step 2 of either of the agency's proposed approaches to the BACM and BACT determination process, the state would identify such measures as ''existing measures'' that should be further evaluated as potential BACM or BACT or additional feasible measures.

6. Multi-State Nonattainment Areas

States that share a multi-state Serious $PM_{2.5}$ nonattainment area must consult with one another on BACM and BACT and additional feasible measures that will be required for the nonattainment area in the different states. This requirement would be consistent with the overall requirements for BACM and BACT and additional feasible measures determinations, as all states with Serious areas need to consider implementing BACM and BACT-level measures that have been implemented in other states, even if those measures incur higher costs. The EPA anticipates that states may potentially adopt controls that differ from state to state, based upon each state's determination of what qualifies as ''best'' given the mixture of sources and potential controls in the state portions of relevant nonattainment areas, subject to EPA approval. If the state can adequately demonstrate that its chosen BACM and BACT and additional feasible measures fully meet the EPA's proposed criteria for such measures, then the agency may consider approving individual state plans that differ in implementation of control measures.

7. Environmental Justice Considerations for Developing the Attainment Plan Control Strategy for a Serious $PM_{2.5}$ Nonattainment Area

The EPA strongly urges states to consider the environmental justice aspect of any control measures they have identified as BACM and BACT or additional feasible measures. Because the criteria for determining BACM and BACT will lead in most cases to the selection of an overall more stringent control strategy in a Serious area than what RACM and RACT could provide, an appropriate control strategy for a Serious nonattainment area will likely implicitly include the best measures for ensuring that overburdened populations are appropriately protected. Nonetheless, the EPA encourages states when possible to select BACM and BACT measures that will result in the least possible burden and greatest degree of health protection for overburdened populations in the nonattainment area.

E. Modeling for Attainment Demonstrations

Section IV.E. describes the EPA's proposed attainment demonstration and modeling requirements for Moderate area plans, and the EPA is proposing that the same general requirements should apply to Serious area attainment demonstrations. However, Serious area plans have additional statutory requirements, which the EPA proposes to address as described below.

1. Statutory Requirements

Section 189(b) generally requires a state with a designated Serious nonattainment area to submit an attainment plan for such area. As discussed earlier, section 189(b)(1)(A) more specifically requires the state to submit an attainment demonstration including air quality modeling to establish either: (i) That the area will attain the relevant NAAQS by the applicable attainment date, or (ii) if the state is seeking an extension of the attainment date, that it is impracticable for the area to attain the relevant NAAQS by the statutory Serious area attainment date. For Serious nonattainment areas, the attainment date is as expeditiously as practicable, but no later than the end of the tenth calendar year after designation as nonattainment. An attainment demonstration that shows that it is impracticable for the area to attain within this timeframe must also provide for attainment of the NAAQS by the most expeditious alternative date practicable, but no later than 5 years after the maximum statutory Serious area attainment date (based on the criteria specified in section 188(e)).

Attainment demonstrations are due 18 months after reclassification if the EPA reclassifies the area to Serious after failure of the area to attain the applicable Moderate area deadline. Alternatively, section 189(b)(2) requires states with designated Serious nonattainment areas to submit attainment demonstrations no later than 4 years after reclassification of the area to Serious if the reclassification occurs before the Moderate area attainment deadline. However, the EPA is proposing an approach for determining an appropriate attainment plan control strategy for a Serious $PM_{2.5}$ nonattainment area that would require the state to submit the attainment demonstration for the area within 18 months after reclassification regardless of when or the authority under which an area was reclassified to Serious. Sections VI.A and VI.D of this preamble describe more fully the EPA's proposed approach for control strategy analyses and due dates for all elements of a Serious area attainment plan. Section VI.J of this preamble provides a complete discussion of the EPA's proposed criteria for granting a Serious area attainment date extension.

2. Attainment Demonstrations for Serious Areas

As described in Section IV.E of this preamble, an attainment demonstration is a plan that demonstrates how a state will attain the $PM_{2.5}$ NAAQS by the applicable attainment date. The EPA is proposing that the demonstration for Serious areas must consist of: (i) Technical analyses such as base year and future year modeling of emissions which identify sources and quantify emissions that are contributing to violations of the $PM_{2.5}$ NAAQS; and, (ii) analyses of future year projected emissions reductions and air quality improvement resulting from existing (*i.e.* already-adopted or ''on the books'') national, regional and local programs, and potential new local measures needed for attainment, including RACM and RACT and BACM and BACT controls for the area, as well as other measures either inside the nonattainment area or outside the nonattainment area but within the state that could potentially accelerate attainment. Each state with a Serious nonattainment area must submit an attainment plan with an attainment demonstration that includes analyses supporting the state's determination of its proposed attainment date. In all cases, the state must show that the area

will attain the NAAQS as expeditiously as practicable, but not later than the tenth calendar year after designation. In order to establish that the attainment date is as expeditious as practicable, the state must explain why the control measures adopted in the attainment plan provide for the most expeditious attainment and must either: (i) Under proposed Option 1 for the BACM and BACT determination include all BACM and BACT controls in the analysis, or (ii) under proposed Option 2 for BACM and BACT, provide the requisite analysis to show that implementation of additional emissions controls, including any potential BACM and BACT, would not advance the attainment date for the area by at least 1 year if considered collectively.

A state with a Serious nonattainment area can also submit an impracticability demonstration (under section 189(b)(1)(A)(ii)) as part of seeking an extension of the attainment date under section 188(e). The impracticability demonstration for a Serious area would be similar to an impracticability demonstration for Moderate areas because it must include air quality modeling which shows that the area will not be able to attain the $PM_{2.5}$ NAAQS by the outside statutory attainment date, which in this case is by the end of the tenth calendar year following designation. However, in order to support a Serious area impracticability demonstration, the state must also show (through modeling) that attainment cannot be reached by the statutory Serious area attainment date, even if all RACM and RACT and BACM and BACT controls, as well as other measures either inside the nonattainment area or outside the nonattainment area but within the state, were implemented before the attainment date. Moreover, in addition to the Serious area impracticability demonstration, to support an extension of the attainment date, the Serious area plan must demonstrate (again, using air quality modeling) that it provides for attainment by the most expeditious alternative date practicable employing MSM, as specified in section 188(e). As a result, the required plan is both an impracticability demonstration (to justify an extension beyond the statutory attainment date) and an attainment demonstration which serves as the basis for proposing an appropriate alternative attainment date.

3. What modeling is required?

States are required to submit air quality modeling in support of an attainment demonstration for a Serious $PM_{2.5}$ nonattainment area. Unlike the impracticability demonstration for Moderate areas described in section 189(a)(1)(B)(ii), the impracticability demonstration for Serious areas in section 189(b)(1)(A)(ii) also requires air quality modeling establishing the most expeditious alternative attainment date practicable. Therefore, air quality modeling is a required element in all attainment demonstrations for Serious areas.

Other than the timing of plan submissions and additional required elements of a Serious area plan (such as BACM and BACT), the relevant air quality modeling procedures and guidance for Moderate and Serious area plans are the same. *See* Section IV.E. of this preamble for more details on proposed modeling requirements and guidance for all $PM_{2.5}$ nonattainment areas.

4. Will areas reclassified to Serious need to submit two separate attainment demonstrations?

Under section 189(a)(1)(B), a state is required to submit as part of an area's Moderate area attainment plan a demonstration that the area either will attain or cannot practicably attain the NAAQS by the statutory Moderate area attainment date. Regardless of whether the state submits an attainment demonstration or an impracticability demonstration for a Moderate area, if such area is reclassified to Serious prior to or after failing to attain the applicable NAAQS, the state is required under section 189(b)(1)(A) to submit a new attainment demonstration as part of an area's Serious area attainment plan. The separate statutory requirements for Moderate and Serious nonattainment areas anticipate two separate attainment plan submissions, and the EPA's existing guidance in the General Preamble and Addendum further support this expectation. While the state would be required to submit a separate Serious area attainment plan, the EPA anticipates that certain control strategies may build upon those previously adopted and implemented as part of the Moderate area plan. For example, it could be the case that an area dominated by woodsmoke emissions could not attain the standard by the statutory Moderate area attainment date because all necessary woodstove change-outs could not occur in that timeframe, but additional woodstove change-outs could occur by the statutory Serious area attainment date.

5. What future year(s) should be modeled in attainment demonstrations?

A state performing a modeling analysis for an attainment demonstration or a Serious area impracticability analysis must select a future year for the analysis. For an attainment demonstration, a state should select the future modeling year such that all emissions control measures relied on for attainment will have been implemented by the beginning of that year. To demonstrate attainment, the modeling results for the nonattainment area must predict that emissions reductions implemented by the beginning of the last calendar year preceding the attainment date will result in $PM_{2.5}$ concentrations that meet the level of the standard.[198]

While states should choose the future modeling year based on a number of factors, the EPA recommends the last year of the statutory attainment date as a starting point for modeling for two reasons. First, a state with a Serious area for which it submits an attainment date extension request under section 188(e) must show that the area cannot practicably attain the NAAQS by the end of the tenth calendar year following designation of the area. Therefore, the appropriate future modeling year for making such a demonstration would be the tenth year after designations. Even if a state does not submit (or does not intend to submit) a Serious area attainment date extension request, modeling the tenth year is a logical starting point to determine if attainment by year 10 is likely. If attainment-level concentrations of $PM_{2.5}$ are not expected in the tenth calendar year after designations, then the area must also, as a requirement to receive an extension of the Serious area attainment date, submit a demonstration (using air quality modeling) that provides for attainment by the most expeditious alternative date practicable, but no later than the end of the fifteenth year after designation, with the implementation of MSM (*see* Section VI.J of this preamble for details about MSM determinations).

Second, even though attainment of any $PM_{2.5}$ NAAQS is determined based on 3 years of ambient data, states do not have to model 2 years before the attainment date to show modeled attainment. Since the design value is an average of the annual or 98th percentile value for 3 consecutive years, attainment can still be shown even if concentrations exceed the NAAQS in one or more of the 3 years used to determine attainment (as long as the average of the 3 annual values is less

[198] Note that for purposes of the $PM_{2.5}$ NAAQS, a determination of attainment (or failure to attain), which the EPA is required to make after the attainment date has passed, is based on ambient data from the most recent 3 years prior to the attainment date for the area.

than the NAAQS). Therefore, it can be appropriate to model any of the 3 years used to determine attainment. For these reasons, it is acceptable, and may in fact be most efficient, for a state to begin the Serious area attainment demonstration process by modeling the final year of the statutory attainment date to determine future year modeled $PM_{2.5}$ concentrations in the tenth year after designations.

Because an area must attain ''as expeditiously as practicable,'' additional considerations are necessary before an attainment date can be established. For purposes of determining the attainment date that is as expeditious as practicable, the state must conduct future year modeling which takes into account growth and known controls (including any controls that were previously determined to be RACM and RACT for the area). For example, for an area designated nonattainment for the 2012 $PM_{2.5}$ NAAQS during the first round of designations and subsequently reclassified to Serious, a future case scenario for the year 2025 (10 years after the initial nonattainment designation) would be needed to examine whether the the BACM and BACT identified by the state would result in attainment. Under the proposed BACM and BACT determination Option 1 (where BACM and BACT must be determined independent of the attainment demonstration for the area), the future case scenario must include BACM and BACT controls in the analysis plus any additional measures on sources inside and outside of the nonattainment area (but within the state) that the state has identified as feasible to implement by the attainment date. Under proposed Option 2 for determining BACM and BACT (where BACM and BACT is determined according to what is needed to expeditiously attain the NAAQS), the future case scenario must show whether implementation of emissions controls, including all BACM and BACT and additional feasible measures on sources inside and outside of the nonattainment area (but within the state), collectively would advance the attainment date by at least 1 year. Note that similar to RACM and RACT, BACM and BACT controls must be implemented within 4 years after reclassification to Serious nonattainment. In order to justify an extension of the attainment date beyond the end of the tenth year after designation, the state must show that attainment by that date (including the anticipated emissions reductions from RACM and RACT and additional reasonable measures, and BACM and BACT and additional feasible measures) would be impracticable. Any proposed attainment date after the 10 year period must include modeling of BACM and BACT controls plus the most stringent measures that are included in the implementation plan of any state and can be feasibly implemented in the area. The attainment date extension beyond 10 years can be for up to 5 additional years, but the proposed attainment date must also be shown to be as expeditious as practicable. Section VI.J of this preamble provides a complete discussion of the EPA's proposed interpretation of the statutory requirements for a Serious area attainment date extension under section 188(e).

As with Moderate area attainment demonstrations, the EPA believes that it is not necessary or reasonable to require states to model each and every year to determine the appropriate attainment date for a Serious $PM_{2.5}$ nonattainment area given the resource demands associated with modeling.[199] In some cases it may be reasonable to model one additional interim year before the maximum statutory attainment date. However, in most cases, the air quality benefits of an identified set of reasonable control measures, BACM and BACT and additional feasible control measures can be estimated through model sensitivity analyses and the development of transfer factors (factors to relate tons of emissions reductions in the area to $PM_{2.5}$ concentration changes in the area). The EPA strongly recommends that states discuss the selection of the future year(s) to model with their respective EPA Regional Office as part of the modeling protocol development process prior to embarking on the modeling.

6. Attainment Year Motor Vehicle Emissions Budgets

As with Moderate areas, the transportation conformity rule requires that Serious area attainment plans establish motor vehicle emissions budgets for the area's attainment year. Therefore, once a Serious area's attainment date has been established, the state is required to establish motor vehicle emissions budgets for direct $PM_{2.5}$ and any relevant $PM_{2.5}$ precursor for the attainment year.[200] A motor vehicle emissions budget for the purposes of a Serious area $PM_{2.5}$ attainment plan is that portion of the total allowable emissions within the nonattainment area allocated to on-road sources as defined in the submitted attainment plan.[201] Such motor vehicle emissions budgets would be calculated using the latest planning assumptions and the latest approved motor vehicle emissions model available at the time that the attainment plan is developed.[202]

F. RFP Requirements

1. Statutory Requirements

As with Moderate area attainment plans, Serious $PM_{2.5}$ nonattainment area plans must provide for RFP as required under CAA section 172(c)(2). Section IV.F of this preamble fully describes the statutory requirements and overall proposed approaches for states to fulfill the RFP requirement in the context of Moderate area attainment plans. The EPA believes that the proposed approaches described for RFP for Moderate area plans can apply to Serious area attainment plans as well. The following section offers additional detail about how the EPA proposes that the approach to RFP should apply specifically to Serious area attainment plans.

2. Proposed Approach

As with a Moderate area attainment plan, the EPA is generally proposing that a state must submit an RFP plan as part of any attainment plan submission for a Serious nonattainment area in order to satisfy the statutory requirements for RFP. The plan must include a schedule and an analysis that collectively demonstrate when and through what control measures emissions from sources in the nonattainment area will decline from the applicable baseline year to the projected attainment year. The EPA is proposing that the applicable baseline year must be the same year as that represented by the latest base year inventory for the Serious area. The projected attainment year may be up to the end of the tenth year following designation of the area for a Serious area

[199] States with Serious areas that request an attainment date extension beyond 10 years must model the tenth year after designation of the area as part of an impracticability demonstration, plus an additional year beyond that which represents the attainment date.

[200] For more information on $PM_{2.5}$ precursor requirements, *see* section 93.102(b)(2)(iv) and (v) of the transportation conformity rule. *See also* the May 6, 2005, final transportation conformity rule that addressed requirements for $PM_{2.5}$ precursors. (70 FR 24280).

[201] A state would also establish motor vehicle emissions budgets for an area's attainment year. Those budgets would be the motor vehicle emissions that the SIP establishes as being necessary to attain the NAAQS.

[202] If an area includes re-entrained road dust in the motor vehicle emissions budget, the latest approved version of AP–42 should be used unless the EPA has approved an alternative model for the area.

that can demonstrate attainment pursuant to section 189(b)(1)(A), or up to the end of the fifteenth year following designation for a Serious area that is seeking an extension to the statutory attainment date pursuant to section 188(e).[203] The RFP analysis must clearly convey how the schedule for implementing BACM and BACT and any additional control measures will provide for generally linear progress towards attainment or, if step-wise progress is more appropriate for the specific nonattainment area in question, the analysis must convey an appropriate implementation schedule and must explain why generally linear progress towards emissions reductions in the area is not appropriate (*e.g.,* due to the nature of the nonattainment problem and the types of sources contributing to $PM_{2.5}$ levels in the area). For a Serious area that cannot demonstrate attainment by the statutory Serious area attainment date, the EPA proposes that the state must include in its RFP analysis the anticipated emissions reductions expected to be achieved through the implementation of BACM and BACT and MSM on sources in the nonattainment area. As with RFP plans for Moderate areas, the EPA proposes that a state must submit one or more projected emissions inventories as part of the RFP plan for any Serious $PM_{2.5}$ nonattainment area following the same guidance that applies to emissions inventories for attainment plans (*see* Section VI.B of this preamble for a complete discussion of emissions inventories for Serious area attainment plans). These projected inventories must correspond with the quantitative milestone date(s) for the area as described in Section VI.H of this preamble. The EPA proposes that motor vehicle emissions budgets must also be established for direct $PM_{2.5}$ and any relevant $PM_{2.5}$ precursor using the latest planning assumptions and the latest approved motor vehicle emissions model available at the time that the Serious area attainment plan is developed.[204]

The EPA seeks comment on all aspects of the agency's proposal for meeting the statutory RFP requirements as they apply to Serious nonattainment areas. Furthermore, the EPA seeks comment on the proposed options described in Section IV.F of this preamble regarding how to prepare an RFP plan, geographic coverage of emission sources for RFP, and RFP requirements for multi-state nonattainment areas, which would also apply to Serious area attainment plans.

G. Quantitative Milestones

The attainment plan for any Serious nonattainment area must include quantitative milestones pursuant to section 189(c). These quantitative milestones would be in addition to those identified in the area's Moderate area attainment plan, and would need to continue to be achieved every 3 years until the area attains the NAAQS. Specifically, the Serious area plan for an area that can demonstrate attainment by the statutory Serious area attainment date would have to contain quantitative milestones to be achieved by 7.5 years from the area's date of designation as nonattainment. This date would be 3 years after the first quantitative milestones for the area, to be met 4.5 years from designation of the area and 3 years after the Moderate area attainment plan was due to the EPA. The EPA also proposes and seeks comment on a requirement that a Serious area plan for an area that can demonstrate attainment by the statutory Serious area attainment date must also include quantitative milestones to be reached 10.5 years from designation, to help assess the state's progress toward attaining the $PM_{2.5}$ NAAQS in the event the area fails to attain by the applicable attainment date. For a Serious area that cannot demonstrate attainment by the statutory Serious area attainment date, the EPA proposes that the state must include in the Serious area attainment plan quantitative milestones to be achieved at years 7.5, 10.5 and 13.5 from the area's date of designation.

The Addendum included guidance that recommended milestones ''should be addressed by quantifying and comparing the annual incremental emission reductions which result from implementation of BACM and BACT (required within 4 years after the area is reclassified as serious) and from additional measures included in the final serious area SIP to those reductions which were identified in the SIP as quantitative milestones necessary to achieve the NAAQS by the applicable attainment date.'' [205]

The EPA continues to agree with the fundamental concept conveyed in the existing guidance, but believes that it is impractical to expect that a state will always be able to quantify and compare real and projected emissions reductions, and submit a report to the EPA within 90 days of a given milestone, as required under section 189(c)(2). Therefore, the EPA proposes that the general proposed approach to selecting quantitative milestones, described in Section IV.G, should apply to any attainment plan for a $PM_{2.5}$ nonattainment area, independent of its classification. Specifically, the EPA proposes that states be allowed to select the quantitative milestones that they identify as appropriate and quantifiable and that will provide for objective evaluation of progress toward attainment in their Serious $PM_{2.5}$ nonattainment area, and that the EPA, in its attainment plan approval process, will determine if they satisfy the statutory requirements of section 189(c).

In addition to this general proposed approach for selecting quantitative milestones and similar to an option proposed for Moderate area attainment plans, the EPA proposes to require that, at a minimum, states must include in all attainment plans for Serious $PM_{2.5}$ nonattainment areas a measure to confirm that some specific portion of BACM and BACT for the area has been implemented as appropriate in order to comply with the statutory requirement at section 189(b)(1)(B). The EPA acknowledges that the precise quantifiable metric (*e.g.,* 50 percent of BACM and BACT measures implemented by milestone date 7.5 years from designation) would need to be determined on a case-by-case basis, as it would depend upon the date of reclassification of the area, whether the metric is to be achieved at year 7.5 or year 10.5 from designation, and the anticipated implementation timing and nature of the BACM and BACT controls themselves. Nonetheless, the EPA believes it would be appropriate to include it as a metric that any state with a Serious nonattainment area must adopt as a quantitative milestone to demonstrate RFP (and thus must demonstrate compliance with when they submit their milestone report), as it derives from a statutory provision that applies to all Serious areas and thus represents a milestone that all Serious nonattainment areas must meet.

The EPA seeks comment on these proposed options for interpreting the statutory quantitative milestone requirements for Serious areas.

H. Contingency Measures

As noted in Section IV.G of this preamble, all $PM_{2.5}$ nonattainment areas must include in their attainment plans

[203] As noted in Section VI.B of this preamble, depending upon when the area is reclassified from Moderate to Serious, this base year inventory may need to be more recent than the inventory submitted with the Moderate area attainment plan.

[204] If an area includes re-entrained road dust in the motor vehicle emissions budget, the latest approved version of AP–42 should be used unless the EPA has approved an alternative model for the area.

[205] Addendum to the General Preamble, 59 FR 41998 (August 16, 1994), at page 42016.

contingency measures consistent with section 172(c)(9). Contingency measures are additional control measures to be implemented in the event that an area fails to meet RFP requirements or fails to attain the $PM_{2.5}$ standard by the applicable attainment date. These measures must be fully adopted rules or control measures that are ready to be implemented quickly upon a determination by the EPA that the area failed to meet RFP or failed to meet the standard by the applicable attainment date, and such measures are required to take effect without significant further action by the state or the EPA.

The statutory contingency measure requirement at section 172(c)(9) is not superseded or subsumed by any requirement under subpart 4, nor does it apply only to Moderate area attainment plans. Thus, contingency measures are required for Serious $PM_{2.5}$ nonattainment areas as part of a state's Serious area attainment plan submission. The EPA proposes that the criteria for identifying and selecting contingency measures for a Serious area attainment plan should be the same as those for Moderate area plans. Specifically, the EPA proposes that the following requirements must be met in order for contingency measures to be approvable as part of a state's Serious area attainment plan submission:

1. Contingency measures must be fully adopted rules or control measures that are ready to be implemented quickly upon a determination by the Administrator of the nonattainment area's failure to meet RFP or failure to meet the standard by its attainment date.

2. The SIP must contain trigger mechanisms for the contingency measures, specify a schedule for implementation, and indicate that the measures will be implemented without significant further action by the state or by the EPA.

3. Contingency measures must consist of control measures that are not otherwise included in the control strategy for the SIP, or must require further implementation of partial measures already included in the SIP as BACM or BACT, additional feasible measures, or MSM.

4. Contingency measures must provide for emissions reductions equivalent to 1 year's share of reductions needed to demonstrate attainment (*i.e.,* the overall needed reductions divided by the number of years from the base year to the attainment year), or equivalent to 1 year's worth of air quality improvement or emissions reductions proportional to the overall amount of air quality improvement or emissions reductions to be achieved by the area's attainment plan.

The EPA further proposes that a state may elect to rely on contingency measures that achieve emissions reductions on sources located outside the nonattainment area, but within the state, as well as from within the nonattainment area, provided that the measures on sources outside the designated nonattainment area are demonstrated to produce the appropriate air quality impact within the nonattainment area.

As with contingency measures for Moderate nonattainment areas, the EPA believes it appropriate that a state might rely on additional reductions in the years following a failure to meet RFP requirements or a failure to attain the NAAQS by the applicable attainment date from federal or local measures already scheduled for implementation as part or all of their contingency measures. The EPA could potentially consider such measures as meeting the contingency measure requirement as long as they produce emissions reductions in excess of those required to meet other statutory provisions, such as to meet BACM and BACT requirements, and they can be relied on to achieve a sufficient portion of the actual emissions reductions necessary to reduce emissions in the area while the state develops a new plan to bring the area into attainment.[206] As with contingency measures for Moderate area attainment plans, the EPA proposes that the emissions reductions associated with contingency measures for Serious area plans must be equal to approximately 1 year's worth of emissions reductions necessary to achieve RFP for the area, unless the state adequately demonstrates that some smaller amount of reductions is appropriate while the state is revising its attainment plan for the area. The EPA seeks comment on this requirement.

The Addendum provided guidance related specifically to the selection and implementation of contingency measures for Serious nonattainment areas. First, the EPA guidance indicated that ''for those moderate areas reclassified as serious, if all or part of the moderate area plan contingency measures become part of the required serious area control measures (*i.e.,* BACM), then additional contingency measures must be submitted whether or not the previously submitted contingency measures had already been implemented. Further, the affected states must ensure that serious areas have adequate contingency measures considering, among other things, new information about the potential attainment shortfall for the newly reclassified serious area.'' [207] The EPA continues to believe that this approach to the statutory contingency measure requirement is appropriate and proposes to adopt it for purposes of implementing the $PM_{2.5}$ NAAQS in Serious nonattainment areas.

With regard to the timing for implementing contingency measures, the EPA reiterates that the purpose of contingency measures is to ensure that corrective measures are put in place automatically at the time that the EPA makes a determination that an area has failed to meet RFP or failed to meet the NAAQS by the applicable attainment date. For any nonattainment area, the EPA is required to determine within 90 days after receiving a state's RFP demonstration, and within 6 months after the attainment date for an area, whether the state has met their statutory obligations for demonstrating RFP or attaining the standard, as appropriate. As with Moderate areas, the EPA believes that contingency measures should become effective for Serious areas within 60 days of the EPA making its determination that the area failed to meet RFP or attain the NAAQS and proposes to require this for purposes of $PM_{2.5}$ NAAQS implementation in Serious nonattainment areas.

Finally, while section 172(b) gives discretion to the Administrator to establish a deadline for submitting contingency measures up to 3 years from designation of the area, it does not explicitly address the appropriate submittal date for contingency measures for areas reclassified to Serious. In the Addendum, the EPA indicated that ''states must submit contingency measures for serious areas or otherwise demonstrate that adequate measures are in place within 3 years of reclassification.'' [208] The EPA proposes and seeks comment on applying this guidance to Serious nonattainment areas for current and future $PM_{2.5}$ NAAQS.

In addition, as described in Section VI.A, the EPA proposes an alternative submission deadline for Serious area contingency measures that would align the contingency measure due date with the Serious area attainment demonstration due date. If an area is reclassified under the EPA's discretionary authority, the Serious area

[206] *See LEAN* v. *EPA,* 382 F.3d 575 (5th Cir. 2004).

[207] Addendum to General Preamble, 59 FR 41988 (August 16, 1994), at 42015.

[208] *Id.*

attainment demonstration is due 4 years from the date of reclassification; under this alternative proposed approach, contingency measures would also be due 4 years from the date of reclassification for such areas. If an area is reclassified under the EPA's mandatory duty upon failure of the area to attain the NAAQS by the Moderate area attainment date, then the Serious area attainment demonstration is due 18 months from the date of reclassification; accordingly, under this alternative proposed approach, contingency measures would also be due 18 months from the date of reclassification for such an area. In either case, the BACM and BACT provisions for the Serious area would be due at or before the time contingency measures would be due, which is appropriate given that the EPA expects a state to consider its BACM and BACT measures as it develops its contingency measures. The state may ascertain that measures not otherwise required or necessary for BACM or BACT may nevertheless be suitable for purposes of contingency measures. The EPA seeks comment on this alternative approach to setting Serious area contingency measure due dates.

I. Attainment Dates

As explained earlier, section 188 establishes the attainment dates for both Moderate and Serious areas. For a Serious area, section 188(c)(2) provides that ''the attainment date shall be as expeditiously as practicable but no later than the end of the tenth calendar year beginning after the area's designation as nonattainment.'' [209] For example, for an area initially designated as nonattainment effective in April 2015 that is reclassified to Serious at some future date, the Serious area attainment date, absent any approved Serious area attainment date extension, would be no later than December 31, 2025 (the end of the tenth calendar year after designation). As discussed in Section IV.I, the EPA proposes to interpret the references to ''designation'' in CAA section 188(c) as meaning ''effective date of designation,'' consistent with the agency's prior approach for implementing the previous $PM_{2.5}$ NAAQS under subpart 1 and other NAAQS.

The process for a state to determine the most expeditious attainment date practicable for a Serious area will depend upon the final approach selected for determining BACM and BACT for the area. Therefore the EPA is proposing two approaches for determining the appropriate attainment date for a Serious area. Under the first approach, which would correspond to the agency's proposed Option 1 for determining BACM and BACT—independent of the attainment demonstration for the area—the state would simply include the control measures determined to be BACM and BACT for the area in its air quality modeling, and would report the results of the modeling, including the earliest projected attainment date.

Under the second proposed approach, which would correspond to the EPA's proposed Option 2 for determining BACM and BACT—tied to the attainment needs of the particular nonattainment area—the state would be required to follow a two-step process for determining the appropriate attainment date for the area. First, the state would be required to demonstrate through air quality modeling that the area can attain the relevant NAAQS by the latest statutory attainment date and determine which control measures and technologies are needed for the area to attain by that date. Second, the state would be required to determine whether implementing any remaining BACM or BACT controls (*i.e.,* those not needed for attainment by the latest date) or any other additional controls can cumulatively advance the attainment date for the area by at least 1 year. In the event that a state determines that the area can attain the relevant NAAQS earlier through the application of these other measures, the state must propose the earlier date as part of the attainment plan submission for the area. This second approach is similar to the proposed approach for determining the most expeditious attainment date for a Moderate area.

As with Moderate area attainment dates, when the EPA takes action to approve the different elements of the attainment plan for the Serious area, one of the elements that the agency will take action on will be the state's proposed attainment date for the area. If the EPA approves an attainment date for the area that is earlier than the latest date allowed by statute, then the applicable attainment date for the area will be the approved date. If the state demonstrates that the Serious area cannot practicably attain the NAAQS by the end of the tenth calendar year following designation, the state may request a Serious area attainment date extension as long as certain conditions are met, as described next in Section VI.J.

J. Attainment Date Extensions

1. Statutory Requirements

As with Moderate areas, the EPA may grant an extension of the attainment date for a Serious $PM_{2.5}$ nonattainment area if certain statutory criteria are met. Specifically, section 188(e) provides that the EPA may allow one attainment date extension of no more than 5 years ''upon application by any state . . . if attainment by the [original Serious area attainment date] would be impracticable, the state has complied with all requirements and commitments pertaining to that area in the implementation plan, and the state demonstrates to the satisfaction of the Administrator that the plan for that area includes the most stringent measures that are included in the implementation plan of any state or are achieved in practice in any state, and can feasibly be implemented in the area.'' In addition to the required preconditions for such an extension, the statute also includes factors which the Administrator may use as she considers whether to grant the extension and the length of the extension, including ''the nature and extent of nonattainment, the types and numbers of sources or other emitting activities in the area (including the influence of uncontrollable natural sources and transboundary emissions from foreign countries), the population exposed to concentrations in excess of the standard, the presence and concentrations of potentially toxic substances in the mix of particulate emissions in the area, and the technological and economic feasibility of various control measures.'' [210]

2. Proposed Approach

In the Addendum, the EPA generally described the statutory requirements listed above and expressed an intent to issue guidance on applying for an extension of the Serious area attainment date, if appropriate. While ultimately the EPA did not deem it necessary to issue such guidance, the EPA has interpreted these statutory requirements through actual exercise of its authority under section 188(e) in past rulemakings for specific PM_{10} nonattainment areas. For example, the EPA interpreted section 188(e) in approving an extension of a Serious area

[209] The EPA believes that there is no real effect on attainment date determinations due to the small difference in statutory language in section 188(c) basing the Moderate area attainment date on the ''sixth calendar year after the area's designation'' and the Serious area attainment date on the ''tenth calendar year *beginning* after the area's designation,'' (emphasis added).

[210] Notably, these statutory criteria do not include specific ambient air quality criteria like the criteria that need to be met in the year prior to a Moderate area attainment date in order for the area to qualify for an attainment date extension under section 188(d).

attainment date for purposes of the PM_{10} NAAQS for the Maricopa area (AZ).[211] The EPA believes that the steps finalized in the Maricopa County PM_{10} Serious area SIP approval notice provide an appropriate starting point for a proposed regulatory approach, with some potential modification, for states to meet the statutory requirements that could apply nationally. The EPA is thus proposing to require that states adhere to the following steps when preparing and submitting a request for a Serious area attainment date extension:

Step 1: Demonstrate that attainment by the statutory Serious area attainment date is impracticable. In order to demonstrate impracticability, the state would have to show that the implementation of all BACM and BACT and all additional feasible measures required under section 172(c)(6) will not bring the area into attainment by the statutory Serious area attainment date (*i.e.,* by no later than the end of the tenth calendar year after designation).[212] The statutory provision for demonstrating impracticability requires that the demonstration be based on air quality modeling (*see* section 189(b)(1)(A)). Additional guidance on this demonstration is provided in Section VI.E of this preamble.

Step 2: Comply with all requirements and commitments in the applicable implementation plan. Similar to the proposed approach described in Section IV.J of this preamble for Moderate area attainment date extensions, the EPA proposes to interpret the criterion under section 188(e) that requires a state to have ''complied with all requirements and commitments pertaining to that area in the implementation plan'' simply to mean that the state has implemented the control measures in the SIP revisions it has submitted to address the applicable requirements in sections 172 and 189. For a Serious area attainment date extension request being submitted contemporaneously with the ''original'' Serious area attainment plan for the area, the EPA proposes to read section 188(e) not to require the area to have a fully approved attainment plan that meets the CAA's requirements for Moderate areas. The agency proposes to base this reading on the plain language of section 188(e) which requires the state to comply with all requirements and commitments pertaining to that area in the implementation plan but does not require that the state comply with all requirements pertaining to the area in the CAA.[213] For the same reason, the EPA also proposes to read this provision not to bar an extension if all or part of an area's Moderate area plan is disapproved or has been promulgated as a FIP, provided the area has complied with all of the requirements in the applicable FIP, or in the applicable SIP and FIP.

However, for a Serious area attainment date extension request being submitted sometime after submission of an ''original'' Serious area attainment plan that contained an attainment demonstration meeting the requirements of section 189(b)(1)(A)(i), the EPA proposes to read section 188(e) not to require the area to have a fully approved attainment plan that meets the CAA's requirements for Serious areas, but to have a fully approved Moderate area attainment plan. The rationale for this distinction is due to the timing of the Serious area attainment date extension request under these circumstances, which is discussed in greater detail later in this section. The EPA believes that this proposed interpretation of this criterion would apply whether the area was reclassified to Serious under the EPA's discretionary authority (section 188(b)(1)) or by operation of law upon failing to attain by the Moderate area attainment date (section 188(b)(2)).

The EPA also seeks comment on an alternative interpretation of the implementation plan compliance criterion that would require a state to have a Moderate area attainment plan fully approved by the EPA, not just fully implemented by the state, at the time of the Serious area attainment date extension request, regardless of when such a request is submitted to the EPA. The EPA believes that one may reasonably argue that a state seeking an extension of the Serious area attainment date should have fully implemented all elements of an approved Moderate area attainment plan. The EPA believes that while such a condition may be reasonable, generally speaking, there may be circumstances in which a state submits a Moderate area attainment plan that the EPA is unable to approve in a timely way, potentially creating a situation in which the state cannot qualify for a Serious area attainment date extension (due to its unapproved Moderate area plan) even if the area is reclassified to Serious and cannot practicably attain by the statutory attainment date for a Serious area. The EPA seeks comment on this alternate proposed interpretation of the applicable implementation plan compliance criterion under section 188(e). Recognizing that a situation such as that described above may be rare, the agency also seeks comment on what remedy might be available under the statute if such a situation comes to pass if the EPA were to finalize this alternative proposed interpretation of the applicable implementation plan criterion.

Step 3: Demonstrate the inclusion of MSM. To qualify for any extension of a Serious area attainment date, section 188(e) requires a state to ''demonstrate to the satisfaction of the Administrator that the plan for the area includes the most stringent measures that are included in the implementation plan of any state, or are achieved in practice in any state, and can feasibly be implemented in the area.'' In its prior guidance in the Addendum, the EPA interpreted the term ''most stringent measure'' (MSM) to mean the maximum degree of emission reduction that has been required or achieved from a source or source category in any other attainment plans or in practice in any other states and that can feasibly be implemented in the area seeking the extension, such as what LAER represents for new or modified sources under the NNSR permit program.[214]

The agency proposes that a state would need to follow a process for determining MSM for a Serious nonattainment area that is generally similar to proposed Option 2 for BACM and BACT described in Section VI.D of this preamble, which would include exemptions from MSM for sources in *de minimis* source categories if such measures did not collectively advance the attainment date for the area by at least 1 year. The EPA is also proposing an alternative approach for determining MSM for a Serious nonattainment area that would provide for *de minimis* source category exemptions for MSM only for those source categories that do not contribute significantly to ambient $PM_{2.5}$ concentrations in the Serious nonattainment area, an approach more closely aligned with proposed Option 1 for determining BACM and BACT.

[211] Maricopa County PM_{10} Serious area attainment date extension, proposal: 65 FR 19964 (April 13, 2000); and final: 67 FR 48718 (July 25, 2002).

[212] This proposed approach parallels the EPA's proposed approach, described earlier in this preamble, for the impracticability option for Moderate areas under CAA section 189(a)(1)(B) in which all measures that qualify as RACM and RACT and all additional reasonable measures are required before a Moderate area plan could show impracticability of attainment by the statutory Moderate area attainment date (the end of the sixth calendar year after designation).

[213] This interpretation as applied to section 188(e) for Serious area attainment date extensions was upheld by the Ninth Circuit Court of Appeals in *Vigil* v. *Leavitt,* 366 F.3d 1025, amended at 381 F.3d 826 (9th Cir. 2004).

[214] Addendum to the General Preamble, 59 FR 41998 (August 16, 1994), at page 42010.

Under proposed approach #1 for MSM, the EPA would prescribe a five-step process for states to follow when selecting and implementing MSM. This proposed approach is similar to that used in practice for approving the PM_{10} Serious area attainment plan and Serious area attainment date extension request submitted for Maricopa County (AZ) in 2000.[215]

The first step of this proposed approach would be for the state to update as needed the emissions inventory of direct $PM_{2.5}$ and $PM_{2.5}$ precursor sources and source categories in the Serious nonattainment area required under section 172(c)(3) for any attainment plan submission. The EPA expects that the state would meet this inventory requirement as part of its Serious area attainment plan submittal without any additional work if the state submits the Serious area attainment date extension request simultaneously with the plan itself. However, in the event the attainment date extension request is submitted after the ''original'' Serious area attainment plan for the area (*i.e.,* toward the end of the Serious area attainment period), then the EPA proposes to require that the state must submit a more recent, complete and accurate emissions inventory that meets the same emissions inventory requirements for Moderate and Serious $PM_{2.5}$ nonattainment areas pursuant to section 172(c)(3), as well as an attainment projected inventory as part of the new Serious area attainment plan for the area. The inventories submitted to support a Serious area attainment plan must also include point sources meeting the lower major stationary source threshold in 40 CFR part 51, subpart A.

The second step in this proposed MSM determination process would require the state to perform air quality modeling in order to evaluate, for each of the various source categories included in the emissions inventory for the area, the impact on $PM_{2.5}$ concentrations in excess of the applicable NAAQS in order to determine which categories are significant for the purposes of adopting MSM. Those source categories for which such modeling indicates potential control measures collectively would have only a *de minimis* effect on advancing the attainment date for the area could be eliminated from further consideration. In the context of the EPA's action to approve the Maricopa County PM_{10} Serious area attainment plan and attainment date extension request, the agency finalized an approach for judging what constitutes a *de minimis* source category for MSM by applying a test of whether MSM controls on the allegedly *de minimis* sources would result in more expeditious attainment, rather than applying a test of whether or not requiring the application of controls for such sources would make the difference between attainment and nonattainment by the statutory Serious area deadline, as the latter test implicitly would be met through the controls chosen for demonstrating attainment by the alternate attainment date for the area. In the agency's explanation of the proposed approach, the EPA explained that ''Our responsibility under section 188(e) . . . is to grant the shortest practicable extension of the attainment date by assuring the plan provides for attainment as expeditiously as practicable. Thus, one means of determining an appropriate *de minimis* level is to determine if applying MSM to the proposed *de minimis* source categories would meaningfully expedite attainment. If it did, then the *de minimis* level is too high, and if it did not, then the *de minimis* level is appropriate.'' [216] The EPA thus proposes to determine whether any source categories should be eliminated from MSM controls through a *de minimis* exemption based on a demonstration that collectively applying MSM controls to such source categories would not advance attainment of the NAAQS in the area by at least 1 year. This test would presumably result in a more stringent threshold for what is considered a *de minimis* source category for MSM as compared to the threshold for *de minimis* source categories for BACM and BACT as described in the EPA's proposed Option 1 for BACM and BACT determination criteria (*see* Section VI.D of this preamble). The EPA proposes and seeks comment on this test for determining whether any source categories could be found to be *de minimis* and thus not subject to MSM controls.

The third step in the EPA's first proposed approach to determining MSM for a Serious nonattainment area would involve identifying the potentially most stringent measures in other implementation plans for $PM_{2.5}$ or other NAAQS, or used in practice in other states for controlling emissions from each of the remaining source categories listed in the emissions inventory that were not determined to be *de minimis.* For each measure, the state would be required to determine its technological and economic feasibility for sources in the area. The EPA proposes generally to apply more stringent criteria for determining the feasibility of potential MSM than that described for BACM and BACT in Section VI.D. In some situations, MSM could involve increasing the coverage of measures that were already adopted and implemented as BACM and BACT (for example, changing out an even greater percentage of woodstoves in an area, or paving even more roads, if such source categories were major contributors to the air quality problem in the nonattainment area).

However, because BACM and BACT represent the ''best'' level of control feasible for an area, it would be possible for the MSM requirement to result in no more controls and no more emissions reductions in an area than result from the implementation of BACM and BACT. Stated another way, there may be sources or categories for which no other feasible controls exist beyond what a state has already adopted as BACM or BACT. Given the strategy in the nonattainment provisions of the CAA to offset longer attainment timeframes with more stringent control requirements, the EPA therefore proposes to interpret the MSM provision in order to increase the potential that it will result in additional controls beyond the set of measures adopted as BACM and BACT by requiring a state to reanalyze any measures that were rejected during the state's BACM and BACT analysis for the area to see if they are now feasible for the area given the potentially longer attainment date (up to 5 years after the statutory Serious area attainment date) or given the changes that have occurred in the interim that improve the feasibility of previously rejected measures.

The fourth step of this first proposed approach would require the state to compare the potential MSM for each non-*de minimis* source category against the measures, if any, already adopted for that source category in the Serious nonattainment area to determine if such MSM would provide any additional reductions.

The fifth step would then require that the plan provide for the adoption and expeditious implementation of any MSM that is more stringent than existing measures or, in lieu of adoption, provide a reasoned justification for rejecting the potential MSM, *i.e.,* provide an explanation as to why such measures cannot be feasibly implemented in the area.

[215] Maricopa County PM_{10} Serious area attainment date extension, 67 FR 48718 (July 25, 2002).

[216] Maricopa County PM_{10} Serious area attainment date extension proposal, 65 FR 19964 (April 13, 2000), at page 19969.

As noted earlier, the EPA expects that this first proposed approach to determining MSM would be most compatible with the agency's proposed Option 2 for determining BACM and BACT, described in Section VI.D. Under proposed Option 2 for BACM and BACT determinations, a state would be required to implement only those ''best'' control measures necessary to bring a Serious nonattainment area into attainment expeditiously. Such an approach to BACM and BACT determinations would not incorporate an explicit step in the process for a state to exempt *de minimis* source categories from consideration for potential control measures. However, it would allow a state to eliminate any potential BACM or BACT or additional feasible measures that are not needed to bring a Serious area into attainment by the statutory attainment date and that cannot, collectively, advance the attainment date for the area by at least 1 year. Proposed Option 2 for determining BACM and BACT for an area is thus similar to the proposed approach to MSM described above, in which a state could eliminate from further consideration those source categories for which potential control measures collectively would have only a *de minimis* effect on advancing the attainment date for the area (*see* proposed step 2).

The EPA's proposed Option 1 for BACM and BACT determinations would include an explicit step in the process for exempting *de minimis* source categories from further consideration for potential control measures. However, under such approach, a state would need to assess whether emissions of a particular pollutant from a given source category contributed significantly to $PM_{2.5}$ concentrations in the nonattainment area. If the state determined that the source category contributed only a *de minimis* amount of emissions, then the state could exempt the source category from further consideration for potential control measures. Thus, while it incorporates a step to identify *de minimis* source categories, the EPA's proposed Option 1 for BACM and BACT determinations is not wholly consistent with the agency's proposed approach #1 for determining MSM.

Therefore, the EPA is also proposing an alternative approach for determining MSM for a Serious nonattainment area that would be more compatible with the EPA's proposed approach #1 for determining BACM and BACT. Under this alternative proposed approach for determining MSM, a state could exempt *de minimis* source categories from further consideration, but *de minimis* source categories would be identified by virtue of their lack of significant contribution to $PM_{2.5}$ levels in the area, not by virtue of whether controlling such sources categories collectively could expedite attainment of the relevant NAAQS. In this way, *de minimis* source categories for MSM would be defined in a similar way, or subject to a similar ''significant contribution'' test, as *de minimis* source categories for BACM and BACT determinations under proposed Option 1. Thus under proposed approach #2 for MSM, the steps described for determining MSM would generally be the same as under proposed approach #1, with the exception of step 2. Rather, the EPA proposes an alternative step 2 in the MSM determination process in which a state could identify *de minimis* source categories to exempt from further control based on an analysis of the particular contribution made by a given source category to ambient $PM_{2.5}$ levels in the nonattainment area. The EPA believes that defining *de minimis* source categories and ''significant contribution'' for determining *de minimis* source categories would be equally challenging in the context of MSM determinations as in the context of BACM and BACT determinations.[217] However, in the event the agency finalizes proposed Option 1 for BACM and BACT determinations, the EPA believes it would be appropriate to finalize proposed approach #2 for MSM, and would require that a state seeking to exempt from MSM sources in a given source category apply more stringent criteria for evaluating whether a certain source category's contributions to the area's $PM_{2.5}$ concentrations are indeed *de minimis.*

The EPA believes that either of these proposed approaches for determining MSM for a Serious nonattainment area would be consistent with the EPA's guidance in the Addendum to define MSM as those measures that can ''feasibly be implemented in the relevant area from among those which are either included in any other SIP or have been achieved in practice by any other state.'' One of the key features of this guidance relates to identifying control measures implemented elsewhere, which is also a key feature of the EPA's proposed process for identifying RACM and RACT and additional reasonable measures (and BACM and BACT and additional feasible measures, if necessary) for a $PM_{2.5}$ nonattainment area. For these processes, the EPA is proposing that a state identify potential measures for consideration as RACM or RACT or additional reasonable measures (or BACM or BACT or additional feasible measures) by looking at measures implemented by other states to meet $PM_{2.5}$ NAAQS or other NAAQS. Thus, a state seeking to identify MSM should be able to start its process using with the work already undertaken for the nonattainment area's RACM and BACM determinations and to make updates to the list of potential control measures accordingly.

The EPA notes that section 188(e) does not identify a deadline for a state to implement MSM, while elsewhere the statute establishes a deadline for implementing RACM and RACT and BACM and BACT (*see* CAA sections 189(a)(1)(C) and 189(b)(1)(A), respectively). However, because the clear intent of section 188(e) is to minimize the length of a Serious area attainment date extension, the EPA proposes that the implementation of MSM must be as expeditious as practicable but no later than 1 year prior to the alternative Serious area attainment date identified by the state in its extension request.

The EPA seeks comment on whether the two proposed approaches to determine MSM are sufficiently consistent with the agency's respective proposed approaches to BACM and BACT determination. The agency also seeks comment on whether considerations regarding its MSM approach should influence the final selection of a BACM and BACT approach.

Step 4: Demonstrate attainment by the most expeditious alternative date practicable. Section 189(b)(1)(A) requires that a Serious area plan demonstrate attainment, using air quality modeling, by the most expeditious date practicable after the statutory Serious area attainment date. This demonstration is the final criterion that must be met before the EPA may consider granting an extension. The agency's determination of whether the plan provides for attainment by the most expeditious date practicable would depend on whether the plan provides for implementation of BACM and BACT by the statutory implementation deadline and MSM as expeditiously as practicable. In no case would a state be able to seek an extension of a Serious area attainment date to a date more than 5 years past the statutory attainment date for Serious areas. Section VI.E of this preamble describes the EPA's proposed requirements for attainment

[217] *See* the discussion of *de minimis* source categories in Section VI.D in this preamble.

demonstration modeling for Serious area attainment plans.

Step 5: Apply for an attainment date extension. The state would have to apply to the EPA for any extension of a Serious area attainment date. The request would have to accompany an attainment plan submission containing an attainment demonstration showing attainment by the most expeditious alternative date practicable, and the state would need to submit modeling as part of the attainment demonstration in accordance with Section VI.E. Furthermore, the state would have to provide the public reasonable notice and a public hearing on the attainment date extension request before submitting it to the EPA, as the EPA would consider it an integral part of the attainment demonstration and part of the revised SIP submission which is subject to the requirements of the CAA and federal regulations for public notice and hearing on SIP revisions.

3. Timing of Extension Request Submittal

The EPA believes that a state may submit a request for an extension of the Serious area attainment date either at the time the original Serious area attainment plan is submitted following reclassification of the area or at a point in time closer to the Serious area attainment date. In the first case, when taken together with language under section 189(b)(1)(A)(ii) which describes the possibility of including an impracticability demonstration in a Serious area attainment plan that parallels the impracticability demonstration for a Moderate area attainment plan, section 188(e) appears to set an expectation that a state may request an extension of the attainment date for a Serious area when the state initially submits its Serious area plan. Therefore, the EPA would deem such a request as timely and appropriate.

On the other hand, the EPA also recognizes that a state may prepare and fully implement a timely Serious area plan that includes modeling demonstrating attainment no later than the statutory Serious area attainment date (the end of the tenth calendar year following designation), and yet may see as the attainment date nears that the Serious area will in fact fail to attain by its projected attainment date. While the statute provides a remedy to be instituted immediately upon failure of a Serious area to attain the standard (through contingency measures and other measures stipulated in section 189(d)), the EPA also believes that the criteria of section 188(e) could be applied after a state submits a Serious area attainment plan but prior to the area failing to attain, as long as the area had not already been granted a prior Serious area attainment date extension under section 188(e). In such a case, the EPA believes that it would be acceptable for a state to submit a Serious area attainment date extension request similar to that described above (for submissions made simultaneous with initial Serious area attainment plans) together with a new Serious area attainment plan meeting all of the statutory requirements that apply to such plans. In this case, the complete submission would have to be made in a timely way such that the EPA could fully review the new attainment plan for the area and the accompanying attainment date extension request, including the status of compliance with all requirements and commitments in the Moderate area attainment plan for the area, the justification for the selection of the alternate attainment date, and provisions for the implementation of MSM, prior to making its determination of failure of the area to timely attain the relevant NAAQS.

The EPA seeks comment on this option, particularly with respect to whether the criteria proposed above are appropriate in a situation in which a state seeks a Serious area attainment date extension after submitting a Serious area attainment plan that initially demonstrated attainment by the statutory Serious area attainment date. For example, the EPA seeks comment in particular on whether it would be appropriate to interpret the section 188(e) requirement for a state to have ''complied with all requirements and commitments pertaining to that area in the implementation plan'' as referencing those requirements and commitments contained in the area's Moderate area plan (as proposed above for areas seeking a Serious area attainment date extension simultaneous with submittal of their Serious area plan) or whether, for areas that already submitted Serious area plans demonstrating attainment, it is more appropriate that the state must have complied with all requirements and commitments pertaining to the area in the area's original Serious area attainment plan. The EPA believes this second interpretation is the more appropriate interpretation as it pertains to Serious areas seeking an extension of their attainment date as they approach their statutory Serious area attainment date, and therefore the agency is proposing and seeking comment on this approach. The EPA believes that this second interpretation is especially preferable if the EPA finalizes its proposal that interprets the SIP compliance requirement for areas seeking an attainment date extension simultaneous with their Serious area attainment plan submittal to mean that the state need only have implemented the control measures in the SIP revisions it has submitted to the EPA to address the CAA requirements in section 189 (*i.e.,* to mean that the area need not have a fully approved attainment plan that meets the CAA's requirements for Serious areas).

The EPA seeks comment on these proposed options for interpreting and implementing the statutory language at section 188(e) for Serious area attainment date extensions.

VII. What are the EPA's proposed requirements for attainment plans under CAA section 189(d) for Serious areas that fail to attain the NAAQS by the applicable attainment date?

In the event that a Serious area fails to attain the $PM_{2.5}$ NAAQS by the applicable attainment date, section 189(d) requires that ''the state in which such area is located shall, after notice and opportunity for public comment, submit within 12 months after the applicable attainment date, plan revisions which provide for attainment of the . . . standard and, from the date of such submission until attainment, for an annual reduction in PM_{10} or PM_{10} precursor emissions within the area of not less than 5 percent of the amount of such emissions as reported in the most recent inventory prepared for such area.''

A state with a Serious nonattainment area subject to section 189(d) must submit to the EPA its plan to meet the requirements of section 189(d) in the form of a complete attainment plan submission that contains the following elements: (i) An attainment demonstration and provisions for the implementation of measures that will achieve annual emissions reductions of not less than 5 percent from the most recent emissions inventory for the area for each year until attainment (section 189(d)); (ii) quantitative milestones that will be used to measure compliance with the RFP requirement (section 189(c)); and, (iii) regulation of $PM_{2.5}$ precursors (in general to meet attainment and control strategy requirements and as specifically required for major stationary sources by section 189(e)). Subpart 1 requirements that apply to Serious $PM_{2.5}$ nonattainment areas also subject to the requirements of section 189(d) include the following: (i) A description of the expected annual incremental reductions

in emissions that will demonstrate RFP (section 172(c)(2)); (ii) emissions inventories (section 172(c)(3)); and, (iii) contingency measures (section 172(c)(9)). A state with a Serious $PM_{2.5}$ nonattainment area that fails to attain the NAAQS by the applicable Serious area attainment date must also address any statutory requirements relevant to Moderate nonattainment areas and Serious nonattainment areas under sections 172 and 189 of the CAA that have not already been satisfied. In addition, the EPA must approve a new attainment date for the area under sections 172(a)(2) and 179(d)(3).

The remainder of this section presents the EPA's proposed requirements for attainment plan submissions under section 189(d).

A. Plan Due Dates

Section 189(d) requires a state with a Serious PM_{10} nonattainment area that failed to attain the NAAQS by the applicable Serious area attainment date to submit a new attainment plan submission for the area within 12 months after the missed attainment date. Therefore a state with a nonattainment area subject to section 189(d) must submit a new attainment plan for the area—with all required elements of the attainment plan—within 12 months after the missed attainment date.

B. Emissions Inventory Requirements

As with all other attainment plan submissions required for Moderate and Serious $PM_{2.5}$ nonattainment areas, a state must develop its submission to meet section 189(d) based on ''the most recent emissions inventory prepared for such [nonattainment] area.'' This inventory must meet the same requirements that would apply to any other emissions inventory submitted for a $PM_{2.5}$ nonattainment area to meet the requirements of section 172(c)(3), which requires ''a comprehensive, accurate, and current inventory of actual emissions of the relevant pollutants'' in the nonattainment area. Therefore the EPA proposes that the inventory submitted with an attainment plan to meet section 189(d) requirements must also meet the EPA's proposed regulatory requirements for such emissions inventories as described earlier in this preamble under Section IV.B (for Moderate area attainment plans) and Section VI.B (for Serious area attainment plans).

One important aspect of the emissions inventory required to be submitted with an attainment plan under section 189(d) is its role as the basis for calculating the emissions reductions of direct $PM_{2.5}$ and $PM_{2.5}$ precursors necessary to satisfy the 5 percent annual reduction criteria of section 189(d). For this reason, the EPA proposes that the ''most recent inventory'' for the area must not only meet the criteria as that described for a base year inventory submitted pursuant to section 172(c)(3) and in Section VI.B of this preamble, but also must fully account for emissions reductions achieved to date through the implementation of all RACM and RACT, BACM and BACT and additional reasonable and feasible measures submitted with the Moderate and original Serious area attainment plans for the area. In this way, the state will calculate the additional reductions that the nonattainment area will need beyond those already required in order to fulfill the requirements of section 189(d) and bring the area into attainment as expeditiously as practicable.

In order to ensure that the ''most recent inventory'' is representative of the nonattainment problem in the area current at the time of the section 189(d) submission, the EPA proposes that the inventory year must be one of the 3 years from which monitored data was used to determine that the area failed to attain the $PM_{2.5}$ NAAQS by the applicable Serious area attainment date. The EPA believes that associating the inventory with one of these 3 years is reasonable in light of the fact that some BACM and BACT controls and additional feasible controls (required under section 172(c)(6)) for sources in the area may not be implemented until the beginning of the attainment year. Thus, requiring that a state use an emissions inventory for one of those 3 years will help ensure that the inventory adequately captures the emissions reductions already achieved through the prior implementation of BACM and BACT and additional feasible measures.

The EPA recognizes the additional level of effort that may be needed to produce an up-to-date emissions inventory for a nonattainment area, and therefore is proposing and seeking comment on an alternative approach that would allow a state to select an inventory year earlier than one of the 3 years from which monitored data were used to determine that the area failed to attain the NAAQS by the applicable attainment date. Under this alternative proposed approach, another inventory year may be included in the plan under specific circumstances with the submission of a written justification for selecting the earlier year and in consultation with the appropriate EPA Regional Office. At a minimum, the state would need to demonstrate that the inventory for the alternative year adequately incorporates emissions reductions projected to be achieved through the implementation of BACM and BACT and additional feasible control measures submitted with the original Serious area attainment plan for the area. The EPA proposes that modification of an older inventory to incorporate those emissions reductions would be an acceptable way to meet this requirement. In considering use of this option, states could be obligated to achieve a larger annual reduction than 5 percent if the older inventory has higher emissions levels than the ''most recent inventory'' for the area.

The EPA seeks comment on these proposed criteria and options for emissions inventories to be submitted as part of the attainment plan due for a Serious area under section 189(d).

C. Pollutants To Be Addressed in the Plan

Section 189(d) requires states to develop a new attainment plan for an area that failed to attain by the applicable Serious area attainment date that provides for ''an annual reduction in PM_{10} or PM_{10} precursor emissions within the area of not less than 5 percent of the amount of such emissions'' reported in the latest emissions inventory for the area. In Section III of this preamble, the EPA is proposing several options on how a state may evaluate which $PM_{2.5}$ precursors to control for purposes of attaining the NAAQS in a particular nonattainment area. The EPA interprets the requirements of the CAA generally to allow an air agency to provide a ''precursor demonstration'' that can support a determination that one or more precursors need not be subject to control requirements in a given nonattainment area, even if the area has failed to attain the relevant NAAQS by the applicable Serious area attainment date.

Section III presents three options describing different proposed approaches to such precursor demonstrations, and requests comment on each. The discussion for each option describes how states and the EPA should address precursors for Moderate areas and for Serious areas, including Serious areas that fail to attain the $PM_{2.5}$ NAAQS by the applicable attainment date. This section describes, for each of the three options, how the given precursor approach would apply to plans required to be submitted where the area has failed to attain by the Serious area attainment date.

- Option 1: Two independent analyses: (a) An attainment planning

analysis demonstrating that control measures for a particular precursor are not needed for expeditious attainment, meaning that the precursor can be excluded from measures needed to attain as expeditiously as practicable for all types of sources; and (b) a section 189(e) technical demonstration showing that major stationary sources of a particular precursor do not contribute significantly to levels that exceed the $PM_{2.5}$ standard, meaning that the precursor can be excluded from control requirements for major sources and from NNSR permitting. Consistent with this approach, for an area subject to the requirements of section 189(d), the state would need to evaluate control measures to identify those needed to achieve a minimum 5 percent reduction in emissions of direct $PM_{2.5}$ or precursors on an annual basis, and identify those control measures for direct $PM_{2.5}$ and all precursors that would bring the area into attainment as expeditiously as practicable.

- Option 2: Single analysis demonstrating that all emissions of a particular precursor from within the area do not significantly contribute to $PM_{2.5}$ levels that exceed the standard, meaning that control requirements for emissions of the precursor from major stationary and area sources, as well as mobile sources, would not be required for expeditious attainment, control requirements for major sources, or for NNSR permitting. For an area subject to section 189(d) requirements for which a precursor had previously been demonstrated not to significantly contribute to $PM_{2.5}$ levels that exceed the standard, the air agency would be required to update the precursor demonstration taking into account any relevant information or technical tools that had been developed since the demonstration was approved. Consistent with this approach, if, upon failure to attain, the state continued to demonstrate that the precursor did not contribute significantly to $PM_{2.5}$ concentrations in the area, then the state would not need to identify or implement any measures to control that precursor's emissions.
- Option 3: An attainment planning analysis demonstrating that control measures for all types of sources of a particular precursor are not needed for expeditious attainment also would be deemed to meet the section 189(e) technical demonstration requirement, meaning that the state would not need to regulate emissions of the particular precursor from major stationary sources under the NNSR permitting program or other control requirements for major stationary sources. Consistent with this approach, for an area subject to the requirements of section 189(d), the state would need to evaluate control measures to identify those needed to achieve a minimum 5 percent reduction in emissions of direct $PM_{2.5}$ or precursors on an annual basis, and identify those control measures for direct $PM_{2.5}$ and all precursors that would bring the area into attainment as expeditiously as practicable.

The EPA will finalize its approach to $PM_{2.5}$ precursors and clarify the implications for states conducting analyses to identify measures to satisfy the requirements of section 189(d) after considering public comment received on this proposal.

D. Attainment Plan Control Strategy

The control strategy to be developed for the attainment plan submission for a Serious area subject to section 189(d) should place particular emphasis on control measures that can be implemented quickly, in order to ensure that the area attains the $PM_{2.5}$ NAAQS as expeditiously as practicable. The control strategy would need to include any additional measures that are beyond those already adopted for the area as RACM and RACT and additional reasonable measures, or BACM and BACT and additional feasible measures, and that are necessary to achieve annual reductions in emissions of direct $PM_{2.5}$ and $PM_{2.5}$ precursors from sources in the area of at least 5 percent of the amount of such emissions reported in the most recent emissions inventory for the area. The EPA is proposing to interpret section 189(d) in this way to address the ambiguity of how the statutory language should apply to the $PM_{2.5}$ NAAQS, as section 189(d) requires ''an annual reduction in PM_{10} or PM_{10} precursor emissions . . . as reported in the most recent inventory prepared for such area.''

1. Proposed Approach

The EPA believes that in light of the important role that $PM_{2.5}$ precursors play in the formation of $PM_{2.5}$, it is appropriate to require a state to implement control measures for all types of sources in a Serious nonattainment area subject to section 189(d) to achieve the requisite 5 percent annual reduction in emissions of both direct $PM_{2.5}$ and $PM_{2.5}$ precursors from sources in that area. Accordingly, the EPA is proposing that, for direct $PM_{2.5}$ and for $PM_{2.5}$ precursors that the state and the EPA have determined are necessary to be controlled for purposes of attainment in the area, the attainment plan required by section 189(d) would have to include control measures that will achieve at least 5 percent reductions from the latest emissions inventory of each such pollutant on an annual basis until the area attains the relevant $PM_{2.5}$ NAAQS. The EPA believes this is an appropriate interpretation of the 5 percent requirement of section 189(d) and seeks comment on this proposed approach.

The EPA also proposes and seeks comment on an alternative reading of the statute that would require a state to achieve 5 percent reductions of inventoried emissions of either direct $PM_{2.5}$ *or* of any relevant $PM_{2.5}$ precursors. This approach, while consistent with past guidance on how to interpret section 189(d) requirements for PM_{10} NAAQS implementation, could potentially allow a state to delay the implementation of measures to control the relevant pollutants. However, paired with the requirement for the area to reach attainment of the NAAQS as expeditiously as practicable, the EPA believes that such an interpretation may be reasonable and seeks comment on this approach.

It is important to note that under implementation of either of the options presented above, and as described more fully in Section III of this preamble, the EPA is proposing that in the event that a state has demonstrated and can continue to demonstrate that emissions of a given precursor from all sources in a nonattainment area do not contribute significantly to $PM_{2.5}$ concentrations in the area, then the state would not need to achieve 5 percent reductions in emissions of that precursor even if the nonattainment area becomes subject to the requirements of section 189(d).

The statute requires that the requisite minimum 5 percent emissions reductions must be calculated from the total emissions for each precursor and for direct $PM_{2.5}$ contained in the most recent inventory for the area, as described earlier in this section. In addition, the EPA proposes that these required reductions must then be achieved every year between the section 189(d) plan submission date and the new projected attainment date for the area. For example, assume it is 2025, and a Serious area has failed to attain the 2012 $PM_{2.5}$ NAAQS within 10 years of designation. Assume also that the most recent inventory available for an area subject to section 189(d) is for the year 2023. This inventory would serve as the base inventory for determining the emissions reduction requirement under section 189(d). If the most recent inventory indicates that emissions of direct $PM_{2.5}$ from all sources in the area are 100 tons/day, then the area would need to reduce emissions of direct $PM_{2.5}$

by 5 percent of the base inventory (in this example, 5 percent of the 2023 base inventory, or 5 tons/day) each year until the area attains the NAAQS. Thus, in the first year following submission of the section 189(d) plan for the area, emissions of direct $PM_{2.5}$ could not exceed 95 tons/day; in the second year, emissions could not exceed 90 tons/day; and so forth.

Although section 189(d) requires that a state develop measures that will obtain annual emissions reductions of ''not less than 5 percent'' from the most recent inventory, the EPA interprets this language to authorize states to elect to front-load emissions reductions in earlier years and still meet the 5 percent per year requirement. The EPA notes that interpreting the statute in this way will encourage states to implement measures earlier, where possible, rather than delay implementation of measures merely to assure that the 5 percent requirement can be met in later years. Thus, using the example described above, the annual reduction requirement for the area would be 5 tons/day from a base year emissions level of 100 tons/day. The required level after year 1 would be 95 tons/day, after year 2 the level would be 90 tons/day, and so on. If the area reached a level of 81 tons/day by the end of year 3, then by the end of year 4 it would only need to reduce emissions by 1 ton/day to yield an emissions level of 80 tons/day. Consistent with its past action to approve a Serious area attainment plan for the San Joaquin Valley (CA) PM_{10} nonattainment area under section 189(d), the EPA therefore proposes and seeks comment on an approach to allow states to carry forward any emissions reductions beyond the required minimum 5 percent in a given year to the next year as a means to encourage states to achieve emissions reductions as quickly as possible.[218]

The EPA also proposes to clarify its interpretation of the statutory language under section 189(d) that requires a state to submit a new attainment plan to achieve annual reductions ''from the date of such submission until attainment,'' to mean annual reductions beginning from the due date of such submission until the new projected attainment date for the area based on the new or additional control measures identified to achieve at least 5 percent emissions reductions annually. This proposed clarification is intended to make clear that even if a state is late in submitting its section 189(d) plan, the area must still achieve its annual 5 percent emissions reductions beginning from the past due date for the section 189(d) plan submission. Because attainment dates for $PM_{2.5}$ nonattainment areas established under subpart 4 occur at the end of the calendar year, any section 189(d) plan, which is required within 12 months of the missed attainment date for the area, would also be due by the end of the calendar year.

2. Additional Guidance on Section 189(d) Control Measures

The EPA believes that an appropriate starting point for a state to identify measures to achieve the requisite minimum 5 percent annual emissions reductions of direct $PM_{2.5}$ and $PM_{2.5}$ precursors is the list of potential control measures initially required as part of the RACM and RACT determination for the area, then updated as part of the required BACM and BACT determination for the area. The EPA anticipates that a state should be able to rely on much of the work it previously undertook to develop this list of potential control measures and analyze their technological and economic feasibility, and the time required to implement them. However, for purposes of meeting the requirements of section 189(d), the EPA recommends that the state first identify any additional potential measures not previously identified for the area, and then analyze any new or additional measures that the state has not already adopted in a previous attainment plan for the area. The EPA expects that such an analysis to identify new control measures would necessarily take into account recent technological advances in control technologies, the possibility of a greater availability of funding to expand implementation of control measures for area sources, and the additional time the area will have to attain the $PM_{2.5}$ NAAQS under sections 189(d) and 179(d)(3).

In addition, a state may include in the section 189(d) plan control strategy for the area any control measures triggered as contingency measures upon the EPA's determination that area failed to attain the $PM_{2.5}$ NAAQS by the applicable attainment date. In order to be included as control measures that will help the area meet its requisite minimum 5 percent reductions in direct $PM_{2.5}$ and $PM_{2.5}$ precursor emissions, such measures would have to meet the same requirements as all other approvable control measures for being quantifiable, enforceable, replicable and accountable. The EPA believes that reliance on such measures is appropriate given the short timeline provided for in the statute for states to revise and submit their SIP revisions (12 months from the missed attainment date) and the fact that the contingency measures included in the prior attainment plan for the area under section 172(c)(9) must be activated once the EPA publishes its finding of the area's failure to attain the NAAQS by the applicable attainment date. If contingency measures from the Serious area attainment plan are relied on in the new attainment demonstration as part of the control strategy, the state will need to submit additional contingency measures for the section 189(d) attainment plan submission.

3. Control Strategy Submission Requirements

To ensure that attainment plan submissions contain the necessary supporting information for the EPA to review and approve the state's new control strategy to achieve at least 5 percent reductions in emissions of direct $PM_{2.5}$ and significant $PM_{2.5}$ precursors, the EPA proposes to require under the authority of section 301(a) that a state must submit the following information as part of its section 189(d) plan submission:

- A list of all emissions source categories, sources and activities in the nonattainment area (for multi-state nonattainment areas, this would include source categories, sources and activities from all states which make up the area);
- For each source category, source or activity in the nonattainment area, an inventory of direct $PM_{2.5}$ and all $PM_{2.5}$ precursor emissions;
- For each source category, source or activity in the nonattainment area, a comprehensive list of potential control measures considered by the state for those sources in the nonattainment area; [219]
- For each potential control measure considered by the state but eliminated from further consideration due to a determination by the state that the control measure or technology was not technologically feasible, a narrative explanation and quantitative or qualitative supporting documentation to justify the state's conclusion;
- For each technologically feasible emission control measure or technology, the state must provide the following information relevant to economic feasibility: (i) the control efficiency by pollutant; (ii) the possible emission reductions by pollutant; (iii) the estimated cost per ton of pollutant reduced; and, (iv) a determination of whether the measure is economically

[218] 69 FR 30006 (May 26, 2004).

[219] Menu of Control Measures document available at *http://www.epa.gov/air/criteria.html.*

feasible, with narrative explanation and quantitative supporting documentation to justify the state's conclusion;

• For each technologically and economically feasible emission control measure or technology, the date by which the technology or measure could be implemented.

As with other $PM_{2.5}$ attainment plan submissions, the EPA believes that it is incumbent on the state to ensure that the information needed for the EPA to evaluate the state's analysis of new control measures needed to achieve annual 5 percent reductions is presented separately as part of the control strategy analysis and in a format that provides transparency, consistency and the ability for another party to evaluate the state's analysis effectively and to duplicate the state's results. For this reason, the EPA is including the section 189(d) plan base year emissions inventory information as a necessary part of the control strategy submittal and as one element of the state's section 189(d) plan due 12 months after the missed attainment date for the area. In addition, the EPA proposes that the state must provide information as part of any attainment plan submitted to meet the requirements of section 189(d) consistent with the criteria described in Section VI.D.5 of this preamble to ensure that a state adopts effective regulations to implement the control measures identified as being needed to meet those requirements. Specifically, all control measures must be quantifiable, enforceable, replicable and accountable.

The section 189(d) requirement to reduce emissions by 5 percent per year is in effect a fixed level of RFP to be achieved annually. Accordingly, just as quantitative milestones are used to track progress with RFP requirements, the EPA proposes that the state would be required to submit quantitative milestone reports to describe the area's progress in meeting the 5 percent annual emissions reduction requirement under section 189(d). *See* Section VII.G of this preamble for more details.

E. Modeling for Attainment Demonstrations

Section 189(d) requires a state with a Serious nonattainment area that failed to attain the relevant NAAQS by the applicable Serious area attainment date to submit a new attainment plan for such area within 12 months after the missed attainment date. The EPA is proposing that the same general requirements for attainment demonstrations and modeling that apply to Moderate area plans and Serious area plans due under sections 189(a) and 189(b) should also apply to section 189(d) attainment plans. However, the EPA is proposing additional requirements specific to plans states submitted pursuant to section 189(d) as described below.

1. Attainment Demonstrations for Serious Areas That Fail To Attain the NAAQS by the Applicable Attainment Date

The EPA is proposing that the attainment demonstration for Serious areas subject to section 189(d) requirements must consist of: (i) technical analyses such as base year and future year modeling of emissions which identify sources and quantify their emissions that are contributing to violations of the $PM_{2.5}$ NAAQS; and, (ii) analyses of future year projected emissions reductions and air quality improvement resulting from national, regional and local programs already implemented as part of previous Moderate and/or Serious area attainment plans for the area (including reasonable control measures, BACM and BACT and additional feasible measures), and additional measures needed for expeditious attainment, including measures needed to achieve 5 percent emissions reductions on an annual basis. Each state with a nonattainment area subject to the requirements of section 189(d) must submit an attainment plan with an attainment demonstration that includes analyses supporting the state's determination of its proposed new attainment date. In all cases, the state must show that the area will attain the NAAQS as expeditiously as practicable.

2. What modeling is required?

The EPA proposes that states are required to submit air quality modeling in support of an attainment demonstration for a nonattainment area subject to the requirements of section 189(d). The modeling demonstration must show how and when the area will attain the NAAQS. Other than the timing of plan submissions and requirement to achieve 5 percent emissions reductions in direct $PM_{2.5}$ and $PM_{2.5}$ precursors, the relevant air quality modeling procedures and guidance for all $PM_{2.5}$ nonattainment area plans are the same. *See* Sections IV.E. and VI.E of this preamble for more details on proposed modeling requirements and guidance for Moderate and Serious $PM_{2.5}$ nonattainment areas, respectively.

3. What future year(s) should be modeled in attainment demonstrations?

As discussed more fully in Section VII.I of this preamble, the EPA must establish a new attainment date for a $PM_{2.5}$ nonattainment area subject to section 189(d) and must do so according to the provisions of sections 179(d)(3) and 172(a)(2), which require that the new attainment date must be as expeditious as practicable, but no later than 5 years from the date of publication in the **Federal Register** of the EPA's determination that the area failed to attain the relevant NAAQS. The EPA may extend the attainment date by up to 5 additional years (thus to 10 years from the date of publication of the notice of finding of failure to attain by the applicable attainment date for the area) if the agency deems it appropriate ''considering the severity of nonattainment and the availability and feasibility of pollution control measures.''

For purposes of determining the attainment date that is as expeditious as practicable, the state must conduct future year modeling which takes into account emissions growth, known controls (including any controls that were previously determined to be RACM or RACT or additional reasonable measures, or BACM or BACT or additional feasible measures for the area), the 5 percent per year emissions reductions required by section 189(d), plus any other emissions controls that are needed for expeditious attainment of the NAAQS. A state performing a modeling analysis for a plan submitted under section 189(d) must select a future modeling year such that all emissions control measures relied on for attainment will have been implemented by the beginning of that year. To demonstrate attainment, the modeling results for the nonattainment area must predict that emissions reductions implemented by the beginning of the last calendar year preceding the attainment date will result in $PM_{2.5}$ concentrations that meet the level of the standard.[220]

For a $PM_{2.5}$ nonattainment area subject to section 189(d), the EPA expects that the state will adopt any control measures necessary to demonstrate expeditious attainment within 5 years of the area failing to attain the NAAQS by the applicable Serious area attainment date.

4. Attainment Year Motor Vehicle Emissions Budgets

As with all other $PM_{2.5}$ NAAQS attainment plans, the transportation

[220] Note that for purposes of the $PM_{2.5}$ NAAQS, a determination of attainment (or failure to attain), which the EPA is required to make after the attainment date has passed, is based on an average of the most recent 3 years of ambient data prior to the area's attainment date.

conformity rule requires that attainment plans for areas subject to section 189(d) establish motor vehicle emissions budgets for the area's attainment year. Therefore, for such an area, the state would first determine the new attainment date as described in Section VII.I of this preamble. Once an area's attainment date has been established, the state would establish motor vehicle emissions budgets for direct $PM_{2.5}$ and any relevant $PM_{2.5}$ precursor for the attainment year.[221] A motor vehicle emissions budget for the purposes of a $PM_{2.5}$ attainment plan is that portion of the total allowable emissions within the nonattainment area allocated to on-road sources as defined in the submitted attainment plan.[222] Such motor vehicle emissions budgets would be calculated using the latest planning assumptions and the latest approved motor vehicle emissions model available at the time that the attainment plan is developed.[223]

The EPA seeks comment on these proposed attainment demonstration and modeling requirements for new attainment plans due for Serious areas subject to section 189(d).

F. RFP Requirements

As with other $PM_{2.5}$ attainment plans, a plan submitted to meet the requirements of section 189(d) must provide for RFP as required under sections 172(c)(2) and 189(c)(1). Section 171(1) defines RFP as ''such annual incremental reductions in emissions of the relevant air pollution as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable [NAAQS] by the applicable attainment date.'' The purpose of RFP requirements is to assure that a state is making progress towards attainment on an annual basis through the attainment plan, rather than deferring emissions reductions until just before the attainment date for the area. This requirement is similar to, though less prescriptive than, the requirement under section 189(d) for 5 percent emissions reductions of direct $PM_{2.5}$ or $PM_{2.5}$ precursors from the most recent emissions inventory on an annual basis until the area attains. Therefore, the EPA proposes to determine that a state has satisfied the RFP requirement if the state submits an approvable control strategy under section 189(d) that demonstrates that the state will achieve at least 5 percent reductions in direct $PM_{2.5}$ and $PM_{2.5}$ precursor emissions from sources in the area annually until attainment.

The EPA proposes that motor vehicle emissions budgets must also be established as part of any RFP plan for direct $PM_{2.5}$ and for any relevant $PM_{2.5}$ precursor using the latest planning assumptions and the latest approved motor vehicle emissions model available at the time that the plan is developed for a Serious area subject to 189(d).[224]

The EPA seeks comment on this proposed approach related to RFP requirements for new attainment plans due under section 189(d).

G. Quantitative Milestones

The revised attainment plan for any Serious nonattainment area that fails to attain the relevant $PM_{2.5}$ NAAQS by the applicable attainment date must include quantitative milestones pursuant to section 189(c). These quantitative milestones would be additional to those previously identified in the Moderate area and original Serious area attainment plans, and would need to reflect the projected emissions reductions or air quality improvements expected through the implementation of specific control measures identified to achieve the minimum 5 percent annual reductions required under section 189(d). Such milestones would need to be achieved every 3 years until the area attains the relevant NAAQS, such that the EPA proposes that, at a minimum, quantitative milestones selected for an attainment plan submitted under section 189(d) would need to demonstrate a reduction of at least 15 percent in emissions of direct $PM_{2.5}$ and significant precursors below those emissions reported in the most recent inventory for the area.

The section 189(d) plan for an area that failed to attain the standard by the applicable Serious area attainment date would have to contain quantitative milestones to be achieved by 13.5 years from the area's date of designation and every 3 years thereafter until the area's new projected attainment date. In the event a state is developing a revised attainment plan pursuant to section 189(d) that will be due sometime after 13.5 years following designation of the area, the EPA proposes to allow the state to submit quantitative milestones beginning for the year 16.5 from designation and every 3 years thereafter until the area's projected attainment date.

The EPA believes that its proposed requirements for quantitative milestones, described in Sections IV.G and VI.G of this preamble, should also apply to quantitative milestones submitted with any revised attainment plan pursuant to section 189(d), and thus proposes and seeks comment on the agency's proposed milestone requirements for application to attainment plans due under section 189(d).

H. Contingency Measures

All $PM_{2.5}$ attainment plans, including plans for areas subject to section 189(d), must contain contingency measures that are consistent with section 172(c)(9). Section VI.H of this preamble describes the EPA's proposed criteria for contingency measures for a Serious area attainment plan, and the agency proposes that contingency measures for a section 189(d) plan must meet the same criteria. The EPA proposes that the emissions reductions associated with contingency measures for section 189(d) plans must be at least 5 percent of direct $PM_{2.5}$ and significant $PM_{2.5}$ precursor emissions as reported in the most recent inventory for the area. The EPA believes this requirement would appropriately align the proposed requirement for selecting contingency measures with the agency's proposed approach to RFP for these areas. In other words, if RFP for an area is equivalent to about 1 year's worth of emissions reductions, or 5 percent emissions reductions in direct $PM_{2.5}$ and $PM_{2.5}$ precursors, then the adopted contingency measures should likewise achieve about 1 year's worth of emissions reductions, or 5 percent emissions reductions in direct $PM_{2.5}$ and $PM_{2.5}$ precursors.

The EPA recognizes that identifying contingency measures for a Serious $PM_{2.5}$ nonattainment area that failed to attain the relevant NAAQS by the applicable attainment date may be challenging for a state that should already have fully implemented all control measures identified as ''reasonable'' and ''best,'' and potentially ''most stringent,'' in addition to identifying new control measures to achieve the requisite minimum 5 percent reductions in direct $PM_{2.5}$ and significant $PM_{2.5}$ precursor emissions

[221] For more information on $PM_{2.5}$ precursor requirements, *see* section 93.102(b)(2)(iv) and (v) of the transportation conformity rule. *See* also the May 6, 2005, final transportation conformity rule that addressed requirements for $PM_{2.5}$ precursors. (70 FR 24280).

[222] A state would also establish motor vehicle emissions budgets for an area's attainment year. Those budgets would be the motor vehicle emissions that the SIP establishes as being necessary to attain the NAAQS.

[223] If an area includes re-entrained road dust in the motor vehicle emissions budget, the latest approved version of AP–42 should be used unless the EPA has approved an alternative model for the area.

[224] If an area includes re-entrained road dust in the motor vehicle emissions budget, the latest approved version of AP–42 should be used unless the EPA has approved an alternative model for the area.

necessary for expeditious attainment. Nonetheless, given the statutory language of section 172(c)(9), the EPA seeks comment on applying the same proposed requirements for contingency measures for section 189(d) plans, and on the agency's proposed approach for calculating the emissions reductions that such measures must be able to achieve.

I. Attainment Dates

As previously discussed, section 189(d) requires a minimum 5 percent annual reduction in emissions of direct $PM_{2.5}$ and $PM_{2.5}$ precursors until the area attains the relevant NAAQS. However, neither section 189(d) nor other sections in subpart 4 explicitly establish or provide the authority to establish a new attainment date for the area; other subpart 4 attainment date provisions for Moderate or Serious areas are likewise not applicable to areas in this situation. Therefore, once an area is beyond the attainment dates that Congress specified in subpart 4 for the PM_{10} NAAQS, the EPA must look to the existing provisions of the CAA to provide authority for a new attainment date. Sections 179(d)(3) and 172(a)(2) provide generally applicable attainment dates that fill the gap in the statute left for areas subject to the requirements of section 189(d). Thus, for a $PM_{2.5}$ nonattainment area subject to section 189(d) requirements, the EPA must establish a new attainment date, and must do so according to the provisions of section 179(d)(3) and 172(a)(2). The EPA has followed this same approach in the past for PM_{10} nonattainment areas governed by subpart 4 nonattainment requirements.[225]

The new attainment date must be as expeditious as practicable, but no later than 5 years from the date of publication in the **Federal Register** of the EPA's determination that the area failed to attain the relevant NAAQS. The EPA may extend the attainment date by up to 5 additional years (thus to 10 years from the date of publication of the notice of finding of failure to attain by the applicable attainment date for the area) if the agency deems it appropriate ''considering the severity of nonattainment and the availability and feasibility of pollution control measures.'' For a $PM_{2.5}$ nonattainment area subject to section 189(d), the EPA expects that the state will adopt any control measures necessary to demonstrate expeditious attainment within 5 years of the area failing to attain the NAAQS by the applicable Serious area attainment date.

As discussed earlier in this section, the EPA will consider the state's attainment demonstration and proposed attainment date for the area, in addition to the state's revised control strategy and the relevant facts and circumstances, in order to identify the most expeditious attainment date practicable for the area.

The EPA seeks comment on this proposal for interpreting the statutory requirements under section 189(d) for a Serious area that fails to attain the $PM_{2.5}$ NAAQS by the applicable attainment date.

VIII. What are the EPA's proposed NNSR permitting requirements?

A. Statutory Requirements for NSR

Section 110(a)(2)(C) of the CAA requires states to include in their SIPs a preconstruction review permitting program that regulates the construction and modification of stationary sources as necessary to ensure that NAAQS are achieved. To address the regulation of the larger pollutant-emitting sources (defined as major stationary sources), Congress provided specific permitting requirements in the CAA in parts C and D of title I. The requirements for preconstruction permits under parts C and D of the CAA are commonly known collectively as the major NSR program because they apply specifically to the preconstruction review and permitting of new major stationary sources, and major modifications at existing sources. As explained in Sections VIII.A.1 and 2 of this preamble, the preconstruction review of each new and modified major stationary source generally is carried out on a pollutant-specific basis and the requirements with regard to each pollutant apply based on whether the area in which the proposed major source or major modification would locate is designated attainment (or unclassifiable) or nonattainment for that pollutant at the time the permit is issued.

1. PSD

Part C of title I of the CAA (hereafter referred to simply as part C) contains implementation plan requirements that apply to new major stationary sources and major modifications in areas designated attainment or unclassifiable for any NAAQS. These requirements constitute the PSD program. Pursuant to part C, the EPA has adopted PSD regulations at 40 CFR 51.166 (minimum requirements for an approvable state PSD program in the SIP) and 40 CFR 52.21 (the federal PSD program, applicable in areas where the state does not have an EPA-approved PSD program in its SIP). The EPA last amended the PSD regulations for $PM_{2.5}$ on January 15, 2013, in the final rule revising the $PM_{2.5}$ NAAQS.[226] This proposal does not relate to the PSD program, nor does it propose further changes to the PSD regulations. Any future revisions to the PSD regulations for $PM_{2.5}$ would be done through a separate notice-and-comment rulemaking.

2. NNSR

Part D of title I of the CAA (hereafter referred to as part D) contains implementation plan requirements for nonattainment areas, which include the requirements for permitting new major stationary sources and major modifications in designated nonattainment areas, referred to as the NNSR program. As noted earlier, part D contains several subparts that include various requirements for addressing nonattainment areas. Subpart 1 addresses plan requirements for nonattainment areas generally, including section 172(c)(5) which requires preconstruction and operating permits for new major stationary sources and major modifications in nonattainment areas. Section 173 outlines the minimum statutory requirements for a state's NNSR permit program and serves as the basis for the EPA's NNSR regulations for $PM_{2.5}$ as promulgated in the 2008 $PM_{2.5}$ NSR Rule. Subpart 4 was added to part D as part of the 1990 CAA Amendments and includes additional plan provisions for designated PM_{10} nonattainment areas. Relevant here, section 189(a)(1)(A) of subpart 4 requires states to include in their implementation plan a permit program addressing major stationary sources of PM_{10} that meets the requirements under section 173 of subpart 1. Subpart 4 also includes some additional preconstruction review requirements for which, to date, the EPA has promulgated NSR regulations applying only to major stationary sources of PM_{10} in PM_{10} nonattainment areas. The specific NNSR requirements contained in both subparts 1 and 4 are described below including the changes to the NNSR regulations needed to address $PM_{2.5}$ specifically that the EPA is proposing in this notice.

[225] For example, *see* the **Federal Register** notice from June 6, 2007 (72 FR 31183) in which the EPA found that the Phoenix PM_{10} Serious nonattainment area failed to attain the standard by the 2006 attainment date.

[226] More information on the PSD requirements for $PM_{2.5}$ as well as the public comments and the EPA's responses to those comments and the related issues for which comments were received is contained in the January 15, 2013 **Federal Register** document (78 FR 3086, beginning at page 3251).

B. Federal NNSR Regulations

Federal regulations pertaining to the preconstruction permitting of new major stationary sources and major modifications in areas designated nonattainment are contained at 40 CFR 51.165; part 51, appendix S; and, § 52.24. An approved NNSR program in a state's implementation plan must, at a minimum, meet the program requirements set forth in the federal NNSR requirements at 40 CFR 51.165, which for $PM_{2.5}$ are currently based on changes made under the 2008 $PM_{2.5}$ NSR Rule. States are required to adopt regulations consistent with those plan requirements and submit them to the EPA for approval as part of their SIP within a period of time consistent with the schedule prescribed by the CAA.

The EPA interprets the requirement established under section 110(a)(2)(C) of the CAA for states to regulate the construction and modification of sources to apply in nonattainment areas as of the effective date of a new nonattainment area designation.[227] Although section 110(a)(2)(C) does not contain specific requirements a state must follow for issuing major source permits during the interim period between effective date of designation and the date when a state has an EPA-approved NNSR program, the EPA regulation at 40 CFR 52.24(k) authorizes states to apply 40 CFR part 51, Appendix S, known as the Emission Offset Interpretative Ruling, during the interim period. [228] [229]

Accordingly, states with newly designated nonattainment areas for the revised primary $PM_{2.5}$ NAAQS have two possible means by which they can implement NNSR requirements for $PM_{2.5}$ following the effective date of designations and until the EPA approves a SIP submission meeting the NNSR requirements for $PM_{2.5}$ promulgated in this rule under subpart 4. First, any state that has an approved NNSR program for $PM_{2.5}$ can continue to apply those permitting requirements in the interim. Second, states that lack any approved NNSR program for $PM_{2.5}$ may rely upon the NNSR provisions in Appendix S until the EPA approves a SIP submission from the state to address $PM_{2.5}$ in order to ensure that proposed new major stationary sources and major modifications for $PM_{2.5}$ in newly designated $PM_{2.5}$ nonattainment areas undergo the appropriate type of preconstruction review in the interim.

1. General Applicability

New major stationary sources are subject to the NNSR requirements when they are major for the pollutant for which an area is designated nonattainment. *See* 40 CFR 51.165(a)(2)(i). With regard to major modifications, NNSR applies to proposed physical changes or changes in the method of operation of an existing stationary source that (1) is major for the nonattainment pollutant (or a precursor for that pollutant) and (2) results in both a significant emissions increase and a significant net emissions increase of that nonattainment pollutant (or a precursor for that pollutant).[230]

For each proposed major new source and major modification, the general NNSR requirements that are required to be included in a state's SIP include: (i) the installation and continuous operation of pollution control technology that complies with the LAER; (ii) the acquisition of creditable emissions reductions to adequately offset the proposed emissions increase of the nonattainment pollutant; and, (iii) a demonstration of compliance with other analyses as required under section 173 of the CAA.[231] These NNSR requirements must be satisfied by a major new source or major modification as a prerequisite for receipt of a construction permit and apply as of the effective date of designation of an area as nonattainment for the pollutant.

2. Historical Overview of NNSR for PM_{10} and $PM_{2.5}$ NAAQS

Following the adoption of new PM NAAQS based on the PM_{10} indicator in 1987 (replacing the original Total Suspended Particulate indicator), the EPA announced that it did not intend to designate areas as nonattainment for PM_{10}. As a result, the EPA initially determined that part D, which at that point consisted only of generally applicable requirements, did not apply to the PM_{10} NAAQS.[232] Thus, nonattainment area requirements, including the NNSR program, did not initially apply with respect to PM_{10}. Consequently, all new major stationary sources and major modifications of PM_{10} were required to undergo PSD review as a prerequisite for construction or modification.

The approach for implementing the NNSR program for PM changed when in 1990 Congress established a new subpart 4 specifically to address implementation plan requirements for PM_{10} nonattainment areas, including new preconstruction permit requirements for major stationary sources and major modifications with respect to PM_{10} and PM_{10} precursors. Moreover, Congress created new PM_{10} nonattainment areas through designations that became effective upon enactment of the 1990 Amendments on November 15, 1990.[233] In section 189(a)(2)(A), Congress also required states to submit the necessary NNSR permit program SIP revisions for these areas to the EPA by June 30, 1992.

In a letter to its Regional Offices dated March 11, 1991,[234] the EPA initially indicated that states should implement such new requirements by operation of law, without the need for formal rulemaking by the EPA to establish the necessary requirements for states to adopt. In the General Preamble, the EPA offered states additional guidance and described the EPA's preliminary views on how the states and the EPA should interpret various provisions of the 1990

[227] *See* the **Federal Register** published on November 29, 2005 (70 FR 71612, 71677 and 71678).

[228] States with designated $PM_{2.5}$ nonattainment areas were required to submit SIPs satisfying the requirements of the 2008 $PM_{2.5}$ NSR Implementation Rule by May 16, 2011, 3 years from the date of publication of that rule. *See* 73 FR 28321 (May 16, 2008), at page 28342. Such approved state programs can continue to be implemented to issue permits to new major stationary sources and major modifications until the state's revised program containing the subpart 4 NNSR provisions promulgated in this rulemaking is approved under the applicable SIP.

[229] Appendix S was originally promulgated in 1976 to address whether, and to what extent, new and modified sources would be allowed to construct in nonattainment areas whose attainment deadlines had already passed, in light of the regulatory requirement that new or modified sources be disapproved where the source would interfere with attainment of the NAAQS (41 FR 55524 (December 21 1976)). When Congress added the part D provisions in the 1977 CAA Amendments, it also added the requirement that SIPs contain NNSR provisions as set forth in Part D. Additionally, Congress provided that Appendix S would govern preconstruction permitting in nonattainment areas lacking approved part D SIPs before a construction ban went into effect. When Congress removed the construction ban via the 1990 CAA Amendments (except as provided for in section 110(n)(3)) it left in place the use of the interim NNSR program under Appendix S.

[230] As will be explained in ensuing discussions, the nonattainment pollutant and any applicable precursors for that pollutant are considered separately for NNSR applicability purposes. *See* 40 CFR 51.165(a)(1)(v)(A), (a)(2)(ii)A).

[231] The basic NNSR requirements are set forth in section 173 of subpart 1. Subpart 4 adds a more stringent definition of ''major source'' for PM_{10} sources in PM_{10} nonattainment areas classified as Serious and sets forth provisions for the regulation and potential exemption of major sources of PM_{10} precursors in PM_{10} nonattainment areas. Until the decision in *NRDC* v. *EPA* was issued, the additional subpart 4 requirements had not been directly applied with regard to $PM_{2.5}$.

[232] At the time the EPA promulgated the new PM_{10} NAAQS, part D of the CAA did not include subpart 4. *See* 52 FR 24672 (July 1, 1987).

[233] *See* section 107(d)(4)(B) of the CAA. The EPA subsequently published a list of the statutorily created PM_{10} areas in a **Federal Register** document at 55 FR 45799 (October 31, 1990).

[234] The EPA memorandum titled ''New Source Review (NSR) Program Transition Guidance,'' signed by John S. Seitz, Director, Office of Air Quality Planning & Standards.

Amendments, primarily those provisions concerning planning and control measure requirements for the attainment of the NAAQS in nonattainment areas. In a 2005 final rule, the EPA formally amended the NNSR regulations to incorporate the requirements contained in subpart 4 of part D of the 1990 CAA Amendments concerning PM_{10} nonattainment areas. [235]

The EPA revised the PM NAAQS in 1997, establishing new annual and 24-hour NAAQS using $PM_{2.5}$ particles as a new indicator, while retaining the NAAQS for PM_{10}.[236] In 2006, the EPA again revised the suite of PM NAAQS by tightening the 24-hour $PM_{2.5}$ standards and retaining the level of the annual $PM_{2.5}$ standards.[237] In 2008, the EPA issued the $PM_{2.5}$ NSR Rule that established various provisions ensuring that proposed new major stationary sources or major modifications of sources of direct $PM_{2.5}$ emissions or emissions of applicable $PM_{2.5}$ precursors would be required to undergo preconstruction review.[238] The EPA included specific provisions in the 2008 $PM_{2.5}$ NSR Rule to apply when such sources are located in a designated $PM_{2.5}$ nonattainment area. Unlike the NNSR requirements for PM_{10} developed under subpart 4, the EPA determined that the applicable implementation requirements for the $PM_{2.5}$ NAAQS were contained in the general nonattainment provisions under subpart 1.

With regard to NSR applicability for $PM_{2.5}$ precursors in the 2008 $PM_{2.5}$ NSR Rule, the EPA recognized NO_X, SO_2, VOC and ammonia as precursors of $PM_{2.5}$ in the scientific sense (because those pollutants under the appropriate conditions can contribute to the formation of $PM_{2.5}$ in the ambient air) but did not require that states subject all of these precursors to control as part of the attainment plan or NSR permitting requirements applicable to a given nonattainment area.[239] Instead, based on the authority in section 302(g) of the CAA, the EPA established the initial presumptions for nonattainment areas that SO_2 and NO_X should be regulated precursors for $PM_{2.5}$, but VOC and ammonia need not be regulated precursors. The EPA or the states could rebut the initial presumptions regarding NO_X, VOC or ammonia on an area-by-area basis with a demonstration approved by the Administrator and thus reverse any of those presumptions in the state's implementation plan for that area.[240]

As described above in Section II.C of this preamble, in January 2013 the court in *NRDC* v. *EPA* held that the EPA erred in implementing the $PM_{2.5}$ NAAQS pursuant only to the general implementation requirements in subpart 1, rather than also to the implementation requirements specific to particulate matter in subpart 4. Accordingly, the court directed the EPA to comply with the requirements of subpart 4 when developing implementing regulations for $PM_{2.5}$ nonattainment areas.

The court decision, requiring that the EPA implement the $PM_{2.5}$ NAAQS consistent with the requirements of subpart 4, clearly has specific implications for implementing the NNSR program for $PM_{2.5}$. Two provisions of subpart 4 impose additional requirements on the existing NNSR program requirements for $PM_{2.5}$. The first relates to the definition of ''major stationary source.'' Section 188(b) provides that some areas initially designated as Moderate areas for PM_{10} subsequently may be reclassified as Serious areas. For any PM_{10} nonattainment area reclassified as a Serious area, section 189(b)(3) provides that a major stationary source of PM_{10} be defined to include any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit at least 70 tpy of PM_{10}. In accordance with the statute, the EPA is proposing to establish a major source emissions threshold for stationary sources of $PM_{2.5}$ that satisfies the intent of section 189(b)(3).

The second relevant subpart 4 provision governs the treatment of major sources of PM_{10} precursors. As previously explained in Section III.A of this preamble, the court specifically criticized the EPA's prior establishment of the rebuttable presumptions for addressing $PM_{2.5}$ precursors, specifically citing the requirement of section 189(e). Section 189(e) requires that the control requirements in the plan applicable to major stationary sources of PM_{10} must also apply to major stationary sources of PM_{10} precursors. Section 189(e) also provides that states may elect not to impose control requirements on major stationary sources of PM_{10} precursor emissions if such emissions do not contribute significantly to ambient PM_{10} concentrations that exceed the standard in the PM_{10} nonattainment area. Section 189(e) requires that the EPA must make this determination, and thus the EPA must approve the decisions of a state that elects to use this provision to exempt any major stationary sources of $PM_{2.5}$ precursors from controls in its attainment plan or NNSR program.

The court's observation that the EPA's prior presumptions regarding precursors were inconsistent with the explicit requirements of section 189(e) that major sources of all $PM_{2.5}$ precursors are subject to control requirements thus necessitates that the agency revise the NNSR regulations governing precursors for $PM_{2.5}$. As explained in greater detail later in this section, the EPA is proposing different potential options to make the necessary changes to the NNSR regulations in order to address the precursor requirements contained in subpart 4.

C. What are the changes the EPA is proposing for NNSR for $PM_{2.5}$ nonattainment areas?

In this section, the EPA presents for comment certain proposed revisions to the NNSR regulations as well as alternative approaches for incorporating the subpart 4 requirements into the NNSR regulations for $PM_{2.5}$. The proposed changes would affect the existing regulations at 40 CFR 51.165 and part 51 Appendix S. The agency does not intend to propose any changes to the regulations at 40 CFR 52.24, which provide the authorization for states to issue NNSR permits to major new sources and major modifications ''during the period between the date of designation as nonattainment and the date the NSR permit program meeting the requirements of part D is approved.''

1. What are the changes the EPA is proposing for the NNSR requirements for $PM_{2.5}$ at 40 CFR 51.165?

As explained above, the existing NNSR regulations applicable to $PM_{2.5}$ are based solely on the permit requirements contained in section 173 of subpart 1. In subpart 4, section 189(a)(1)(A) requires states to include in their SIPs for PM_{10} nonattainment areas a permit program meeting the requirements of section 173; however, other provisions in subpart 4 add additional requirements for the NNSR permit program. Those additional provisions concern (i) the definition of ''major stationary source'' in nonattainment areas classified as Serious areas, and (ii) control

[235] *See* ''Final Rule to Implement Certain Aspects of the 1990 Amendments Relating to New Source Review and Prevention of Significant Deterioration as They Apply in Carbon Monoxide, Particulate Matter and Ozone NAAQS.'' 70 FR 71611 (November 29, 2005).

[236] *See* 62 FR 38652 (July 18, 1997).

[237] *See* 71 FR 61144 (October 17, 2006).

[238] *See* 73 FR 28321 (May 16, 2008).

[239] *See* 72 FR 20589.

[240] In the 2008 $PM_{2.5}$ NSR Rule, the EPA concluded that SO_2 should be regulated as a precursor for $PM_{2.5}$ in all areas. *See* 73 FR 28327.

requirements for applicable major stationary sources of PM_{10} precursors. While those particular requirements in subpart 4 refer specifically to PM_{10}, the EPA is proposing to add similar requirements for $PM_{2.5}$ in accordance with the court's holding in *NRDC* v. *EPA* that subpart 4 also governs implementation of the $PM_{2.5}$ NAAQS.

a. *Definition of ''major stationary source'' in Serious $PM_{2.5}$ nonattainment areas.* In Section III.A of this preamble, the EPA indicated its intention to propose new provisions based on the requirements in subpart 4 for reclassifying certain $PM_{2.5}$ nonattainment areas as Serious areas. Because the NNSR regulations for $PM_{2.5}$ set forth in the 2008 $PM_{2.5}$ NSR Rule were developed pursuant to subpart 1, which does not provide for the classification of designated nonattainment areas, the EPA has not yet developed regulations to address subpart 4 requirements concerning nonattainment areas classified as Serious. With respect to NNSR, section 189(b)(3) provides that, for any PM_{10} nonattainment area classified as Serious, the major source threshold with regard to the terms ''major source'' and ''major stationary source'' shall be 70 tpy of PM_{10}. Accordingly, the EPA is proposing to amend the NNSR regulations at 40 CFR 51.165 consistent with this provision to establish a major source threshold for new major stationary sources and major modifications in $PM_{2.5}$ nonattainment areas classified as Serious consistent with subpart 4. The EPA is proposing to set the major source threshold for direct $PM_{2.5}$ emissions at 70 tpy. *See* proposed 40 CFR 51.165(a)(1)(iv)(A)(*1*)(*vii*).

While the court decision did not mandate that the EPA define ''major source'' and ''major stationary source'' for $PM_{2.5}$ at a threshold of 70 tpy of $PM_{2.5}$ emissions for areas reclassified as Serious, the most straightforward and consistent application of section 189(b)(3) to $PM_{2.5}$ nonattainment areas is to establish the same numerical threshold for Serious $PM_{2.5}$ nonattainment areas as that which applies to Serious PM_{10} nonattainment areas. Moderate nonattainment areas for both PM_{10} and $PM_{2.5}$ are already subject to the same major source thresholds by statute, so the EPA believes that it is also reasonable to establish the threshold for $PM_{2.5}$ in Serious areas at the same level as the threshold that applies to PM_{10} in Serious areas. For the reasons explained below, the EPA believes that potential alternative approaches to setting the major source threshold for Serious $PM_{2.5}$ nonattainment areas could have significant drawbacks. Nevertheless, the EPA is proposing and requesting comments on other possible thresholds for Serious areas.

A possible alternative approach would be to promulgate a $PM_{2.5}$ major source threshold lower than 70 tpy of $PM_{2.5}$ emissions, recognizing that $PM_{2.5}$ is a subset of PM_{10}. Generally, any source's $PM_{2.5}$ emissions will be a fraction of that source's PM_{10} emissions. However, determining the appropriate major source emissions threshold for $PM_{2.5}$ that would be equivalent to 70 tpy of PM_{10} on a national basis is problematic because, while $PM_{2.5}$ is generally a subset of PM_{10}, there is not a consistent ratio of $PM_{2.5}$ to PM_{10} emissions for all stationary sources. Combustion sources, such as industrial and commercial boilers that burn fossil fuels, and selected industrial processes emit primarily finer particles within the $PM_{2.5}$ size range, while other industrial processes—typically involving crushing and grinding operations—tend to emit more coarse particles in the PM_{10} size range. While the PM_{10}: $PM_{2.5}$ ratio for most sources decreases when the overall emissions of PM are controlled, the quantitative difference between $PM_{2.5}$ emissions and PM_{10} emissions from specific sources can still be significant, thus making a national $PM_{2.5}$ major source threshold based on a single ratio difficult to define. The EPA seeks comments on possible ways in which a $PM_{2.5}$ emissions rate different from the statutory 70 tpy rate for PM_{10} emissions can be established, taking into account variations in the PM_{10}: $PM_{2.5}$ ratio for different source categories and activities.

Accordingly, while the EPA seeks comment on this alternative approach, because of the associated limitations just described, the first option (*i.e.,* a major source threshold of 70 tpy of $PM_{2.5}$ emissions for stationary sources proposing to construct or modify in $PM_{2.5}$ nonattainment areas reclassified as Serious) represents the agency's preferred approach.

b. *Control requirements for new major stationary sources and major modifications of $PM_{2.5}$ precursors.* The second key provision contained in subpart 4 that is not contained in subpart 1 relates to the control of major stationary sources and major modifications of precursor pollutants. Section 189(e) provides that, with respect to NNSR, the control requirements applicable to major stationary sources of PM_{10} also apply to major stationary sources of PM_{10} precursors, except that major stationary sources of a particular precursor may be exempt from the control requirements that apply to major stationary sources of PM_{10} if the state can demonstrate (based on guidance provided by the EPA) that the precursor emissions from those sources do not contribute significantly to ambient PM_{10} concentrations that exceed the standard in the nonattainment area.

The specific ''control requirements'' for new or modified major stationary sources of $PM_{2.5}$ are contained in section 173 of the CAA (outlining requirements for the state permit program required to be submitted in a state plan under section 189(a)(1)(A)) and 189(b)(3) (establishing a major source threshold for sources in Serious areas). Consistent with these requirements, the EPA is proposing a series of revisions to address $PM_{2.5}$ precursors in the NNSR regulations at 40 CFR 51.165, including: Revision of the definition of ''regulated NSR pollutant'' to require regulation under the permitting program of all $PM_{2.5}$ precursors; the establishment of major stationary source thresholds (for both Moderate areas and Serious areas) for all $PM_{2.5}$ precursors; and, a provision for an exemption from the NNSR requirements, pursuant to section 189(e) of the CAA, for major stationary sources of any $PM_{2.5}$ precursor where such sources do not contribute significantly to ambient concentrations of $PM_{2.5}$ that exceed the standard in a particular nonattainment area. As described in greater detail below, the EPA is not at this time proposing any new significant emissions rates for the $PM_{2.5}$ precursors.

As described in Section VIII.A.2.b of this preamble, the NNSR regulations at 40 CFR 51.165 currently require states to regulate new major stationary sources and major modifications of SO_2 and NO_X as precursors under the NNSR requirements for $PM_{2.5}$.[241] Optionally, a state may avoid regulating new major stationary sources and major modifications of NO_X under the NNSR requirements for $PM_{2.5}$ if that state demonstrates to the satisfaction of the EPA that NO_X is not a significant contributor to $PM_{2.5}$ concentrations in a particular $PM_{2.5}$ nonattainment area. Similarly, the existing regulations provide that a state may opt to regulate new major stationary sources and major modifications of VOC or ammonia under the NNSR requirements for $PM_{2.5}$ if that state demonstrates to the satisfaction of the EPA that VOC or ammonia are precursors for $PM_{2.5}$ that need to be controlled in a particular

[241] *See* the definition of ''regulated NSR pollutant'' at existing 40 CFR 51.165(a)(1)(xxxvii)(C)(*2*) and (*3*).

$PM_{2.5}$ nonattainment area.[242] In accordance with the court's statement that section 189(e) requires all $PM_{2.5}$ precursors to be addressed, the EPA is proposing to revise the NNSR regulations to require that new major stationary sources and major modifications of SO_2, NO_X, VOC and ammonia meet the NNSR requirements for $PM_{2.5}$ in $PM_{2.5}$ nonattainment areas. In doing so, the EPA believes that it is necessary to propose several revisions to 40 CFR 51.165 to ensure that the NNSR requirements for $PM_{2.5}$ adequately address the regulated precursors consistent with the requirements of subpart 4.

First, the EPA is proposing to revise the regulations at 40 CFR 51.165 to ensure that new major stationary sources and major modifications of the four scientific precursors for $PM_{2.5}$ are subject to the same requirements under the NNSR regulations that apply to new major stationary sources and major modifications of direct $PM_{2.5}$ emissions. As explained earlier in this preamble, the court decision in *NRDC vs. EPA* concluded that section 189(e) ''expressly governs precursor presumptions'' and thus necessitates that the EPA revise its existing provisions in the NNSR rules that indicate that VOC and ammonia are not regulated $PM_{2.5}$ precursors. The EPA is thus proposing to revise the NNSR definition of ''regulated NSR pollutant'' to ensure that the NNSR regulations are consistent in establishing that SO_2, NO_X, VOC and ammonia are all regulated $PM_{2.5}$ precursors for purposes of NNSR requirements, except under certain conditions explained below. *See* proposed 40 CFR 51.165(a)(1)(xxxvii)(C)(*2*).

While section 189(e) generally requires that major stationary sources of $PM_{2.5}$ precursors must apply the control requirements (including those for NNSR) for major stationary sources of direct $PM_{2.5}$ emissions, the section also provides for an exemption from such requirements for any precursor for which ''the Administrator determines that such sources do not contribute significantly'' to the levels of $PM_{2.5}$ that exceed the standard in the nonattainment area. Section 189(e) further authorizes the EPA to issue guidelines concerning the application of the exemption process.

In Section III of this preamble, the EPA described the agency's proposed approaches for interpreting requirements for states to control $PM_{2.5}$ precursors in their attainment plans for the $PM_{2.5}$ NAAQS, which includes several proposed options to enable states to exempt a precursor from the attainment plan control requirements (including NNSR) for a particular $PM_{2.5}$ nonattainment area with the appropriate factual and analytical basis. In summary, the options included: (i) Separate analyses to determine which precursors are subject to the control requirements for attainment plans and which precursors are subject to the control requirements for NNSR for $PM_{2.5}$; (ii) a technical demonstration showing that all sources of a particular precursor do not significantly contribute to the $PM_{2.5}$ levels that exceed the standard in an area, thus exempting the precursor from control under both the attainment plan and NNSR programs; and, (iii) one analysis to determine whether control measures for a precursor are not needed for expeditious attainment for purposes of the attainment plan, which would also define the precursors that should be addressed for NNSR for $PM_{2.5}$. Accompanying the description of each of the above options, Section III.C of this preamble discusses the potential analytical requirements for any proposed demonstration that any particular precursor should be exempted from the control requirements for $PM_{2.5}$ in a given nonattainment area. The EPA is requesting comments on the three precursor options and the technical approaches for requesting a precursor exemption. Any comments received will be considered in developing the agency's final policy for addressing $PM_{2.5}$ precursors under the NNSR program for $PM_{2.5}$.

The second proposed change with regard to the nonattainment area control requirements for $PM_{2.5}$ precursors involves the definition of ''major stationary source'' as it relates specifically to precursors. The EPA is proposing to revise the definition of ''major stationary source'' contained in the NNSR regulations to ensure that new sources that emit major amounts of any $PM_{2.5}$ precursor that the state is regulating in the attainment plan for the area are appropriately considered major stationary sources subject to the NNSR requirements for $PM_{2.5}$. *See* proposed 40 CFR 51.165(a)(1)(iv)(A)(*1*). The proposed change concerning the regulation of precursors for $PM_{2.5}$ is being accomplished by adding to the term ''regulated NSR pollutant'' the phrase ''(as defined in paragraph (a)(1)(xxxvii) of this section).'' It should be noted that the definition of ''major modification'' already contains this phrase. As described above, the EPA is also proposing to revise the definition of ''regulated NSR pollutant'' to clarify that four precursors are being regulated for $PM_{2.5}$ in nonattainment areas for $PM_{2.5}$. The EPA is proposing to set the major source threshold for each $PM_{2.5}$ precursor (SO_2, NO_X, VOC and ammonia) at 100 tpy of each precursor for sources locating in Moderate areas, and 70 tpy of any precursor for sources locating in Serious areas. *See* proposed 40 CFR 51.165(a)(1)(iv)(A)(*1*) and (a)(*1*)(*viii*), respectively. For example, in order to be a major source for purposes of the $PM_{2.5}$ NAAQS, the source would need to emit at least 100 tpy of $PM_{2.5}$ emissions or at least 100 tpy of any individual $PM_{2.5}$ precursor that is a regulated precursor in a Moderate $PM_{2.5}$ nonattainment area. The individual treatment of pollutants and precursors for applicability purposes is consistent with the EPA's policy as explained in previous rulemakings.[243]

In proposing to set the major source threshold for each $PM_{2.5}$ precursor at 100 tpy for Moderate areas, the EPA is following the precedent established in the 2008 $PM_{2.5}$ NSR Rule in which the agency set the same 100 tpy major source threshold for $PM_{2.5}$ and each of its precursors (at that time SO_2 and NO_X).[244] As the EPA stated in that 2008 notice, sections 169 and 302(j) of the CAA contain definitions of ''major emitting facility'' and ''major stationary source'' that apply to programs implemented under subpart 1, which contain the PSD and NNSR program requirements, respectively.[245] Those definitions also apply to programs implemented under subpart 4 to the extent that they regulate areas classified as Moderate $PM_{2.5}$ nonattainment areas, as subpart 4 does not establish a different threshold for such areas. This proposal to set the same 100 tpy major source thresholds for sources of $PM_{2.5}$ emissions and applicable $PM_{2.5}$ precursor emissions is also consistent with the requirements of section 189(e), which make the control requirements applicable to major stationary sources of PM_{10} also applicable to major stationary sources of applicable PM_{10} precursors.[246]

As noted above, section 189(b)(3) sets a lower major source threshold of 70 tpy of PM_{10} emissions for sources locating in PM_{10} nonattainment areas reclassified as Serious. Because subpart 4 NNSR requirements must be applied to $PM_{2.5}$, the EPA must set a lower major source

[242] *Ibid* at (a)(1)(xxxvii)(C)(*3*) and (*4*).

[243] ''Different pollutants, including precursors, are not summed to determine applicability.'' *See* 73 FR 28231 (May 16, 2008), at page 28331.

[244] *Ibid.*

[245] *Ibid.*

[246] *See* 57 FR 13498 (April 16, 1992), at page 13538.

threshold for $PM_{2.5}$, pursuant to section 189(b)(3), in $PM_{2.5}$ nonattainment areas that are reclassified as Serious areas. Thus, the EPA's preferred approach proposed above is to set a major source threshold of 70 tpy of $PM_{2.5}$ emissions for sources in $PM_{2.5}$ nonattainment areas reclassified as Serious.

Consistent with this proposal, the EPA is also proposing to set the major source threshold for Serious areas for each precursor at 70 tpy of that particular precursor. As noted above, section 189(e) makes the control requirements for major stationary sources of PM_{10} also applicable to major stationary sources of PM_{10} precursors; thus, in accordance with the provision of the statute, the control requirements applicable to major stationary sources of $PM_{2.5}$ emissions are also applicable to major stationary sources of $PM_{2.5}$ precursors. Accordingly, the EPA must develop a major source threshold for $PM_{2.5}$ precursors that is consistent with the threshold for direct $PM_{2.5}$ that will apply in $PM_{2.5}$ nonattainment areas reclassified as Serious. *See* proposed 40 CFR 51.165(a)(1)(iv)(*1*)(*viii).*

The EPA's proposal to set a major source threshold of 70 tpy for Serious areas for each $PM_{2.5}$ precursor is also consistent with the approach the EPA has taken for establishing a major source threshold for each PM_{10} precursor under subpart 4. In the Addendum to the General Preamble offering guidance as to how to apply the new subpart 4 requirements in Serious areas, the EPA indicated that it interpreted the statute as applying the 70 tpy threshold to sources of PM_{10} precursors.[247]

The EPA also solicits comments on the appropriateness of setting the precursor major source thresholds at a different rate, particularly if, as alternatively proposed above, the agency defines ''major stationary source'' for sources of direct $PM_{2.5}$ in Serious $PM_{2.5}$ nonattainment areas at a rate lower than 70 tpy of $PM_{2.5}$ emissions. For example, if the agency sets the major source threshold at 60 tpy of $PM_{2.5}$ emissions in Serious $PM_{2.5}$ nonattainment areas, the agency would also consider setting the major source threshold for each $PM_{2.5}$ precursor at 60 tpy of that particular precursor.

Moreover, the EPA believes that a reasonable argument can be made that whatever threshold is set for $PM_{2.5}$ emissions, the same level would be too low to be regarded as ''major'' for each precursor when considering the effects that such precursor sources could have on ambient $PM_{2.5}$ concentrations. The EPA previously analyzed the relationship between emissions of SO_2 and NO_X and the formation of secondary $PM_{2.5}$ in the ambient air expressly for purposes of determining an appropriate ratio for allowing interprecursor offsets for $PM_{2.5}$. Those studies resulted in the EPA providing in the 2008 $PM_{2.5}$ NSR Rule ''preferred'' ratios for both SO_2 and NO_X, whereby a source could obtain reductions of a $PM_{2.5}$ precursor to offset an increase of direct $PM_{2.5}$ emissions or another $PM_{2.5}$ precursor based on the ''preferred'' offset ratios.[248] In brief, the preferred ratios were as follows: For NO_X-to-primary $PM_{2.5}$: 200 to 1 (NO_X tons to $PM_{2.5}$ tons) for areas in the eastern U.S, and 100 to 1 for areas in the western U.S.; and for SO_2-to-primary $PM_{2.5}$: 40 to 1 (SO_2 tons for $PM_{2.5}$ tons). In each case, the ratio illustrates that it requires considerably more precursor emissions than direct $PM_{2.5}$ emissions to result in a particular ambient concentration of $PM_{2.5}$. It should be noted that at that time the EPA did not consider using the preferred ratios for the purpose of adjusting the major source thresholds or significant emissions rates for SO_2 and NO_X when regulating them as $PM_{2.5}$ precursors.

The preferred ratios as presented in the 2008 notice were later challenged in a petition for reconsideration and the EPA withdrew them via an EPA memorandum issued in 2011.[249] In withdrawing the preferred ratios, the EPA cited several concerns. First, it was determined that the preferred ratios were not sufficiently conservative to be representative of conditions in all areas of the country. Second, the EPA determined that the preferred ratios were not adequate for addressing the precursor relationship to ambient $PM_{2.5}$ concentrations for the short-term (daily) averaging period.[250] In addition, the EPA believes that the overall analysis conducted for the 2008 notice generally illustrates that the threshold for defining ''major'' for either SO_2 or NO_X as precursors for $PM_{2.5}$ could reasonably be set at an emissions rate considerably higher than 70 tpy of that particular precursor and be equally protective of air quality as the 70 tpy threshold applied to $PM_{2.5}$ emissions.

Although the statutory definition at section 189(b)(3) applicable to PM_{10} does not explicitly apply to other pollutants, the EPA is considering the possibility that it may not have the legal authority to set a higher major source threshold for $PM_{2.5}$ precursors, even if it were technically justified. As previously noted, section 189(e), as interpreted in light of the court decision in *NRDC* v. *EPA,* requires that the same control requirements applicable to major stationary sources of $PM_{2.5}$ also apply to major stationary sources of $PM_{2.5}$ precursors. Courts have determined in other contexts that the term ''controls'' under the CAA includes NSR requirements, and in particular includes major source thresholds as specified in the statute.[251] Thus, if the holding of *South Coast* directs the EPA's actions, section 189(e) must be read to require the same major source threshold be applied to $PM_{2.5}$ precursors as applies to direct emissions of $PM_{2.5}$.

This conclusion is also consistent with the limited legislative history on this issue. A House (of Representatives) Report accompanying the 1990 amendments to the CAA described the effects of adding section 189(b)(3) to include the requirement that ''new or modified sources emitting 70 tons or more per year of VOC will be subject to new source review requirements.'' [252] Thus, Congress seems to have contemplated that the same major source threshold would apply to sources of $PM_{2.5}$ emissions and $PM_{2.5}$ precursors in Serious areas.

The EPA does not believe that a sufficient technical basis exists at this time to enable the agency to propose specific higher major source thresholds for any of the four $PM_{2.5}$ precursors presumptively regulated in $PM_{2.5}$ nonattainment areas. The EPA intends to continue its analysis of the relationship between each precursor and ambient $PM_{2.5}$ concentrations with the possibility that higher major source thresholds for specific precursors could be established in the future. In the meantime, the agency solicits comments

[247] *See* Addendum to the General Preamble, 59 FR 41998 (August 16, 1994), at page 42012 (defining major point sources in Serious areas as ''sources with the potential to emit at least 70 tons per year of PM_{10} (or PM_{10} precursors) as required in sections 189(b)(3) and 189(e) of the Act'').

[248] The technical assessment, with details on data and modeling inputs, was fully described in a technical memo titled ''Details on Technical Assessment to Develop Interpollutant Trading Ratios for $PM_{2.5}$ Offsets,'' which was placed in the docket to the 2008 final rule. *See also* 73 FR 28321 (May 16, 2008), at page 28339.

[249] Memorandum from Gina McCarthy, then EPA Assistant Administrator, dated July 21, 2011, titled ''Revised Policy to Address Reconsideration of Interpollutant Trading Provisions for Fine Particles ($PM_{2.5}$)'' and sent to Regional Air Division Directors.

[250] Nevertheless, while the ratios are no longer considered appropriate to use presumptively to meet the NNSR requirements for emissions offsets, a state may still conduct its own analysis and propose area-specific ratios for EPA approval on a case-by-case basis for interpollutant offset trading.

[251] *See South Coast Air Quality Management District* v. *EPA,* 472 F.3d 882, 900–902 (D.C. Cir. 2006) (holding that ''controls'' in section 172(e) anti-backsliding provision include NSR requirements such as LAER, offset ratios, and major source thresholds).

[252] H.R. Rep. 101–490.

on the general appropriateness of setting higher major source thresholds for one or more $PM_{2.5}$ precursors in $PM_{2.5}$ nonattainment areas, as well as legal and technical considerations that should be made as part the EPA's future analysis of NNSR requirements with respect to $PM_{2.5}$ precursors.

c. *Significant emissions rates for $PM_{2.5}$ precursors.* As explained above, a modification to an existing major stationary source of a nonattainment pollutant such as $PM_{2.5}$ is a major modification and subject to the NNSR requirements for that pollutant when the source proposes to make a physical or operational change that results in both a significant emissions increase and a significant net emissions increase of that nonattainment pollutant. With regard to $PM_{2.5}$ precursors, a modification to a major stationary source of any such precursor is likewise a major modification subject to the NNSR requirements for $PM_{2.5}$ when the source proposes a physical or operational change resulting in a significant net emissions increase of that precursor. The EPA defined ''significant'' for SO_2 and NO_X as $PM_{2.5}$ precursors in the 2008 $PM_{2.5}$ NSR Rule. For both precursors, the EPA set the significant emissions rate for each pollutant when it is regulated as a precursor to $PM_{2.5}$ at 40 tpy, the same level as the existing significant emissions rate for the pollutant as independently regulated as a criteria pollutant for purposes of the SO_2 and NO_2 NAAQS.[253] Also, in the preamble to the 2008 $PM_{2.5}$ NSR Rule, the EPA indicated that it would consider 40 tpy for VOC as a $PM_{2.5}$ precursor; however, that rate was not codified in any of the NSR regulations because the regulations provided that VOC was generally presumed not to be a precursor to $PM_{2.5}$. Instead, the agency explained that any state making a demonstration that VOC should be treated as a $PM_{2.5}$ precursor in a particular nonattainment area ''would be required to adopt the 40-tpy significant emissions rate unless it demonstrated that a more stringent significant emissions rate (lower rate) is more appropriate.'' [254]

The 2008 $PM_{2.5}$ NSR Rule codified the presumption that ammonia, like VOC, need not be regulated as a $PM_{2.5}$ precursor and the EPA did not set a significant emissions rate for ammonia. Instead, the agency indicated that it was allowing states that determine that ammonia significantly contributes to $PM_{2.5}$ concentrations in a given $PM_{2.5}$ nonattainment area to set the significant emissions rate for ammonia based on information developed for each individual attainment plan.[255]

As explained in the 2008 $PM_{2.5}$ NSR Rule, the EPA set the significant emissions rates for the presumed $PM_{2.5}$ precursors at the levels for those pollutants already included in NSR programs. The EPA explained that the use of the existing rates where the $PM_{2.5}$ precursor is also regulated as a separate criteria pollutant harmonizes the NSR program for $PM_{2.5}$ with the NSR programs for those other criteria pollutants. The agency further explained that this approach for setting the significant emissions rates for $PM_{2.5}$ precursors follows the precedent for setting the significant emissions rate for NO_X as a precursor to ozone, where the same 40 tpy threshold was used for NO_X emissions as both a criteria pollutant (NO_2) and a precursor for ozone.[256]

Nevertheless, the EPA gave some consideration in the development of the 2008 $PM_{2.5}$ NSR Rule to setting the significant emissions rates for the individual $PM_{2.5}$ precursors at different levels based on the effect of each precursor on ambient $PM_{2.5}$ concentrations. The EPA concluded that it did not have adequate data on the impacts of precursor emissions from individual sources to override the administrative advantages of setting the significant emissions rates for SO_2, NO_X and VOC for purposes of the $PM_{2.5}$ NSR program at the same levels that are already used for other purposes in the major NSR program for other NAAQS. The EPA continues to believe, however, that when more data are available, these data could provide a reasonable basis for considering subsequent changes to the significant emissions rates for each $PM_{2.5}$ precursor for purposes of implementing the $PM_{2.5}$ NAAQS, whereby the significant emissions rates for the individual $PM_{2.5}$ precursors could more realistically reflect the effect that each precursor has on ambient $PM_{2.5}$ concentrations.

The EPA is currently undertaking a separate rulemaking for both NNSR and PSD in which it intends to include a technical analysis of each $PM_{2.5}$ precursor to better understand the relationship of emissions of each precursor to ambient $PM_{2.5}$ concentrations. The agency intends to consider the results of that analysis and other factors and may propose new significant emissions rates accordingly for SO_2 and NO_X as $PM_{2.5}$ precursors. The EPA also intends to propose individual significant emissions rates for VOC and ammonia as $PM_{2.5}$ precursors at that time. Thus, the EPA is not proposing any changes to the existing significant emissions rates for SO_2 and NO_X as $PM_{2.5}$ precursors in this document.

It is the EPA's expectation that any new or revised significant emissions rates for the individual $PM_{2.5}$ precursors will become effective in that separate rulemaking not long after the date of that final rule, allowing states to adopt and use them in their own NNSR regulations once the EPA approves their individual SIPs. However, in the event that the timing of that rule does not allow ample time for states to rely on it to adopt any new or revised significant emissions rates in their rules, it was explained earlier that individual significant emissions rates already exist for SO_2 and NO_X at 40 tpy. Additionally, the significant emissions rate for VOC was identified as 40 tpy in the 2008 $PM_{2.5}$ NSR Rule notice (though not in the final regulations), but the EPA is proposing to add that precursor and emissions rate to the list of $PM_{2.5}$ precursors. *See* proposed 40 CFR 51.165(a)(1)(x)(A). Hence, only the ammonia significant emissions rate would remain to be defined by each state that needs to control major stationary sources of ammonia as part of their NNSR program.

d. *Transition provisions for $PM_{2.5}$.* The CAA requires proposed major stationary sources and major modifications to meet major NSR permitting requirements that apply on the basis of the area's attainment designation.[257] Accordingly, the EPA's longstanding interpretation of the CAA is that a proposed new major stationary source or major modification must satisfy the appropriate major NSR requirements (PSD vs. NNSR) for a particular pollutant that are in effect on the date that a permit is issued to the source, rather than the requirements that may have been applicable when the permit application was submitted.[258]

In the final 2012 PM NAAQS rule, the EPA established a grandfathering provision that would enable some proposed new and modified sources

[253] *See* the **Federal Register** published on May 16, 2008 (73 FR 28321, 28333 and 28334); and existing 40 CFR 51.165(a)(1)(x)(A).

[254] *See* the **Federal Register** published on May 16, 2008 (73 FR 28321 and 28333).

[255] *Ibid.*

[256] *See* 73 FR 28321 (May 16, 2008), at page 28334.

[257] *Compare* CAA section 165(a) (permitting requirements for sources locating in attainment and unclassifiable areas) with sections 172(c)(5) and 173 (permitting requirements for sources locating in nonattainment areas).

[258] *See* Memorandum from John S. Seitz, Director, EPA Office of Air Quality Planning and Standards, on March 11, 1991, titled ''New Source Review (NSR) Transitional Guidance,'' Attachment p. 6, sent to Regional Air Division Directors.

that had already submitted a PSD application prior to the effective date of the revised primary annual $PM_{2.5}$ NAAQS to continue being reviewed under the pre-existing PSD requirements for $PM_{2.5}$. This provision applies where the PSD program continues to be the applicable set of major NSR requirements for the area of concern. In response to the EPA's proposal to add this grandfathering provision for certain PSD permit applications pending upon the effective date of the new NAAQS, the EPA received comments concerning the need for a transition period for implementing the NNSR requirements in newly designated $PM_{2.5}$ nonattainment areas as a result of the tightening of the primary annual $PM_{2.5}$ NAAQS.[259] The commenters recommended that the EPA establish a grandfathering provision to enable pending permit applications to continue under review for the pre-existing requirements. A subset of the commenters recommended that grandfathering be accomplished by establishing an effective date for designations 1 year after initial publication in the **Federal Register**. Presumably, these commenters believed that by delaying the effective date of any new nonattainment designations for the primary annual $PM_{2.5}$ NAAQS, sources with pending PSD permit applications could continue to be reviewed under the PSD permitting requirements rather than the NNSR requirements for $PM_{2.5}$.

In the final 2012 PM NAAQS rule, the EPA expressed its disagreement with those commenters, explaining that the obligation to adopt new provisions under a state's NNSR program will not apply with regard to the revised NAAQS until such time as an area is designated nonattainment, and beginning on the effective date of the new area designations for $PM_{2.5}$ proposed new and modified major sources would be required to meet the applicable NNSR requirements for $PM_{2.5}$.[260] However, the EPA further indicated that it would continue to consider the need to establish a grandfathering provision under the NNSR program for $PM_{2.5,}$ and would propose such provision, if appropriate, as part of a subsequent NSR implementation rulemaking with additional opportunity for public comment.[261]

After further considering the issue during the development of this proposal, the EPA has decided not to propose a grandfathering provision that would apply to pending PSD permit applications that were submitted but not approved prior to the effective date of the new nonattainment designations for the 2012 primary annual $PM_{2.5}$ NAAQS. The EPA does not believe it would be acceptable for the EPA or a state to issue a PSD permit, instead of a NNSR permit, with regard to a particular pollutant for which an area is designated nonattainment on the date the permit is to be issued. Instead, if the PSD permit has not been issued by the effective date of the new nonattainment designation, then the applicant should be required to withdraw that part of the permit application that addresses the nonattainment pollutant and submit an application that satisfies the applicable NNSR or minor NSR requirements in effect in the implementation plan on the date the permit will be issued. Given adverse conditions that already exist in a nonattainment area and the congressional directive to reach attainment as expeditiously as practicable, construction at a major stationary source that significantly increases emissions in such an area should be expected to address NNSR requirements, even if this could cause delay to the permit applicant.

As explained in Section VIII.D of this preamble, states will have 18 months from the date of the new nonattainment designations to revise their existing NNSR programs or establish new programs in accordance with the applicable requirements under subpart 4. Where the area was already designated nonattainment for any prior $PM_{2.5}$ NAAQS before the effective date of designations for the 2012 NAAQS, the state should continue to apply the NNSR requirements contained in the approved SIP to issue the final permit addressing all $PM_{2.5}$ NAAQS until the new SIP revisions required by this rule are approved. In areas already designated nonattainment for any $PM_{2.5}$ NAAQS but lacking an approved NNSR program that applies to $PM_{2.5}$, the requirements of Appendix S may continue to be applied for issuing permits in that area. However, any changes to the Appendix S requirements that the EPA may make via this rulemaking must be implemented in any area that applies Appendix S once these revisions become effective. Section VIII.C.2 that follows discusses the possible changes to the NNSR requirements in Appendix S that the agency is proposing in this action.

The EPA is not proposing to add any grandfathering provisions that would apply to changes in NNSR permitting requirements in areas that the EPA may already have designated nonattainment for $PM_{2.5}$ at the time the source submitted a permit application. For reasons similar to those identified above in cases where an area designation changes, the EPA generally believes that major sources that would contribute to the air quality in an area that is not meeting the NAAQS for a particular pollutant should be expected to address the most current requirements that apply in the nonattainment area. The agency acknowledges it is possible that a proposed new or modified source may need to address additional precursor control requirements that did not apply when a permit application was submitted once the EPA's final rule is promulgated and the appropriate revisions are approved into a state's NNSR SIP. However, based on the terms of section 189(e) of the CAA, the EPA generally believes that those requirements should be addressed in pending permit applications unless the air agency has determined, and the EPA has approved such demonstration, that major stationary sources of that precursor do not contribute significantly to $PM_{2.5}$ levels in the nonattainment area. Nevertheless, the agency recognizes that there may be certain circumstances where proposed construction might be delayed and an applicant may feel fundamental fairness would support exempting a particular pending permit from newly established requirements; therefore, the EPA seeks comment on what circumstances, if any, would justify a grandfathering provision for pending nonattainment NSR permits similar to the grandfathering provision promulgated in the final 2012 PM NAAQS Rule for PSD permitting purposes. *See* 40 CFR 51.166(i)(10) 52.21(i)(11). In addition, the EPA requests comment on how such a grandfathering provision would be consistent with the relevant provisions of the CAA. The EPA does not believe the statutory deadline in section 165(c) that forms part of the EPA's basis for grandfathering in the PSD context is applicable to NNSR permit decisions.

2. What are the changes the EPA is proposing in Appendix S?

As described above, 40 CFR 52.24(k) provides that the Emission Offset

[259] *See* 78 FR 3086 (January 15, 2013), at page 3263.

[260] The applicable NNSR requirements would be either the NNSR requirements for $PM_{2.5}$ in the state's existing SIP or the requirements found at 40 CFR part 51 Appendix S, where a state's SIP does not currently include NNSR requirements for $PM_{2.5}$. States will be required to submit to the EPA for approval SIP revisions containing the amended NNSR program requirements for $PM_{2.5}$ contained in the final $PM_{2.5}$ NAAQS implementation rule being proposed in this notice, but those additional requirements will not apply in states with SIPs that include NNSR requirements for $PM_{2.5}$ until the EPA approves the SIP revision. *See ibid.*

[261] *Ibid.*

Interpretative Ruling, 50 CFR part 51, Appendix S, shall govern permits to construct and operate for which a NNSR permit application is submitted between the effective date of designation as nonattainment and the date a state's NSR permit program meeting the requirements of part D is approved and effective. The EPA is considering a range of options concerning how and whether to address the proposed subpart 4 requirements in the interim NNSR program requirements contained in Appendix S.

Permitting requirements for new major stationary sources and major modifications in $PM_{2.5}$ nonattainment areas were originally added to Appendix S in the 2008 $PM_{2.5}$ NSR Rule. The amendments generally followed the NNSR requirement contained in subpart 1 of part D. However, in the 2008 $PM_{2.5}$ NSR Rule, the EPA determined that, in light of the transitional function of Appendix S, it would be appropriate to regulate $PM_{2.5}$ precursors under Appendix S in a manner that differed slightly from the regulatory approach taken in 40 CFR 51.165.

As explained in Section VIII.B.2 of this preamble, under the existing requirements for NNSR plans at 40 CFR 51.165, SO_2 is regulated as a $PM_{2.5}$ precursor, NO_X is presumed to be a regulated $PM_{2.5}$ precursor, and VOC and ammonia are presumed not to be regulated precursors (with either states or the EPA having authority to rebut any such presumption for a particular nonattainment area). However, in developing Appendix S, the EPA determined that it would be premature to presume that NO_X is a regulated $PM_{2.5}$ precursor in all $PM_{2.5}$ nonattainment areas that proposed new major sources and major modifications in those areas should be required to address as a prerequisite to obtaining a NNSR permit, while at the same time the states were in the process of determining whether in fact NO_X emissions contribute significantly to ambient $PM_{2.5}$ concentrations in those areas. Accordingly, the EPA decided to delay implementing any control requirements for NO_X as a $PM_{2.5}$ precursor until the states completed the necessary analyses to determine the need for NO_X controls as part of their SIP revisions addressing the revised $PM_{2.5}$ NAAQS. Thus, the existing NNSR requirements for $PM_{2.5}$ under Appendix S do not contain a requirement for proposed sources to consider the control of NO_X emissions as a $PM_{2.5}$ precursor. Moreover, as states presumptively did not need to regulate VOC and ammonia in accordance with the 2008 $PM_{2.5}$ NSR Rule in 40 CFR 51.165, the EPA similarly did not require sources seeking permits pursuant to the Appendix S requirements to address those precursors.

As an interim measure to facilitate permitting while states develop NNSR rules for $PM_{2.5}$, the EPA believes that the NNSR requirements under Appendix S need not be identical to those governing states' development of approvable programs pursuant to subpart 4, which requires regulation of all $PM_{2.5}$ precursors unless a state provides, and the EPA approves, a demonstration that such control is not necessary for major stationary sources in the area under section 189(e). This is reasonable because the EPA anticipates that many states may be able to demonstrate to the EPA that there is not a need to regulate one or more $PM_{2.5}$ precursors from major stationary sources in a given nonattainment area, as described in Section III of this preamble.

Accordingly, the EPA is proposing to revise the definition of regulated NSR pollutant as contained in Appendix S to provide for the regulation of some precursors during the transition period, but not others. Specifically, for reasons explained below, the EPA is proposing to require that both SO_2 and NO_X be considered regulated $PM_{2.5}$ precursors in Appendix S and is proposing a significant emissions rate of 40 tpy for NO_X as a $PM_{2.5}$ precursor. *See* proposed Sections II.A.31(iii)(*b*) and II.A.10(i) of Appendix S, respectively. However, this proposal would not provide states the option of submitting a demonstration that could relieve them of the obligation to regulate SO_2 and NO_X as $PM_{2.5}$ precursors during the transition period. The EPA believes that it is not necessary or efficient to expend effort on such a demonstration for the transitional program, when states are developing the demonstration for submittal with the NNSR SIP submission that, when approved, would replace the Appendix S transitional program for that area.

The EPA is proposing to include SO_2 and NO_X in Appendix S based on the principle that the national application of a transition program should correspond to the general expectation of what the prevailing regulation of precursors will ultimately be when SIPs are submitted. Although such expectations are uncertain at this time, it is nonetheless appropriate to base the transition program on them. The EPA believes it is likely in many cases that states will determine that emissions of VOC and/or ammonia do not contribute significantly to $PM_{2.5}$ concentrations in the affected $PM_{2.5}$ nonattainment area, although such determinations should be made on a case-by-case basis for individual $PM_{2.5}$ nonattainment areas.

On the other hand, the EPA expects that the cases where NO_X does not contribute significantly to $PM_{2.5}$ concentrations in the affected $PM_{2.5}$ nonattainment area will be few in number. Accordingly, given this likelihood, the EPA believes that it is reasonable to require the regulation of SO_2 and NO_X as $PM_{2.5}$ precursors during the interim period when states are developing their $PM_{2.5}$ attainment plans for newly designated areas (including the necessary revisions to the NNSR programs based on subpart 4). An added benefit of this proposed approach is that it will also ensure that states using the permitting requirements contained in Appendix S will regulate the same precursors that are required to be regulated in states that have already adopted NNSR for $PM_{2.5}$ based on the 2008 $PM_{2.5}$ NSR Rule. The EPA seeks comment on this approach as part of this proposal.

As one alternative approach that the EPA is presenting for public comment, the agency is proposing to amend Appendix S to regulate not only SO_2 and NO_X, but also VOC and ammonia, as $PM_{2.5}$ precursors that must be controlled during this interim period. This alternative would more closely match the basic NNSR program requirements of subpart 4, which indicate that states should regulate precursors from major stationary sources in the nonattainment area unless the EPA has determined that such emissions do not significantly contribute to violations of the NAAQS in the area. However, it would require states to control new major stationary sources and major modifications of each $PM_{2.5}$ precursor during the interim period prior to submission of the required SIP revisions without the benefit of first allowing states to determine whether the control of each precursor is warranted. The EPA does not prefer this option for amending Appendix S as an interim NNSR program; however, the EPA is seeking comment on the approach to address the policy and legal implications associated with it. This alternative, while being proposed for comment, is not shown in the proposed regulatory text.

Another alternative that the agency is proposing for comment is for the EPA to establish a phased-in process for regulating $PM_{2.5}$ precursors in the NNSR program whereby states would initially require sources issued a permit to control only SO_2 and NO_X as $PM_{2.5}$ precursors (as under the preferred option), with a second requirement to later require sources issued a permit

after the prescribed date (*e.g.,* the date on which SIP revisions based on subpart 4 requirements are due) to control emissions of VOC and ammonia as well. For each precursor, the requirement to control would apply to major stationary sources of that particular precursor. The EPA believes that by phasing in the requirement to address all precursors, states that are ultimately able to demonstrate to the EPA's satisfaction that VOC and/or ammonia do not need to be subject to control under the NNSR requirements for $PM_{2.5}$, but that have not yet submitted such demonstration, will have ample time to make the necessary demonstration and will not have to control such precursors even temporarily. At the same time, the phase-in provision could address concerns about delays in SIP submittal or approval in states with $PM_{2.5}$ nonattainment areas in which VOC and ammonia need to be regulated. Such delays could result in prolonged exclusion of these precursors from control requirements beyond the time when an EPA-approved state NNSR program is expected to be in place. This alternative, while being proposed for comment, is not shown in the proposed regulatory text.

Separately, the EPA is proposing to amend Appendix S by revising the definition of ''major stationary source'' to include a separate $PM_{2.5}$ major source threshold applicable to new major stationary sources and major modifications in $PM_{2.5}$ nonattainment areas reclassified as Serious areas. *See* proposed section II.A.4(i)(a)(*7*). Inclusion of the new definition is not an immediate concern for the revised 2012 primary annual $PM_{2.5}$ NAAQS or any future revision to the $PM_{2.5}$ NAAQS because the possible reclassification of any Moderate area to a Serious area will not occur for several years and states are required to submit their SIP revisions addressing NNSR requirements prior to such time. There is a possibility, however, that existing $PM_{2.5}$ nonattainment areas (for the 1997 and/or 2006 $PM_{2.5}$ NAAQS) could be reclassified as Serious areas sooner. States that still do not have approved NNSR programs addressing $PM_{2.5}$ would be without the appropriate NNSR provisions to address new major stationary sources and major modifications in those Serious areas until they submit revisions to their existing programs and the EPA approves those revisions. The EPA solicits comments on this proposal to incorporate a definition of ''major stationary source'' for $PM_{2.5}$ nonattainment areas reclassified as Serious.

The EPA is not proposing any Appendix S provisions for grandfathering proposed new and modified sources from newly established permit requirements applicable to $PM_{2.5}$ nonattainment areas. The EPA generally believes that it would not be appropriate to grandfather sources from requirements that apply in areas that are not meeting the NAAQS. Nevertheless, the EPA seeks comment on possible circumstances where grandfathering, similar to the grandfathering provision established for pending PSD permits under the final 2012 p.m. NAAQS Rule, may be appropriate with respect to changes made to Appendix S.

D. Plan Due Dates

For Moderate areas, section 189(a)(2)(B) requires that states make an attainment plan submission satisfying the requirements contained therein, including applicable NNSR programs for PM_{10} (and $PM_{2.5}$), to the EPA for approval within 18 months of an area being designated nonattainment. The agency recognizes that this submittal date represents a considerably earlier date than anticipated when it issued the final 2012 p.m. NAAQS rule.[262] However as the CAA requires, the EPA will apply the 18 month deadline from the effective date of designation of a Moderate $PM_{2.5}$ nonattainment area for the submission of any applicable NNSR program revisions for $PM_{2.5}$ as included in any final implementation rule.

In the event a Moderate area is reclassified as a Serious $PM_{2.5}$ nonattainment area, it will be required to implement the NNSR program with a ''major stationary source'' threshold of 70 tons per year (per CAA section 189(b)(3)). However, the CAA does not specify a deadline for the state's submittal of any NNSR program revisions (*e.g.,* to lower the major stationary source threshold from 100 tpy to 70 tpy) that would be needed to implement the program in a Serious area. Pursuant to the EPA's gap-filling authority in CAA section 301(a), and to effectuate the statutory control requirements in section 189 of the CAA, the EPA proposes to require the state to submit these NNSR SIP revisions no later than 18 months from the effective date of final reclassification of the area as a Serious nonattainment area. This timeframe is consistent with the 18 month timeframe required for submittal of certain Serious area plan elements, and it is consistent with the 18 month time for submittal of Moderate area plan revisions. We also request comment on a 12-month timeframe for submittal of the NNSR revisions for Serious areas. An approach that requires the NNSR revisions to be submitted on the same 18-month schedule as other Serious area plan elements is expected to be more administratively efficient than one that would require the NNSR revisions on a different schedule. On the other hand, this type of revision to the NNSR regulations may be relatively straightforward and potentially could be completed within 12 months of the reclassification date, thereby assuring that new major sources or modified major sources in the area will be subject to the lower statutory major source thresholds expeditiously. The EPA requests comment on both the proposed 18-month timeframe for submission of the NNSR SIP revisions for Serious areas and the alternative 12-month option.

E. Avoidance of Dual Review for PSD and NNSR for $PM_{2.5}$

Because the EPA designates nonattainment areas for the primary annual and 24-hour $PM_{2.5}$ NAAQS independently, some areas ultimately may be designated nonattainment for one of these standards and unclassifiable/attainment or attainment for another. This may raise concerns that the sources locating in such an area may be subject to both PSD and NSSR for the same pollutant. In the preamble to the final 2012 p.m. NAAQS rule, the EPA explained that the existing PSD regulations resolved this issue.[263] Specifically, the PSD regulations at 40 CFR 51.166(i)(2) and 52.21(i)(2) provide that the PSD requirements do not apply to a major stationary source or major modification with respect to a pollutant when ''*as to that pollutant,* the source or modification is located in an area designated as nonattainment . . . .'' [264] [emphasis added]. This policy was explained in the preamble to the final rule promulgating the revised primary annual $PM_{2.5}$ NAAQS.[265] The EPA is simply reiterating in this action the agency's policy for addressing NSR applicability for areas that may be designated nonattainment for one averaging period and attainment or unclassifiable for another averaging

[262] *Ibid.*

[263] *See ibid.*

[264] The policy for applying the PSD exemption is clear with regard to the federal PSD program at 40 CFR 52.21; however, the requirements for a SIP-approved PSD program state that ''[t]he plan may provide . . .'' Accordingly, a state may choose to apply a different applicability strategy if it so wishes.

[265] *Ibid.*

period. Thus, for $PM_{2.5}$ only the NNSR requirements would apply with regard to major stationary sources of $PM_{2.5}$ locating in that nonattainment area.

IX. What other proposed requirements would apply in $PM_{2.5}$ nonattainment areas?

A. Waivers Under Section 188(f)

1. Statutory Requirements and Existing Guidance

Section 188(f) of the CAA provides a means for the EPA to waive a specific date for attainment and certain control and planning requirements for $PM_{2.5}$ nonattainment areas if certain conditions are met in the nonattainment area. Specifically, the statute provides that: ''The Administrator may, on a case-by-case basis, waive any requirement applicable to any Serious Area . . . where the Administrator determines that anthropogenic sources of PM_{10} do not contribute significantly to the violation of the PM_{10} standard in the area.'' In addition, ''the Administrator may also waive a specific date for attainment of the [PM_{10}] standard where the Administrator determines that nonanthropogenic sources of PM_{10} contribute significantly to the violation of the PM_{10} standard in the area.'' In the Addendum, the EPA provided extensive guidance on how the agency interpreted section 188(f) and how it intended to apply the statutory waiver provisions for purposes of implementing the PM_{10} NAAQS.[266] At this time, the EPA is not proposing to revise the guidance presented in the Addendum with respect to section 188(f), but the agency requests comment on whether the existing guidance in the Addendum is appropriate when implementing the current and any future $PM_{2.5}$ NAAQS.

2. Relationship Between the CAA Section 188(f) Waiver Provisions and the EPA's Exceptional Events Rule

On March 22, 2007, the EPA promulgated the ''Treatment of Data Influenced by Exceptional Events; Final Rule'' (72 FR 13560), known as the Exceptional Events Rule, pursuant to the 2005 amendment of CAA section 319.[267] The Exceptional Events Rule provides a mechanism by which the EPA can concur with an air agency's request to exclude from regulatory decisions air quality monitoring data determined by the EPA to have been affected by exceptional events.[268] The Exceptional Events Rule applies to all NAAQS pollutants, including $PM_{2.5}$. Section 188(f) and the Exceptional Events Rule provide separate mechanisms by which states and/or other air agencies can seek to have event-influenced monitoring data excluded from certain regulatory requirements or decisions associated with the PM NAAQS implementation process, under appropriate circumstances. This section explains the EPA's views on how these two mechanisms can operate.

The Exceptional Events Rule addresses elevated emissions from specific events that influence monitored air quality concentrations. The EPA's regulations at 40 CFR 50.1(j) define an ''exceptional event'' as one that ''affects air quality, is not reasonably controllable or preventable, is an event caused by human activity that is unlikely to recur at a particular location or a natural event, and is determined by the Administrator in accordance with 40 CFR 50.14 to be an exceptional event.'' Further, 40 CFR 50.1(j) explicitly provides that exceptional events do ''. . . not include stagnation of air masses or meteorological inversions, a meteorological event involving high temperatures or lack of precipitation, or air pollution relating to source noncompliance.'' At 40 CFR 50.1(k), the EPA's regulations define a ''natural event'' as an event in which human activity plays little or no direct causal role to the event in question.[269] The Exceptional Events Rule allows the EPA to exclude from regulatory decisions air quality monitoring data that it determines to have been influenced by emissions that result from exceptional events. Air quality monitoring data that the EPA determines to have been influenced by an exceptional event under the procedural steps, substantive criteria, and schedule specified in the Exceptional Events Rule may be excluded from regulatory decisions such as initial area designations decisions and decisions associated with implementing the $PM_{2.5}$ NAAQS such as clean data determinations, evaluation of attainment demonstrations, and discretionary or mandatory reclassifications of nonattainment areas from Moderate to Serious. While the EPA may agree with an air agency's request to exclude event-influenced air quality monitoring data from regulatory decisions, these regulatory actions require the EPA to provide an opportunity for public comment on the claimed exceptional event and all supporting data prior to the EPA taking final agency action.

If wildfire is a potential contributor to exceedances of the NAAQS and exceptional events, the EPA urges state and local agencies to coordinate with the land management agencies, as appropriate, in developing plans and appropriate public communications regarding public safety and reducing exposure. This action can directly help states meet their Exceptional Events Rule obligation whereby ''states must provide public notice, public education, and must provide for implementation of reasonable measures to protect public health when an event occurs.'' When wildfire impacts are significant in a particular area, air agencies and communities may be able to lessen the impacts of wildfires by working collaboratively with land managers and land owners to employ various mitigation measures including taking steps to minimize fuel loading in areas vulnerable to fire.[270]

The EPA notes that there could be some potential overlap between the application of the Exceptional Events Rule and section 188(f). The EPA believes that this potential for overlap can best be addressed by considering the applicability of the Exceptional Events Rule and section 188(f) in sequence. Thus, the EPA recommends

[266] 59 FR 41998 (August 16, 1994), at page 42004.

[267] Section 319 of the CAA, as amended by section 6013 of the Safe Accountable Flexible Efficient-Transportation Equity Act: A Legacy for Users (SAFE–TEA–LU) of 2005, required the EPA to propose and promulgate regulations governing the review and handling of air quality monitoring data influenced by exceptional events.

[268] References to ''air agencies'' are meant to include state, local and tribal air agencies responsible for implementing the Exceptional Events Rule.

[269] The EPA will generally consider human activity to have played little or no *direct* role in causing emissions of the dust generated by high wind for purposes of the regulatory definition of ''natural event'' if contributing anthropogenic sources of the dust are reasonably controlled at the time of the event, regardless of the amount of dust coming from these reasonably controlled anthropogenic sources, and thus the event could be considered a natural event. In such cases, the EPA believes that it would generally be a reasonable interpretation of its regulations to find that the anthropogenic source had ''little'' direct causal role. If anthropogenic sources of windblown dust that are reasonably controllable but that did not have those reasonable controls applied at the time of the high wind event have contributed significantly to a measured concentration, then the event would not be considered a natural event. *See* preamble to the Exceptional Events Rule at 72 FR 13560 (March 22, 2007), footnote 11 on page 13566.

[270] Because of previously expressed stakeholder feedback regarding implementation of the Exceptional Events Rule and specific stakeholder concerns regarding the analyses that can be used to support wildfire-related exceptional event demonstrations, the EPA intends to propose revisions to the Exceptional Events Rule in a future notice-and-comment rulemaking and will solicit public comment at that time. Depending on the nature and scope of any interstate emissions events affecting downwind air quality, the EPA may be able to assist states in developing approvable exceptional events demonstrations.

that air agencies first consider whether the monitored air quality data on specific days were influenced by an exceptional event. If the air agency requests and the EPA agrees with this request and determines that the monitored air quality data should be excluded from consideration in regulatory decisions, then using the provisions in the Exceptional Events Rule could address the situation adequately. Thereafter, if the air agency determines that the waiver provisions of section 188(f) may also be applicable, then the EPA can evaluate that question based on the remaining data that are representative for the area in question.

B. Conformity Requirements

1. What requirements apply to both transportation and general conformity?

a. What are transportation and general conformity? Conformity is required under CAA section 176(c) to ensure that federal actions are consistent with (''conform to'') the purpose of the SIP. Conformity to the purpose of the SIP means that federal activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the relevant NAAQS or interim reductions and milestones. Conformity applies to areas that are designated nonattainment, and those nonattainment areas redesignated to attainment with a CAA section 175A maintenance plan after 1990 (''maintenance areas'').

The EPA's Transportation Conformity Rule (40 CFR 51.390 and part 93, subpart A) establishes the criteria and procedures for determining whether transportation activities conform to the SIP. These activities include adopting, funding or approving transportation plans, transportation improvement programs (TIPs) and federally supported highway and transit projects. The EPA first promulgated the Transportation Conformity Rule on November 24, 1993 (58 FR 62188), and subsequently published several amendments. For example, the EPA published a final rule on July 1, 2004 (69 FR 40004) that provided conformity procedures for state and local agencies under the 1997 $PM_{2.5}$ NAAQS, among other things. On May 6, 2005 (70 FR 24280) the EPA published a final rule that addressed transportation conformity requirements for $PM_{2.5}$ precursors.[271] The EPA published another final rule on March 24, 2010 (75 FR 14260) that addressed additional requirements for the 2006 $PM_{2.5}$ NAAQS. Finally, the EPA published a final rule on March 14, 2012 (77 FR 14979) that restructured portions of the transportation conformity rule so that they would clearly apply to nonattainment and maintenance areas for new and revised NAAQS, including the 2012 $PM_{2.5}$ NAAQS. All of these rules apply to the current $PM_{2.5}$ NAAQS including the 1997 $PM_{2.5}$ NAAQS, the 2006 24-hour $PM_{2.5}$ NAAQS and the 2012 primary annual $PM_{2.5}$ NAAQS and will apply to future $PM_{2.5}$ NAAQS. For further information on conformity rulemakings, policy guidance and outreach materials, *see* the EPA's Web site at *http://www.epa.gov/otaq/stateresources/transconf/index.htm*. The EPA may issue future transportation conformity guidance as needed to implement the 2012 primary annual $PM_{2.5}$ NAAQS.

With regard to general conformity, the EPA first promulgated general conformity regulations in November 1993 (40 CFR part 51, subpart W, 40 CFR part 93, subpart B). Subsequently the EPA finalized revisions to the general conformity regulations on April 5, 2010 (75 FR 17254). Besides ensuring that federal actions not covered by the transportation conformity rule will not interfere with the SIP, the general conformity program also fosters communications between federal agencies and state/local air quality agencies, provides for public notification of and access to federal agency conformity determinations and allows for air quality review of individual federal actions. More information on the general conformity program is available at *http://www.epa.gov/air/genconform/*.

b. *Why is the EPA discussing transportation and general conformity in this proposed rulemaking?* The EPA is discussing transportation and general conformity in this proposed rulemaking in order to provide affected parties with information on when conformity must be implemented after nonattainment areas are designated for a new or revised $PM_{2.5}$ NAAQS. At this time the EPA is using the 2012 $PM_{2.5}$ NAAQS as an example. The agency is also discussing how it plans to make the transition from demonstrating conformity for the 1997 annual $PM_{2.5}$ NAAQS to the 2012 primary annual $PM_{2.5}$ NAAQS because this transition is unique in that the 1997 annual $PM_{2.5}$ NAAQS was retained as a secondary NAAQS. The information presented here is consistent with existing conformity regulations and statutory provisions that are not addressed by this $PM_{2.5}$ implementation rulemaking. Affected parties would include state and local transportation and air quality agencies, metropolitan planning organizations (MPOs), and federal agencies including the U.S. Department of Transportation (DOT), the U.S. Department of Defense, the U.S. Department of Interior and the U.S. Department of Agriculture.

c. *When would transportation and general conformity apply to areas designated nonattainment for the 2012 primary annual $PM_{2.5}$ NAAQS?* Transportation and general conformity apply 1 year after the effective date of nonattainment designations for a new or revised $PM_{2.5}$ NAAQS including the 2012 primary annual $PM_{2.5}$ NAAQS. This is because CAA section 176(c)(6) provides a 1-year grace period from the effective date of initial designations for any new NAAQS before transportation and general conformity apply in areas newly designated nonattainment for a specific pollutant and NAAQS. With regard to general conformity, the EPA's April 2010 revisions to its general conformity regulations (*see* 75 FR 17277; April 5, 2010) apply the same 1-year grace period for purposes of general conformity.

With regard to transportation conformity, the conformity grace period applies to all areas designated nonattainment for a new or revised $PM_{2.5}$ NAAQS including the 2012 primary annual $PM_{2.5}$ NAAQS. The requirements differ depending on whether the nonattainment area is within or adjacent to a MPO designated under 23 U.S.C. 134. Within 1 year after the effective date of the initial nonattainment designation for a given pollutant and NAAQS, the MPOs and DOT must make a conformity determination with regard to that pollutant and standard for all of the transportation plans and TIPs in the nonattainment area. The conformity requirements for surrounding ''donut areas,'' including the application of the 1-year conformity grace period, are generally the same as those for metropolitan areas.[272] For the purposes of the implementation of the 2012 $PM_{2.5}$ NAAQS, MPOs and any adjacent donut areas in a 2012 $PM_{2.5}$ NAAQS nonattainment area must continue to meet conformity requirements during the grace period for any other applicable NAAQS, including the 1997 annual $PM_{2.5}$ NAAQS and the 2006 24-hour $PM_{2.5}$ NAAQS. If, at the end of the grace period for the 2012 annual $PM_{2.5}$ NAAQS, the MPO and DOT have not made a transportation plan and TIP

[271] This final rule was not challenged or affected in any way by the January 2013 D.C. Circuit Court decision requiring the EPA to implement the $PM_{2.5}$ NAAQS pursuant to subpart 4 of the CAA.

[272] For the purposes of transportation conformity, a ''donut'' area is the geographic area outside a metropolitan planning area boundary, but inside a designated nonattainment or maintenance area boundary that includes an MPO (40 CFR 93.101).

conformity determination for that NAAQS, the area would be in a conformity ''lapse.'' During a conformity lapse, only certain projects can receive additional federal funding or approvals to proceed. The practical impact of a conformity lapse will vary from area to area. Finally, the 1-year conformity grace period also applies to project level conformity determinations.

Isolated rural nonattainment and maintenance areas are areas that do not contain or are not part of an MPO (40 CFR 93.101). Conformity requirements for isolated rural nonattainment and maintenance areas can be found at 40 CFR 93.109(g). One year after the effective date of the initial nonattainment designation for a given pollutant and NAAQS, conformity requirements with regard to that pollutant and standard would apply in any nonattainment areas that are isolated rural areas. Per the transportation conformity rule, an isolated rural area would be required to make a transportation conformity determination only at the point when a transportation project needs funding or approval. This project level conformity determination may occur significantly after the 1-year grace period has ended. *See* the EPA's July 1, 2004 final rule for further background on how the EPA has implemented this conformity grace period in metropolitan, donut and isolated rural areas (69 FR 40008; July 1, 2014; see also 69 FR 40009, 40010, 40011, 40012, 40013 and 40014).

d. *How will transportation and general conformity apply with regard to the 1997 annual $PM_{2.5}$ NAAQS, which was retained as a secondary NAAQS?* In the final 2012 p.m. NAAQS rule the EPA established a new health-based primary annual $PM_{2.5}$ NAAQS of 12.0 $\mu g/m^3$. In that same action the EPA retained the 1997 annual $PM_{2.5}$ NAAQS of 15.0 $\mu g/m^3$ as a secondary NAAQS to protect against certain welfare effects. In the 1997 $PM_{2.5}$ designations rule (70 FR 944; January 5, 2005), the EPA designated areas nonattainment for both the 1997 primary and secondary annual $PM_{2.5}$ NAAQS (which have identical levels of 15.0 $\mu g/m^3$). Designations for the 2012 primary annual $PM_{2.5}$ NAAQS were made in January 2015 (80 FR 2205; January 15, 2015). This action did not make any changes to the designations that apply for the 1997 secondary annual $PM_{2.5}$ standard. Therefore, at this time, all areas designated nonattainment in 2005 for the 1997 annual $PM_{2.5}$ standard are considered as having been designated nonattainment for both the 1997 primary annual $PM_{2.5}$ NAAQS and for the 1997 secondary annual $PM_{2.5}$ NAAQS where such distinctions are made below. Similarly, for any 1997 $PM_{2.5}$ nonattainment areas that have approved redesignation requests for attainment of the 1997 $PM_{2.5}$ NAAQS, the redesignation applies to both the primary and secondary standards of the 1997 $PM_{2.5}$ NAAQS. A discussion of how transportation and general conformity apply in this situation follows.

CAA section 176(c)(5) establishes that conformity applies to: a nonattainment area and each pollutant for which the area is designated as a nonattainment area; and an area that was designated as a nonattainment area but that was later redesignated by the Administrator as an attainment area and that is required to develop a maintenance plan under CAA section 7505a with respect to the specific pollutant for which the area was designated nonattainment. Section 176(c)(5) is clear that transportation and general conformity apply in nonattainment areas and in areas that have been redesignated to attainment and are required to develop a maintenance plan under section 175A.

Section 175A(a) establishes the requirements for areas that are required to submit a maintenance plan as one of the requirements that must be fulfilled in order for an area to be redesignated to attainment.

Section 175A(a) requires nonattainment areas for primary NAAQS to submit maintenance plans in order to be redesignated, and such plans must ensure maintenance of the standard for at least 10 years after redesignation. Section 175A(a) does not require nonattainment areas for secondary NAAQS to submit maintenance plans in order to be designated to attainment. Therefore, the EPA concludes that transportation and general conformity do not apply in areas that have been redesignated for any secondary NAAQS, such as the 1997 secondary annual $PM_{2.5}$ NAAQS, since conformity does not apply in areas that have been redesignated without maintenance plans.

Elsewhere in this notice, the EPA is proposing options for revoking the 1997 primary annual $PM_{2.5}$ NAAQS, which has been replaced by the more health protective 2012 primary annual $PM_{2.5}$ NAAQS. If the EPA finalizes an option that results in the revocation of the 1997 primary annual $PM_{2.5}$ NAAQS, nonattainment and maintenance areas would not be required to make transportation or general conformity determinations for the 1997 primary annual $PM_{2.5}$ NAAQS after the effective date of the revocation of the 1997 primary annual NAAQS. The revocation would leave designations in place for the 1997 secondary annual NAAQS. Any area that is designated as nonattainment for the 1997 secondary annual NAAQS would have to continue to make transportation and general conformity determinations for that NAAQS as conformity applies in nonattainment areas for secondary NAAQS.

However, for any area that has been redesignated to attainment for the 1997 secondary NAAQS and is not designated nonattainment for the 2012 primary annual $PM_{2.5}$ NAAQS, the relevant planning organization will not have to make conformity determinations for any annual $PM_{2.5}$ NAAQS after the effective date of the revocation of the 1997 primary annual $PM_{2.5}$ NAAQS because, as discussed above, the CAA does not require maintenance areas for secondary NAAQS to make conformity determinations. This means that if the EPA finalizes any of the options for revoking the 1997 primary annual $PM_{2.5}$ NAAQS, after the effective date of the revocation, areas redesignated to attainment for the 1997 secondary annual $PM_{2.5}$ NAAQS will no longer be required to make transportation plan, TIP, or project-level transportation conformity determinations for that NAAQS. In addition, federal agencies will no longer be required to make general conformity determinations for that NAAQS. Areas that remain designated nonattainment for the 1997 secondary annual $PM_{2.5}$ NAAQS will continue to make transportation plan, TIP, and project-level conformity determinations for that NAAQS and federal agencies will be required to continue to make general conformity determinations for that NAAQS in these areas until such time as they attain that NAAQS and are redesignated to attainment.

e. *What impact will the implementation of a new or revised $PM_{2.5}$ NAAQS such as the 2012 $PM_{2.5}$ NAAQS have on a state's transportation and/or general conformity SIP?* As long as the EPA does not make specific changes to its transportation or general conformity regulations states should not need to revise their transportation and/or general conformity SIPs. The EPA is not proposing any changes to its transportation conformity regulations. The EPA is proposing to change the *de minimis* levels in its general conformity regulations as discussed in Section IX.B.2.b. of this preamble. States with a general conformity SIP should evaluate the need to revise those SIPs if this change is finalized. States with new nonattainment areas may also need to revise conformity SIPs in order to

ensure the state regulations apply in any newly designated areas.

However, if this is the first time that transportation conformity will apply in a state, such a state is required by the statute and EPA regulations to submit a SIP revision that addresses three specific transportation conformity requirements that address consultation procedures and written commitments to control or mitigation measures associated with conformity determinations for transportation plans, TIPs or projects (40 CFR 51.390). Additional information and guidance can be found in the EPA's ''Guidance for Developing Transportation Conformity State Implementation Plans'' (*http://www.epa.gov/otaq/stateresources/transconf/policy/420b09001.pdf*).

2. What additional requirements apply to general conformity?

a. What de minimis *emissions levels will apply for direct $PM_{2.5}$ and its precursors?*

Federal actions estimated to have an annual net emissions increase less than the *de minimis* levels established in the general conformity regulations are not required to demonstrate conformity under those regulations. For direct $PM_{2.5}$ and its precursors (SO_2, NO_X, VOC and ammonia), the existing *de minimis* emissions levels are set forth in the EPA's general conformity regulations at 40 CFR 93.153(b)(1). Those levels were based on the definition of a major stationary source for nonattainment NSR programs as established by sections 182, 183 and 302 of the CAA. The EPA believes it is appropriate to continue this practice for implementing the current and any future $PM_{2.5}$ NAAQS.

However, because the definition of precursors currently in the general conformity regulations at 40 CFR 93.152(b)(1) does not reflect the elimination of rebuttable presumptions for certain $PM_{2.5}$ precursors, the EPA is proposing changes to these conformity provisions to make them consistent with the agency's revised precursor requirements. Specifically, the current definition of precursors for $PM_{2.5}$ in the general conformity regulations reflects the rebuttable presumptions for VOC and ammonia finalized in the 2007 $PM_{2.5}$ Implementation Rule (72 FR 20583; April 25, 2007). It also does not reflect the subpart 4 definitions for ''major source'' and ''major stationary source'' that apply for Serious $PM_{2.5}$ nonattainment areas. Therefore, through this proposal the EPA proposes to change the $PM_{2.5}$ precursor *de minimis* levels currently in 40 CFR 93.153(b)(1) to be consistent with the statutory requirements for major stationary source thresholds under subpart 4 and any relevant changes being proposed in Section III of this preamble. The EPA proposes to set the *de minimis* levels that apply to direct $PM_{2.5}$ and $PM_{2.5}$ precursors for $PM_{2.5}$ nonattainment areas for purposes of general conformity as identified in Table 3 below.

TABLE 3—GENERAL CONFORMITY *De Minimis* EMISSION LEVELS FOR $PM_{2.5}$ PRECURSORS

Type of emission	Tons/year in moderate $PM_{2.5}$ nonattainment areas and all maintenance areas	Tons/year in Serious $PM_{2.5}$ nonattainment areas
Direct emissions	100	70
SO_2	100	70
NO_X	100	70
VOC	100	70
Ammonia	100	70

b. *Are there any other impacts related to general conformity based on implementation of the 2012 $PM_{2.5}$ NAAQS?* The EPA is not proposing any other revisions to the general conformity regulations at this time. However, as states develop SIP revisions for the 2012 and future $PM_{2.5}$ NAAQS, the agency recommends that state and local air quality agencies work with federal agencies with large facilities (*e.g.,* commercial airports, ports and large military bases) that are subject to the general conformity regulations to establish an emissions budget for those facilities in order to facilitate future conformity determinations under the conformity regulations. Such a budget could be used by federal agencies in determining conformity or identifying mitigation measures if the budget level is included and identified in the SIP.

Significant tracts of land under federal management may also be included in nonattainment area boundaries. The role of fire in these areas should be assessed and emissions budgets developed in concert with those federal land management agencies. In such areas the EPA encourages states to consider in any baseline, modeling and SIP attainment inventory used and/or submitted to include emissions expected from projects subject to general conformity, including emissions from wildland fire that may be reasonably expected in the area. Where appropriate, states may consider developing plans for addressing wildland fuels in collaboration with land managers and owners. Information is available from DOI and USDA Forest Service on the ecological role of fire and on smoke management programs and basic smoke management practices.[273]

C. Clean Data Policy

This section describes the ongoing status of the EPA's Clean Data Policy and proposes provisions applicable to any determinations of attainment under current and future $PM_{2.5}$ NAAQS. This section also sets forth the regulatory consequences of an EPA determination, made after notice and comment rulemaking, that an area designated nonattainment for a $PM_{2.5}$ standard has air quality attaining that standard. Upon such a determination by the EPA, the state's requirement for the area to submit the separate required elements of an attainment plan (including an attainment demonstration, but not the emissions inventory requirement), shall be suspended until such time as the area is redesignated to attainment, at which time the requirements no longer apply. If the EPA determines that the area, after reaching attainment, has again violated that $PM_{2.5}$ NAAQS, the requirements are again applicable. The following discussion of this interpretation, known as the EPA's Clean Data Policy, explains the basis for the EPA's interpretation and is relevant to all $PM_{2.5}$ NAAQS under subpart 4.

1. What is a clean data determination?

The EPA's interpretation of the CAA applies when the agency, after notice-and-comment rulemaking, issues a ''clean data determination'' (CDD), in

[273] USDA Forest Service and Natural Resources Conservation Service, Basic Smoke Management Practices Tech Note, October 2011, *http://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb1046311.pdf.*

which it determines that a specific nonattainment area has attained the relevant standard. For such areas, the EPA interprets the CAA as suspending the state requirements to submit to the EPA the planning elements of an attainment plan related to attaining the NAAQS for as long as the area continues to attain the standard.[274] These planning elements generally include reasonable further progress (RFP) requirements, attainment demonstrations, RACM and RACT, nonattainment area contingency measures, and other state planning requirements related to the attainment of the NAAQS.[275] The suspension of the obligation to submit applies regardless of when the plan submissions are due. The CDD does not suspend CAA requirements that are independent of helping the area achieve attainment, such as the requirements to submit an emissions inventory and nonattainment new source review requirements.

The emissions inventory is a basic compilation of information used to characterize the sources of emissions of the nonattainment area. Section 172(c)(3), the statutory provision requiring submission of an emissions inventory, is not tied to attainment of the NAAQS, unlike the attainment planning provisions which are suspended by a CDD. A base year inventory continues to be relevant to a nonattainment area that is attaining the NAAQS and has obtained a CDD because, for example, the inventory is a necessary component to an approvable redesignation request. In addition, in the event the air quality in the area exceeds the standard in a subsequent year, the state would be obligated to submit an attainment demonstration and other planning elements for the area, and a base year inventory would need to be available immediately in order for the state to submit an approvable attainment plan expeditiously. Similarly, the new source review requirement is not suspended because section 172(c)(5) is not tied to attainment of the NAAQS, and an area with a CDD is still designated nonattainment. NNSR permitting is required in each nonattainment area until the area is redesignated to attainment.'' For the past two decades, and for many NAAQS, the EPA has consistently applied its Clean Data Policy interpretation to attainment-related provisions of subparts 1, 2 and 4 of Part D, Title I of the CAA. The Clean Data Policy is the subject of several EPA memoranda and regulations and numerous individual rulemakings published in the **Federal Register**. These rulemakings have applied the interpretation to a broad spectrum of NAAQS, including the 1-hour and 1997 ozone standards, PM_{10}, 1997 and 2006 $PM_{2.5}$ standards and the carbon monoxide (CO) and lead standards. The D.C. Circuit has upheld the Clean Data Policy interpretation as embodied in the EPA's 8-hour ozone Implementation Rule, 40 CFR 51.918.[276] *NRDC* v. *EPA,* 571 F. 3d 1245 (D.C. Cir. 2009). Other U.S. Circuit Courts of Appeals that have considered and reviewed the EPA's Clean Data Policy interpretation have upheld it and the rulemakings applying the EPA's interpretation. *Sierra Club* v. *EPA,* 99 F.3d 1551 (10th Cir. 1996); *Sierra Club* v. *EPA,* 375 F. 3d 537 (7th Cir. 2004); *Our Children's Earth Foundation* v. *EPA,* N. 04–73032 (9th Cir. June 28, 2005) (memorandum opinion); *Latino Issues Forum,* v. *EPA,* Nos. 06–75831 and 08–71238 (9th Cir. March 2, 2009) (memorandum opinion). The EPA incorporated its Clean Data Policy interpretation in both its 1997 8-hour ozone implementation rule and in its remanded 2007 $PM_{2.5}$ Implementation Rule in 40 CFR 51.1004(c). *See* the **Federal Register** published on April 25, 2007 (72 FR 20583, 20585 and 20665. The D.C. Circuit, in its January 4, 2013 decision remanding the $PM_{2.5}$ implementation rule, did not address the merits of that regulation or the EPA's existing interpretation of the statutory provisions as they pertained to the EPA's Clean Data Policy.

The EPA has previously articulated its Clean Data Policy interpretation under subpart 4 in implementing the PM_{10} standard. *See, e.g.,* 75 FR 27944 (May 19, 2010) (determination of attainment of the PM_{10} standard in Coso Junction, California); 71 FR 13021 (March 14, 2006) (Yuma, Arizona area); 71 FR 40023 (July 14, 2006) (Weirton, West Virginia area); 71 FR 44920 (August 8, 2006) (Rillito, Arizona area); 71 FR 63642 (October 30, 2006) (San Joaquin Valley, California area) 72 FR 14422 (March 28, 2007) (Miami, Arizona area). In the EPA's proposed and final rulemakings determining that the San Joaquin Valley nonattainment area attained the PM_{10} standard, the EPA set forth at length its rationale for applying the Clean Data Policy to PM_{10} under subpart 4. 71 FR at 63643–45. The Ninth Circuit upheld the EPA's final rulemaking, and specifically the EPA's Clean Data Policy, in the context of subpart 4. *Latino Issues Forum* v. *EPA,* supra. Nos. 06–75831 and 08–71238 (9th Cir. March 2, 2009) (memorandum opinion). In rejecting the petitioner's challenge to the Clean Data Policy under subpart 4 for PM_{10}, the Ninth Circuit stated, ''As the EPA explained, if an area is in compliance with PM_{10} standards, then further progress for the purpose of ensuring attainment is not necessary.'' Thus the EPA has previously established its interpretation that, under subpart 4, a clean data determination suspends the obligations to submit an attainment demonstration, RACM/RACT, RFP and quantitative milestones, contingency measures, and other measures related to attainment. The EPA is proposing to codify this interpretation in this implementation rule for the $PM_{2.5}$ NAAQS.

As with its Clean Data Policy interpretation for 8-hour ozone, which the EPA embodied in a regulation that was upheld by the D.C. Circuit in *NRDC* v. *EPA,* 571 F. 3d 1245 (D.C. Cir. 2009), the EPA intends to embody its interpretation for the Clean Data Policy for current and future $PM_{2.5}$ NAAQS in a regulation as part of this proposed rulemaking. This interpretation complies with the D.C. Circuit's ruling (*NRDC* v. *EPA,* 706 F.3d 428 (D.C. Cir. 2013)) that both subparts 1 and subpart 4 apply to implementation, and reflects the interpretation upheld by the *Latino Issues Forum* Court. *Latino Issues Forum* v. *EPA,* supra. Nos. 06–75831 and 08–71238 (9th Cir. March 2, 2009) (memorandum opinion). Under this proposed regulation, if the EPA determines, after notice-and-comment rulemaking, that an area has attained the applicable $PM_{2.5}$ NAAQS based on the most recent 3 years of complete, quality-assured data meeting the requirements of 40 CFR part 50, Appendix N, the area's obligation to submit the following Moderate or Serious area attainment-related planning requirements is suspended for so long as the area continues to attain the $PM_{2.5}$ standard: (i) the part D, subpart 4 and subpart 1

[274] In the context of CDDs, the EPA distinguishes between attainment planning requirements of the CAA, which relate to the attainment demonstration for an area and related control measures for bringing an area into attainment for a given NAAQS as expeditiously as practicable, and other types of requirements, such as permitting requirements under the NNSR program, and any specific control requirements independent of those strictly needed to ensure timely attainment of a given NAAQS.

[275] *See* December 14, 2004 memorandum from Stephen D. Page, Director, EPA Office of Air Quality Planning and Standards, to Air Division Directors, EPA Regions I–X, entitled ''Clean Data Policy for the Fine Particle National Ambient Air Quality Standards.'' Available at: *http://www.epa.gov/airquality/urbanair/sipstatus/docs/pm25_clean_data_policy_14dec2004.pdf.*

[276] ''The EPA's Final Rule to implement the 8-hour Ozone National Ambient Air Quality Standard—Phase 2 (Phase 2 Final Rule).'' *See* the **Federal Register** published on November 29, 2005 (70 FR 71612, 71645 and 71646).

obligation to provide an attainment demonstration pursuant to section 189(a)(1)(B); (ii) the RACM and RACT provisions of section 189(a)(1)(C); (iii) the RFP and quantitative milestones provisions of section 189(c); and, (iv) related attainment demonstration, RACM and RACT, RFP and contingency measure provisions requirements of subpart 1, section 172.

A final determination of attainment, also known as a clean data determination, would not constitute a redesignation to attainment under CAA section 107(d)(3). The state would still have to meet the statutory requirements for redesignation in order to be redesignated to attainment. A determination of attainment for purposes of the Clean Data Policy is also not linked to any particular attainment deadline, and is not necessarily equivalent to a determination that an area has attained the standard by its applicable attainment deadline, *e.g.,* under section 189(c).

2. Planning Requirements Suspended With a CDD

a. *Control measure requirements for Moderate areas.* Both sections 172(c)(1) and 189(a)(1)(C) require ''provisions to assure that reasonably available control measures'' (*i.e.,* RACM) are implemented in a nonattainment area. Reasonably available control technology (*i.e.,* RACT) is a subset of RACM. The General Preamble states that the EPA interprets section 172(c)(1) so that RACM requirements are a ''component'' of an area's attainment demonstration.[277] Thus, for the same reason the obligation to submit an attainment demonstration is suspended, the requirement for a state to submit RACM is suspended if the nonattainment area reaches attainment. For $PM_{2.5}$, the EPA has consistently interpreted this provision to require only implementation of potential RACM that could contribute to RFP or to timely attainment (General Preamble, 57 FR 13498). Thus, where an area is already attaining the standard, no additional RACM are required, but all measures adopted into the SIP prior to attainment would remain.[278] The EPA is interpreting section 189(a)(1)(C) consistent with its interpretation of section 172(c)(1).

b. *RFP and quantitative milestones.* The EPA has long interpreted the provisions of part D, subpart 1 of the CAA (sections 171 and 172) as not requiring the submission of RFP for an area already attaining the PM_{10} NAAQS. For an area that is attaining, showing that the state will make RFP towards attainment ''will, therefore, have no meaning at that point.'' [279] Section 189(c)(1) states that: ''Plan revisions demonstrating attainment submitted to the Administrator for approval under this subpart shall contain quantitative milestones which are to be achieved every 3 years until the area is redesignated attainment and which demonstrate reasonable further progress, as defined in section [171(1)] of this title, toward attainment by the applicable date.''

With respect to RFP, section 171(1) states that, for purposes of part D, RFP ''means such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable date.'' 42 U.S.C. 7501(1). Thus, whether dealing with the general RFP requirement of section 172(c)(2), the ozone-specific RFP requirements of sections 182(b) and (c), or the specific RFP requirements for PM_{10} areas of part D, subpart 4, section 189(c)(1), the stated purpose of RFP is to ensure attainment by the applicable attainment date. Although section 189(c) states that revisions shall contain milestones which are to be achieved until the area is redesignated to attainment, such milestones are designed to show reasonable further progress ''toward attainment by the applicable attainment date,'' as defined by section 171. Thus, it is clear that once the area has attained the standard, no further milestones are necessary or meaningful. This interpretation is supported by language in section 189(c)(3), which mandates that a state that fails to achieve a milestone must submit a plan that assures that the state will achieve the next milestone or attain the NAAQS if there is no next milestone. Thus, section 189(c)(3) itself assumes that the requirement to submit and achieve milestones does not continue after attainment of the NAAQS.

In the General Preamble, the EPA noted with respect to section 189(c) that the purpose of the milestone requirement is ''to provide for emission reductions adequate to achieve the standards by the applicable attainment date (H.R. Rep. No. 490 101st Cong., 2d Sess. 267 (1990)).'' 57 FR 13498 (April 16, 1992), at page 13539. If an area has in fact attained the standard, the stated purpose of the RFP requirement will have already been fulfilled.[280] Similarly, the requirements of section 189(c)(2) with respect to milestones no longer apply so long as an area has attained the standard. Section 189(c)(2) provides in relevant part that: Not later than 90 days after the date on which a milestone applicable to the area occurs, each State in which all or part of such area is located shall submit to the Administrator a demonstration . . . that the milestone has been met.

Where the area has attained the standard and there are no further milestones, there is no further requirement to make a submission showing that such milestones have been met. This is consistent with the position that the EPA took with respect to the general RFP requirement of section 172(c)(2) in the General Preamble and in the May 10, 1995 Seitz memorandum [281] with respect to the requirements of sections 182(b) and (c). In the Seitz memorandum, the EPA also noted that section 182(g), the milestone requirement of subpart 2, which is analogous to provisions in section 189(c), is suspended upon a determination that an area has attained. The memorandum, citing additional provisions related to attainment

[277] 57 FR 13498 (April 16, 1992), at page 13560.

[278] The EPA's interpretation that the statute requires implementation only of RACM that would advance attainment was upheld by the Fifth Circuit Court (*Sierra Club* v. *EPA,* 314 F.3d 735, 743–745 (5th Cir. 2002), and by the D.C. Circuit Court (*Sierra Club* v. *EPA,* 294 F.3d 155, 162–163 (D.C. Cir. 2002)).

[279] 57 FR 13498 (April 16, 1992), at page 13564. *See* 71 FR 40952 (July 19, 2006) and 71 FR 63642 (October 30, 2006) (proposed and final determination of attainment for San Joaquin Valley); 75 FR 13710 (March 23, 2010) and 75 FR 27944 (May 19, 2010) (proposed and final determination of attainment for Coso Junction).

[280] Thus, the EPA believes that it is a distinction without a difference that section 189(c)(1) speaks of the RFP requirement as one to be achieved until an area is ''redesignated attainment,'' as opposed to section 172(c)(2), which is silent on the period to which the requirement pertains, or the ozone nonattainment area RFP requirements in sections 182(b)(1) or 182(c)(2), which refer to the RFP requirements as applying until the ''attainment date,'' since section 189(c)(1) defines RFP by reference to section 171(1) of the CAA. Reference to section 171(1) clarifies that, as with the general RFP requirements in section 172(c)(2) and the ozone-specific requirements of section 182(b)(1) and 182(c)(2), the PM-specific requirements may only be required ''for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date.'' 42 U.S.C. 7501(1). As discussed in the text of this proposed rulemaking, the EPA interprets the subpart 4 RFP requirements, in light of the definition of RFP in section 171(1), and its incorporation into section 189(c)(1), to no longer apply once the EPA makes a determination that the standard has been attained.

[281] Memorandum from John S. Seitz, titled ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' (Seitz Memo). May 10, 1995.

demonstration and RFP requirements, stated:

> Inasmuch as each of these requirements is linked with the attainment demonstration or RFP requirements of section 182(b)(1) or 182(c)(2), if an area is not subject to the requirement to submit the underlying attainment demonstration or RFP plan, it need not submit the related SIP submission either. (Seitz memo, page 4).

c. *Contingency measures.* Other SIP submission requirements are linked with these attainment demonstration and RFP requirements, and similar reasoning applies to them. These requirements include the contingency measure requirements of sections 172(c)(9). The EPA has interpreted the obligation to submit contingency measure requirements of sections 172(c)(9) as suspended when an area has attained the standard because those ''contingency measures are directed at ensuring RFP and attainment by the applicable date.'' 57 FR at 13564; *see* also Seitz memo at pgs. 5–6.

Section 172(c)(9) provides that: ''SIPs in nonattainment areas shall provide for the implementation of specific measures to be undertaken if the area fails to make reasonable further progress, or to attain the [NAAQS] by the attainment date applicable under this part. Such measures shall be included in the plan revision as contingency measures to take effect in any such case without further action by the state or the EPA.''

The contingency measure requirement is inextricably tied to the RFP and attainment demonstration requirements. Contingency measures are implemented if RFP targets are not achieved, or if attainment is not realized by the attainment date. Where an area has already achieved attainment and continues to do so it has no need to rely on contingency measures to come into attainment or to make further progress to attainment. As the EPA stated in the General Preamble: ''The section 172(c)(9) requirements for contingency measures are directed at ensuring RFP and attainment by the applicable date.'' *See* 57 FR 13564.

d. *Attainment demonstrations.* With respect to the attainment demonstration requirements of section 172(c) and section 189(a)(1)(B), the EPA proposes to find that, as with the RFP requirements, if an area is already monitoring attainment of the standard, there is no need for an area to make a further submission containing additional measures to achieve attainment. The plain language of section 189(a)(1)(B) requires that the attainment plan provide for ''a demonstration (including air quality modeling) that the [SIP] will provide for attainment by the applicable attainment date . . . .'' Where the area has attained the standard, such a demonstration no longer serves a purpose. This interpretation is consistent with the interpretation of the section 172(c) requirements provided by the EPA in the General Preamble, the Page memo, and the section 182(b) and (c) requirements set forth in the Seitz memo.[282] As the EPA stated in the General Preamble, no other measures to provide for attainment would be needed by areas seeking redesignation to attainment since ''attainment will have been reached'' (57 FR at 13564). *See* also *Latino Issues Forum,* v. *EPA,* Nos. 06–75831 and 08–71238 (9th Cir.), Memorandum Opinion, March 2, 2009.

e. *Control measure requirements for Serious areas.* Under proposed Option 1 for BACM and BACT determinations, described in Section VI.D of this preamble, BACM and BACT for sources in the nonattainment area would be determined independent of the attainment needs of the area, and thus the requirement for BACM and BACT would not be considered an attainment planning requirement. Therefore, under such an approach, a determination of attainment (*i.e.,* a clean data determination) would not suspend the obligation to submit any applicable outstanding BACM and BACT requirements. Under proposed Option 2 for BACM and BACT determinations, BACM and BACT would be identified based on the specific attainment needs of the area, thus tying the BACM and BACT requirement directly to attainment planning for the area. Consistent with this second proposed approach for determining BACM and BACT, issuance of a CDD would therefore also suspend BACM and BACT requirements.

In addition, for a Serious area that failed to attain the relevant $PM_{2.5}$ NAAQS by the applicable attainment date and that is therefore subject to the annual 5 percent emissions reduction requirement under section 189(d), but is nevertheless now attaining the relevant NAAQS, the EPA believes that the Clean Data Policy may apply to the obligations of the state to make an attainment plan submission to meet the requirements of section 189(d). Once such an area is attaining the relevant NAAQS, a clean data determination would suspend the section 189(d) submission requirement.

[282] Memorandum from Stephen D. Page titled ''Clean Data Policy for the Fine Particle National Ambient Air Quality Standards'' are equally pertinent to all NAAQS. December 14, 2004.

3. Planning Requirements Not Suspended With a CDD

For Moderate nonattainment areas, the planning elements that are not suspended with a clean data determination are: Emissions inventories, nonattainment new source review including 189(e) control requirements for major stationary source precursors, and conformity. For Serious nonattainment areas, the planning elements not suspended with a clean data determination are: Emissions inventories, nonattainment NSR including section 189(e) control requirements for major stationary sources of $PM_{2.5}$ precursors, the Most Stringent Measures (MSM) requirements (if the area has elected to seek an extension of the attainment date under section 188(e)), and conformity. In addition, for a Serious $PM_{2.5}$ nonattainment area, if the EPA finalizes proposed Option 1 for BACM and BACT determinations, in which BACM and BACT would be determined independent of the attainment needs for the area, then the requirement for implementation of BACM and BACT would not be considered an attainment planning requirement and would thus not be suspended with a clean data determination for the area.

4. Violations of the NAAQS After a CDD

The suspension of the state's obligations to submit attainment plan elements such as provisions for RACM and RACT, RFP and quantitative milestones, contingency measures, an attainment demonstration and other related attainment planning requirements exists only for as long as the area continues to monitor attainment of the relevant NAAQS prior to redesignation. If the EPA determines, after notice-and-comment rulemaking but prior to redesignation, that the area has monitored a violation of the relevant NAAQS, the basis for the suspension of the requirements no longer exists. In that case, the area would again be subject to the requirement to submit the pertinent attainment plan elements or SIP revisions and would need to address those requirements. Thus, a final determination that the area need not currently submit one of the required attainment plan elements amounts to no more than a suspension of the obligation to make the submission for so long as the area continues to attain the standard. Only if and when the EPA redesignates the area to attainment under section 107(d)(3) would the area be permanently relieved of these attainment plan submission obligations.

Upon the EPA's determination that an area is currently attaining the applicable $PM_{2.5}$ standard, the EPA proposes that the obligations to submit attainment planning provisions to meet the requirements for an attainment plan for the $PM_{2.5}$ NAAQS, including RFP plans, RACM and RACT, quantitative milestones, contingency measures and an attainment demonstration are suspended for as long as the area continues to monitor attainment of the applicable $PM_{2.5}$ standards. If in the future, prior to redesignation of the nonattainment area to attainment, the EPA determines after notice-and-comment rulemaking that the area again violates the applicable $PM_{2.5}$ standard, then the basis for suspending the obligation of the state to make one or more of these submissions would no longer exist and these attainment plan elements would again be due. Since all attainment planning requirements had been suspended for this area and the area attained by its attainment date, the CAA attainment plan contingency measures would not apply at the time of the NAAQS violation. In addition, because the area did not have a maintenance plan, the CAA section 175A maintenance plan contingency measures would also not apply. When an area violates after a CDD, and the statutory submission date has passed, CAA section 110(k)(5) applies, requiring that if the EPA finds that the applicable implementation plan is substantially inadequate to attain or maintain the NAAQS, the Administrator shall establish a reasonable deadline (not to exceed 18 months) for a state to submit a SIP plan revision.

D. Section 179B/International Border Areas

The EPA recognizes that some states are affected not only by local and regional sources of $PM_{2.5}$ and $PM_{2.5}$ precursors, but also international sources that can contribute to an area's $PM_{2.5}$ NAAQS nonattainment status. As discussed in Section II of this preamble, direct $PM_{2.5}$ and more importantly $PM_{2.5}$ precursors can be transported long distances and can be found in the air thousands of miles from where the emissions occurred and the particles were formed. Nitrates and sulfates formed from NO_X and SO_2 emissions are generally transported over wide areas leading to substantial background contributions to NAAQS violations in urban areas. Organic carbon, which has both a primary and secondary component, can also be transported, but to a far lesser degree. In general, higher concentrations of elemental carbon and crustal matter are found closer to the sources of these emissions.

Section 179B of the CAA, entitled ''International Border Areas,'' applies to areas that could attain the relevant NAAQS by the statutory attainment date ''but for'' emissions emanating from outside the U.S. Specifically, section 179B(a) provides that the EPA shall approve an attainment plan for such an area if: (i) the attainment plan meets all other applicable requirements of the CAA, and (ii) the submitting state can satisfactorily demonstrate that ''but for emissions emanating from outside of the United States,'' the area would attain and maintain the relevant NAAQS. In addition, section 179B(d) applies specifically to PM_{10} NAAQS (which would include the $PM_{2.5}$ NAAQS) and provides that if a state demonstrates that an area would have timely attained the NAAQS but for emissions emanating from outside the U.S., then the area is not subject to the mandatory reclassification element of section 188(b)(2) for Moderate areas that fails to attain the PM_{10} NAAQS by the applicable attainment date.

Under section 179B, areas affected by emissions from outside the U.S. continue to have attainment plan obligations. First, even if the area is impacted by emissions from outside the U.S., that fact does not affect the designation of the area. An area that is violating the relevant NAAQS, even if emissions from outside the U.S. contribute to that violation, will be designated nonattainment. Section 179B does not affect designation. Second, as a result of that designation, the state is required to meet the applicable attainment plan requirements for the relevant NAAQS. Section 179B does not negate the attainment plan requirements, it only eliminates the obligation for an attainment demonstration that demonstrates attainment and maintenance of the NAAQS, and elimination of that obligation is conditioned upon the state meeting all other attainment plan requirements.

Under section 179B, states remain obligated to meet the attainment plan requirements other than the requirement to demonstrate timely attainment. The applicable requirements for an attainment plan for $PM_{2.5}$ include those requirements that apply to a Moderate area attainment plan, including an emissions inventory, RACM and RACT measures, RFP and quantitative milestones, and contingency measures. The Addendum includes a discussion of the applicable attainment plan requirements in the context of developing a SIP subject to section 179B. In it, the EPA clarified that ''RACM/RACT must be implemented to the extent necessary to demonstrate attainment by the applicable attainment date if emissions emanating from outside the U.S. were not included in the analysis.'' [283] The EPA further encouraged states ''to reduce emissions beyond the minimum necessary to satisfy the 'but for' test in order to reduce the PM concentrations to which their populations are exposed''.[284] However, the EPA acknowledged that ''if . . . States . . . were also required, because of contributions to PM_{10} violations caused by foreign emissions, to shoulder more of a regulatory and economic burden than States not similarly affected . . . such a requirement would unfairly penalize States containing international border areas and effectively undermine the purpose of section 179B. Indeed, to the extent an affected State can satisfactorily demonstrate that implementation of such measures clearly would not advance the attainment date, EPA and the state could conclude they are unreasonable and hence do not constitute RACM.'' [285]

The EPA has considered this past interpretation of RACM and RACT requirements in the context of section 179B attainment plans for $PM_{2.5}$ NAAQS and no longer views it as appropriate or consistent with the agency's guidance that encourages states ''to reduce emissions beyond the minimum necessary to satisfy the 'but for' test in order to reduce the PM_{10} concentrations to which their populations are exposed.'' [286] That is, given that the primary purpose of an attainment plan is to achieve emission reductions so that people living in a nonattainment area receive the public health protection intended by the NAAQS, adopting an interpretation that would allow those people to continue to be subjected to levels of $PM_{2.5}$ above the NAAQS that the state could reasonably reduce—in this case not to attainment level, but to a level below the current level—would be antithetical to the objectives of the CAA. In addition, as with all other Moderate $PM_{2.5}$ nonattainment areas, the EPA interprets the provisions of section 172(c)(6) to require that such areas must implement all additional reasonable measures that it can implement through the sixth calendar year following designation of the area, in addition to those measures meeting

[283] Addendum to the General Preamble, 59 FR 41998 (August 16, 1994), at page 42001.

[284] *Ibid.*

[285] *Ibid.*

[286] *Ibid.*

the definition of RACM and RACT, in order to make progress toward attainment after the end of the fourth year following designation.

Therefore, the EPA is proposing and seeking comment on two proposed approaches that would give greater clarity to the agency's existing interpretation of control strategy requirements for Moderate area attainment plans to be approved under section 179B. The first proposed interpretation would clarify that the control strategy for an area that could attain by the Moderate area attainment date, ''but for'' foreign emissions of direct $PM_{2.5}$ or its precursors, must include all control measures identified by the state to be technologically and economically feasible and implementable on sources in the area by the end of the sixth calendar year following designation of the area, thus satisfying requirements for RACM and RACT and additional reasonable measures, with a possible exception for any such measures that collectively would not be effective in reducing ambient $PM_{2.5}$ levels in the area. This interpretation would closely align the EPA's interpretation of what constitutes a reasonable control strategy for a Moderate area attainment plan submitted pursuant to section 179B with the EPA's proposed interpretation of what constitutes a reasonable control strategy for a Moderate area attainment plan submitted pursuant to section 189(a)(1) for an area that cannot practicably attain by the statutory Moderate area attainment date.

More specifically, under the first proposed approach for identifying appropriate control measures on sources in a Moderate $PM_{2.5}$ nonattainment area that could attain the NAAQS ''but for'' foreign emissions, the EPA is proposing that the state would be required to implement all technologically and economically feasible measures that can be implemented on sources in the area by the end of the sixth calendar year following designation of the area in order to ensure that the area makes reasonable progress toward attaining the standard even if such measures are not expected to yield attainment by the statutory Moderate area attainment date. However, because the EPA recognizes that it may not be reasonable to require that a state implement those technologically and economically feasible control measures that collectively will not effectively reduce ambient $PM_{2.5}$ concentrations, the agency is proposing to allow the state not to implement such measures if it can demonstrate that collectively they will not be effective in reducing $PM_{2.5}$ levels in the area. The EPA seeks comment on this proposed approach for Moderate $PM_{2.5}$ nonattainment areas potentially subject to an attainment demonstration waiver under section 179B, and seeks comment on an alternative proposed approach that would not allow such an exception based on the collective effectiveness of otherwise ''reasonable'' measures. This alternative proposed option parallels a similar option described in Section IV.D in this preamble for Moderate $PM_{2.5}$ nonattainment areas that cannot practicably attain the NAAQS by the latest statutory attainment date for the area.

The EPA also seeks comment on a distinct, second proposed approach for interpreting what would constitute an acceptable control strategy for sources in an area for which a state is seeking an attainment plan approval under section 179B. Under this second option, a state would need to demonstrate that its selected control measures for a Moderate nonattainment area would achieve reductions in $PM_{2.5}$ levels that exceeded the applicable NAAQS in proportion to their contribution to overall $PM_{2.5}$ levels. For example, if monitors in a Moderate nonattainment area reveal that the area is exceeding the 2012 $PM_{2.5}$ NAAQS of 12 $\mu g/m^3$ by 2 $\mu g/m^3$, for a total of 14 $\mu g/m^3$, and the state concludes that foreign sources are contributing 3 $\mu g/m^3$, then the state would be responsible for the remaining 11 $\mu g/m^3$ and would need to implement enough reasonable control measures to achieve reductions in monitored ambient $PM_{2.5}$ concentrations equal to (11/14)*2 $\mu g/m^3$ or 1.6 $\mu g/m^3$. The EPA recognizes that this approach could require a high level of precision to be able to quantify accurately contributions from sources inside and outside the nonattainment area as well as projected emission reductions to be achieved with the implementation of each potential control measure for sources inside the area. However, the agency believes that such precision may be justified to support any ''but for'' demonstration submitted to the EPA and to support any claims that a state should only be required to implement a subset of otherwise ''reasonable'' control measures on sources of direct $PM_{2.5}$ emissions or emissions of $PM_{2.5}$ precursors located in the nonattainment area.

The EPA seeks comment on these two approaches to clarify what constitutes a reasonable control strategy in the context of a SIP submitted pursuant to section 179B. The EPA is also proposing regulations for the $PM_{2.5}$ NAAQS consistent with the existing guidance with respect to requirements for RFP and quantitative milestones and contingency measures for areas seeking Moderate area attainment plan approval under section 179B. The General Preamble states that:

> In international border areas, EPA will not require the contingency measures for PM_{10} to be implemented after the area fails to attain if EPA determines that the area would have attained the NAAQS, but for emissions emanating from outside the U.S. However, the EPA will require contingency measures to be implemented if it determines that the area failed to make RFP in achieving the required reductions in PM_{10} emissions from sources within the U.S., or if the area does not, in fact, obtain the emission reductions that were necessary to demonstrate timely attainment of the NAAQS, but for emissions emanating from outside the U.S.[287]

The EPA is proposing that this interpretation of section 179B(a)(1) with respect to contingency measures and RFP requirements should apply to Moderate nonattainment areas for the $PM_{2.5}$ NAAQS. Specifically, the EPA proposes that as part of any Moderate area attainment plan submitted under section 179B, a state must include an RFP plan developed consistent with proposed Option 2 for RFP analyses for Moderate nonattainment areas that cannot practicably attain the relevant NAAQS by the statutory attainment date, described in Section IV.F of this preamble. Furthermore, the state must include as part of any attainment plan submission made for such an area contingency measures that can be implemented without significant effort in the event the EPA finds that such area failed to meet RFP requirements. The contingency measures should achieve approximately 1 year's worth of emissions reductions as calculated by the state for purposes of the RFP analysis. In addition, the EPA proposes that the state must identify quantitative milestones for the area to be achieved 4.5 years and 7.5 years from the date of designation of the area. The EPA proposes to apply the same proposed requirements for establishing and reporting on quantitative milestones for Moderate nonattainment areas seeking attainment date waivers under section 179B as for all other Moderate nonattainment areas, described fully in Section IV.G of this preamble. The agency seeks comment on these proposed requirements for Moderate area plans submitted pursuant to section 179B.

The EPA has historically evaluated section 179B ''but for'' demonstrations on a case-by-case basis, based on the

[287] *Ibid.*

individual circumstances and data provided by the submitting state. These demonstrations have included information such as ambient air quality monitoring data, modeling scenarios, emissions inventory data and meteorological or satellite data.[288] The Moderate area attainment demonstration modeling and other elements of the attainment demonstration must show timely attainment of the NAAQS but for the emissions from outside of the U.S. Section 179B does not, however, provide authority to exclude monitoring data influenced by international transport from regulatory determinations related to attainment and nonattainment. Thus, even if the EPA approves a section 179B ''but for'' demonstration for an area, the area would continue to be designated as nonattainment and subject to the applicable requirements, including nonattainment new source review, conformity and other measures prescribed for nonattainment areas by the CAA. Section 179B requires states to continue to meet attainment plan requirements, notwithstanding the contribution of emissions from sources outside the U.S., in order to provide the public health protection intended by the NAAQS. However, if the EPA approves a ''but for'' demonstration for a Moderate nonattainment area, the area would not be subject to reclassification for failure to attain by the applicable attainment date as explained earlier.

Although monitor data cannot be excluded for a determination of whether an area has attained based solely on the fact the data are affected by emissions from outside the U.S., such data may be excluded from consideration if they were significantly influenced by exceptional events under section 319(b)(3) of the CAA. Where international transport of emissions contributes to an exceedance or violation and comes from natural sources such as wildfires, and otherwise meets the criteria contained in the EPA's Exceptional Events Rule, it can be addressed by that rule.[289] Specifically, if the EPA concurs with an air agency's request to exclude affected data, the event-influenced data are officially noted and removed from the data set used to calculate official design values. Because of previously expressed stakeholder feedback regarding implementation of the Exceptional Events Rule and specific stakeholder concerns regarding the analyses that can be used to support wildfire-related exceptional event demonstrations, the EPA intends to propose revisions to the Exceptional Events Rule in a future notice-and-comment rulemaking and will solicit public comment at that time. The EPA has approved $PM_{2.5}$ wildfire influenced exceptional events demonstrations in the past, which are posted on the agency's Exceptional Events Rule Web site.[290]

Depending on the nature and scope of international emissions events affecting air quality in the U.S., the EPA may be able to assist states in developing approvable exceptional events demonstrations. More generally, the EPA believes that the best approach for evaluating the potential impacts of international transport on nonattainment is for states to work with the EPA on a case-by-case basis to determine the most appropriate information and analytical methods for each area's unique situation. The EPA will work with states that are developing attainment plans for which section 179B is relevant, and ensure the states have the benefit of the EPA's understanding of international transport of $PM_{2.5}$ and $PM_{2.5}$ precursors.

E. Enforcement and Compliance

Section 172(c)(6) in subpart 1 of the CAA requires nonattainment SIPs to ''include enforceable emission limitations, and such other control measures, means or techniques . . . as well as schedules and timetables for compliance, as may be necessary or appropriate to provide for attainment.'' In the remanded 2007 $PM_{2.5}$ Implementation Rule, the EPA described the general elements that characterize an enforceable SIP regulation, recognizing that enforceable SIP regulations may address the elements in different ways depending on the type of source category being regulated. The agency continues to believe and hereby proposes that in general, in order for a SIP regulation to be enforceable, it must clearly spell out which sources or source types are subject to its requirements and what its requirements (*e.g.,* emission limits or work practices) are. An enforceable regulation would also specify the timeframes within which these requirements must be met, and definitively state the recordkeeping and monitoring requirements appropriate to the type of sources being regulated. The recordkeeping and monitoring requirements would have to be sufficient to enable the state or the EPA to determine whether the source is complying with the emission limit on a continuous basis. An enforceable regulation would also contain test procedures in order to determine whether sources are in compliance.

The EPA continues to believe that complete and effective regulations that ensure compliance with an applicable emissions limit would have to include requirements for both performance testing of emissions and ongoing monitoring of the compliance performance of control measures, and the agency proposes to require that SIP regulations that establish emission limits include the following:

(a) Indicator(s) of compliance—the pollutant or pollutants of interest (*e.g.,* filterable and condensable $PM_{2.5}$) and the applicable units of measurement for expressing compliance (*e.g.,* ng/J of heat input, lb/hr);

(b) Test method—reference to a specific EPA or other published set of sample collection and analytical procedures, equipment design and performance criteria, and the calculations providing data in units of the indicator of compliance (Section IX.K of this preamble presents a discussion of specific test methods for condensable $PM_{2.5}$ emissions);

(c) Averaging time—the minimum length of each required test run and the requirement to average the results of the test runs (*e.g.,* three runs) representing a specified period of time (*e.g.,* 8 hours); and,

(d) Frequency—the maximum time between emissions or performance tests (*e.g.,* within 30 days of facility start-up and once each successive quarter, every 6-month period, or yearly).

In order to be complete with regard to compliance monitoring provisions, the EPA proposes that regulations adopted into the SIP must include the following critical elements:

(a) Indicator(s) of performance—the parameter or parameters measured or observed for demonstrating proper operation of the pollution control measure or compliance with the applicable emissions limitation or standard. Indicators of performance could include direct or predicted emissions measurements, process or control device (and capture system) operational parametric values that correspond to compliance with efficiency or emissions limits, and recorded findings of verification of work practice activities, raw material or fuel pollutant content, or design

[288] *Ibid.* The Addendum includes further examples of information a state may present for the EPA to consider as part of the ''but for'' demonstration, including additional monitors in international border areas, more detailed emissions inventories, and speciation data that identifies $PM_{2.5}$ components from foreign sources.

[289] *See* 40 CFR 50.14.

[290] The EPA's Exceptional Events Rule Web site is located at: *http://www.epa.gov/ttn/analysis/exevents.htm.*

characteristics. Indicators could be expressed as a single maximum or minimum value, a function of process variables (*e.g.,* within a range of pressure drops), a particular operational or work practice status (*e.g.,* a damper position, completion of a waste recovery task), raw material or fuel pollutant content, or an interdependency between two or more variables;

(b) Measurement technique—the means used to gather and record information of or about the indicators of performance. The components of the measurement technique include the detector type or analytical method, location and installation specifications, inspection procedures, and quality assurance and quality control measures. Examples of measurement approaches include continuous emissions monitoring systems (CEMS), continuous opacity monitoring systems (COMS), continuous parametric monitoring systems (CPMS), performance testing, vendor or laboratory analytical data, and manual inspections and data collection that include making records of process conditions, raw materials or fuel specifications, or work practices. Directly enforceable emission measurements, such as PM CEMs, are preferred wherever feasible. Where COMS are feasible, it should be clear that opacity is a directly enforceable standard, not merely an indicator of compliance;

(c) Averaging time—the period over which to average data to verify compliance with the emissions limitation or standard or proper operation of the pollution control measure. Examples of averaging time include a 3-hour average in units of the emissions limitation, a 30-day rolling average emissions value, a daily average of a control device operational parametric range, periodic (*e.g.,* monthly, annual) average of raw materials or fuel pollutant content, and an instantaneous alarm;

(d) Monitoring frequency—the number of monitoring data values recorded over a specified time interval. Examples of monitoring frequencies include at least one data value every 15 minutes for CEMS or CPMS, at least every 10 seconds for COMS, upon receipt or application of raw materials or fuel to the process, or at least once per operating day (or week, month, etc.) for performance testing, work practice verification, or equipment design inspections; and,

(e) Reporting and record retention requirements—criteria for retaining monitoring and test data in an electronic form and periodic electronic reporting of information as needed to the compliance office. Electronic record retention and submission have been widely adopted, and the EPA believes that such readily accessible documentation could be used by state, federal and other analysts to spot trends and non-compliance more easily than if these entities conducted reviews of paper documents. The EPA also recommends that compliance reports be made available online so that the general public can readily access the information without the need to submit Freedom of Information Act (FOIA) requests to the EPA. The EPA is in the process of revising federal rules to make similar requirements apply.

The EPA continues to believe that approval of regulations adopted into SIPs would have to ensure that these critical elements are present and clearly defined to be approvable. In particular, the compliance obligations, including emissions limits and other applicable requirements, would need to be representative of and accountable to the assumptions used in a state's attainment demonstration. This accountability would include the ability to transfer the applicable regulatory requirements to a title V operating permit subject to the EPA and public review.[291]

The EPA seeks comment on the elements proposed to be required to ensure that regulations adopted into a SIP are enforceable.

F. Efforts To Encourage a Multi-Pollutant Approach When Developing $PM_{2.5}$ Attainment Plans

1. General Guidance

From a planning and resource perspective, the EPA believes that it can be efficient for states to develop integrated control strategies that address multiple pollutants rather than separate strategies for each pollutant or NAAQS individually. An integrated air quality control strategy that reduces multiple pollutants can help ensure that reductions are efficiently achieved and produce the greatest overall air quality benefits. For example, it is widely known that certain control measures that reduce emissions of NO_X and VOC, and thus reduce ambient $PM_{2.5}$ levels, can also result in reduced ambient concentrations of ground-level ozone.[292] Many VOC are also hazardous air pollutants (HAP), so a control strategy for a $PM_{2.5}$ nonattainment area that reduces VOC emissions may provide the additional benefit of reducing air toxics. It is also widely known that many sources of $PM_{2.5}$ also emit toxic metals as particulates, so controlling directly emitted $PM_{2.5}$ emissions from these sources would also reduce the emissions of toxic metals. In addition, due to expected changes in meteorology resulting from climate change, the EPA encourages states to assess climate change and air pollution together and account for the potential effects of climate change in their multi-pollutant planning efforts.

In June 2007, the EPA's CAA Advisory Committee (CAAAC) recommended that the agency allow states to integrate SIP requirements and other air quality goals into a comprehensive plan.[293] The recommended plan would demonstrate attainment/maintenance of multiple NAAQS, accomplish sector-based reductions, realize risk reductions of HAPs and make improvements in visibility. It could also be structured to integrate programs addressing land use, transportation, energy and climate.

The EPA has encouraged states to take a multi-pollutant approach to managing air quality.[294] Specifically, the agency has encouraged states to involve all stakeholders when planning to meet air quality standards and to provide a basic outline for how local jurisdiction(s) could address air pollutants in an integrated manner.

While the agency encourages states to develop multi-pollutant plans, it recognizes that the requirement for the agency to review and, as necessary, revise NAAQS every 5 years, which can trigger new statutory attainment plan submission and attainment dates, as well as the ever-evolving understanding of pollutants and many control programs that may be available to reduce emissions, can sometimes make such efforts challenging. For example, under the current law, the 2007 submission date for Regional Haze SIPs has already passed while RACT SIPs for nonattainment areas classified as Moderate or higher for the 2008 ozone NAAQS were due more than 2 years before the due date for Moderate area

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[291] Under the title V regulations, sources have an obligation to include in their title V permit applications, among other components, all emissions of pollutants for which the source is major, and all emissions of regulated air pollutants. *See, e.g.,* 40 CFR 70.5(c)(3). The definition of regulated air pollutant in 40 CFR 70.2 includes any pollutant for which a NAAQS has been promulgated, including $PM_{2.5}$.

[292] For a list of potential control measures for $PM_{2.5}$ and $PM_{2.5}$ precursors, *see http://www.epa.gov/air/pdfs/MenuOfControlMeasures.pdf.*

[293] Recommendations to the Clean Air Act Advisory Committee: Phase II, June 2007, *http://www2.epa.gov/caaac/caaac-reports.*

[294] Memorandum from Stephen D. Page to Regional Air Division Directors, ''Consideration of Multiple Pollutants in Control Strategy Development.'' August 10, 2005.

attainment plans for areas designated nonattainment for the 2012 annual $PM_{2.5}$ NAAQS. Although it is not feasible to integrate fully these planning requirements, states could potentially use common databases and modeling tools for all three SIP submissions for these different requirements and rely on similar control measures as appropriate. Furthermore, as states develop plans to meet any current or future $PM_{2.5}$ NAAQS, they may wish to modify existing plans for implementing the ozone NAAQS or other NAAQS, or for regional haze, as they consider strategies more comprehensively. However, it is important to note that states and the EPA must continue to meet all the CAA mandated planning and program elements for individual NAAQS. The EPA seeks comment on alternative approaches to integrate the planning requirements for multiple NAAQS and other CAA programs that are promulgated at different times.

2. What is the EPA doing beyond encouraging states to integrate their air quality planning activities to the extent feasible?

Ideally, an air quality management plan (AQMP) is a set of pollution reduction strategies/planning activities for an area demonstrating: attainment/maintenance of one or more NAAQS; risk reductions from HAPs; improvements in visibility and ecosystem health; and, integration of land use, transportation, energy and climate activities in the area. Three areas in the country—North Carolina, New York and the City of St. Louis (involving both Missouri and Illinois)—participated in an EPA-led pilot effort to develop multi-pollutant AQMPs. The pilot projects provided lessons regarding AQMP development that should prove useful to other areas interested in better integrating their air quality planning. The areas' initial AQMPs and other materials are available on the EPA's Web site.[295]

Implementation of the 2012 $PM_{2.5}$ NAAQS provides an opportunity for states to consider how to use a multi-pollutant approach from the beginning of their planning process. The EPA recommends that states and tribes wishing to take a comprehensive approach consider the following activities:

- Develop models for the attainment demonstration that include previously implemented or planned measures to reduce $PM_{2.5}$ precursors and secondary fine particles, ozone precursors, pollutants that contribute to regional haze and, where appropriate, air toxics and any potential negative impacts on ecosystems;
- Conduct an integrated assessment of the impact that controls have on ambient levels of $PM_{2.5}$, ozone, regional haze, and, where applicable, air toxics, greenhouse gases, ecosystem protection and environmental justice to identify those controls with the greatest potential co-benefits; and,
- Use common data bases and analytical tools, where possible.

The EPA is requesting comment on what incentives or assistance the agency might be able to provide to encourage states to integrate their planning activities.

3. Multi-Pollutant Assessments/One-Atmosphere Modeling

A multi-pollutant assessment, or one-atmosphere modeling, is conducted with a single air quality model that is capable of simulating transport and formation of multiple pollutants simultaneously.[296] For example, this type of model can simulate formation and deposition involving pollutants associated with $PM_{2.5}$, ozone and regional haze, and it can include algorithms simulating gas phase chemistry, aqueous phase chemistry, aerosol formation and acid deposition. This type of model could also include the formation and deposition of key air toxics and the chemical interactions that occur with these individual toxic species to produce $PM_{2.5}$ and ozone.

Multi-pollutant assessments are recommended for $PM_{2.5}$ attainment demonstrations because the formation and transport of VOC and NO_X are closely related to the formation of both ozone and regional haze. There is often a positive correlation between measured secondary particulate matter and ozone. Many of the same factors affecting $PM_{2.5}$ concentrations also affect ozone concentrations because similarities exist in sources of precursors for both pollutants. For example, emissions of NO_X may lead to formation of nitrates, which affect both ambient $PM_{2.5}$ and ozone levels and impair visibility. Many VOC (such as toluene) are air toxics and may also be sources of precursors for both organic particles and ozone. In addition, the presence of ozone itself may be an important factor affecting secondary particle formation.

Because of these relationships, models and data analysis intended to address $PM_{2.5}$ could be beneficial for use in addressing ozone and visibility impairment. When performing a multi-pollutant assessment, the modeling should take into account previously implemented or planned measures to reduce $PM_{2.5}$, ozone, and regional haze. States that undertake multi-pollutant assessments as part of their attainment demonstration should consider assessing the impact of their $PM_{2.5}$ strategies on ozone and visibility impairment to ensure that optimal emission reduction strategies are developed for the three programs to the extent possible. This could facilitate addressing all of these pollutants in a more cost effective manner.

States may also find it desirable to assess the impact of $PM_{2.5}$, ozone, and/or regional haze control strategies on toxic air pollutants regulated under the CAA or under state air toxic initiatives. Given the relationships that exist between air toxics and the formation of $PM_{2.5}$ and ozone, states may find that controls can be selected to meet goals for $PM_{2.5}$ and/or ozone attainment as well as those of specific air toxic programs.

G. Measures To Ensure Appropriate Protections for Overburdened Populations

1. Review of PM NAAQS and At-Risk Populations

As discussed in Section II of this preamble, when the EPA sets a primary NAAQS, the CAA directs the Administrator to establish a standard that is ''requisite'' to protect public health with ''an adequate margin of safety.'' [297] In setting the NAAQS, the EPA considers available, relevant scientific information on the health effects that may occur in the general

[295] *See http://www.epa.gov/air/aqmp/.*

[296] Depending on the context, ''multi-pollutant'' can be defined in different ways. In this context the agency is defining multi-pollutant modeling as simultaneous modeling of $PM_{2.5}$, ozone, key air toxics, and regional haze. Future multi-pollutant models may include the ability to model a broader array of air toxics as well as greenhouse gases.

[297] The requirement that primary standards provide an adequate margin of safety was intended to address uncertainties associated with inconclusive scientific and technical information available at the time of standard setting. It was also intended to provide a reasonable degree of protection against hazards that research has not yet identified. Both kinds of uncertainties are components of the risk associated with pollution at concentrations below those at which human health effects can be said to occur with reasonable scientific certainty. Thus, in selecting primary standards that provide an adequate margin of safety, the EPA Administrator is seeking not only to prevent pollution levels that have been demonstrated to be harmful but also to prevent lower pollutant levels that may pose an unacceptable risk of harm, even if the risk is not precisely identified as to nature or degree. The CAA does not require the Administrator to establish a primary NAAQS at a zero-risk level or at background concentration levels, but rather at a level that reduces risk sufficiently so as to protect public health with an adequate margin of safety.

population, as well as specific groups within the general population that are at increased risk for experiencing adverse pollutant-related health effects (*i.e.,* at-risk populations).[298] These groups could exhibit a greater risk of pollutant-related health effects than the general population for a number of reasons including being adversely affected at lower pollutant concentrations, experiencing a larger health impact at a given pollutant concentration, and/or being exposed to higher pollutant concentrations than the general population. Thus, the NAAQS review process inherently takes into consideration certain environmental justice factors as part of the standard-setting process. In setting a secondary standard, the CAA directs the Administrator to establish a standard that ''is requisite to protect the public welfare from any known or anticipated adverse effects.''

Section 109(d) of the CAA requires the EPA to periodically review (every 5 years) the science upon which the standards are based and the standards themselves. As discussed elsewhere in this proposal, in its 2012 review of the PM NAAQS, the EPA revised the primary annual $PM_{2.5}$ standard by lowering the level to 12.0 micrograms per cubic meter ($\mu g/m^3$) so as to provide increased protection against health effects associated with long- and short-term $PM_{2.5}$ exposures.[299] The agency also revised the form of the primary annual $PM_{2.5}$ standard to eliminate the spatial averaging provisions to avoid potential disproportionate impacts on at-risk populations. In conjunction with these revisions, the EPA retained the primary 24-hour $PM_{2.5}$ standard, as revised in 2006 (71 FR 61144, October 17, 2006), to provide supplemental protection against health effects associated with short-term $PM_{2.5}$ exposures, especially in areas with high peak $PM_{2.5}$ concentrations. This suite of primary annual $PM_{2.5}$ standards provides increased public health protection, including the health of at-risk populations which include children, older adults, persons with pre-existing health and lung disease, and persons of lower socioeconomic status, against a broad range of $PM_{2.5}$-related effects that include premature mortality, increased hospital admissions and emergency department visits, and development of chronic respiratory disease.[300]

In addition, the Policy Assessment (U.S. EPA, 2011a, p. 2–60) observed that the highest concentrations of $PM_{2.5}$ in an area tend to be measured at monitors located in areas where the surrounding populations are more likely to live below the poverty line and to have higher percentages of minorities. The EPA directed states to relocate a limited number of existing monitors to near-roadway sites in large urban areas. Both of these revisions were informed by scientific evidence that underscored the potentially disproportionate exposure to high $PM_{2.5}$ concentrations and therefore disproportionate risk to low-income and minority populations.

2. Relationship Between Direct $PM_{2.5}$ Emissions and $PM_{2.5}$ Precursor Emissions Reductions and At-Risk Populations

Sources of direct PM emissions have their greatest impact on $PM_{2.5}$ concentrations and public health in the general vicinity of the source (*e.g.,* within 10 miles), while sources of precursor emissions can contribute to $PM_{2.5}$ concentrations more than 100 miles away and are considered to have a more regional impact. To date, state $PM_{2.5}$ attainment plans have generally relied to a greater extent on reductions of precursor pollutants rather than on reductions of direct $PM_{2.5}$ emissions. Studies show, however, that on a per ton basis, the reduction of a ton of direct $PM_{2.5}$ emissions leads to greater health benefits than the reduction of a ton of SO_2 or NO_X.[301]

The process for developing attainment plans for the current and future $PM_{2.5}$ NAAQS presents a potential opportunity to target the health protections afforded by the NAAQS, as the EPA expects that attainment for the 2012 $PM_{2.5}$ NAAQS and future $PM_{2.5}$ NAAQS in nonattainment areas with the most severe pollution problems may need to give greater emphasis to reducing direct $PM_{2.5}$ emissions in combination with efforts already underway to further reduce precursor emissions. Placing greater emphasis on reducing emissions from sources of direct $PM_{2.5}$ (*e.g.,* certain industrial facilities located in more densely populated areas; areas with high motor vehicle and other diesel engine emissions, such as rail yards and near major roadways; and, areas with high wood smoke emissions) could provide the added benefit of reducing exposure to $PM_{2.5}$ in low-income and minority communities.

With this in mind, the EPA is seeking comment on additional ways that air agencies can provide public health protection specifically for overburdened populations when preparing attainment plans for the $PM_{2.5}$ NAAQS. The discussion that follows provides some examples of points in the attainment plan development process at which a state could assess opportunities for providing such additional protections, and examples of what those additional protections might look like.

3. Options for States To Consider To Ensure Appropriate Protections From $PM_{2.5}$ Exposure for Overburdened Populations

The EPA believes that states have sufficient flexibility and discretion under the CAA in implementing their attainment strategies to focus resources on controlling those sources of emissions that directly and adversely affect low-income and other at risk populations. By reducing impacts on at-risk populations, states can maximize health benefits, thereby creating greater net benefits for the state in a cost-effective manner.[302] In addition, reducing adverse impacts to low-income and minority populations advances the environmental justice goal of fair treatment for these populations.

There are a number of actions that states could take to focus resources in this way. Some of these actions can help identify areas where additional ambient monitoring may be needed in low income and overburdened communities.

[298] The legislative history of section 109 of the CAA indicates that a primary standard is to be set at the ''maximum permissible ambient air level . . . which will protect the health of any [sensitive] group of the population'' and that for this purpose ''reference should be made to a representative sample of persons comprising the sensitive group rather than to a single person in such a group.''

[299] 78 FR 3086 (January 15, 2013).

[300] In the final 2012 p.m. NAAQS rule, based on information presented in the *Integrated Science Assessment for Particulate Matter* (U.S. EPA, 2009, sections 2.2.1 and 8.1.7), the EPA made a finding that persons with lower socioeconomic status are at increased risk for experiencing adverse health effects related to PM exposures (78 FR 3085, January 15, 2013, at page 3104). Persons with lower socioeconomic status (SES) have been generally found to have a higher prevalence of pre-existing diseases, limited access to medical treatment, and increased nutritional deficiencies, which can increase this population's risk to PM-related effects (77 FR 38911, June 29, 2012).

[301] *See* Fann, N., Fulcher, C., and B. Hubbell, 2009. The Influence of location, source, and emission type in estimates of the human health benefits of reducing a ton of air pollution. Air Quality, Atmosphere & Health. Volume 2, Number 3, 169–176, June 2009. *See also* Fann et. al., 2011. Maximizing health benefits and minimizing inequality: incorporating local-scale data in the design and evaluation of air quality policies. Society for Risk Analysis, vol. 31, no. 6, p. 908–922, June 2011.

[302] Wesson, K., Fann, N., Morris, M, Fox, T., Hubbell, T., 2010. A multipollutant, risk-based approach to air quality management. Case study for Detroit. *Atmospheric Pollution Research,* 1, 296–304. The study compared air quality control strategies and concluded that the multi-pollutant, risk-based approach was able to produce approximately two times greater monetized benefits through avoided health impacts and was more cost effective than a pollutant-by-pollutant approach.

Such information can be used to support updates to the state's annual monitoring plan. Examples of actions to support updates to the annual monitoring plan include:

- Develop databases and online mapping tools that enable users (including state staff, public, and the regulated community) to understand where sources of direct $PM_{2.5}$ emissions are located and where new or modified sources of emissions could have potential impacts on low income and other overburdened communities;
- Incorporate existing mapping tools which identify target areas in the attainment plan development process and related actions; and,
- Analyze emissions data, ambient data, and available modeling to identify potential unmonitored $PM_{2.5}$ hotspots in areas with a high percentage of low income, minority or indigenous persons (*see* Section IV.E of this preamble for further discussion of this option).

Once target areas for addressing these sensitive population needs within a nonattainment area have been identified, the state could consider taking any of the following actions which help target emissions reductions that may be needed to attain the $PM_{2.5}$ NAAQS:

- Prioritize the selection of control measures that target reductions of direct $PM_{2.5}$, particularly from sources located in ''at-risk'' areas as part of the state's RACM and RACT analysis (for Moderate nonattainment areas) or BACM and BACT analysis (for Serious nonattainment areas), as well as other measures needed to demonstrate attainment (*see* Sections IV.D and VI.D, respectively, of this preamble for further discussion of this option);
- Improve the understanding of the potential impact of minor sources by improving or generating an emissions inventory for such minor sources, including sources that are not currently required to report emissions, to generate options on how emissions can be reduced in the target area;
- Design voluntary programs to reduce VMT and mobile source-related $PM_{2.5}$ emissions (*e.g.,* diesel retrofits);
- Incorporate environmental justice criteria into the alternatives analysis to ensure appropriate siting and require cumulative impact studies for proposed projects;
- Eliminate exemptions from and/or raise thresholds for minor source permitting;
- Develop a list of potential supplemental environmental projects (SEPs) [303] that could be applied in the target area; and,
- Prioritize targeted enforcement strategies.

In addition to the above, states could increase opportunities for meaningful involvement of community groups in attainment plan development, annual monitoring network plan reviews, and permitting processes [304] for at-risk and minority populations by taking the following steps:

- Develop advisory boards and/or develop enhanced notice-and-comment requirements for low income and minority communities to assure meaningful involvement relative to projects that impact their communities;
- Provide special notice of important actions affecting target areas in appropriate languages and with attention to cultural barriers;
- Provide advance notification for low income and minority communities of upcoming opportunities for public comment on SIPs, ambient air monitoring plans, and other relevant actions;
- Maintain multi-lingual Web sites and offer translators for public meetings and hearings;
- Coordinate with the state's EJ coordinator to assist with outreach efforts; and,
- Provide states with appropriate federal EJ guidance tools.

The EPA is seeking comment on these examples and whether and how the EPA might provide recommendations to states preparing attainment plans for the 2012 and any future $PM_{2.5}$ NAAQS on additional ways to ensure equal protections for overburdened populations.

H. Tribal Issues

The 1998 Tribal Air Rule (TAR) (40 CFR part 49), which implements section 301(d) of the CAA, gives tribes the option of developing TIPs. Specifically, the TAR provides for the tribes to be treated in the same manner as a state in implementing certain sections of the CAA. However, tribes are not required to develop implementation plans. The EPA determined in the TAR that it was inappropriate to treat tribes in a manner similar to a state with regard to specific plan submittal and implementation deadlines for NAAQS-related requirements, including, but not limited to, such deadlines in CAA sections 110(a)(1), 172(a)(2), 182 187, and 191. *See* 40 CFR 49.4(a). In addition, the EPA determined it was not appropriate to treat tribes similarly to states with respect to provisions of the CAA requiring as a condition of program approval the demonstration of criminal enforcement authority or providing for the delegation of such criminal enforcement authority. *See* 40 CFR 49.4(g). To the extent a tribe is precluded from asserting criminal enforcement authority, the federal government will exercise primary criminal enforcement responsibility. *See* 40 CFR 49.8. In such circumstances, tribes seeking approval for CAA programs provide potential investigative leads to an appropriate federal enforcement agency.

If a tribe elects to do a TIP, the agency will work with the tribe to develop an appropriate schedule which meets the needs of the tribe, and which does not interfere with the attainment of the NAAQS in other jurisdictions. The tribe developing a TIP can work with the EPA Regional Office on the appropriateness of addressing RFP and other substantive SIP requirements that may or may not be appropriate for the tribe's situation.

The CAA and the TAR provide tribes opportunities and flexibility for the tribe in the preparation of a TIP to address the NAAQS. If a tribe elects to develop a TIP, the TAR offers flexibility for the tribe to identify and implement on a case-by-case basis only those CAA programs or reasonably severable program elements needed to address their specific air quality problems. In the TAR, the EPA described this flexible implementation approach as a modular approach. Each tribe may evaluate the particular activities, including potential sources of air pollution within the exterior boundaries of its reservation (or within non-reservation areas for which it has demonstrated jurisdiction), which cause or contribute to its air pollution problem. A tribe may adopt measures for controlling those sources of $PM_{2.5}$-related emissions, as long as the elements of the TIP are reasonably severable from the package of elements that can be included in a whole TIP. A TIP must include regulations designed to solve specific air quality problems for which the tribe is seeking the EPA's approval, as well as a demonstration that the tribal air agency has the authority from the tribal government to develop and run their program, the capability to enforce their rules, and the resources to implement the program they adopt. In addition, the tribe must receive an eligibility determination from the EPA to be treated in the same manner as a state for the particular

[303] For more information on SEPs, go to *www2.epa.gov/enforcement/supplemental-environmental-projects-sep*.

[304] *See* 78 FR 27220 (May 9, 2013) notice of availability, ''EPA Activities To Promote Environmental Justice in the Permit Application Process.''

matter at issue and to receive authorization from the EPA to run a CAA program.

The EPA would review and approve, where appropriate, these partial TIPs as one step of an overall air quality plan to attain the NAAQS. A tribe may step in later to add other elements to the plan, or the EPA may step in to fill gaps in the air quality plan as necessary or appropriate. In approving a TIP, the agency would evaluate whether the plan appropriately coordinates with the overall air quality plan for an area when tribal lands are part of a multi-jurisdictional area.

Because many $PM_{2.5}$ nonattainment areas will include multiple jurisdictions, and in some cases both Indian country and state lands, it is particularly important for the tribes and the states to work together to coordinate their planning efforts. States need to incorporate Indian country emissions in their base emissions inventories if Indian country is part of an attainment or nonattainment area.[305] Tribes and states should coordinate their planning activities as appropriate to ensure that neither is adversely affecting attainment of the NAAQS in the area as a whole. Coordinated planning in these areas will help ensure that the planning decisions made by the states and tribes complement each other and that the nonattainment area makes reasonable progress toward attainment and ultimately attains the applicable $PM_{2.5}$ NAAQS. In reviewing and approving individual TIPs and SIPs, the EPA will determine if together they are consistent with the overall air quality needs of an area.

To date, very few tribes have submitted for the EPA's approval TIPs covering areas over which they have jurisdiction. In the absence of a TIP, the EPA is authorized under the TAR to implement CAA programs in such areas as necessary or appropriate. For example, an unhealthy air quality situation on an Indian reservation may require the EPA to develop a FIP to reduce emissions from sources on the reservation. Likewise, if the agency determines that sources in an area under tribal jurisdiction could interfere with a larger nonattainment area meeting the NAAQS by its attainment date, it would develop a FIP for those sources in consultation with the tribe, as necessary or appropriate.

States have an obligation to notify other states in advance of any public hearing(s) on their state plans if such plans will significantly impact such other states. 40 CFR 51.102(d)(5). Under section 301(d) of the CAA and the TAR, tribes may become eligible to be treated in a manner similar to states (TAS) for this purpose. Affected tribes with this status must also be informed of the contents of such state plans and given access to the documentation supporting these plans. In addition to this mandated process, the EPA encourages states to extend the same notice to all affected tribes, regardless of their TAS status.

Executive Orders and the EPA's Indian policies generally call for the EPA to coordinate and consult with tribes on matters that affect tribes. Executive Order 13175, titled, ''Consultation and Coordination with Indian Tribal Governments'' requires the EPA to develop a process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have Tribal implications.'' In addition, the EPA's policies include the agency's 1984 Indian Policy relating to Indian tribes and implementation of federal environmental programs, the April 10, 2009, Office of Air Quality Planning and Standards guidance ''Consulting with Indian Tribal Governments,'' and the ''EPA Policy on Consultation and Coordination With Indian Tribes.'' Consistent with these policies, the EPA intends to meet with tribes on activities potentially affecting the attainment and maintenance of the current and future $PM_{2.5}$ NAAQS in Indian country, including agency actions on SIPs. As such, it would be helpful for states to work with tribes with land that is part of the same air quality area during the SIP development process and to coordinate with tribes as they develop their SIPs.

I. Voluntary Programs for Reducing Ambient $PM_{2.5}$

1. PM Advance Program

The EPA believes there are significant advantages for states, tribes and local agencies to take steps to reduce direct $PM_{2.5}$ emissions and emissions of $PM_{2.5}$ precursors as early as possible. First and foremost, early reductions help to achieve cleaner air sooner, and help to ensure continued health protection. Second, early steps could help an area avoid a nonattainment designation in the first place, or for an area eventually designated as nonattainment, early reductions could help bring the area back into attainment sooner, which may lead to qualifying for a CDD and subsequent suspension of attainment planning requirements as described in Section IX.C of this preamble. In addition, early action to improve air quality can help an eventual nonattainment area, particularly an area that has never been designated nonattainment before, to establish working relationships between key stakeholders. The EPA's expectation is that early actions to reduce emissions in such areas would be less resource-intensive than actions taken once a nonattainment designation has been made, since at that point the implementation of controls would need to occur in conjunction with actions to comply with other requirements such as nonattainment NSR and transportation conformity.

In January 2013, the EPA began a new early emissions reduction program for attainment areas called ''PM Advance,'' which is much like the related ''Ozone Advance'' program that began in April 2012. Additional information about the PM Advance program for the annual and 24-hour $PM_{2.5}$ NAAQS is provided in a separate guidance document that is available at *http://www.epa.gov/ozonepmadvance*.

2. Residential Wood Smoke Programs

The EPA recognizes that residential wood smoke is a concern for many nonattainment areas. The EPA estimates that wood stoves, hydronic heaters and fireplaces emit more than 345,000 tons of $PM_{2.5}$ into the air throughout the country each year—mostly during the winter months. Residential wood smoke can increase fine particle pollution to levels that cause significant health concerns (*e.g.,* asthma attacks, heart attacks, premature death). Wood smoke causes many counties throughout the U.S. to either exceed the national health-based standards for fine particles, or places them on the cusp of exceeding the standards. Because wood stoves, hydronic heaters and other similar appliances can be used around the clock in residential areas, they can cause significant and varying health and quality of life issues.

To reduce fine particle pollution, many $PM_{2.5}$ nonattainment areas will need to address residential wood smoke. The EPA has developed the ''Strategies for Reducing Residential Wood Smoke''

[305] On January 17, 2014, the United States Court of Appeals for the District of Columbia Circuit issued a decision vacating the EPA's 2011 rule entitled ''Review of New Sources and Modifications in Indian Country'' (76 FR 38748, July 1, 2011) with respect to non-reservation areas of Indian country (*See, Oklahoma Department of Environmental Quality* v. *EPA,* 740 F.3d 185 (D.C. Cir. 2014)). Under the court's reasoning, with respect to CAA state implementation plans, a state has primary regulatory jurisdiction in non-reservation areas of Indian country (*i.e.,* Indian allotments located outside of reservations and dependent Indian communities) within its geographic boundaries unless the EPA or a tribe has demonstrated that a tribe has jurisdiction over a particular area of non-reservation Indian country within the state.

document that provides education and outreach tools, information on regulatory approaches to reduce wood smoke, as well as information about voluntary programs that communities around the country have used.[306] In addition, it includes methods for calculating emissions reductions, funding ideas and the basic components of a wood smoke reduction plan that can be adopted into a SIP as an enforceable control measure.[307] To access the document, go to *http://epa.gov/burnwise/pdfs/strategies.pdf*. For more information on the EPA's wood smoke reduction program, visit *http://www.epa.gov/burnwise*.

J. Improved Stationary Source Emissions Monitoring

1. Background

For purposes of demonstrating compliance with the EPA's air quality regulatory requirements, the EPA, air agencies, and sources rely on two basic types of monitoring: ambient air quality monitoring and stationary source emissions monitoring. Ambient air quality monitoring, as discussed in Section II of this preamble, entails collecting and measuring samples of criteria pollutants in ambient air to evaluate air quality as compared to clean air standards and historical information. Stationary source emissions monitoring, on the other hand, entails collecting and using measurement data (or other information) from individual stationary sources to demonstrate compliance with emissions standards, to assess process or control device performance, or to verify work practices. While ambient air quality monitoring is used to assess compliance with the NAAQS, stationary source emissions monitoring is used to assess compliance with source-specific regulations under programs like the New Source Performance Standards (NSPS), the National Emissions Standards for Hazardous Air Pollutants (NESHAP), the compliance assurance monitoring (CAM) program, the title V air operating permits program, and the acid deposition control program, as well as specific SIP control measures.[308]

Accurate stationary source emissions monitoring is critical for purposes of developing accurate emissions inventories and in order to identify appropriate control measures to reduce emissions from stationary sources. In addition, after control measures are in place, stationary source emissions monitoring provides process and control device performance information to the facility operator so that appropriate corrective action can be taken if emission levels exceed applicable thresholds. Thus, appropriate stationary source emissions monitoring requirements, like the control measures with which they are associated, are a fundamental element of an approvable attainment plan.

By way of example, in a limited study on improving stationary source emissions monitoring, the EPA found that revising the measurement technique at a stationary source could provide information to the facility operator to take corrective action that could potentially reduce emissions up to 15 percent, and that increasing monitoring frequency at the facility could provide information that could be used to inform corrective actions that could yield potential stationary source emissions reductions of up to 13 percent.[309] [310] Implementation of stationary source emissions monitoring improvements could thus lead to actions to achieve additional emissions reductions not only at individual sources but also in the nonattainment areas where these sources are located.

2. Guidance To Help Improve Stationary Source Emissions Monitoring

Because of the important role that effective stationary source emissions monitoring can play in informing the development of attainment strategies for $PM_{2.5}$ NAAQS nonattainment areas, the EPA is interested in applied best practices for stationary source emissions monitoring that could be included in guidance for other stationary sources and air agencies. The EPA seeks to gather information about ways to make the source emissions monitoring data collection process easier and more transparent. The EPA therefore seeks appropriate examples and supporting data from individual sources and air agencies with experience in this area to inform such future guidance. The EPA also seeks comment on the specific topics and questions that follow, which the agency may address in future guidance related to improved source monitoring. Specifically:

(1) Based on your experience, in which cases do you believe improved monitoring techniques are more appropriate than visual emissions (VE) techniques for monitoring compliance with $PM_{2.5}$ (or PM, in general) emissions limits? Please identify monitoring techniques that you would recommend in lieu of VE, and describe the instances in which VE remains appropriate.

(2) Based on your experience, are bag leak detection systems, PM continuous parameter monitoring systems (CPMS), or PM continuous emissions monitoring systems (CEMS) reliable, cost-effective methods for monitoring compliance with PM emissions? Please provide additional information on reliability and cost to support your position.

(3) Will increasing the frequency of VE observations resolve the issue of applicability of VE techniques for monitoring compliance with $PM_{2.5}$ emissions? In other words, are there situations in which increased VE frequency (*i.e.,* daily versus weekly) would be expected to have no impact on compliance with $PM_{2.5}$ emission limits? If so, please provide relevant data and explanation of such situations.

(4) Should the EPA consider mandating through rulemaking the use of alternatives to VE techniques for monitoring compliance with $PM_{2.5}$ and PM emissions limits in certain situations and applications? If so, in what cases?

(5) Should the EPA's effort with regard to the use of improved monitoring techniques in lieu of VE monitoring be focused on applicable requirements established/relied upon for compliance with the $PM_{2.5}$ NAAQS, or should the agency more broadly address other applicable requirements where VE techniques are commonly used (*e.g.,* to estimate TSP and PM_{10} emissions)?

(6) Should the EPA consider mandating through rulemaking the use of alternatives to continuous opacity monitoring systems (COMS) for monitoring compliance with $PM_{2.5}$ and PM emissions limits in certain situations and applications? If so, in what cases?

[306] On February 3, 2015, the EPA strengthened the New Source Performance Standards (NSPS) for new residential wood heaters and established NSPS for other new wood heaters, including outdoor and indoor wood-fired boilers (also known as hydronic heaters). The standards will reduce emissions of direct $PM_{2.5}$ as well as carbon monoxide, VOC, air toxics (including formaldehyde, benzene and polycyclic organic matter), and black carbon. *See http://www2.epa.gov/residential-wood-heaters/new-source-performance-standards-new-residential-wood-heaters-new.*

[307] For further guidance on incorporating voluntary measures into a SIP, *see* ''Incorporating Emerging and Voluntary Measures in a State Implementation Plan (SIP).'' U.S. EPA. Office of Air and Radiation. September 2004. Available at *http://www.epa.gov/ttn/caaa/t1/memoranda/evm_ievm_g.pdf.*

[308] Regulations governing the implementation of these programs are located at 40 CFR parts 60, 61, 63, 64, 70, 71 and 75.

[309] *Impact of Improved Monitoring on $PM_{2.5}$ Emissions,* memorandum from L. Barr and K. Schaffner, RTI International, to B. Parker, U.S. Environmental Protection Agency. December 2003.

[310] As discussed in Section IX.E of this preamble, emissions monitoring has four essential components: (i) indicator(s) of performance; (ii) measurement technique(s); (iii) monitoring frequency; and, (iv) averaging time.

(7) In its study published in 2003, the EPA identified stationary source emission reduction techniques that air agencies should consider when developing their potential list of control measures for a $PM_{2.5}$ NAAQS nonattainment area.[311] Specifically, the EPA identified improved measurement techniques and increased monitoring frequency as practices that could better inform sources and air agencies of excess emissions from individual sources which, if responded to more quickly, could yield significant reductions and assist in bringing the area into attainment for the NAAQS. Please comment on whether these techniques remain appropriate, given that they were based on the best technical information available at the time. Are there ways to improve the methodologies described in the study?

(8) Please submit any examples of improved stationary source emissions monitoring, including a description of the measure, monitoring data, etc.

(9) Please submit any other methodologies—complete with equations and explanations—for estimating emissions reductions due to improved monitoring.

The EPA will continue to explore and implement innovative, cost-effective ideas that offer tangible incentives for improved source monitoring to be adopted as part of the associated emissions limitations that will help achieve additional reductions from stationary sources and bring areas into attainment for the $PM_{2.5}$ NAAQS in a timely way.

K. Stationary Source Test Methods for Emissions of Condensable $PM_{2.5}$

1. Background

As discussed in Section II of this preamble, direct $PM_{2.5}$ comprises of two components: Filterable $PM_{2.5}$ and condensable $PM_{2.5}$ emissions. Accurate test methods for quantifying filterable PM emissions have been available for air agencies and states to apply since the early 1970s. In addition, controls have improved over the past 40 years and most sources now achieve substantially lower emissions than required by state and federal emissions limits. With the filterable portion of $PM_{2.5}$ emissions being relatively well controlled, the condensable portion of $PM_{2.5}$ emissions now represents a larger share of overall $PM_{2.5}$ emissions for several categories of stationary sources. However, accurate test methods for condensable $PM_{2.5}$ emissions have only been recently developed and approved by the EPA. Thus, many states may have stationary source emission limits adopted into their existing SIPs based only on filterable $PM_{2.5}$ emissions or based on outdated methods for measuring or estimating condensable $PM_{2.5}$ emissions.

The following discussion focuses on current test methods for quantifying condensable $PM_{2.5}$ emissions and the EPA's proposed requirements for states developing control strategies for $PM_{2.5}$ nonattainment areas.

2. Test Methods for Condensable PM From Stationary Sources

Since January 1, 2011, the EPA has required that states take into consideration condensable $PM_{2.5}$ emissions when establishing emission limits for stationary sources as part of any control strategy for $PM_{2.5}$ NAAQS nonattainment areas.[312] This date coincided with the effective date of the agency's revisions to test methods for measuring filterable PM_{10} emissions from stationary sources (Method 201A) and for measuring condensable PM emissions from stationary sources (Method 202).[313] The revisions increased the precision of Method 202 and improved the consistency in the measurements obtained between source tests performed under different regulatory authorities.

In the preamble to the 2007 $PM_{2.5}$ Implementation Rule, the EPA explained that the use of the (then anticipated) revisions to the EPA Method 201A combined with Method 202 to obtain measured source specific emissions of $PM_{2.5}$ would improve the quality of emissions inventories for stationary sources and would aid in the development of a more reliable attainment strategy, as sources that may have a considerable amount of condensable $PM_{2.5}$ emissions could be better characterized with the new methods. The EPA continues to believe that using these improved test methods can help identify sources of direct $PM_{2.5}$ emissions which, if better controlled, can help to bring a $PM_{2.5}$ nonattainment area into attainment. Likewise, use of these test methods may help a state identify sources whose condensable emissions may have been incorrectly estimated and therefore may not provide meaningful $PM_{2.5}$ control opportunities.

3. Proposed SIP Requirements for Test Methods For Condensable $PM_{2.5}$ Emissions

The EPA proposes to require that, where a state needs to adopt control measures for direct $PM_{2.5}$ from sources in a nonattainment area, the state must specify $PM_{2.5}$ emission limits in its SIP that include both filterable and condensable emissions. In addition, compliance testing of those sources must include measurement of condensable emissions (such as through the use of Method 202). Under this proposal, any new or revised emission limit used as a control measure to bring an area into attainment for any current or future $PM_{2.5}$ NAAQS must use methods that measure $PM_{2.5}$ or total PM including both filterable and condensable particulate matter. Existing emission limitations that are not being revised as part of a Moderate area or Serious area attainment plan can remain as filterable PM or whatever test method is used by the state for compliance determination. In these cases, the acceptability of existing stationary source test methods for $PM_{2.5}$ attainment plans will depend upon what is required under the state's current test methods for PM emissions. The EPA believes that this proposed requirement is appropriate because the addition of the condensable portion of $PM_{2.5}$ to filterable $PM_{2.5}$ may increase direct $PM_{2.5}$ emissions by a factor of five or more, and the use of test methods that only measure filterable emissions potentially limit the control measures available for developing cost effective strategies to achieve attainment of the $PM_{2.5}$ NAAQS.

The EPA seeks comment on this proposed requirement for states to quantify condensable $PM_{2.5}$ emissions in their attainment plans for $PM_{2.5}$ nonattainment areas.

X. What is the EPA proposing with respect to revoking the 1997 primary annual $PM_{2.5}$ NAAQS?

A. Background

If the 1997 primary annual $PM_{2.5}$ NAAQS were to remain in place after conformity requirements begin to apply for the 2012 primary annual $PM_{2.5}$ NAAQS (1 year after the effective date of designations), a number of federal agencies, metropolitan planning organizations (MPOs) and other state, local, and federal transportation and air quality agencies in areas that are currently designated nonattainment or maintenance for the 1997 annual $PM_{2.5}$ NAAQS and will be designated nonattainment for the 2012 primary annual NAAQS would be required to implement conformity requirements for both annual $PM_{2.5}$ NAAQS concurrently. Additionally, some areas would also be implementing conformity requirements for the 2006 24-hour $PM_{2.5}$

[311] *Ibid.*

[312] 72 FR 20586 (April 25, 2007).

[313] 75 FR 80118 (December 21, 2010).

NAAQS, and two areas remain subject to conformity requirements for the 1997 24-hour $PM_{2.5}$ NAAQS. This could lead to unnecessary complexity for transportation conformity determinations, especially if an area's boundaries for the various $PM_{2.5}$ NAAQS differ from one another and the same test of conformity cannot be used for all of the $PM_{2.5}$ NAAQS. Even where an area's boundaries are unchanged, different analysis years under the conformity rules may be required for each $PM_{2.5}$ NAAQS. It could also lead to general conformity determinations being made in areas that are attainment for the 2012 primary annual $PM_{2.5}$ NAAQS. Finally, state and local air quality agencies would be required to continue attainment planning activities for the 1997 primary annual $PM_{2.5}$ NAAQS even if they had air quality data that resulted in their being designated attainment for the 2012 primary annual $PM_{2.5}$ NAAQS.

The EPA believes that it is more important and consistent with CAA requirements to determine conformity for the new 2012 primary annual $PM_{2.5}$ NAAQS, which is more stringent and thus more protective of health than the 1997 $PM_{2.5}$ NAAQS. This section therefore describes the EPA's proposed approaches for transitioning from the 1997 primary annual $PM_{2.5}$ NAAQS to the 2012 primary annual $PM_{2.5}$ NAAQS. This section discusses a number of options for revoking the 1997 primary annual $PM_{2.5}$ NAAQS and addresses anti-backsliding requirements that would apply, as appropriate, under each of the revocation options. The EPA is not proposing to revoke the 1997 secondary annual $PM_{2.5}$ NAAQS in this action because that NAAQS has been retained in order to prevent certain welfare effects associated with $PM_{2.5}$.[314]

The proposed options are framed in the context of the CAA requirements that apply to NAAQS transitions to ensure that states and nonattainment areas continue to make progress and do not reverse progress, or backslide, from improvements already made in air quality. The CAA contains several provisions indicating congressional intent not to allow a state to alter or remove provisions from an approved attainment plan if the revision would reduce air quality protection. Section 193 of the CAA prohibits modification of a control requirement in effect or required to be adopted as of November 15, 1990 (the date of enactment of the 1990 CAA Amendments), unless such a modification would ensure equivalent or greater emissions reductions. Section 172(e), which addresses relaxations of a NAAQS, requires protections for areas that have not attained a NAAQS prior to a relaxation by requiring controls which are at least as stringent as the controls applicable in nonattainment areas prior to any such relaxation. Section 110(l) provides that a SIP revision cannot be approved if it will interfere with attainment or other CAA requirements. Under section 175A(d), an area that is redesignated to attainment may, with an appropriate showing of no interference, cease to implement a measure that is contained in the SIP at the time of redesignation, but only if that measure is retained as a contingency measure in the area's maintenance plan.[315] [316]

The transition from the 1997 to the 2012 primary annual $PM_{2.5}$ NAAQS is a straightforward tightening of the level with little change in the form of the standard, so it is unambiguous that the 2012 primary annual $PM_{2.5}$ NAAQS is more stringent than the 1997 primary annual $PM_{2.5}$ NAAQS. In the final 2012 PM NAAQS rule the EPA eliminated the provisions that allowed for an area to use spatial averaging of monitoring data to determine whether or not it is attaining the 1997, 2012 and any future annual $PM_{2.5}$ NAAQS.[317] Eliminating spatial averaging provides additional protection for populations that may be at a greater risk to exposures of elevated levels of $PM_{2.5}$. In these circumstances where the annual $PM_{2.5}$ NAAQS has clearly been strengthened, section 172(e) on its face does not apply. The EPA's interpretation that anti-backsliding provisions consistent with the purposes of section 172(e) by analogy should apply as upheld by the court in *South Coast* as appropriate in the absence of statutory provisions addressing tightened air quality standards. In proposing anti-backsliding requirements that would apply as appropriate to the options that are being considered, the EPA seeks to apply the principles of section 172(e).[318]

B. History of Revocation of Other NAAQS

The EPA has either adopted or has proposed to adopt transition policies for other NAAQS, including the policies for the transitions from:

- The 1-hour ozone NAAQS to the 1997 ozone NAAQS;
- The 1997 ozone NAAQS to the 2008 ozone NAAQS;
- The prior lead NAAQS to the 2008 lead NAAQS; and,
- The prior sulfur dioxide (SO_2) NAAQS to the 2010 SO_2 NAAQS.

It is important to note that for all previous NAAQS transitions, the EPA has used revocation to reduce the burden associated with implementing a NAAQS that has been replaced with a more stringent NAAQS.

In its Phase 1 Rule for the transition from the 1-hour ozone NAAQS to the 1997 ozone NAAQS, the EPA stated that the 1-hour ozone NAAQS would be revoked (*i.e.,* no longer apply) 1 year after the effective date of initial area designations for the 1997 ozone NAAQS. The EPA also included anti-backsliding requirements in the Phase 1 Rule to address the transition between the two standards.

The Phase 1 Rule for implementation of the 1997 ozone NAAQS was the subject of legal challenges, and the resulting court decision in *South Coast* upheld the EPA's authority to revoke the 1-hour ozone NAAQS as long as adequate anti-backsliding measures were retained to prevent backsliding.[319] The decision directed the EPA to provide additional 1-hour ozone NAAQS anti-backsliding requirements for NNSR, section 185 fees, and section 172(c)(9) and 182(c)(9) contingency measures for failure to attain the 1-hour ozone NAAQS by the applicable attainment date or to make reasonable further progress toward attainment of that standard, in addition to the anti-backsliding measures contained in the Phase 1 rule.[320]

[314] 78 FR 3086 (January 15, 2013).

[315] Nonattainment areas that were redesignated to attainment with an approved section 175A maintenance plan are referred to throughout this document as ''maintenance areas.''

[316] Unimplemented requirements in the SIP or those shown to be unnecessary for maintenance can be shifted to the contingency measures portion of the SIP upon redesignation. *See* ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992; ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992,'' Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993. As discussed elsewhere in this document, an exception is made for NNSR, which can be removed from the SIP completely and need not be retained as a contingency measure after redesignation to attainment.

[317] *See* the **Federal Register** published on January 15, 2013 (78 FR 3085, 3124, 3125, 3126, 3137 and 3229).

[318] *South Coast Air Quality Management District* v. *EPA,* 472 F.3d 882 (D.C. Cir. 2006).

[319] *South Coast Air Quality Management District* v. *EPA,* 472 F.3d 882 (D.C. Cir. 2006).

[320] For a more complete discussion of the requirements for the transition from the 1-hour ozone NAAQS to the 1997 ozone NAAQS, *see* the **Federal Register** dated April 30, 2004 *(*69 FR 23951, 23969, 23970, 23971, 23972, 23973, 23974, 23975, 23976, 23977, 23978, 23979, 23980, 23981, 23982, 23983, 23984, 23985, 23986, 23987, 23988 and 23989).

As part of its final SIP requirements rule for the 2008 ozone NAAQS, the EPA included requirements for the transition from the 1997 ozone NAAQS to the 2008 ozone NAAQS.[321] In developing that rulemaking, the EPA built upon its experience in implementing the Phase 1 rule for the transition from the 1-hour ozone NAAQS to the 1997 ozone NAAQS and the decision in the *South Coast* litigation. The EPA revoked the 1997 ozone NAAQS on the effective date of the final SIP requirements rule and finalized anti-backsliding requirements consistent with the implementation of the court decision for the previous ozone transition that would apply in areas designated nonattainment for the 1997 ozone NAAQS at the time of revocation.[322]

It should be noted that as part of the transition from the 1997 ozone NAAQS to the 2008 ozone NAAQS, the EPA revoked the 1997 ozone NAAQS for transportation conformity purposes only in a separate action related to classifications for the 2008 ozone NAAQS that was finalized prior to the time that the full implementation rule had been proposed.[323] The EPA took this action because the D.C. Circuit Court in litigation on the transportation conformity rule and in its decision in the *South Coast* litigation affirmed that the use of motor vehicle emissions budgets that have been approved or found adequate for use in transportation conformity determinations for the prior NAAQS must be used in transportation conformity determinations for the new NAAQS until a state submits motor vehicle emissions budgets for the new NAAQS and those budgets are either found adequate or are approved.[324] [325] These cases seemed to indicate that the use of these existing budgets until new budgets are available is the appropriate anti-backsliding measure with respect to transportation conformity to support revocation for that purpose.[326] It should be noted, however, that the revocation of the 1997 ozone NAAQS for transportation conformity purposes was the subject of litigation in the D.C. Circuit Court.[327] The court issued its decision on December 23, 2014, and held that the EPA lacked authority to revoke the 1997 ozone NAAQS only for transportation conformity purposes because for areas that remain designated as nonattainment or maintenance for the 1997 ozone NAAQS, CAA section 176(c) requires transportation conformity determinations in nonattainment and maintenance areas.

Following promulgation of the 2008 lead NAAQS and 2010 SO_2 NAAQS, the EPA revoked the prior lead and SO_2 NAAQS for all purposes in areas that had attained the prior NAAQS and had been redesignated to attainment, as well as in areas that had initially been designated as attainment for those NAAQS. The EPA retained the prior NAAQS in areas that had not yet attained those NAAQS until those areas had an approved attainment plan for the revised NAAQS. Because the EPA revoked the prior lead and SO_2 NAAQS in areas that had been redesignated to attainment for those NAAQS, the EPA primarily relied on the CAA's anti-backsliding provisions found in sections 110(l) and 193 in order to provide anti-backsliding protection.[328]

In developing the options for revoking the 1997 primary annual $PM_{2.5}$ NAAQS contained in this proposal, the EPA has drawn from these prior anti-backsliding approaches.

C. Proposed Options for Revocation and Related Anti-Backsliding Requirements for the 1997 Primary Annual $PM_{2.5}$ NAAQS

The EPA is proposing and seeking comment on two options for revoking the 1997 primary annual $PM_{2.5}$ NAAQS and is seeking comment on whether to revoke the NAAQS at the current time. Under either of the options to revoke the 1997 NAAQS, revocation would take effect no sooner than 1 year after the effective date of designations for the 2012 primary annual $PM_{2.5}$ NAAQS. One of these options would provide for revocation at a later date for some areas.

After revocation of the 1997 primary annual $PM_{2.5}$ NAAQS, the designations (and the classifications associated with those designations) for that standard would no longer be in effect, and the designations that would remain in effect would be those for the 1997 secondary annual $PM_{2.5}$ NAAQS, the 2006 primary and secondary 24-hour $PM_{2.5}$ NAAQS and the 2012 primary annual $PM_{2.5}$ NAAQS. However, the EPA would retain the listing of the designated nonattainment areas for the revoked 1997 primary annual $PM_{2.5}$ NAAQS in 40 CFR part 81, for the sole purpose of identifying the anti-backsliding requirements that may apply to the areas at the time of revocation. Accordingly, such references to historical designations for the revoked standard should not be viewed as current designations under CAA section 107(d).

For any proposed option that allows for revocation in nonattainment areas for the 1997 primary annual $PM_{2.5}$ NAAQS, the EPA is also proposing anti-backsliding provisions to ensure that in these areas: (i) There is protection against degradation of air quality (*e.g.,* the areas do not backslide in terms of air quality improvements); (ii) the areas continue to make progress toward attainment of the new, more stringent 2012 primary annual $PM_{2.5}$ NAAQS; and, (iii) there is consistency with the $PM_{2.5}$ NAAQS implementation framework outlined in subpart 4 of part D, title I of the CAA. At the current time, there are 14 areas that continue to be designated as nonattainment for the 1997 annual $PM_{2.5}$ NAAQS; however all but 2 of these areas have 2011–2013 air quality data showing that they are attaining that NAAQS. Therefore, the EPA expects many of these current nonattainment areas will be eligible to seek redesignation to attainment prior to any revocation. The EPA is proposing and seeking comment on the following two options:

- *Option 1:* Revoke the 1997 primary annual $PM_{2.5}$ NAAQS for all purposes in attainment areas for that NAAQS 1 year after the effective date of the designations for the 2012 primary annual $PM_{2.5}$ NAAQS; or,
- *Option 2:* Revoke the 1997 primary annual $PM_{2.5}$ NAAQS for all purposes in all nonattainment and attainment areas for that NAAQS 1 year after the effective date of the designations for the 2012 primary annual $PM_{2.5}$ NAAQS.

More details on the proposed options and associated rationale are included below.

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[321] *See* the published proposal at 78 FR 34178 (June 6, 2013) and the final SIP requirements rule for the 2008 ozone NAAQS at *http://www.epa.gov/groundlevelozone/implement.html.*

[322] *Ibid.*

[323] 77 FR 30160 (May 21, 2012).

[324] *See South Coast Air Quality Management District* v. *EPA,* 472 F.3d 882 (D.C. Cir. 2006).

[325] 40 CFR 93.101 defines ''motor vehicle emissions budget'' as ''that portion of the total allowable emissions defined in the submitted or approved control strategy implementation plan revision or maintenance plan for a certain date for the purpose of meeting reasonable further progress milestones or demonstrating attainment or maintenance of the NAAQS, for any criteria pollutant or its precursors, allocated to highway and transit vehicle use and emissions.''

[326] In addition, the Court affirmed that conformity determinations need not be made for a revoked standard.

[327] *NRDC* v. *EPA,* No. 12–1321 (D.C. Cir.) (challenging EPA actions taken at 77 FR 30160 (May 21, 2012)).

[328] For details on the requirements for the lead NAAQS and the SO_2 NAAQS, respectively, *see* 73 FR 66964 (November 12, 2008), at page 67043; and 75 FR 35519 (June 22, 2010), at page 35580.

1. Option 1: Revoke the 1997 Primary Annual $PM_{2.5}$ NAAQS for All Purposes in Attainment Areas for That NAAQS 1 Year After the Effective Date of the Designations for the 2012 Primary Annual $PM_{2.5}$ NAAQS

The EPA's first proposed option would revoke the 1997 primary annual $PM_{2.5}$ NAAQS for all purposes in areas that are designated as attainment for that NAAQS 1 year after the effective date of designations for the 2012 primary annual $PM_{2.5}$ NAAQS, as well as in future areas that are redesignated as attainment areas after the initial revocation. The areas addressed by this option are those that were originally designated as attainment areas for the 1997 primary $PM_{2.5}$ NAAQS and those that were originally designated as nonattainment but have since or will in the future be redesignated to attainment for that NAAQS. Under this option, the EPA would not revoke the 1997 primary annual $PM_{2.5}$ NAAQS in any area that is designated nonattainment for that NAAQS.

Areas that are designated nonattainment for the 1997 annual $PM_{2.5}$ NAAQS at the time of the initial revocation would be required to continue to meet all applicable requirements for such NAAQS, and could continue to seek redesignation to attainment for the 1997 primary annual $PM_{2.5}$ NAAQS. For example, even if the revocation were to become effective in April 2016, redesignations could continue to be approved after that date. For such areas, the effective date of the revocation would be the effective date of the area's redesignation to attainment for the 1997 annual $PM_{2.5}$ NAAQS.

The EPA notes that under proposed Option 1 it is unnecessary to propose anti-backsliding requirements for the 1997 primary annual $PM_{2.5}$ NAAQS, since Option 1 would only revoke this NAAQS in attainment areas. Anti-backsliding requirements are not applicable to attainment areas (*i.e.,* for former nonattainment areas that have been redesignated to attainment the EPA has already determined through the redesignation process and approval of maintenance plans that all applicable requirements for the 1997 primary annual $PM_{2.5}$ NAAQS—including anti-backsliding requirements—have been fulfilled and areas that have always been designated attainment for this NAAQS).

For areas that were initially designated as attainment for both the 1997 and 2012 annual $PM_{2.5}$ NAAQS the EPA is proposing that the approved PSD SIPs for these areas satisfy the obligation to submit an approvable maintenance plan for the 2012 primary annual $PM_{2.5}$ NAAQS under section 110(a)(1).

The EPA also notes that areas designated nonattainment for the 2012 primary annual $PM_{2.5}$ NAAQS would be required to comply with applicable conformity requirements beginning 1 year after the effective date of designations for that NAAQS. For transportation conformity purposes these requirements would include using adequate or approved motor vehicle emissions budgets for the 1997 annual $PM_{2.5}$ NAAQS where they exist until the area has approved or adequate budgets for the 2012 primary annual $PM_{2.5}$ NAAQS.[329] The use of such budgets serves as the appropriate anti-backsliding measure for transportation conformity purposes.

In general, Option 1 builds upon the EPA's practice in the transition from the 1-hour to the 1997 ozone NAAQS in that areas will not only be able to be redesignated to attainment up to the date of the initial revocation, but any remaining nonattainment areas will be able to be redesignated after the initial revocations occur 1 year after the effective date of designations.[330] This approach is also consistent with the approach established for the transition from the prior lead and SO_2 NAAQS to the current lead and SO_2 NAAQS.

2. Option 2: Revoke the 1997 Primary Annual $PM_{2.5}$ NAAQS for All Purposes in All Nonattainment and Attainment Areas for That NAAQS 1 Year After the Effective Date of Designations for the 2012 Primary Annual $PM_{2.5}$ NAAQS

Under this second proposed option, the EPA would revoke the 1997 primary annual $PM_{2.5}$ NAAQS for all purposes in all nonattainment and attainment areas 1 year after the effective date of designations for the 2012 primary annual $PM_{2.5}$ NAAQS. The requirements for revoking the 1997 primary annual NAAQS in attainment areas for that NAAQS are discussed under proposed Option 1. However, revoking the 1997 primary annual $PM_{2.5}$ NAAQS in nonattainment areas for that NAAQS would require anti-backsliding measures. Therefore, the EPA is proposing the following anti-backsliding measures for any designated nonattainment areas that exist for the 1997 primary annual $PM_{2.5}$ NAAQS upon the effective date of the proposed revocation:

- For areas designated *attainment* for the 2012 primary annual $PM_{2.5}$ NAAQS and *nonattainment* for the 1997 primary annual $PM_{2.5}$ NAAQS, the EPA's preferred proposed option is not to require these areas to adopt any outstanding applicable requirements for the revoked 1997 primary annual $PM_{2.5}$ standard. However, the EPA proposes that the approved PSD SIPs for these areas satisfy the obligation to submit an approvable maintenance plan for the 2012 primary annual $PM_{2.5}$ NAAQS under section 110(a)(1).
- For these same areas (*i.e.,* those designated *attainment* for the 2012 primary annual $PM_{2.5}$ NAAQS and nonattainment for the 1997 primary annual $PM_{2.5}$ NAAQS), the EPA is also proposing an alternative anti-backsliding option where these areas would be required to show maintenance for the 2012 primary annual $PM_{2.5}$ NAAQS. This maintenance showing would be due 3 years after the effective date of designations for the 2012 primary annual $PM_{2.5}$ NAAQS. The maintenance showing would contain a demonstration of continued maintenance of the 2012 primary annual $PM_{2.5}$ NAAQS in the area for 10 years from the effective date of the area's designation as attainment for the 2012 primary annual $PM_{2.5}$ NAAQS. The EPA would take further action to specify the elements of such a maintenance showing should the agency require it in the final rule. For areas designated nonattainment for the 2012 primary annual $PM_{2.5}$ NAAQS and also designated nonattainment for the 1997 annual $PM_{2.5}$ NAAQS, the EPA is proposing that these areas continue to implement their approved SIPs for the 1997 annual $PM_{2.5}$ NAAQS and fulfill any outstanding requirements, and that they comply with the applicable requirements for the current 2012 primary annual $PM_{2.5}$ NAAQS. For example, at some time in the future there may be an area that is reclassified as Serious for the 1997 $PM_{2.5}$ NAAQS while also classified as Moderate for the 2012 $PM_{2.5}$ NAAQS. In such an area, the lower Serious area major source threshold of 70 tpy (PTE) would apply. In addition to these proposed requirements, if a state seeks to revise any measure already approved into its SIP for a nonattainment area for the 1997 annual $PM_{2.5}$ NAAQS, the state must meet the requirements of sections 110(l) and 193, if applicable.

The EPA notes that Option 2 for 2012 attainment/1997 nonattainment would

[329] Areas that do not have adequate or approved motor vehicle emissions budgets for the 1997 annual $PM_{2.5}$ NAAQS or the 2006 24-hour $PM_{2.5}$ NAAQS would use one of the two interim emissions tests required by 40 CFR 93.109(c)(3) and 40 CFR 93.119(b).

[330] Although section 51.905(a) specified that the anti-backsliding requirements ''attached'' at the time of designation for the 1997 ozone NAAQS, areas were still able to redesignate to attainment for the 1-hour ozone NAAQS up to the date of revocation of that standard.

be similar to the approach to revocation of the 1-hour ozone NAAQS consistent with court decisions and the approach to revocation of the 1997 ozone NAAQS in the final 2008 ozone NAAQS SIP requirements rule.[331] The EPA also notes that areas designated nonattainment for the 2012 primary annual $PM_{2.5}$ NAAQS would be required to comply with applicable conformity requirements beginning 1 year after the effective date of designations for that NAAQS. For transportation conformity purposes these requirements would include using adequate or approved motor vehicle emissions budgets for the 1997 annual $PM_{2.5}$ NAAQS where they exist until the area has approved or adequate budgets for the 2012 primary annual $PM_{2.5}$ NAAQS.[332] The use of such budgets serves as the appropriate anti-backsliding measure for transportation conformity purposes. Further details regarding this option and associated rationale are in Section X.D of this preamble.

Lastly, the EPA requests comment on the possible approach of not revoking the 1997 primary annual $PM_{2.5}$ NAAQS at this time. Under this concept, the EPA would not revoke the 1997 primary annual $PM_{2.5}$ NAAQS for any purpose at this time. As a result, all nonattainment and maintenance areas would be required to continue planning activities associated with the 1997 annual $PM_{2.5}$ NAAQS such as submitting attainment SIPs and maintenance plans, NNSR, and transportation and general conformity requirements for the 1997 primary annual $PM_{2.5}$ NAAQS, in addition to any new requirements associated with the more health-protective 2012 primary annual $PM_{2.5}$ NAAQS. Under this approach the EPA would not have to establish any anti-backsliding requirements.

The EPA again notes that if this approach were finalized it would be the first time that the EPA has not taken some action to reduce the burden associated with implementing a NAAQS that has been replaced with a more stringent NAAQS.[333] If the EPA were to finalize this approach, it would result in state and local agencies being required to implement the requirements associated with two primary annual $PM_{2.5}$ NAAQS. These agencies would be required to continue attainment planning activities for the 1997 primary annual $PM_{2.5}$ NAAQS even if they had air quality data that resulted in their being designated attainment for the 2012 primary annual $PM_{2.5}$ NAAQS. State, local and federal agencies would be required to continue to make transportation and general conformity determinations for the less protective 1997 primary annual $PM_{2.5}$ NAAQS.

D. Discussion of Options

Until the 1997 primary annual $PM_{2.5}$ NAAQS is revoked, that NAAQS remains in effect, in parallel with the 2012 primary annual $PM_{2.5}$ NAAQS, and continues to apply independently and by its own terms. The EPA believes that all of the proposed options to revoke the 1997 primary annual $PM_{2.5}$ NAAQS are consistent with the CAA and previous precedent in transitioning from a previous NAAQS to a new, more stringent NAAQS, and would ensure that attainment areas continue to attain the revoked NAAQS into the future. If the 1997 primary annual $PM_{2.5}$ NAAQS is revoked, the EPA is proposing that the anti-backsliding requirements for the 1997 primary annual $PM_{2.5}$ NAAQS, as proposed in this rulemaking, will become applicable. However, the EPA notes that most of the areas that were initially designated as nonattainment for the 1997 primary annual $PM_{2.5}$ NAAQS where the NAAQS would be revoked have already been redesignated to attainment (*i.e.,* they are maintenance areas) or could qualify for redesignation based on current air quality data, and in such cases their approved maintenance plan for the 1997 primary annual $PM_{2.5}$ would prevent backsliding.[334] Under Option 2 there would be a limited number of nonattainment areas where the 1997 primary annual NAAQS would be revoked and where anti-backsliding measures would be required. Under all of the proposed options, conformity would apply in areas that are designated nonattainment for the more health protective 2012 primary annual $PM_{2.5}$ NAAQS. In the case of transportation conformity, adequate or approved motor vehicle emissions budgets for the 1997 primary annual $PM_{2.5}$ NAAQS would be used in conformity determinations until motor vehicle emissions budgets for the 2012 primary annual $PM_{2.5}$ NAAQS are found adequate or are approved. Once a NAAQS is revoked in a nonattainment area, the EPA would not designate or redesignate areas for that NAAQS after the revocation of that NAAQS except as described in Option 1. The extent of continued implementation of a revoked standard derives from administration of anti-backsliding requirements for that standard.

Under Option 1, the 1997 primary annual $PM_{2.5}$ NAAQS would be revoked only in areas that have attained the 1997 annual $PM_{2.5}$ NAAQS and have been redesignated to attainment with an approved section 175A maintenance plan for the 1997 primary annual $PM_{2.5}$ NAAQS; under Option 2, many of the areas where the 1997 primary annual NAAQS would be revoked would have been redesignated to attainment with an approved maintenance plan. The EPA also anticipates that states will continue to request that areas be redesignated to attainment and the EPA will continue to act on those requests under Option 2. As a result the EPA anticipates that a number of such requests will be approved prior to the point in time that the EPA has proposed for the revocations to become effective (*i.e.,* 1 year after the effective date of designations for the 2012 primary annual $PM_{2.5}$ NAAQS). Therefore, the number of nonattainment areas for the 1997 primary annual $PM_{2.5}$ NAAQS will continue to decrease and fewer areas will be required to comply with anti-backsliding requirements, and a correspondingly larger number of areas will be required to continue to implement their approved section 175A maintenance plan for the 1997 primary annual $PM_{2.5}$ NAAQS.

It should also be noted that, for either proposed option, after the effective date of any revocation of the 1997 primary annual $PM_{2.5}$ NAAQS, transportation and general conformity determinations would continue to be required in areas that are designated nonattainment for the 1997 secondary annual $PM_{2.5}$ NAAQS until such areas are redesignated to attainment pursuant to the requirements of section 107(d)(3). Areas that are initially designated as nonattainment for the 2012 primary annual NAAQS are subject to transportation and general conformity requirements after the end of the grace period that ends 1 year after the effective date of designations for the 2012 primary annual $PM_{2.5}$ NAAQS. *See* further information for how conformity will be implemented for the 2012 $PM_{2.5}$ NAAQS in Section IX.B of this preamble. Under Options 1 and 2 the

[331] *See* the final SIP requirements rule for the 2008 ozone NAAQS at *http://www.epa.gov/groundlevelozone/implement.*

[332] Areas that do not have adequate or approved motor vehicle emissions budgets for the 1997 annual $PM_{2.5}$ NAAQS or the 2006 24-hour $PM_{2.5}$ NAAQS would use one of the two interim emissions tests required by 40 CFR 93.109(c)(3) and 40 CFR 93.119(b).

[333] As discussed in Section IX.B of this preamble, the EPA has taken action to revoke previous ozone, SO_2 and lead NAAQS when the previous NAAQS has been revised.

[334] Based on 2011–13 air quality data, many of the areas that were initially designated nonattainment for the 1997 annual $PM_{2.5}$ NAAQS will have already met the 1997 annual $PM_{2.5}$ NAAQS and will have been redesignated to attainment by the time it is revoked (projected to be in or around April 2016), and thus after revocation of the 1997 primary annual $PM_{2.5}$ NAAQS, the number of areas with 1997 anti-backsliding requirements will be correspondingly reduced.

timing that the EPA is proposing means that any area that was previously a 1997 annual $PM_{2.5}$ NAAQS nonattainment area, but has been redesignated to attainment for the 1997 annual $PM_{2.5}$ NAAQS by the time of revocation of the 1997 primary annual $PM_{2.5}$ NAAQS (*e.g.,* April 2016 for most areas), will not be subject to the anti-backsliding requirements for the 1997 annual $PM_{2.5}$ NAAQS. This is because when an area has been redesignated to attainment for a $PM_{2.5}$ NAAQS while that NAAQS is in effect, it has fulfilled all applicable requirements for that NAAQS, including applicable anti-backsliding requirements for the 1997 annual $PM_{2.5}$ NAAQS. The area is, therefore, not subject to anti-backsliding requirements for the revoked 1997 primary annual $PM_{2.5}$ NAAQS. These areas are required instead to implement their approved CAA section 175A maintenance plan for the 1997 primary annual $PM_{2.5}$ NAAQS and implement a PSD program for this NAAQS, if they are designated attainment for the 2012 primary annual $PM_{2.5}$ NAAQS.[335] [336] Revisions to the approved maintenance plan can only be made if the revisions meet the requirements of section 110(l) and, if applicable, section 193. The EPA proposes that these areas not be required to submit a second 10-year maintenance plan for the 1997 primary annual $PM_{2.5}$ NAAQS because there is no justification for additional maintenance plan burdens to be imposed on these areas solely because at one time they were designated nonattainment under the revoked 1997 primary annual $PM_{2.5}$ NAAQS. Not requiring a second 10-year maintenance plan for these areas would help to minimize the burden associated with preparing SIPs for a succession of NAAQS of increasing stringency.

As explained previously, for areas redesignated to attainment under Options 1 and 2, the section 175A maintenance plan for the 1997 primary annual $PM_{2.5}$ NAAQS satisfies the anti-backsliding requirements of these areas. The EPA believes that for these areas any further 110(a)(1) maintenance plan requirement under the 2012 primary annual $PM_{2.5}$ NAAQS for areas designated attainment for that NAAQS would be unnecessarily burdensome.

For Option 2, the EPA is applying a general principle to apply transition requirements depending on how the area is designated—attainment or nonattainment—for the 2012 primary annual $PM_{2.5}$ NAAQS, while taking into account the area's status with respect to the 1997 primary annual $PM_{2.5}$ NAAQS. For those areas which have already incorporated measures into their approved SIPs that satisfy the nonattainment requirements for that standard, section 110(l) functions to require continued implementation of such measures unless revised in accordance with its provisions.

Under Option 2, the EPA is proposing as one alternative that areas designated attainment for the 2012 primary annual $PM_{2.5}$ NAAQS and nonattainment for the 1997 annual $PM_{2.5}$ NAAQS (as of revocation of the 1997 primary annual $PM_{2.5}$ NAAQS) not be required to adopt any outstanding applicable requirements for the revoked 1997 primary annual standard. This approach is similar to the approach followed in the transition from the 1-hour ozone NAAQS to the 1997 ozone NAAQS. However, instead of submitting a maintenance plan the EPA is also proposing that the approved PSD SIPs for these areas satisfy the obligation to submit an approvable maintenance plan for the 2012 primary annual $PM_{2.5}$ NAAQS under section 110(a)(1). This is similar to what the EPA finalized for the transition from the 1997 ozone NAAQS to the 2008 ozone NAAQS.[337] The EPA's rationale for this approach is as follows: Areas designated attainment for the 2012 primary annual $PM_{2.5}$ NAAQS and nonattainment for the 1997 primary annual $PM_{2.5}$ NAAQS (as of revocation of the 1997 primary annual $PM_{2.5}$ NAAQS) have already attained the most stringent existing standard. These areas thus have developed nonattainment plans that in combination with federal measures and emissions controls in upwind areas have produced sufficient emissions reductions to achieve the more protective 2012 primary annual $PM_{2.5}$ NAAQS. They remain subject to the 1997 nonattainment area requirements already approved into the SIP, which can be revised only upon a showing that such revision is consistent with sections 110(l) and 193, if applicable. At this time, and given the succession of NAAQS of increasing stringency that has occurred, the EPA believes that the burden of developing an approvable maintenance plan for the 2012 primary annual $PM_{2.5}$ NAAQS would outweigh any compensating benefit for an area that is already attaining that more stringent NAAQS and that is subject to prior nonattainment requirements which are already incorporated into the SIP.

Under Option 2, the EPA is also proposing, for areas that are attainment for the 2012 primary annual $PM_{2.5}$ NAAQS, that the NNSR anti-backsliding requirement(s) for the 1997 annual $PM_{2.5}$ NAAQS cease to apply, since PSD will then be in effect. The state may request that the corresponding NSR requirements be removed entirely, rather than be retained in the SIP as a maintenance plan contingency measure.[338] Areas that are designated nonattainment for the more stringent 2012 primary annual $PM_{2.5}$ NAAQS will be subject to NNSR and other nonattainment requirements for their classification under the more stringent 2012 primary annual $PM_{2.5}$ NAAQS.

The revocation of the 1-hour ozone NAAQS and the associated anti-backsliding provisions were the subject of past litigation. In its December 2006 decision on that challenge, as modified following rehearing, the Court held with respect to the anti-backsliding approach for conformity that 1-hour ozone motor vehicle emissions budgets must be used in transportation conformity determinations for the more protective 1997 ozone NAAQS where such SIP motor vehicle emissions budgets have been found adequate or approved, until SIP motor vehicle emissions budgets for the 1997 ozone NAAQS are available.[339] In addition, the Court affirmed more broadly that in order for transportation conformity determinations to fulfill the requirements of CAA section 176(c)(1), motor vehicle emissions budgets for a prior NAAQS must be used in transportation conformity determinations under a revised NAAQS until emissions budgets for the revised NAAQS are either found adequate or are approved, but that conformity determinations need not be made for a revoked standard. Therefore, areas designated nonattainment for the 2012 primary annual $PM_{2.5}$ NAAQS that have adequate or approved SIP budgets for the 1997 annual $PM_{2.5}$ NAAQS must continue to use such budgets in transportation conformity determinations until budgets for the

[335] Areas initially designated as attainment for the 1997 annual $PM_{2.5}$ NAAQS would also be required to continue to implement a PSD program unless an area was designated nonattainment for the 2012 primary annual $PM_{2.5}$ NAAQS. Such an area would be required to implement a NNSR program for that NAAQS.

[336] Areas designated nonattainment for the 2012 primary annual $PM_{2.5}$ NAAQS would implement a NNSR program for that NAAQS.

[337] *See* the the final SIP requirements rule for the 2008 ozone NAAQS at *http://www.epa.gov/groundlevelozone/implement.html.*

[338] *See* 40 CFR 51.905(a)(3), the comparable provision for transitions from the 1-hour NAAQS to the 1997 ozone NAAQS, which allows such areas to request that the 1-hour NNSR provisions be removed from the SIP.

[339] *See South Coast Air Quality Management District* v. *EPA,* 472 F.3d at 882 (D.C. Cir. 2006).

2012 primary annual $PM_{2.5}$ NAAQS are found adequate or are approved.[340]

With regard to general conformity, the D.C. Circuit Court did not address the need for specific anti-backsliding measures in its initial decision or in the modified decision on the *South Coast* litigation. Therefore, if the EPA finalizes either Option 1 or 2 and revokes the 1997 primary annual $PM_{2.5}$ NAAQS, general conformity determinations will be required in nonattainment areas for the 2012 primary annual NAAQS as required by section 176(c)(5) to ensure that the action of federal agencies do not cause a violation of that NAAQS, make an existing violation worse or delay timely attainment of the NAAQS or an interim milestone.[341] The EPA believes that revoking the 1997 primary annual $PM_{2.5}$ NAAQS under Option 1 or 2 is logical because it would result in only one primary annual $PM_{2.5}$ NAAQS—the 2012 primary annual $PM_{2.5}$ NAAQS—applying for purposes of transportation and general conformity in most areas, after the end of the 1-year conformity grace period that applies to newly designated nonattainment areas. (CAA section 176(c)(6)).

Areas that are attaining the more health protective 2012 primary annual $PM_{2.5}$ NAAQS would no longer have to expend resources to make conformity determinations for any of the current primary annual $PM_{2.5}$ NAAQS after the 1997 primary annual $PM_{2.5}$ NAAQS is revoked and the area is redesignated as attainment for the 1997 secondary annual $PM_{2.5}$ NAAQS. Some of these areas would be required to continue to make conformity determinations for the 2006 24-hour $PM_{2.5}$ NAAQS and based on 2011–13 air quality data two areas would be required to make conformity determinations for the 1997 24-hour $PM_{2.5}$ NAAQS. It should be noted that any areas that are attaining the more health protective 2012 primary annual NAAQS are also necessarily attaining the less stringent 1997 annual $PM_{2.5}$ NAAQS by a wide margin. Therefore, the options of this proposal would provide a seamless transition from demonstrating conformity for the 1997 annual $PM_{2.5}$ NAAQS to demonstrating conformity for the more stringent 2012 primary annual $PM_{2.5}$ NAAQS.

Areas designated nonattainment for the 2012 primary annual $PM_{2.5}$ NAAQS will likely need the full 1-year grace period provided in section 176(c)(6) to complete the required initial transportation conformity determination. Those areas that were designated as either nonattainment or maintenance for the 1997 annual $PM_{2.5}$ NAAQS at the time of designation as nonattainment for the 2012 primary annual $PM_{2.5}$ NAAQS will need certainty as to the specific requirements for that conformity determination. For example they need to know what analysis years must be addressed and, if the boundaries for the $PM_{2.5}$ NAAQS are different, they need to know whether to address conformity for both areas and which test or tests would apply.

The EPA seeks comment on the options proposed in the preceding discussion regarding revoking the 1997 primary annual $PM_{2.5}$ standard, as well as on whether the agency should take no action to revoke the standard as this time.

XI. Environmental Justice Considerations

The EPA believes the human health or environmental risk addressed by this action will not have disproportionately high and adverse human health or environmental effects on minority, low-income, or indigenous populations because it would not negatively affect the level of protection provided to human health or the environment under the $PM_{2.5}$ NAAQS. When promulgated, these proposed regulations will clarify the state implementation plan requirements and the NNSR permitting requirements to be met by states in order to attain the $PM_{2.5}$ NAAQS as expeditiously as practicable. These requirements are designed to protect all segments of the general population. The EPA included specific discussion in this preamble about actions that could be considered for the protection of minority, low-income or indigenous populations in Section IV.D.6 on Moderate area attainment plan control strategies; Section VI.D.7 on Serious area attainment plan control strategies; and Section IX.G, measures to ensure appropriate protections for overburdened populations. In addition, as part of the consultation activities conducted in developing this rule, the EPA participated in training and outreach activities with representatives from environmental justice organizations in a March 2014 conference held in Research Triangle Park, NC titled, ''Clean Air Act Rulemaking and Permitting Training for EJ Communities.'' These proposed regulations are designed to protect and enhance the health and safety of these and other populations, and they will not adversely affect the health or safety of minority, low-income or indigenous populations.

XII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review because it raises novel policy issues. Any changes made in response to OMB recommendations have been documented in the docket.[342]

B. Paperwork Reduction Act (PRA)

The information collection activities in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the PRA. The Information Collection Request (ICR) document prepared by the EPA has been assigned the EPA ICR number 2258.03, OMB Control No. 2060–0611. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here.

The EPA is proposing this $PM_{2.5}$ NAAQS SIP Requirements Rule to describe the CAA requirements that must be met by states with nonattainment areas required to develop attainment plans for attaining and maintaining the NAAQS. The intended effect of the SIP Requirements Rule is to provide certainty to states regarding their planning obligations such that states may begin SIP development. Only states with nonattainment areas are required to submit SIPs under this rule.

For purposes of analysis of the estimated paperwork burden, the EPA assumed there were 21 existing nonattainment areas for the 1997 and 2006 $PM_{2.5}$ NAAQS, and 15 hypothetical, newly-designated nonattainment areas.[343] The attainment

[340] Areas that do not have adequate or approved motor vehicle emissions budgets for the 1997 annual $PM_{2.5}$ NAAQS or the 2006 24-hour $PM_{2.5}$ NAAQS would use one of the two interim emissions tests requied by 40 CFR 93.109(c)(3) and 40 CRR 93.119(b).

[341] It should be noted that some areas will remain designated nonattainment for 1997 secondary annual $PM_{2.5}$ NAAQS. Such areas will remain subject to transportation and general conformity for that NAAQS until such time that they are redesignated to attainment for that NAAQS pursuant to the requirements of section 107(d)(3).

[342] Note that a regulatory impact analysis evaluating the costs and benefits associated with attaining the 2012 $PM_{2.5}$ NAAQS was released at the time the NAAQS review was finalized. *See* ''Regulatory Impact Analysis for the Final Revisions to the National Ambient Air Quality Standards for Particulate Matter.'' U.S. Environmental Protection Agency, Office of Air Quality and Planning Standards, Health and Environmental Impacts Division, February 28, 2013. EPA–452/R–12–005.

[343] These hypothetical nonattainment areas were developed based on 2010–12 air quality data and state recommendations. Actual nonattainment designations and boundaries are based on the most recent, complete air quality data available.

plan requirements would appear as 40 CFR 51.1000 through 51.1015 which implement CAA subsections 172(c)(1) and (2), and 189(a)(1)(B) and (C), 189(b)(1)(A) and (B) and 189(c). Some states have new nonattainment areas and some states should already have information from emission sources, as facilities should have provided this information to meet 1997 and 2006 $PM_{2.5}$ NAAQS SIP requirements, operating permits and/or emissions reporting requirements. Such information does not generally reveal the details of production processes. But, to the extent it may, confidential business information for the affected facilities is protected. Specifically, submissions of emissions and control efficiency information that is confidential, proprietary and trade secret and is not emission data is protected from disclosure under the requirements of subsections 503(e) and 114(c) of the CAA.

The annual state burden for this information collection for the 15 hypothetical newly designated 2012 $PM_{2.5}$ nonattainment areas, averaged over the first 3 years of this ICR, is estimated to be a total of 54,000 labor hours per year at an annual labor cost of $3.2 million (present value) over the 3-year period, or approximately $649,000 per state for the 5 state respondents. The average annual reporting burden is approximately 3,600 hours per response, with approximately 3 responses per state for 15 state responses. There are no capital or operating and maintenance costs associated with the proposed rule requirements. Burden is defined at 5 CFR 1320.3(b).

The annual state burden for this information collection for the 21 existing nonattainment areas for the 1997 and 2006 $PM_{2.5}$ NAAQS, averaged over the first 3 years of this ICR, is estimated to be a total of 43,400 labor hours per year at an annual labor cost of $2.6 million (present value) over the 3-year period, or approximately $370,000 per state for the 7 state respondents. The average annual reporting burden is approximately 2,000 hours per response, with approximately 3 responses per state for 21 state responses. There are no capital or operating and maintenance costs associated with the proposed rule requirements. Burden is defined at 5 CFR 1320.3(b).

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

Submit your comments on the agency's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs via email to *oria_submissions@omb.eop.gov*, Attention: Desk Officer for the EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after receipt, OMB must receive comments no later than April 22, 2015. The EPA will respond to any ICR-related comments in the final rule.

C. Regulatory Flexibility Act

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

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

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements directly on small entities. Entities potentially affected directly by this proposal include state, local and tribal governments and none of these governments are small governments. Other types of small entities are not directly subject to the requirements of this rule. The EPA continues to be interested in the potential impacts of the proposed rule on small entities and welcomes comments on issues related to such impacts.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any state, local or tribal governments or the private sector. The CAA imposes the obligation for states to submit attainment plans to implement the $PM_{2.5}$ NAAQS. In this rule, the EPA is clarifying those requirements. Therefore, this action is not subject to the requirements of sections 202, 203, and 205 of the UMRA.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The requirement to submit attainment plans to meet a $PM_{2.5}$ NAAQS is imposed by the CAA. This proposed rule, if made final, would interpret those requirements as they apply to current and future $PM_{2.5}$ NAAQS. Thus, Executive Order 13132 does not apply to these proposed regulations.

In the spirit of Executive Order 13132 and consistent with the EPA policy to promote communications between the EPA and state and local governments, the EPA specifically solicits comments on this proposed action from state and local officials. In addition, the EPA intends to meet with organizations representing state and local officials during the comment period for this action.

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

This proposed action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It would not have a substantial direct effect on one or more Indian tribes. Furthermore, these proposed regulation revisions do not affect the relationship or distribution of power and responsibilities between the federal government and Indian tribes. The CAA and the TAR establish the relationship of the federal government and tribes in characterizing air quality and developing plans to attain the NAAQS, and these revisions to the regulations do nothing to modify that

relationship. Thus, Executive Order 13175 does not apply to this action.

Although Executive Order 13175 does not apply to this action, the EPA solicits comment on this proposed action from tribal officials. The EPA also intends to offer to consult with any tribal government to discuss this proposal.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it implements a previously promulgated health or safety-based federal standard established pursuant to the CAA.

These proposed regulatory provisions are designed to help implement the current and future $PM_{2.5}$ NAAQS, promulgated to protect the health and welfare of individuals, including children, who are susceptible to the adverse effects of exposure to unhealthy levels of ambient $PM_{2.5}$.

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

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

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

This proposed rulemaking does not involve technical standards. Therefore, the EPA is not considering the use of any voluntary consensus standards.

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

The EPA believes the human health or environmental risk addressed by this action will not have disproportionately high and adverse human health or environmental effects on minority, low-income, or indigenous populations. The results of this evaluation are contained in Section XI of this preamble.

K. Determination Under Section 307(d)

Pursuant to sections 307(d)(1)(E) and 307(d)(1)(V) of the CAA, the Administrator proposes to determine that this action is subject to the provisions of section 307(d). Under section 307(d)(1)(V), the provisions of section 307(d) apply to ''such other actions as the Administrator may determine.''

Statutory Authority

The statutory authority for this action is provided by 42 U.S.C. 7403, 7407, 7410, and 7601.

List of Subjects

40 CFR Part 50

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter.

40 CFR Part 51

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter.

40 CFR Part 93

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter.

Dated: March 10, 2015.

Gina McCarthy,

Administrator.

For the reasons stated in the preamble, Title 40, Chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 50—NATIONAL PRIMARY AND SECONDARY AMBIENT AIR QUALITY STANDARDS

■ 1. The authority citation for part 50 continues to read as follows:

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

■ 2. In § 50.13, add paragraph (d) to read as follows:

§ 50.13 National primary and secondary ambient air quality standards for $PM_{2.5}$.

* * * * *

(d) The standards set forth in this section will remain applicable to all areas notwithstanding the promulgation of the 2012 primary annual $PM_{2.5}$ national ambient air quality standards (NAAQS) in § 50.18. The 1997 primary annual $PM_{2.5}$ NAAQS set forth in this section will no longer apply to an area 1 year after the effective date of the designation of that area, pursuant to section 107 of the Clean Air Act, for the primary annual $PM_{2.5}$ NAAQS set forth in § 50.18; except that for areas designated nonattainment for the 1997 annual $PM_{2.5}$ NAAQS set forth in this section as of 1 year after the effective date of the designations for the primary annual $PM_{2.5}$ NAAQS established in § 50.18, the requirements applicable to the 1997 annual $PM_{2.5}$ NAAQS set forth in this section will apply until the effective date of an area's redesignation to attainment for the 1997 annual NAAQS pursuant to the requirements of section 107 of the Clean Air Act. The 1997 secondary annual $PM_{2.5}$ NAAQS and the 1997 24-hour $PM_{2.5}$ NAAQS shall remain in effect.

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

■ 3. The authority citation for part 51 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

Subpart I—Review of New Sources and Modifications

■ 4. In § 51.165:

■ a. Revise paragraphs (a)(1)(iv)(A)(*1*), (a)(1)(x)(A), and (a)(1)(xxxvii)(C)(*2*);

■ b. Remove paragraphs (a)(1)(xxxvii)(C)(*3*), and (*4*); and

■ d. Revise paragraphs (a)(2)(i) and (a)(2)(ii)(A).

The revisions read as follows:

§ 51.165 Permit requirements.

(a) * * *

(1) * * *

(iv)(A) * * *

(*1*) Any stationary source of air pollutants that emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant (as defined in paragraph (a)(1)(xxxvii) of this section), except that lower emissions thresholds shall apply in areas subject to subpart 2, subpart 3, or subpart 4 of part D, title I of the Act, according to paragraphs (a)(1)(iv)(A)(*1*)(*i*) through (*viii*) of this section.

(*i*) 50 tons per year of volatile organic compounds in any serious ozone nonattainment area.

(*ii*) 50 tons per year of volatile organic compounds in an area within an ozone transport region, except for any severe or extreme ozone nonattainment area.

(*iii*) 25 tons per year of volatile organic compounds in any severe ozone nonattainment area.

(*iv*) 10 tons per year of volatile organic compounds in any extreme ozone nonattainment area.

(*v*) 50 tons per year of carbon monoxide in any serious nonattainment area for carbon monoxide, where stationary sources contribute significantly to carbon monoxide levels in the area (as determined under rules issued by the Administrator).

(*vi*) 70 tons per year of PM_{10} in any serious nonattainment area for PM_{10}.

(vii) 70 tons per year of $PM_{2.5}$ in any serious nonattainment area for $PM_{2.5}$.

(viii) 70 tons per year of any precursor for $PM_{2.5}$ in any serious nonattainment area for $PM_{2.5}$.

* * * * *

(x)(A) *Significant* means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant Emission Rate

Carbon monoxide: 100 tons per year (tpy)
Nitrogen oxides: 40 tpy
Sulfur dioxide: 40 tpy
Ozone: 40 tpy of volatile organic compounds or nitrogen oxides
Lead: 0.6 tpy
PM_{10}: 15 tpy
$PM_{2.5}$: 10 tpy of direct $PM_{2.5}$ emissions; 40 tpy of sulfur dioxide emissions; 40 tpy of nitrogen oxide emissions; 40 tpy of VOC emissions;

* * * * *

(xxxvii) * * *

(C) * * *

(*2*) Sulfur dioxide, nitrogen oxides, volatile organic compounds and ammonia are precursors to $PM_{2.5}$ in any $PM_{2.5}$ nonattainment area, unless the State demonstrates to the Administrator's satisfaction or the EPA demonstrates that major stationary sources of a particular precursor do not contribute significantly to $PM_{2.5}$ levels that exceed the $PM_{2.5}$ ambient standards in a particular area.

* * * * *

(2) *Applicability procedures.* (i) Each plan shall adopt a preconstruction review program to satisfy the requirements of sections 172(c)(5) and 173 of the Act for any area designated nonattainment for any national ambient air quality standard under subpart C of 40 CFR part 81. Such a program shall apply to any new major stationary source or major modification that is major for the pollutant (as defined in paragraph (a)(1)(xxxvii) of this section) for which the area is designated nonattainment under section 107(d)(1)(A)(i) of the Act, if the stationary source or modification would locate anywhere in the designated nonattainment area. Different pollutants, including individual precursors, are not summed to determine applicability of a major stationary source or major modification.

(ii) * * *

(A) Except as otherwise provided in paragraphs (a)(2)(iii) and (iv) of this section, and consistent with the definition of major modification contained in paragraph (a)(1)(v)(A) of this section, a project is a major modification for a regulated NSR pollutant (as defined in paragraph (a)(1)(xxxvii) of this section), if it causes two types of emissions increases—a significant emissions increase (as defined in paragraph (a)(1)(xxvii) of this section), and a significant net emissions increase (as defined in paragraphs (a)(1)(vi) and (x) of this section). The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

* * * * *

■ 5. In Appendix S to part 51:

■ a. Revise paragraph II.A.4.(i)(*a*) introductory text;

■ b. Add paragraphs II.A.4.(*a*)(*7*) and (*8*); and

■ c. Revise paragraphs II.A.10.(i) and II.A.31.(ii)(*b*)(*2*).

The revisions and addition read as follows:

Appendix S to Part 51—Emission Offset Interpretative Ruling

* * * * *

II. * * *

A. * * *

4. (i) * * *

(*a*) Any stationary source of air pollutants which emits, or has the potential to emit, 100 tons per year or more of a regulated NSR pollutant (as defined in paragraph II.A.31 of this Ruling), subject to regulation under the Act, except that lower emissions thresholds shall apply in areas subject to subpart 2, subpart 3, or subpart 4 of part D, title I of the Act, according to paragraphs II.A.4(i)(*a*)(*1*) through (*6*) of this ruling.

* * * * *

(7) 70 tons per year of $PM_{2.5}$ in any serious nonattainment area for $PM_{2.5}$.

(*8*) 70 tons per year of any $PM_{2.5}$ precursor (as defined in paragraph II.A.31 of this Ruling) in any Serious nonattainment area for $PM_{2.5}$.

* * * * *

10. (i) *Significant* means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emissions Rate

Carbon monoxide: 100 tons per year (tpy)
Nitrogen oxides: 40 tpy
Sulfur dioxide: 40 tpy
Ozone: 40 tpy of volatile organic compounds or nitrogen oxides
Lead: 0.6 tpy
Particulate matter: 25 tpy of particulate matter emissions
PM_{10}: 15 tpy
$PM_{2.5}$: 10 tpy of direct $PM_{2.5}$ emissions; 40 tpy of sulfur dioxide emissions; 40 tpy of nitrogen oxides emissions

* * * * *

31. * * *

(ii) * * *

(*b*) * * *

(*2*) Sulfur dioxide and nitrogen oxides are precursors to $PM_{2.5}$ in all $PM_{2.5}$ nonattainment areas.

* * * * *

■ 6. Revise subpart Z to read as follows:

Subpart Z—Provisions for Implementation of $PM_{2.5}$ National Ambient Air Quality Standards

Sec.

51.1000 Definitions.
51.1001 Applicability of part 51.
51.1002 Classifications.
51.1003 Attainment plan submittals and due dates.
51.1004 Attainment dates.
51.1005 Attainment date extensions.
51.1006 Requirements for demonstrating insignificant contribution of $PM_{2.5}$ precursors.
51.1007 Requirements for *de minimis* source category determinations for direct $PM_{2.5}$ and $PM_{2.5}$ precursors.
51.1008 Emissions inventory requirements.
51.1009 Moderate area attainment plan control strategy requirements.
51.1010 Serious area attainment plan control strategy requirements.
51.1011 Attainment demonstration and modeling requirements.
51.1012 Reasonable further progress (RFP) requirements.
51.1013 Quantitative milestone requirements.
51.1014 Contingency measures requirements.
51.1015 Clean data requirements.

§ 51.1000 Definitions.

The following definitions apply for purposes of this subpart. Any term not defined herein shall have the meaning as defined in 40 CFR 51.100 or Clean Air Act section 302.

Act means the Clean Air Act as codified at 42 U.S.C. 7401–7671q (2003).

Additional feasible measure is any control measure that otherwise meets the definition of ''best available control measure'' (BACM) but can only be implemented in whole or in part beginning 4 years after the date of reclassification of an area as Serious and no later than the statutory attainment date for the area.

Additional reasonable measure is any control measure that otherwise meets the definition of ''reasonably available control measure'' (RACM) but can only be implemented in whole or in part during the period beginning 4 years after the date of designation of a nonattainment area and no later than the end of the sixth calendar year following the date of designation of the area.

Applicable annual standard is the annual $PM_{2.5}$ NAAQS established, revised, or retained as a result of a particular $PM_{2.5}$ NAAQS review.

Applicable attainment date means the latest statutory date by which an area is required to attain a particular $PM_{2.5}$ NAAQS, unless EPA has approved an attainment plan for the area to attain such NAAQS, in which case the applicable attainment date is the date approved under such attainment plan. If EPA grants an extension of an approved attainment date, then the applicable attainment date for the area shall be the extended date.

Applicable 24-hour standard is the 24-hour $PM_{2.5}$ NAAQS established, revised, or retained as a result of a particular $PM_{2.5}$ NAAQS review.

Attainment projected inventory means the projected emissions of direct $PM_{2.5}$ and all $PM_{2.5}$ precursors from sources included in the base year inventory, and from any additional sources of such emissions expected within the boundaries of the nonattainment area by the projected attainment date for the area.

Base year inventory means the actual emissions of direct $PM_{2.5}$ and all $PM_{2.5}$ precursors from all sources within the boundaries of a nonattainment area in one of the 3 years used for purposes of designations or another technically appropriate year.

Benchmark RFP analysis means the analysis submitted as part of the RFP plan for a $PM_{2.5}$ nonattainment area that requires generally linear emissions reductions in direct $PM_{2.5}$ and in each $PM_{2.5}$ precursor from the base year through the projected attainment year.

Best available control measure (BACM) is any technologically and economically feasible control measure that can be implemented in whole or in part within 4 years after the date of reclassification of a $PM_{2.5}$ nonattainment area and that generally can achieve greater permanent and enforceable emissions reductions in direct $PM_{2.5}$ emissions and/or emissions of $PM_{2.5}$ precursors from sources in the area than can be achieved through the implementation of RACM on the same source(s). BACM includes best available control technology (BACT).

Date of designation means the effective date of a $PM_{2.5}$ area designation as promulgated by the Administrator.

Date of reclassification means the effective date of a $PM_{2.5}$ area reclassification from Moderate to Serious as promulgated by the Administrator.

Direct $PM_{2.5}$ emissions means solid particles emitted directly from an air emissions source or activity, or gaseous emissions or liquid droplets from an air emissions source or activity which condense to form particulate matter at ambient temperatures. Direct $PM_{2.5}$ emissions include filterable and condensable $PM_{2.5}$ emissions composed of elemental carbon, directly emitted organic carbon, directly emitted sulfate, directly emitted nitrate, and other inorganic particles (including but not limited to crustal material, metals, and sea salt).

Existing control measure means any federally enforceable national, state, or local control measure that results in reductions in direct $PM_{2.5}$ emissions or emissions of $PM_{2.5}$ precursors in a nonattainment area in that state.

Implemented means adopted by the state and fully approved into the SIP by EPA for the nonattainment area; built, installed, and/or otherwise physically manifested; and, fully complied with by the affected sources.

Most stringent measure (MSM) is any permanent and enforceable control measure that achieves the most stringent emissions reductions in direct $PM_{2.5}$ emissions and/or emissions of $PM_{2.5}$ precursors from among those control measures which are either included in any other SIP for any NAAQS or have been achieved in practice by any state and that can feasibly be implemented in the relevant $PM_{2.5}$ NAAQS nonattainment area.

$PM_{2.5}$ design value (DV) for a $PM_{2.5}$ nonattainment area is the highest of the three-year average concentrations calculated for the ambient air quality monitors in the area, in accordance with 40 CFR part 50, appendix N.

$PM_{2.5}$ NAAQS are the fine particulate matter National Ambient Air Quality Standards codified at 40 CFR part 50.

$PM_{2.5}$ precursors are sulfur dioxide (SO_2), oxides of nitrogen (NO_X), volatile organic compounds (VOC), and ammonia (NH_3).

Reasonably available control measure (RACM) is any technologically and economically feasible measure that can be implemented in whole or in part within 4 years after the date of designation of a $PM_{2.5}$ nonattainment area and that achieves permanent and enforceable reductions in direct $PM_{2.5}$ emissions and/or $PM_{2.5}$ precursor emissions from sources in the area. RACM includes reasonably available control technology (RACT).

Reasonable further progress (RFP) means such annual incremental reductions in emissions of direct $PM_{2.5}$ and $PM_{2.5}$ precursors regulated in the attainment plan as are required for the purpose of ensuring attainment of the applicable $PM_{2.5}$ NAAQS in a nonattainment area by the applicable attainment date.

Subpart 1 means subpart 1 of part D of title I of the Act.

Subpart 4 means subpart 4 of part D of title I of the Act.

§ 51.1001 Applicability of part 51.

The provisions in subparts A through X of this part apply to areas for purposes of the $PM_{2.5}$ NAAQS to the extent they are not inconsistent with the provisions of this subpart.

§ 51.1002 Classifications.

(a) *Initial classification as Moderate $PM_{2.5}$ nonattainment area.* Any area designated nonattainment for a $PM_{2.5}$ NAAQS shall be classified at the time of such designation, by operation of law, as a Moderate $PM_{2.5}$ nonattainment area.

(b) *Reclassification as Serious $PM_{2.5}$ nonattainment area.* A Moderate nonattainment area shall be reclassified to Serious under the following circumstances:

(1) The EPA shall reclassify as Serious through notice-and-comment rulemaking any Moderate $PM_{2.5}$ nonattainment area that the EPA determines cannot practicably attain a particular $PM_{2.5}$ NAAQS by the applicable Moderate area attainment date.

(2) A Moderate $PM_{2.5}$ nonattainment area shall be reclassified by operation of law as a Serious nonattainment area if the EPA finds through notice-and-comment rulemaking that the area failed to attain a particular $PM_{2.5}$ NAAQS by the applicable Moderate area attainment date.

§ 51.1003 Attainment plan submittals and due dates.

(a) Nonattainment areas initially classified as Moderate.

(1) For any area designated as nonattainment and initially classified as Moderate for a $PM_{2.5}$ NAAQS, the

state(s) shall submit a Moderate area attainment plan that meets all of the following requirements:

(i) Emissions inventory requirements set forth at § 51.1008(a)(1);

(ii) Emissions inventory requirements set forth at § 51.1008(a)(2);

(iii) Moderate area attainment plan control strategy requirements set forth at § 51.1009;

(iv) Attainment demonstration and modeling requirements set forth at § 51.1011;

(v) Reasonable Further Progress (RFP) requirements set forth at § 51.1012;

(vi) Quantitative milestone requirements set forth at § 51.1013;

(vii) Contingency measure requirements set forth at § 51.1014; and,

(viii) Nonattainment new source review plan requirements pursuant to section 189(a)(1)(A) and section 172(c)(5) of the CAA.

(2) The state(s) shall submit its Moderate area attainment plan to EPA no later than 18 months from the date of designation of the area.

(b) Nonattainment areas reclassified to Serious.

(1) For any nonattainment area reclassified to Serious for a $PM_{2.5}$ NAAQS under § 51.1002(b), in addition to meeting the Moderate area attainment plan submittal requirements set forth at § 51.1003(a), the state(s) shall submit a Serious area attainment plan that meets all of the following requirements:

(i) Emissions inventory requirements set forth at § 51.1008(b)(1);

(ii) Emissions inventory requirements set forth at § 51.1008(b)(2);

(iii) Serious area attainment plan control strategy requirements set forth at § 51.1010;

(iv) Attainment demonstration and modeling requirements set forth at § 51.1011;

(v) Reasonable Further Progress (RFP) requirements set forth at § 51.1012;

(vi) Quantitative milestone requirements set forth at § 51.1013;

(vii) Contingency measure requirements set forth at § 51.1014; and,

(viii) Nonattainment new source review plan requirements pursuant to section 189(b)(3) and section 172(c)(5) of the CAA.

(2) The state(s) shall submit its Serious area attainment plan to EPA according to the following schedule:

(i) For any nonattainment area reclassified to Serious for a particular $PM_{2.5}$ NAAQS under § 51.1002(b)(1), the state(s) shall submit to EPA the portion of the Serious area attainment plan that meets the requirements set forth at paragraphs (b)(1)(i), (iii) and (viii) of this section no later than 18 months from the date of reclassification. The state(s) shall submit to EPA the portion of the Serious area attainment plan that meets the requirements set forth at paragraphs (b)(1)(ii) and (b)(1)(iv) through (vii) of this section to EPA no later than 4 years from the date of reclassification.

(ii) For any nonattainment area reclassified to Serious for a particular $PM_{2.5}$ NAAQS under § 51.1002(b)(2), the state(s) shall submit to EPA a Serious area attainment plan meeting the requirements set forth at paragraphs (b)(1)(i) through (viii) of this section no later than 18 months from the date of reclassification.

(iii) If the state(s) submits to EPA a request for a Serious area attainment date extension simultaneous with the Serious area attainment plan due under paragraph (b)(1) of this section, such a plan shall meet the most stringent measure (MSM) requirements set forth at § 51.1010(b) in addition to the BACM and BACT and additional feasible measure requirements set forth at § 51.1010(a).

(c) Serious nonattainment areas subject to CAA section 189(d) for failing to attain the $PM_{2.5}$ NAAQS by the applicable Serious area attainment date.

(1) For any Serious nonattainment area that fails to attain a particular $PM_{2.5}$ NAAQS by the applicable Serious area attainment date, the state(s) shall submit a revised Serious area attainment plan that demonstrates that the area annually will achieve at least 5 percent reductions in emissions of direct $PM_{2.5}$ and $PM_{2.5}$ precursors based on the most recent emissions inventory for the area and that meets the following requirements:

(i) Emissions inventory requirements set forth at § 51.1008(c)(1);

(ii) Emissions inventory requirements set forth at § 51.1008(c)(2);

(iii) Demonstration of attainment and modeling requirements set forth at § 51.1011;

(iv) Reasonable Further Progress (RFP) requirements set forth at § 51.1012;

(v) Quantitative milestone requirements set forth at § 51.1013; and,

(vi) Contingency measure requirements set forth at § 51.1014.

(2) The state(s) shall submit to EPA the revised attainment plan meeting the requirements set forth at paragraphs (c)(1)(i) through (vi) of this section no later than 12 months from the missed applicable Serious area attainment date.

(d) Any attainment plan submitted to EPA under this section shall establish motor vehicle emissions budgets for the projected attainment year for the area, if applicable. The state shall develop such budgets according to the requirements of the transportation conformity rule as they apply to $PM_{2.5}$ nonattainment areas (40 CFR part 93).

§ 51.1004 Attainment dates.

(a) The state shall submit a projected attainment date as part of its attainment plan submission under § 51.1003 for any $PM_{2.5}$ NAAQS nonattainment area located in whole or in part within its boundaries. The state shall justify the projected attainment date for each such nonattainment area (or portion of a nonattainment area) as part of the demonstration of attainment developed and submitted according to the requirements set forth at § 51.1011 and according to the following:

(1) Nonattainment areas initially classified as Moderate.

(i) Except for nonattainment areas that meet the criterion under paragraph (a)(1)(ii) of this section, the projected attainment date for a Moderate $PM_{2.5}$ nonattainment area shall be as expeditious as practicable with the implementation of all control measures required under § 51.1009 and may be as late as the end of the sixth calendar year after the date of designation if the state demonstrates that the implementation of certain control measures that qualify as RACM or RACT or additional reasonable measures, but that are not necessary for demonstrating attainment by the end of the sixth calendar year after the date of designation, will not collectively advance the attainment date by at least 1 year.

(ii) The projected attainment date for a Moderate $PM_{2.5}$ nonattainment area which the state demonstrates cannot practicably attain the applicable $PM_{2.5}$ NAAQS by the end of the sixth calendar year after the date of designation of the area with the implementation of all control measures required under § 51.1009 shall be such date unless and until the area is reclassified as Serious according to § 51.1002.

(2) Nonattainment areas reclassified to Serious.

(i) Except for nonattainment areas that meet the criterion under paragraph (a)(2)(ii) of this section, the projected attainment date for a Serious $PM_{2.5}$ nonattainment area shall be as expeditious as practicable with the implementation of all control measures required under § 51.1010 but no later than the end of the tenth calendar year after the date of designation.

[ALTERNATIVE PROPOSED REGULATORY TEXT]

(i) Except for nonattainment areas that meet the criterion under paragraph (a)(2)(ii) of this section, the projected attainment date for a Serious $PM_{2.5}$ nonattainment area shall be as

expeditious as practicable with the implementation of all control measures required under § 51.1010 and may be as late as the end of the tenth calendar year after the date of designation if the state demonstrates that the implementation of certain control measures that qualify as BACM or BACT or additional feasible measures, but that are not necessary for demonstrating attainment by the end of the tenth calendar year after the date of designation, will not collectively advance the attainment date by at least 1 year.]

(ii) A state that submits an attainment plan that demonstrates that a Serious $PM_{2.5}$ nonattainment area cannot practicably attain the $PM_{2.5}$ NAAQS by the end of the tenth calendar year following the date of designation of the area with the implementation of all control measures required under § 51.1010(a) must request an extension of the Serious area attainment date consistent with § 51.1005(b). The request must propose a projected attainment date for the nonattainment area that is as expeditious as practicable, but no later than the end of the fifteenth calendar year from the date of designation of the area.

(3) Serious nonattainment areas subject to CAA section 189(d) for failing to attain by the applicable Serious area attainment date. The projected attainment date for a Serious $PM_{2.5}$ nonattainment area that failed to attain the $PM_{2.5}$ NAAQS by the applicable Serious area attainment date shall be as expeditious as practicable based on annual reductions in direct $PM_{2.5}$ and significant $PM_{2.5}$ precursor emissions within the area of not less than 5 percent of the amount of such emissions as reported in the most recent emissions inventory prepared for the area, but no later than 5 years following the missed Serious area attainment date.

(b) Except for attainment plans that meet the conditions of paragraphs (a)(1)(ii) or (a)(3) of this section, the Administrator shall approve an attainment date at the same time and in the same manner in which the Administrator approves the attainment plan for the area.

(1) In accordance with paragraph (a)(1)(ii) of this section, if a state demonstrates that a Moderate $PM_{2.5}$ nonattainment area cannot practicably attain the $PM_{2.5}$ NAAQS by the end of the sixth calendar year following the date of designation of the area, EPA shall proceed under the provisions of § 51.1002(b)(1) to reclassify the area to Serious through notice-and-comment rulemaking.

(2) In accordance with paragraph (a)(3) of this section, if a Serious $PM_{2.5}$ nonattainment area fails to attain the $PM_{2.5}$ NAAQS by the applicable Serious area attainment date, EPA will proceed to establish a new attainment date through a direct final action published in the **Federal Register**.

§ 51.1005 Attainment date extensions.

(a) Nonattainment areas initially classified as Moderate.

(1) A state with a Moderate $PM_{2.5}$ nonattainment area may apply for a 1-year attainment date extension for the area if the following conditions are met in the year preceding the applicable attainment date for the area:

(i) The state has complied with all requirements and commitments pertaining to the area in the applicable implementation plan;

(ii) For an area designated nonattainment for a particular 24-hour $PM_{2.5}$ NAAQS for which the state seeks an attainment date extension, the 98th percentile concentration at each monitor in the area for the calendar year prior to the applicable attainment date is less than or equal to the level of the applicable 24-hour standard (calculated according to the data analysis requirements in 40 CFR part 50, appendix N);

(iii) For an area designated nonattainment for a particular annual $PM_{2.5}$ NAAQS for which the state seeks an attainment date extension, the annual average concentration at each monitor in the area for the calendar year prior to the applicable attainment date is less than or equal to the level of the applicable annual standard (calculated according to the data analysis requirements in 40 CFR part 50, appendix N).

(2) The applicable implementation plan for a Moderate $PM_{2.5}$ nonattainment area for which a state seeks an attainment date extension is the plan submitted to EPA to meet the requirements of § 51.1003(a).

(3) For a Moderate $PM_{2.5}$ nonattainment area, the requesting state (or states) shall submit a written request by February 28 of the year following the applicable attainment date for the area.

(4) A state with a Moderate area that received an initial 1-year attainment date extension may apply for a second 1-year attainment date extension for the area if the state meets the conditions described in paragraph (a)(1) of this section in the year preceding the approved attainment date.

(b) Nonattainment areas reclassified as Serious.

(1) A state may apply for one attainment date extension not to exceed 5 years for a Serious nonattainment area if the following conditions are met:

(i) The state demonstrates that attainment of the applicable $PM_{2.5}$ NAAQS by the approved attainment date for the area would be impracticable or, in the absence of an approved attainment date, attainment of the applicable $PM_{2.5}$ NAAQS by the applicable statutory attainment date for the area would be impracticable;

(ii) The state has complied with all requirements and commitments pertaining to the area in the applicable implementation plan; and,

(iii) The state demonstrates that the attainment plan for the area includes the most stringent measures (MSM) that are included in the attainment plan of any state or are achieved in practice in any state, and can feasibly be implemented in the area consistent with § 51.1010(b).

(2) At the time of application for an attainment date extension, the state shall submit to EPA a Serious area attainment plan that meets the following requirements:

(i) Emissions inventory requirements set forth at § 51.1008(b);

(ii) Most stringent measures (MSM) requirement described under paragraph (b)(1)(iii) of this section and § 51.1010(b);

(iii) Attainment demonstration and modeling requirements set forth at § 51.1011 that justify the state's conclusion under paragraph (b)(1)(i) of this section;

(iv) Reasonable Further Progress (RFP) requirements set forth at § 51.1012;

(v) Quantitative milestone requirements set forth at § 51.1013; and,

(vi) Contingency measure requirements set forth at § 51.1014.

(3) The applicable implementation plan for a Serious $PM_{2.5}$ nonattainment area for which a state seeks an attainment date extension under § 51.1004(a)(2)(ii) is the plan submitted to EPA to meet the requirements set forth at § 51.1003(a).

(4) The applicable implementation plan for a Serious $PM_{2.5}$ nonattainment area for which a state seeks an attainment date extension under § 51.1004(a)(2)(i) is the plan submitted to EPA to meet the requirements set forth at § 51.1003(b)(1).

(5) A state applying for an attainment date extension for a Serious nonattainment area under § 51.1004(a)(2)(ii) shall submit to EPA a request for an extension at the same time as it submits the Serious area attainment plan due under § 51.1003(b)(1).

(6) A state applying for an attainment date extension for a Serious nonattainment area subsequent to submitting an initial Serious area attainment plan that demonstrated

attainment of the NAAQS by the applicable attainment date consistent with § 51.1004(a)(2)(i) at the time of submittal may apply for such an extension no later than 60 calendar days prior to the approved attainment date for the area or, in the absence of an approved attainment date, no later than 60 calendar days prior to the applicable statutory attainment date for the area.

(c) Serious nonattainment areas subject to CAA section 189(d) for failing to attain by the applicable Serious area attainment date. If a Serious area fails to attain a particular $PM_{2.5}$ NAAQS by the applicable Serious area attainment date, the area is then subject to the requirements of section 189(d) of the Act, and, for this reason, the state is prohibited from requesting an extension of the applicable Serious area attainment date for such area.

(d) For any attainment date extension request submitted pursuant to this section, the requesting state (or states) shall submit a written request and evidence of compliance with these regulations which includes both of the following:

(i) Evidence that all control measures submitted in the applicable attainment plan have been implemented, and

(ii) Evidence that the area has made emission reduction progress that represents reasonable further progress toward timely attainment of the applicable $PM_{2.5}$ NAAQS.

(e) For a $PM_{2.5}$ nonattainment area located in two or more states or jurisdictions, all states and/or jurisdictions in which such area is located shall submit separate attainment date extension requests for the area consistent with the requirements set forth at paragraph (d) of this section.

§ 51.1006 Requirements for demonstrating insignificant contribution of $PM_{2.5}$ precursors.

(a) For purposes of determining that a particular $PM_{2.5}$ precursor does not contribute significantly to ambient $PM_{2.5}$ concentrations in a $PM_{2.5}$ nonattainment area, the state shall conduct a technical analysis that accounts for all emissions of such $PM_{2.5}$ precursor from all sources located within the area.

(b) The state shall submit results and supporting documentation for any technical analyses conducted pursuant to paragraph (a) of this section as part of any attainment plan for the area.

§ 51.1007 Requirements for de minimis source category determinations for direct $PM_{2.5}$ and $PM_{2.5}$ precursors.

(a) All categories of sources of direct $PM_{2.5}$ emissions and of emissions of $PM_{2.5}$ precursors in a $PM_{2.5}$ nonattainment area shall be considered non-*de minimis* unless and until the state conducts a technical analysis to determine whether a particular source category may qualify for a presumptive *de minimis* source category exemption from evaluation for potential control measures due to its minimal contribution to the ambient $PM_{2.5}$ concentrations in the area.

(b) The state shall define source categories for stationary sources classified under the North American Industry Classification System (NAICS) at the level represented by four (4) digits or fewer.

(c) The state shall define a single source category for on-road mobile sources, including on-road vehicles and engines, and a single source category for nonroad mobile sources, including nonroad engines, equipment, and vehicles, or may define a single source category for all mobile sources in the aggregate.

§ 51.1008 Emissions inventory requirements.

(a) For any nonattainment area initially classified as Moderate, the state shall submit to EPA all of the following:

(1) A base year inventory for the nonattainment area for all emissions sources that meets the following minimum criteria:

(i) The inventory year shall be one of the 3 years used for designations or another technically appropriate inventory year if justified by the state in the plan submission.

(ii) The inventory shall include actual emissions of all sources within the nonattainment area.

(iii) The emissions values shall be either annual total emissions or average-season-day emissions. The state shall include as part of the plan a rationale for providing annual or seasonal emissions.

(iv) The inventory shall include direct $PM_{2.5}$ emissions and emissions of all $PM_{2.5}$ precursors.

(v) The state shall report emissions as point sources according to the point source emissions thresholds of the Air Emissions Reporting Rule (AERR), 40 CFR part 51, subpart A.

(vi) The detail of the emissions inventory shall be consistent with the data elements required by 40 CFR part 51, subpart A.

(2) An attainment projected inventory for the nonattainment area that meets the following minimum criteria:

(i) The year of the projected inventory shall be the most expeditious year for which attainment is demonstrated by the modeled attainment plan.

(ii) The emissions values shall be projected emissions of the same sources included in the base year inventory for the nonattainment area (*i.e.,* those only within the nonattainment area). The state shall include in this inventory projected emissions growth and contraction from both controls and other causes during the relevant period.

(iii) The temporal period of emissions shall be the same temporal period (annual or average-season-day) as the base year inventory for the nonattainment area.

(iv) Consistent with the base year inventory for the nonattainment area, the inventory shall include direct $PM_{2.5}$ emissions and emissions of all $PM_{2.5}$ precursors.

(v) The same sources reported as point sources in the base year inventory for the nonattainment area shall be provided as point sources in the attainment projected inventory for the nonattainment area. Nonpoint and mobile source projected emissions shall be provided using the same detail (*e.g.,* state, county, and process codes) as the base year inventory.

(vi) The same detail of the emissions included shall be consistent with the level of detail in the base year inventory (*i.e.,* as required by 40 CFR part 41, subpart A).

(b) For any nonattainment area reclassified as Serious, the state shall submit to EPA all of the following:

(1) For purposes of meeting the emissions inventory requirements of CAA section 172(c)(3), a base year inventory for the nonattainment area for all emissions sources that meets the requirements listed under paragraph (a)(1) of this section, and in addition, uses the Serious area definition of a major source listed under § 51.165(a)(1)(iv)(A)(vii) and (viii) in determining sources to include as point sources.

(2) An attainment projected inventory for the nonattainment area that meets the criteria listed under paragraph (a)(2) of this section.

(c) Serious nonattainment areas subject to CAA section 189(d) for failing to attain a $PM_{2.5}$ NAAQS by the applicable Serious area attainment date. No later than 12 months after EPA finds through notice-and-comment rulemaking that a Serious nonattainment area, or portion thereof contained within a state's borders, fails to attain a $PM_{2.5}$ NAAQS by the applicable attainment date and thus becomes subject to the requirements under CAA section 189(d), the state shall submit to EPA all of the following:

(1) For purposes of meeting the emissions inventory requirements of

CAA section 172(c)(3), a base year inventory for the nonattainment area for all emissions sources that meets the requirements listed under paragraph (a)(1) of this section, and in addition, uses the Serious area definition of a major source listed under § 51.165(a)(1)(iv)(A)(vii) and (viii) in determining sources to include as point sources.

(2) An attainment projected inventory for the nonattainment area as defined by § 51.1000(e) and that meets the criteria listed under paragraph (a)(2) of this section.

§ 51.1009 Moderate area attainment plan control strategy requirements.

(a) The state shall identify, adopt, and implement control measures, including control technologies, on sources of direct $PM_{2.5}$ emissions and sources of emissions of $PM_{2.5}$ precursors located in any Moderate $PM_{2.5}$ nonattainment area or portion thereof located within the state consistent with the following:

(1) The state shall identify all sources of direct $PM_{2.5}$ emissions and all sources of emissions of $PM_{2.5}$ precursors in the nonattainment area in accordance with the emissions inventory requirements of § 51.1008(a);

(2) The state shall identify all potential control measures to reduce emissions from all sources of direct $PM_{2.5}$ emissions and all sources of emissions of $PM_{2.5}$ precursors in the nonattainment area identified under paragraph (a)(1) of this section.

(i) The state may elect not to identify potential control measures to reduce emissions from any sources of a particular $PM_{2.5}$ precursor if the state demonstrates that all sources of such $PM_{2.5}$ precursor contribute insignificantly to ambient $PM_{2.5}$ concentrations in the area under § 51.1006.

(ii) The state may elect not to identify potential control measures to reduce emissions from sources in any source category of direct $PM_{2.5}$ emissions or emissions of $PM_{2.5}$ precursors determined to be a *de minimis* source category under § 51.1007.

(3) For any potential control measure identified under paragraph (a)(2) of this section, the state may make a demonstration that such measure is not technologically or economically feasible to implement in whole or in part by the end of the sixth calendar year following the date of designation of the area, and the state may eliminate such whole or partial measure from further consideration under this paragraph.

(i) For purposes of evaluating the technological feasibility of a potential control measure, the state may consider factors including but not limited to a source's processes and operating procedures, raw materials, physical plant layout, and potential environmental impacts such as increased water pollution, waste disposal, and energy requirements.

(ii) For purposes of evaluating the economic feasibility of a potential control measure, the state may consider factors including but not limited to capital costs, operating and maintenance costs, and cost effectiveness of the measure.

(iii) The state must submit to EPA as part of its Moderate area attainment plan a detailed written justification for eliminating from further consideration any potential control measure identified under paragraph (a)(2) of this section on the basis of technological or economic infeasibility.

(4) The state shall use air quality modeling that meets the requirements of § 51.1011(a) and that accounts for emissions reductions estimated due to all technologically and economically feasible control measures identified for sources of direct $PM_{2.5}$ emissions and sources of emissions of $PM_{2.5}$ precursors in the Moderate $PM_{2.5}$ nonattainment area to demonstrate that the area can attain the applicable $PM_{2.5}$ NAAQS as expeditiously as practicable but no later than the end of the sixth year following the date of designation of the area, or to demonstrate that the Moderate $PM_{2.5}$ nonattainment area cannot practicably attain the applicable $PM_{2.5}$ NAAQS by such date.

(i) If the state demonstrates through air quality modeling that the area can attain the applicable $PM_{2.5}$ NAAQS by the end of the sixth calendar year following the date of designation of the area, the state shall adopt and implement all technologically and economically feasible control measures identified under paragraph (a)(3) of this section that are necessary to bring the area into attainment by such date. The state shall also adopt and implement all other technologically and economically feasible measures identified under paragraph (a)(3) of this section that, when considered collectively, would advance the attainment date for the area by at least 1 year.

(A) Any control measure identified for adoption and implementation under this paragraph that can be implemented in whole or in part by 4 years after the date of designation of the Moderate $PM_{2.5}$ nonattainment area shall be considered RACM for the area. Any such control measure that is also a control technology shall be considered RACT for the area.

(B) Any control measure identified for adoption and implementation under this paragraph that can only be implemented in whole or in part during the period beginning 4 years after the date of designation of the Moderate $PM_{2.5}$ nonattainment area and the beginning of the calendar year containing the applicable attainment date for the area shall be considered an additional reasonable measure for the area.

(ii) If the state demonstrates through air quality modeling that the area cannot practicably attain the applicable $PM_{2.5}$ NAAQS by the end of the sixth calendar year following the date of designation of the area, the state shall adopt all technologically and economically feasible control measures identified under paragraph (a)(3) of this section unless the state makes a demonstration that one or more such measures, when considered collectively, would have minimal effect on reducing ambient $PM_{2.5}$ concentrations in the area.

(A) Any control measure identified for adoption and implementation under this paragraph that can be implemented in whole or in part by 4 years after the date of designation of the Moderate $PM_{2.5}$ nonattainment area shall be considered RACM for the area. Any such control measure that is also a control technology shall be considered RACT for the area.

(B) Any control measure identified for adoption and implementation under this paragraph that can only be implemented in whole or in part during the period beginning 4 years after the date of designation of the Moderate $PM_{2.5}$ nonattainment area through the end of the sixth calendar year following the date of designation of the area shall be considered an additional reasonable measure for the area.

(b) The state shall identify, adopt, and implement control measures, including control technologies, on sources of direct $PM_{2.5}$ emissions and sources of emissions of $PM_{2.5}$ precursors located outside the Moderate $PM_{2.5}$ nonattainment area, or portion thereof, located within the state if doing so is necessary to provide for attainment or will expedite attainment of the applicable $PM_{2.5}$ NAAQS in such area.

(c) For control measures on sources of direct $PM_{2.5}$ emissions in the form of source emissions limitations, the state shall establish such limitations taking into account the filterable and condensable fractions of such emissions.

§ 51.1010 Serious area attainment plan control strategy requirements.

[PROPOSED REGULATORY TEXT FOR OPTION 1:

(a) The state shall identify, adopt, and implement control measures, including control technologies, on sources of direct $PM_{2.5}$ emissions and sources of emissions of $PM_{2.5}$ precursors located in any Serious $PM_{2.5}$ nonattainment area or portion thereof located within the state to yield a control strategy for the area that is more stringent than that developed for the area when it was classified as Moderate, and consistent with the following:

(1) The state shall identify all sources of direct $PM_{2.5}$ emissions and all sources of emissions of $PM_{2.5}$ precursors in the nonattainment area in accordance with the emissions inventory requirements of § 51.1008(b);

(2) The state shall identify all potential control measures to reduce emissions from all sources of direct $PM_{2.5}$ emissions and sources of emissions of $PM_{2.5}$ precursors in the nonattainment area identified under paragraph (a)(1) of this section.

(i) The state shall survey other NAAQS nonattainment areas in the U.S. and identify any measures not previously identified by the state during the development of the Moderate area attainment plan for the area.

(ii) The state may elect not to identify potential control measures to reduce emissions from any sources of a particular $PM_{2.5}$ precursor if the state demonstrates that all sources of such $PM_{2.5}$ precursor contribute insignificantly to ambient $PM_{2.5}$ concentrations in the area under § 51.1006.

(iii) The state may elect not to identify potential control measures to reduce emissions from sources in any source category of direct $PM_{2.5}$ emissions or emissions of $PM_{2.5}$ precursors determined to be a *de minimis* source category under § 51.1007.

(3) The state may make a demonstration that any measure identified under paragraph (a)(2) of this section is not technologically or economically feasible to implement in whole or in part by the end of the tenth calendar year following the date of designation of the area, and may eliminate such whole or partial measure from further consideration under this paragraph.

(i) For purposes of evaluating the technological feasibility of a potential control measure, the state may consider factors including but not limited to a source's processes and operating procedures, raw materials, physical plant layout, and potential environmental impacts such as increased water pollution, waste disposal, and energy requirements.

(ii) For purposes of evaluating the economic feasibility of a potential control measure, the state may consider capital costs, operating and maintenance costs, and cost effectiveness of the measure.

(iii) The state shall submit to EPA as part of its Serious area attainment plan submission a detailed written justification for eliminating from further consideration any potential control measure identified under paragraph (a)(2) of this section on the basis of technological or economic infeasibility. The state shall provide as part of its written justification an explanation of how its criteria for determining the technological and economic feasibility of potential control measures under paragraphs (a)(3)(i) and (ii) of this section are more stringent than its criteria for determining the technological and economic feasibility of potential control measures under § 51.1009(a)(3)(i) and (ii) for the same sources in the $PM_{2.5}$ nonattainment area.

(4) Except as provided under paragraph (a)(3) of this section, the state shall adopt and implement all potential control measures identified under paragraph (a)(2) of this section.

(i) Any control measure that can be implemented in whole or in part by the end of the fourth year following the date of reclassification of the area to Serious shall be considered a best available control measure for the area. Any such control measure that is also a control technology for a stationary source in the area shall be considered a best available control technology for the area.

(ii) Any control measure that can be implemented in whole or in part between the end of the fourth year following the date of reclassification of the area to Serious and the applicable attainment date for the area shall be considered an additional feasible measure.

(5) The state shall use air quality modeling that meets the requirements of § 51.1011(b) and that accounts for emissions reductions estimated due to all best available control measures, including best available control technologies, and additional feasible measures identified for sources of direct $PM_{2.5}$ emissions and sources of emissions of $PM_{2.5}$ precursors in the area to demonstrate that the area can attain the $PM_{2.5}$ NAAQS as expeditiously as practicable but no later than the end of the tenth calendar year following the date of designation of the area, or to demonstrate that the Serious $PM_{2.5}$ nonattainment area cannot practicably attain the applicable $PM_{2.5}$ NAAQS by such date.]

[PROPOSED REGULATORY TEXT FOR OPTION 2:

(a) The state shall identify, adopt, and implement control measures, including control technologies, on sources of direct $PM_{2.5}$ emissions and sources of emissions of $PM_{2.5}$ precursors located in any Serious $PM_{2.5}$ nonattainment area or portion thereof located within the state to yield a control strategy for the area that is more stringent than that developed for the area when it was classified as Moderate, and consistent with the following:

(1) The state shall identify all sources of direct $PM_{2.5}$ emissions and sources of emissions of $PM_{2.5}$ precursors in the nonattainment area in accordance with the emissions inventory requirements of § 51.1008;

(2) The state shall identify all potential control measures to reduce emissions from all sources of direct $PM_{2.5}$ emissions and sources of emissions of $PM_{2.5}$ precursors in the nonattainment area identified under paragraph (a)(1) of this section.

(i) The state shall survey other NAAQS nonattainment areas in the U.S. and identify any measures not previously identified by the state during the development of the Moderate area attainment plan for the area.

(ii) The state may elect not to identify potential control measures to reduce emissions from any sources of a particular $PM_{2.5}$ precursor if the state demonstrates that all sources of such $PM_{2.5}$ precursor contribute insignificantly to ambient $PM_{2.5}$ concentrations in the area under § 51.1006.

(3) The state may make a demonstration that a measure identified under paragraph (a)(2) of this section is not technologically or economically feasible to implement in whole or in part by the end of the tenth calendar year following the date of designation of the area, and may eliminate such whole or partial measure from further consideration under this paragraph.

(i) For purposes of evaluating the technological feasibility of a potential control measure, the state may consider factors including but not limited to a source's processes and operating procedures, raw materials, physical plant layout, and potential environmental impacts such as increased water pollution, waste disposal, and energy requirements.

(ii) For purposes of evaluating the economic feasibility of a potential control measure, the state may consider

capital costs, operating and maintenance costs, and cost effectiveness of the measure.

(iii) The state shall submit to EPA as part of its Serious area attainment plan submission a detailed written justification for eliminating from further consideration any potential control measure identified under paragraph (a)(2) of this section on the basis of technological or economic infeasibility. The state shall provide as part of its written justification an explanation of how its criteria for determining the technological and economic feasibility of potential control measures under paragraphs (a)(3)(i) and (ii) of this section are more stringent than its criteria for determining the technological and economic feasibility of potential control measures under § 51.1009(a)(3)(i) and (ii) for the same sources in the $PM_{2.5}$ nonattainment area.

(4) The state shall use air quality modeling that meets the requirements of § 51.1011(b) and that accounts for emissions reductions estimated due to all technologically and economically feasible control measures identified for sources of direct $PM_{2.5}$ emissions and sources of emissions of $PM_{2.5}$ precursors in the area to demonstrate that the area can attain the applicable $PM_{2.5}$ NAAQS as expeditiously as practicable but no later than the end of the tenth calendar year following the date of designation of the area, or to demonstrate that the Serious $PM_{2.5}$ nonattainment area cannot practicably attain the applicable $PM_{2.5}$ NAAQS by such date.

(5) For a Serious $PM_{2.5}$ nonattainment area which air quality modeling demonstrates that the area can attain the applicable $PM_{2.5}$ NAAQS by the end of the tenth calendar year following the date of designation of the area, the state shall adopt and implement all technologically and economically feasible control measures needed to bring the area into attainment by such date and additionally any other such measures that, when considered collectively, would advance the attainment date for the area by at least 1 year.

(i) Any control measure that can be implemented in whole or in part by the end of the fourth year following the date of reclassification of the area to Serious shall be considered a best available control measure for the area. Any such control measure that is also a control technology for a stationary source in the area shall be considered a best available control technology for the area.

(ii) Any control measure that can only be implemented in whole or in part between the end of the fourth year following the date of reclassification of the area to Serious and the applicable attainment date for the area shall be considered an additional feasible measure.]

(b) For a Serious $PM_{2.5}$ nonattainment area which air quality modeling demonstrates cannot practicably attain the applicable $PM_{2.5}$ NAAQS by the end of the tenth calendar year following the date of designation of the area, the state shall identify, adopt, and implement the most stringent control measures that are included in the attainment plan for any state or are achieved in practice in any state, and can be feasibly implemented in the area, consistent with the following:

(1) The state shall identify all sources of direct $PM_{2.5}$ emissions and sources of emissions of $PM_{2.5}$ precursors in the nonattainment area in accordance with the emissions inventory requirements of § 51.1008(b).

(2) The state shall identify all potential control measures to reduce emissions from all sources of direct $PM_{2.5}$ emissions and sources of emissions of $PM_{2.5}$ precursors in the nonattainment area identified under paragraph (a)(1) of this section and not otherwise determined to contribute insignificantly to ambient $PM_{2.5}$ concentrations in the area according to § 51.1006 or to be *de minimis* according to § 51.1007.

(i) The state shall survey other NAAQS nonattainment areas in the U.S. and identify the most stringent measures adopted into any SIP for any NAAQS or used in practice to control emissions from any non-*de minimis* source categories.

(ii) The state shall reanalyze any measures previously rejected by the state during the development of any Moderate area or Serious area attainment plan control strategy for the area, unless the extension request is made at the same time as the Serious area attainment plan required after the area is reclassified in accordance with § 51.1005(b)(5).

(3) The state may make a demonstration that a measure identified under paragraph (b)(2) of this section is not technologically or economically feasible to implement in whole or in part by 5 years after the applicable attainment date for the area, and may eliminate such whole or partial measure from further consideration under this paragraph.

(i) For purposes of evaluating the technological feasibility of a potential control measure, the state may consider factors including but not limited to a source's processes and operating procedures, raw materials, physical plant layout, and potential environmental impacts such as increased water pollution, waste disposal, and energy requirements.

(ii) For purposes of evaluating the economic feasibility of a potential control measure, the state may consider capital costs, operating and maintenance costs, and cost effectiveness of the measure.

(iii) The state shall submit to EPA as part of its Serious area attainment plan submission a detailed written justification for eliminating from further consideration any potential control measure identified under paragraph (b)(2) of this section on the basis of technological or economic infeasibility. The state shall provide as part of its written justification an explanation of how its criteria for determining the technological and economic feasibility of potential control measures under paragraphs (b)(3)(i) and (ii) of this section are more stringent than its criteria for determining the technological and economic feasibility of potential control measures under paragraphs (a)(3)(i) and (ii) of this section and under § 51.1009(a)(3)(i) and (ii) for the same sources in the $PM_{2.5}$ nonattainment area.

(4) Except as provided under paragraph (b)(3) of this section, the state shall adopt and implement all control measures identified under paragraph (b)(2) of this section that may achieve greater emissions reductions from any non-*de minimis* sources of direct $PM_{2.5}$ emissions or sources of emissions of $PM_{2.5}$ precursors in the area than previously adopted measures have achieved and that shall achieve attainment as expeditiously as practicable but no later than 5 years after the applicable attainment date for the area.

(c) The state shall identify, adopt, and implement control measures, including control technologies, on sources of direct $PM_{2.5}$ emissions and sources of emissions of $PM_{2.5}$ precursors located outside the Serious $PM_{2.5}$ nonattainment area or portion thereof, located within the state if doing so will expedite attainment of the applicable $PM_{2.5}$ NAAQS within the area.

(d) For control measures on sources of direct $PM_{2.5}$ emissions in the form of source emissions limitations, the state shall establish such limitations taking into account the filterable and condensable fractions of such emissions.

§ 51.1011 Attainment demonstration and modeling requirements.

(a) *Nonattainment areas initially classified as Moderate.* The attainment demonstration due to EPA as part of any

Moderate area attainment plan required under § 51.1003(a) shall meet all of the following criteria:

(1) The attainment demonstration shall show the projected attainment date for the Moderate nonattainment area that is as expeditious as practicable in accordance with the requirements of § 51.1004(a)(1).

(2) The attainment demonstration shall meet the requirements of Appendix W of this part and shall include inventory data, modeling results, and emission reduction analyses on which the state has based its projected attainment date.

(3) The base year for the emissions inventory required for an attainment demonstration under this paragraph shall be one of the 3 years used for designations or another technically appropriate inventory year if justified by the state in the plan submission.

(4) The control strategies modeled as part of the attainment demonstration shall be consistent with the following as applicable:

(i) For a Moderate area that can demonstrate attainment of the applicable $PM_{2.5}$ NAAQS no later than the end of the sixth calendar year following the date of designation of the area with the implementation of RACM and RACT and additional reasonable measures, the control strategies modeled as part of the attainment demonstration shall be consistent with control strategy requirements under § 51.1009(a).

(ii) For a Moderate area that cannot practicably attain the applicable $PM_{2.5}$ NAAQS by the end of the sixth calendar year following the date of designation of the area with the implementation of RACM and RACT and additional reasonable measures, the control strategies modeled as part of the attainment demonstration shall be consistent with control strategy requirements under § 51.1009(b).

(5) The attainment demonstration and supporting air quality modeling should be consistent with the most current version of EPA's $PM_{2.5}$ attainment demonstration modeling guidance.

(6) Required time frame for obtaining emissions reductions. For each Moderate nonattainment area, the attainment plan must provide for implementation of all control measures needed for attainment as expeditiously as practicable. All control measures in the attainment demonstration must be implemented no later than the beginning of the year prior to the attainment date, notwithstanding RACM implementation deadline requirements in § 51.1009.

(b) *Nonattainment areas reclassified as Serious.* The attainment demonstration due to EPA as part of a Serious area attainment plan required under § 51.1003(b) shall meet all of the following criteria:

(1) The attainment demonstration shall show the projected attainment date for the Serious nonattainment area that is as expeditious as practicable in accordance with the requirements of § 51.1004(a)(2).

(2) The attainment demonstration shall meet the requirements of Appendix W of this part and shall include inventory data, modeling results, and emission reduction analyses on which the state has based its projected attainment date.

(3) The base year for the emissions inventories required for attainment demonstrations under this paragraph shall be one of the 3 years used for designations or another technically appropriate inventory year if justified by the state in the plan submission.

(4) The control strategies modeled as part of the attainment demonstration shall be consistent with the following as applicable:

(i) For a Serious area that can demonstrate attainment of the applicable $PM_{2.5}$ NAAQS no later than the end of the tenth calendar year following the date of designation of the area with the implementation of best available control measures (BACM), including best available control technologies (BACT), and additional feasible measures, the control strategies modeled as part of the attainment demonstration shall be consistent with control strategy requirements under § 51.1010(a).

(ii) For a Serious area that cannot practicably attain the applicable $PM_{2.5}$ NAAQS by the end of the tenth calendar year following the date of designation of the area with the implementation of best available control measures (BACM), including best available control technologies (BACT), and additional feasible measures, the control strategies modeled as part of the attainment demonstration shall be consistent with control strategy requirements under § 51.1010(b).

(5) The attainment demonstration and supporting air quality modeling should be consistent with the most current version of EPA's $PM_{2.5}$ attainment demonstration modeling guidance.

(6) Required timeframe for obtaining emissions reductions. For each Serious nonattainment area, the attainment plan must provide for implementation of all control measures needed for attainment as expeditiously as practicable. All control measures must be implemented no later than the beginning of the year prior to the attainment date, notwithstanding BACM implementation deadline requirements in § 51.1010.

§ 51.1012 Reasonable further progress (RFP) requirements.

(a) Consistent with CAA section 172(c)(2), the state shall submit in each attainment plan for a $PM_{2.5}$ nonattainment area a plan that demonstrates that the area will achieve, on an annual basis, reasonable further progress (RFP) in reducing emissions of direct $PM_{2.5}$ and any $PM_{2.5}$ precursors from sources in the area that the state has determined are necessary to be controlled in order for the area to attain the applicable $PM_{2.5}$ NAAQS as expeditiously as practicable. The RFP plan shall include all of the following:

(1) A description of each control measure adopted by the state to satisfy the control strategy requirements of § 51.1009 (for Moderate area attainment plans) or § 51.1010 (for Serious area attainment plans), as appropriate, and the projected reductions in direct $PM_{2.5}$ emissions and emissions of $PM_{2.5}$ precursors that each control measure will achieve by the projected attainment date for the area.

(2) A schedule for implementing the measures described in paragraph (a)(1) of this section.

(3) An analysis that demonstrates that by the end of the calendar year for each milestone date for the area determined in accordance with § 51.1013(a), emissions will be at a level that reflects generally linear progress in reducing emissions on an annual basis between the base year and the attainment year.

(b) Except as provided under paragraph (c) of this section, the RFP analysis required under paragraph (a)(3) of this section shall include, at a minimum, a benchmark RFP analysis, and may include an alternative RFP analysis, consistent with the following:

(1) The base year for the RFP emissions inventory shall be one of the 3 years used for designations or another technically appropriate inventory year if justified by the state in the plan submission.

(2) In the benchmark RFP analysis, the state must identify direct $PM_{2.5}$ emissions and $PM_{2.5}$ precursors regulated in the control strategy for the area and specify target emission reduction levels to be achieved during the milestone years. In developing the benchmark RFP analysis, the state must develop emissions inventory information for the area and calculate the following:

(i) For direct $PM_{2.5}$ emissions and each $PM_{2.5}$ precursor addressed in the control strategy, the full implementation reduction is calculated by subtracting

the full implementation inventory from the base year inventory.

(ii) The ''milestone date fraction'' is the ratio of the number of years from the base year to the milestone year divided by the number of years from the baseline year to the full implementation year.

(iii) For direct $PM_{2.5}$ emissions and each $PM_{2.5}$ attainment plan precursor addressed in the attainment strategy, a benchmark emission reduction is calculated by multiplying the full implementation reduction by the milestone date fraction.

(iv) The benchmark emission level in the milestone year is calculated for direct $PM_{2.5}$ emissions and each $PM_{2.5}$ precursor by subtracting the benchmark emission reduction from the base year emission level.

(v) In comparing inventories between the base year and future years for direct $PM_{2.5}$ emissions and emissions of $PM_{2.5}$ precursors, the inventories must be derived for sources located within the nonattainment area.

(vi) For purposes of establishing motor vehicle emissions budgets for transportation conformity purposes (as required in 40 CFR part 93) for a $PM_{2.5}$ nonattainment area, the state shall include in its RFP submittal an inventory of on-road mobile source emissions in the nonattainment area for each milestone year.

(3) The RFP analysis must demonstrate that emissions for the milestone year are either:

(i) At levels that are roughly equivalent to the benchmark emission levels for direct $PM_{2.5}$ emissions and emissions of $PM_{2.5}$ precursors addressed in the attainment plan; or

(ii) At levels included in an alternative RFP analysis that projects generally equivalent improvement in air quality by the milestone year as would be achieved under the benchmark RFP plan.

(iii) The equivalence of an alternative RFP analysis to the corresponding benchmark analysis must be determined by comparing the expected air quality changes from the two analyses at the design value monitor location. This comparison must use the information developed for the attainment plan to assess the relationship between emissions reductions of the direct $PM_{2.5}$ emissions and emissions of $PM_{2.5}$ precursors addressed in the control strategy for the area and the ambient air quality improvement.

(c) For an attainment plan submittal that demonstrates that a Moderate $PM_{2.5}$ nonattainment area cannot practicably attain the applicable $PM_{2.5}$ NAAQS by the end of the sixth calendar year following the effective date of designation of the area with the implementation of control measures as required under § 51.1009, the RFP analysis required under paragraph (a)(3) of this section shall demonstrate generally linear emissions reductions in direct $PM_{2.5}$ emissions and emissions of $PM_{2.5}$ precursors projected from the Moderate area control strategy determined according to § 51.1008 for each milestone year.

(d) For a multi-state or multi-jurisdictional nonattainment area, the RFP plans for each state represented in the nonattainment area shall demonstrate RFP on the basis of common multi-state inventories. The states or jurisdictions within which the area is located must provide a coordinated RFP plan. Each state in a multi-state nonattainment area must ensure that the sources within its boundaries comply with enforceable emission levels and other requirements that in combination with the reductions planned in other state(s) within the nonattainment area will provide for attainment as expeditiously as practicable and demonstrate RFP consistent with these regulations.

§ 51.1013 Quantitative milestone requirements.

(a) Consistent with CAA section 189(c)(1), the state must submit in each attainment plan for a $PM_{2.5}$ nonattainment area specific quantitative milestones that demonstrate reasonable further progress toward attainment of the applicable $PM_{2.5}$ NAAQS in the area and that meet the following requirements:

(1) Nonattainment areas initially classified as Moderate.

(i) For an attainment plan submittal that demonstrates that a Moderate $PM_{2.5}$ nonattainment area can attain the applicable $PM_{2.5}$ NAAQS by the end of the sixth calendar year following the date of designation of the area or earlier with the implementation of control measures as required under § 51.1009, the state shall submit quantitative milestones to be achieved no later than a milestone date of 4.5 years from the date of designation of the area.

(ii) For an attainment plan submittal that demonstrates that a Moderate $PM_{2.5}$ nonattainment area cannot practicably attain the applicable $PM_{2.5}$ NAAQS by the end of the sixth calendar year following the effective date of designation of the area with the implementation of control measures as required under § 51.1009, the state shall submit quantitative milestones to be achieved no later than milestone dates of 4.5 years and 7.5 years, respectively, from the date of designation of the area.

(iii) The state shall select quantitative milestones that coincide with the milestone due dates specified in paragraphs (a)(1)(i) and (ii) of this section, as applicable, and that provide for objective evaluation of emissions reductions and/or air quality improvements representing progress toward attainment of the applicable $PM_{2.5}$ NAAQS in the area, including, at a minimum, a milestone that all control measures identified and adopted as RACM and RACT for the area will be fully implemented within 4 years after the date of designation.

(2) Nonattainment areas reclassified to Serious.

(i) For an attainment plan submittal that demonstrates that a Serious $PM_{2.5}$ nonattainment area can attain a particular $PM_{2.5}$ NAAQS by the end of the tenth calendar year following the effective date of designation of the area with the implementation of control measures as required under § 51.1010(a), the state shall submit quantitative milestones to be achieved no later than milestone dates of 7.5 years and 10.5 years, respectively, from the date of designation of the area.

(ii) For an attainment plan submittal that demonstrates that a Serious $PM_{2.5}$ nonattainment area cannot practicably attain a particular $PM_{2.5}$ NAAQS by the end of the tenth calendar year following the date of designation of the area with the implementation of control measures required under § 51.1010(a), the state shall submit quantitative milestones to be achieved no later than milestone dates of 7.5 years, 10.5 years, and 13.5 years, respectively, from the date of designation of the area.

(iii) The state shall select quantitative milestones that coincide with the milestone due dates specified in paragraphs (a)(2)(i) and (ii) of this section, as applicable, and that provide for objective evaluation of emissions reductions and/or air quality improvements representing progress toward attainment of the applicable $PM_{2.5}$ NAAQS in the area, including, at a minimum, a milestone that all control measures identified and adopted as BACM and BACT for the area will be fully implemented within 4 years of reclassification of the area to Serious.

(3) Serious areas that fail to attain by the applicable Serious area attainment date. For an attainment plan submittal for a Serious area that failed to attain a particular $PM_{2.5}$ NAAQS by the applicable Serious area attainment date and is therefore subject to the requirements of CAA section 189(d) and § 51.1003(c), the state shall submit

quantitative milestones to be achieved no later than a milestone date of 13.5 years from the date of designation of the area and every 3 years thereafter until the projected attainment date for the area. The state shall select quantitative milestones that coincide with the milestone due dates for the area, and that provide for objective evaluation of emissions reductions and/or air quality improvements representing progress toward attainment of the applicable $PM_{2.5}$ NAAQS in the area.

(b) Not later than 90 days after the date on which a milestone applicable to a $PM_{2.5}$ nonattainment area occurs, each state in which all or part of such area is located shall submit to the Administrator a milestone report that contains all of the following:

(1) A certification by the Governor or Governor's designee that the state's attainment plan control strategy, including the RFP plan, is being implemented as described in the applicable attainment plan;

(2) A technical demonstration, including calculations, to document completion statistics for appropriate milestones and to demonstrate that the quantitative milestones have been satisfied and how the emission reductions achieved to date compare to those required or scheduled to meet RFP;

(3) An air quality screening analysis to determine if measured air quality progress is consistent with the expected air quality improvement target correlated with the RFP emissions reductions for the previous 3-year period calculated in accordance with § 51.1012;

(4) An evaluation of whether the area will attain the applicable $PM_{2.5}$ NAAQS by the projected attainment date for the area; and,

(5) A description and schedule for any remedial actions the state has taken or will take to address any failure to meet a quantitative milestone, including the implementation status of contingency measures required under § 51.1014(a)(1)(i) for failing to meet RFP.

(c) In the event a state fails to submit a milestone report that meets the requirements of paragraph (b) of this section by the due date or the Administrator determines that the state failed to meet a milestone by the milestone date, the state shall submit an attainment plan revision within 9 months of the missed due date or the Administrator's determination of the state's failure to meet a milestone that assures that the state will achieve the next milestone or attain the applicable NAAQS by the applicable date, whichever is earlier.

§ 51.1014 Contingency measure requirements.

(a) The state must include as part of each attainment plan submitted under this subpart for a $PM_{2.5}$ nonattainment area specific contingency measures that shall take effect with minimal further action by the state or EPA within 60 days of the Administrator making a determination that the area has failed to meet either of the following conditions:

(1) The area failed to meet the RFP requirements of § 51.1012 or to submit a milestone report due to EPA in accordance with § 51.1013(b); or,

(2) The area failed to attain the applicable $PM_{2.5}$ NAAQS by the applicable attainment date.

(b) The contingency measures adopted as part of a $PM_{2.5}$ attainment plan shall meet all of the following requirements:

(1) The contingency measures shall consist of control measures that are not otherwise included in the control strategy for the area.

(2) The contingency measures shall provide for emissions reductions approximately equivalent to 1 year's worth of reductions needed for RFP, based on the overall level of reductions needed to demonstrate attainment divided by the number of years from the base year to the attainment year, or approximately equivalent to 1 year's worth of air quality improvement or emissions reductions proportional to the overall amount of air quality improvement or emissions reductions to be achieved by the area's attainment plan.

(c) The attainment plan submission shall contain a description of the specific trigger mechanisms for the contingency measures and specify a schedule for implementation.

§ 51.1015 Clean data requirements.

(a) *Nonattainment areas initially classified as Moderate.* Upon a determination by EPA that a Moderate $PM_{2.5}$ nonattainment area has attained the $PM_{2.5}$ NAAQS, the requirements for the state to submit an attainment demonstration, provisions demonstrating that reasonably available control measures, including reasonably available control technology for stationary sources, shall be implemented no later than 4 years following the date of designation of the area, reasonable further progress plan, and contingency measures for the area shall be suspended until such time as:

(1) The area is redesignated to attainment, after which such requirements are permanently discharged; or,

(2) EPA determines that the area has re-violated the $PM_{2.5}$ NAAQS, at which time the state shall submit such attainment plan elements for the Moderate nonattainment area by a future date to be determined by EPA and announced through publication in the **Federal Register** at the time EPA determines the area is violating the $PM_{2.5}$ NAAQS.

(b) *Nonattainment areas reclassified as Serious.* Upon a determination by EPA that a Serious $PM_{2.5}$ nonattainment area has attained the $PM_{2.5}$ NAAQS, the requirements for the state to submit an attainment demonstration, reasonable further progress plan, and contingency measures for the area shall be suspended until such time as:

(1) The area is redesignated to attainment, after which such requirements are permanently discharged; or,

(2) EPA determines that the area has re-violated the $PM_{2.5}$ NAAQS, at which time the state shall submit such attainment plan elements for the Moderate nonattainment area by a future date to be determined by EPA and announced through publication in the **Federal Register** at the time EPA determines the area is violating the $PM_{2.5}$ NAAQS.

[ALTERNATIVE PROPOSED REGULATORY TEXT:

(b) *Nonattainment areas reclassified as Serious.* Upon a determination by EPA that a Serious $PM_{2.5}$ nonattainment area has attained the $PM_{2.5}$ NAAQS, the requirements for the state to submit an attainment demonstration, provisions demonstrating that best available control measures, including best available control technology for stationary sources, shall be implemented no later than 4 years following the date of reclassification of the area to Serious, reasonable further progress plan, and contingency measures for the area shall be suspended until such time as:

(1) The area is redesignated to attainment, after which such requirements are permanently discharged; or,

(2) EPA determines that the area has re-violated the $PM_{2.5}$ NAAQS, at which time the state shall submit such attainment plan elements for the Serious nonattainment area by a future date to be determined by EPA and announced through publication in the **Federal Register** at the time EPA determines the area is violating the $PM_{2.5}$ NAAQS.]

PART 93—DETERMINING CONFORMITY OF FEDERAL ACTIONS TO STATE OR FEDERAL IMPLEMENTATION PLANS

■ 7. The authority citation for part 93 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart B—Determining Conformity of General Federal Actions to State or Federal Implementation Plans

■ 8. In § 93.153, revise paragraphs (b)(1) and (2) to read as follows:

§ 93.153 Applicability.

* * * * *

(b) * * *

(1) For purposes of paragraph (b) of this section the following rates apply in nonattainment areas (NAA's):

	Tons/year
Ozone (VOC's or NO_X):	
Serious NAA's	50
Severe NAA's	25
Extreme NAA's	10
Other ozone NAA's outside an ozone transport region	100
Other ozone NAA's inside an ozone transport region:	
VOC	50
NO_X	100
Carbon Monoxide: All maintenance areas	100
SO_2 or NO_2: All NAA's	100
PM_{10}:	
Moderate NAA's	100
Serious NAA's	70
$PM_{2.5}$ (direct emissions, SO_2, NO_X, VOC, and ammonia):	
Moderate NAA's	100
Serious NAA's	70
Pb: All NAA's	25

(2) For purposes of paragraph (b) of this section the following rates apply in maintenance areas:

	Tons/year
Ozone (NO_X, SO_2 or NO_2):	
All maintenance areas	100
Ozone (VOC's):	
Maintenance areas inside an ozone transport region	50
Maintenance areas outside an ozone transport region	100
Carbon monoxide: All maintenance areas	100
PM_{10}: All maintenance areas	100
$PM_{2.5}$ (direct emissions, SO_2, NO_X, VOC, and ammonia)	100
All maintenance areas	100
Pb: All maintenance areas	25

* * * * *

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Part IV

Nuclear Regulatory Commission

10 CFR Parts 170 and 171
Revision of Fee Schedules; Fee Recovery for Fiscal Year 2015; Proposed Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

[NRC–2014–0200]

RIN 3150–AJ44

Revision of Fee Schedules; Fee Recovery for Fiscal Year 2015

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend the licensing, inspection, and annual fees charged to its applicants and licensees. The proposed amendments are necessary to implement the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), as amended, which requires the NRC to recover through fees approximately 90 percent of its budget authority in Fiscal Year (FY) 2015, not including amounts appropriated for Waste Incidental to Reprocessing (WIR), the Nuclear Waste Fund (NWF), generic homeland security activities, and Inspector General (IG) services for the Defense Nuclear Facilities Safety Board (DNFSB). These fees represent the cost of the NRC's services provided to applicants and licensees.

DATES: Submit comments by April 22, 2015. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received before this date. Because OBRA–90, as amended, requires that the NRC collect the FY 2015 fees by September 30, 2015, the NRC will not grant any requests for an extension of the comment period.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0200. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov*. For technical questions contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule.
- *Email comments to: Rulemaking.Comments@nrc.gov*. If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.
- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301–415–1677.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Arlette Howard, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–1481, email: *Arlette.Howard@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments
II. Background
III. Discussion
IV. Section-by-Section Analysis
V. Regulatory Flexibility Certification
VI. Regulatory Analysis
VII. Backfitting and Issue Finality
VIII. Plain Writing
IX. National Environmental Policy Act
X. Paperwork Reduction Act
Public Protection Notification
XI. Voluntary Consensus Standards
XII. Availability of Guidance
XIII. Availability of Documents

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2014–0200 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0200.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select *''ADAMS Public Documents''* and then select *''Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced. For the convenience of the reader, the ADAMS accession numbers are provided in a table in the ''Availability of Documents'' section of this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2014–0200 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS, and the NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Over the past 40 years the NRC (and earlier, as the Atomic Energy Commission, the NRC's predecessor agency) has assessed and continues to assess fees to applicants and licensees to recover the cost of its regulatory program. The NRC's cost recovery principles for fee regulation are governed by two major laws: (1) The Independent Offices Appropriations Act of 1952 (IOAA) (31 U.S.C. 483 (a)); and (2) OBRA–90 (42 U.S.C. 2214), as amended. The NRC is required each year, under OBRA–90, as amended, to recover approximately 90 percent of its budget authority, not including amounts appropriated for WIR, amounts appropriated for generic homeland security activities, and IG services for the DNFSB, through fees to the NRC licensees and applicants.

In addition to the requirements of OBRA–90, as amended, the NRC is also

required to comply with the requirements of the Small Business Regulatory Enforcement Fairness Act of 1996. This Act encourages small businesses to participate in the regulatory process, and requires agencies to develop more accessible sources of information on regulatory and reporting requirements for small businesses and create a small entity compliance guide. The NRC, in order to ensure equitable fee distribution among all licensees, develops a fee methodology specifically for small entities that consisted of a small entity definition and the Small Business Administration's most common receipts-based size standards as described under the North American Industry Classification System (NAICS) identifying industry codes. The NAICS is the standard used by Federal statistical agencies to classify business establishments for the purposes of collecting, analyzing, and publishing statistical data related to the U.S. business economy. The purpose of this fee methodology is to lessen the financial impact on small entities through the establishment of a maximum fee at a reduced rate for qualifying licensees.

For FY 2015, the NRC staff performed a biennial review using the same fee methodology developed in FY 2009 that applies a fixed percentage of 39 percent to the prior 2-year weighted average of materials users' fees. This methodology disproportionately impacted NRC's small licensees fees by increasing fees by an approximate 43 percent on average compared to other materials licensees not eligible for small entity fee status whose fees increased by 38 percent or less for FY 2015; therefore, the NRC staff limited the increase to 21 percent based on historical applications of the fee methodology. Consequently, the change resulted in a fee of $3,400 for an upper-tier small entity and $700 for a lower-tier small entity for FY 2015. The NRC staff believes these fees are reasonable and provide relief to small entities while at the same time recovering from those licensees some of the NRC's costs for activities that benefit them. The next biennial review will be conducted in FY 2017.

Additionally, this proposed rule is based on the NRC's FY 2015 Congressional Budget Justification figures with adjustments made for the current estimate. In order to ensure timely publication of this rule, adjustments have not been made for the appropriation received on December 16, 2014. All figures in the final rule will be updated based on the NRC's appropriation (an estimate has been included in this proposed rule). Because the enacted appropriation is less than the President's budget, the final rule will reflect that, overall, the NRC will collect a lower amount of fees than is reflected in this proposed rule.

III. Discussion

In compliance with OBRA–90, as amended, and the Atomic Energy Act of 1954 (AEA), the NRC proposes to amend its fee schedules for parts 170 and 171 of Title 10 of the *Code of Federal Regulations* (10 CFR) to recover approximately 90 percent of its FY 2015 budget authority, less the amounts appropriated for WIR, the NWF, generic homeland security activities, and IG services for the DNFSB. The 10 CFR part 170 user fees, under the authority of the IOAA, recover the NRC's costs of providing specific regulatory benefits to identifiable applicants and licensees. For example, the NRC assesses these fees to cover the costs of inspections, applications for new licenses and license renewals, and requests for license amendments. The 10 CFR part 171 annual fees, on the other hand, recover generic regulatory costs that are not otherwise recovered through 10 CFR part 170 fees.

FY 2015 Proposed Fee Collection

In order to allow sufficient time for the NRC to issue the FY 2015 final fee rule during FY 2015, as required by OBRA–90, the NRC is issuing the proposed fee rule based on the President's budget. The FY 2015 final fee rule will be based on the enacted budget. The enacted budget represents a $44.2 million reduction from the President's budget, which will reduce the hourly rate and the amount of annual fees the NRC is required to collect.

The FY 2015 proposed fee rule is based on the President's budget request of $1,059.5 million, modified to reflect comparability adjustments and reallocation of resources. Comparability adjustments are shifts of the same work and the associated resources within or between programs, business, or product lines. Reallocation of resources occurs when resources are used differently than originally budgeted, for reasons such as changes in agency priorities or workload changes. For example, FY 2015 resources decreased in the New Reactors and Fuel Facilities Business Lines due to projected workload decreases, while resources allocated to the Operating Reactors Business Line increased to support efforts to reduce the inventory of pending licensing actions. The 2015 proposed fee rule is based on the anticipated distribution of funds for agency needs at the time of its development. The final rule will be adjusted to reflect the NRC's FY 2015 reduced appropriation of $1,015.3 million.

Table 1.1 contains a sample of the anticipated impact of this calculation. Based on OBRA–90, as amended, the NRC is required to recover $935.3 million through 10 CFR part 170 licensing and inspections fees and 10 CFR part 171 annual fees for the FY 2015 proposed fee rule. This amount excludes non-fee items for WIR activities totaling $1.4 million, IG services for the DNFSB totaling $0.9 million, and generic homeland security activities totaling $18.1 million. The required fee recovery amount is $4.5 million more than the amount recovered in FY 2014, an increase of 0.5 percent. After accounting for billing adjustments, this amount is decreased by $9.0 million as a result of net billing adjustments (sum of unpaid current year invoices (estimated) minus payments for prior year invoices). This leaves approximately $926.2 million in FY 2015 to be billed as fees to licensees for 10 CFR part 170 licensing and inspection fees and 10 CFR part 171 annual fees. This amount represents an increase of $9.5 million in fees assessed to licensees over the FY 2014 final fee rule published on June 30, 2014 (79 FR 37124).

Table I summarizes the proposed budget and fee recovery amounts for the FY 2015 proposed fee rule. The FY 2014 amounts are provided for comparison purposes. (Individual values may not sum to totals due to rounding.)

TABLE I—BUDGET AND FEE RECOVERY AMOUNTS

[Dollars in millions]

	FY 2014 Final rule	FY 2015 Proposed rule	Estimated FY 2015 final
Total Budget Authority	$1,055.9	$1,059.5	$1,015.3
Less Non-Fee Items	*−21.8*	*−20.3*	*−$20.3*
Balance	$1,034.1	$1,039.2	$995.0
Fee Recovery Rate	*90%*	*90%*	*90%*
Total Amount to be Recovered:	$930.7	$935.3	$895.5
10 CFR Part 171 Billing Adjustments:			
Unpaid Current Year Invoices (estimated)	0.5	0.6	0.6
Less Current Year from Collections (Terminated—Operating Reactors)	−2.2	0	0
Less Payments Received in Current Year for Previous Year Invoices (estimated)	*−12.3*	*−9.6*	*−9.6*
Subtotal	−14.0	−9.0	−9.0
Amount to be Recovered through 10 CFR Parts 170 and 171 Fees	$916.7	$926.2	$886.5
Less Estimated 10 CFR Part 170 Fees	*−332.5*	*−324.3*	*−$324.3*
Less Prior Year Unbilled 10 CFR Part 170 Fees	*−0*	*−0*	*−0*
10 CFR Part 171 Fee Collections Required	$584.2	$601.9	$562.2

TABLE I.I—ESTIMATED FINAL FY 2015 FEES

Class/Category of licenses	FY 2014 Final	FY 2015 Proposed	Percent change from FY 2014	Estimated FY 2015 final	Percent change from FY 2014	Percent change from FY 2015 proposed
Operating Power Reactors	$4,999,000	$5,087,000	1.8	$4,750,000	−5.0	−6.6
Spent Fuel Storage/Reactor Decommissioning	224,000	237,000	5.8	234,000	4.5	−1.3
Research and Test Reactors (Nonpower Reactors)	84,500	88,500	4.7	84,700	0.2	−4.3
High Enriched Uranium Fuel Facility	7,175,000	9,424,000	31.3	8,198,000	14.3	−13.0
Low Enriched Uranium Fuel Facility	2,469,000	3,243,000	31.3	2,821,000	14.3	−13.0
UF_6 Conversion and Deconversion Facility	1,466,000	1,925,000	31.3	1,675,000	14.3	−13.0
Conventional Mills	33,800	40,700	20.4	35,300	4.4	−13.3
Typical Materials Users:						
Radiographers (Category 3O)	29,800	26,900	−9.7	25,700	−13.8	−4.5
Well Loggers (Category 5A)	13,600	14,900	9.6	14,300	5.1	−4.0
Gauge Users (Category 3P)	6,800	8,200	20.6	7,900	16.2	−3.7
Broad Scope Medical (Category 7B)	35,700	38,500	7.8	37,300	4.5	−3.1

Hourly Rate

The NRC's hourly rate is used in assessing full cost fees, or the total cost of services provided by the NRC, for specific services provided, as well as flat fees for certain application reviews. The NRC is proposing to decrease the current hourly rate of $279 to $277 in FY 2015 (with an estimated $268 hourly rate in the final rule). The hourly rate decrease is due to the increase in estimated direct hours worked per mission-direct FTE during the year. The hourly rate is inversely related to the mission-direct FTE rate. Thus, as the FTE rate increases, the hourly rate decreases. This rate would be applicable to all activities for which fees are assessed under §§ 170.21 and 170.31. The FY 2015 proposed hourly rate is 0.07 percent lower than the FY 2014 hourly rate of $279.

The NRC's hourly rate is derived by dividing the sum of recoverable budgeted resources for: (1) Mission-direct program salaries and benefits; (2) mission-indirect program support; and (3) agency office support and the IG, all of which are agency overhead or indirect costs by mission-direct FTE hours. The mission-direct FTE hours are the product of the mission-direct FTE multiplied by the hours per direct FTE. The only budgeted resources excluded from the hourly rate are those for contract activities related to mission-direct and fee-relief activities.

In FY 2015, the NRC used 1,420 hours per direct FTE to calculate the hourly fee rate, which is higher than the FY 2014 estimate of 1,375 hours per direct FTE and represents increased productivity. These hours exclude all indirect activities such as training and general administration. The staff used 1,420 hours in the FY 2015 budget formulation cycle (which began in March 2013). The NRC generated this figure by reviewing and analyzing the most currently available time and labor data from FY 2010 through FY 2012 to determine if the direct hours per FTE for FY 2015 budget formulation should be revised.

Table II shows the results of the hourly rate calculation methodology. The FY 2014 amounts are provided for comparison purposes. (Individual values may not sum to totals due to rounding.)

TABLE II—HOURLY RATE CALCULATION

	FY 2014 Final rule	FY 2015 Proposed rule	Estimated FY 2015 final
Mission-Direct Program Salaries & Benefits	$359.2	$368.4	$365.6
Mission-Indirect Program Support	$21.0	$67.8	$67.8
Agency Corporate Support, and the IG	*$486.0*	*$455.6*	*$422.3*
Subtotal	$866.2	$891.8	$855.7
Less Offsetting Receipts	*− $0.0*	*− $0.0*	*$.04*
Total Budget Included in Hourly Rate (Millions of Dollars)	$866.2	$891.7	$855.6
Mission-Direct FTE (Whole numbers)	2,254	2,267	2,249
Professional Hourly Rate (Total Budget Included in Hourly Rate divided by Mission-Direct FTE Hours) (Whole Numbers)	$279	$277	$268

As shown in Table II, dividing the FY 2015 $891.7 million budget amount included in the hourly rate by total mission-direct FTE hours (2,267 FTE times 1,420 hours) results in an hourly rate of $277. The hourly rate is rounded to the nearest whole dollar.

Flat Application Fee Changes

The NRC is proposing to amend the current flat application fees in §§ 170.21 and 170.31 to reflect the revised hourly rate of $277. These flat fees are calculated by multiplying the average professional staff hours needed to process the licensing actions by the proposed professional hourly rate for FY 2015. The agency estimates the average professional staff hours needed to process licensing actions every other year as part of its biennial review of fees performed in compliance with the Chief Financial Officers Act of 1990. The NRC performed this review as part of this FY 2015 proposed fee rulemaking. The lower hourly rate of $277 is the primary reason for the decrease in application fees.

In general, the increase in application fees is due to the increased number of hours required to perform specific activities based on the biennial review. Application fees for 11 fee categories (2.D., 3.C., 3.H., 3.M., 3.P., 3.R.2., 3.S., 4.B., 5.A., 7.A., and 7.C. under § 170.31) increase as a result of the average time to process these types of license applications. The decrease in fees for 7 fee categories (2.C., 2.E., 2.F., 3.B., 3.I., 3.N., and 3.O. under § 170.31) is due to a decrease in average time to process these types of applications. Also, the application fees increase for 3 import and export fee categories (K.4., K.5., and 15.D. under § 170.31) and decrease for 4 import and export fee categories (15.G., 15.H., 15.K., and 15.L. under § 170.31).

The amounts of the materials licensing flat fees are rounded so that the fees would be convenient to the user and the effects of rounding would be minimal. Fees under $1,000 are rounded to the nearest $10, fees that are greater than $1,000 but less than $100,000 are rounded to the nearest $100, and fees that are greater than $100,000 are rounded to the nearest $1,000.

The proposed licensing flat fees are applicable for fee categories K.1. through K.5. of § 170.21, and fee categories 1.C. through 1.D., 2.B. through 2.F., 3.A. through 3.S., 4.B. through 9.D., 10.B., 15.A. through 15.L., 15.R., and 16 of § 170.31. Applications filed on or after the effective date of the FY 2015 final fee rule would be subject to the revised fees in the final rule.

Application of Fee-Relief and Low-Level Waste (LLW) Surcharge

The NRC proposes to credit a total of $10.6 million to licensees' annual fees for both fee-relief activities and LLW surcharge based on their share of the fee recoverable budget authority. For this rulemaking, the NRC also proposes to establish rebaselined annual fees by changing the number of licensees in accordance with SECY–05–0164, ''Annual Fee Calculation Method,'' September 15, 2005 (ADAMS Accession No. ML052580332). The rebaselining method analyzes the budget in detail and allocates the budgeted costs to various classes or subclasses of licensees. Stated otherwise, rebaselining is the annual reallocation of NRC resources based on changes in the NRC's budget. The NRC established the rebaselined methodology for calculating annual fees through notice and comment rulemaking in the FY 1999 fee rule (64 FR 31448; June 10, 1999), determining that base annual fees will be re-established (rebaselined) every third year, or more frequently if there is a substantial change in the total NRC budget or in the magnitude of the budget allocated to a specific class of licenses. The FY 2014 fee rulemaking used this same rebaselining methodology.

Moreover, the NRC would use its fee-relief surplus to decrease all licensees' annual fees, based on their percentage share of the budget. The NRC would apply the 10 percent of its budget that is excluded from fee recovery under OBRA–90, as amended (fee relief), to offset the total budget allocated for activities that do not directly benefit current NRC licensees. The budget for these fee-relief activities is totaled and then reduced by the amount of the NRC's fee relief. Any difference between the fee-relief and the budgeted amount of these activities results in a fee-relief adjustment (increase or decrease) to all licensees' annual fees, based on their percentage share of the budget, which is consistent with the existing fee methodology.

In the Staff Requirements Memorandum for SECY–14–0082, ''Jurisdiction for Military Radium and U.S. Nuclear Regulatory Commission Oversight of U.S. Department of Defense Remediation of Radioactive Material'' (ADAMS Accession No. ML14356A070), the Commission approved the staff's recommendation to finalize and implement a Memorandum of Understanding (MOU) with the U.S. Department of Defense (DOD) for remediation of DOD unlicensed sites containing radioactive materials subject to the NRC's regulatory authority. The MOU is slated to be finalized in FY 2015. As part of this effort, the Commission approved the establishment of a new fee relief category for the regulatory activities for the monitoring of DOD unlicensed sites under the MOU. Consistent with this direction, the NRC proposes to include a new activity under fee relief activities, within 10 CFR part 170 licensing and inspection fees or 10 CFR part 171 annual fees. These program activities capture site-specific oversight activities performed under the MOU and any ongoing non-site specific MOU-related program activities. These activities will

therefore be funded by the agency's 10-percent appropriation.

In comparison to FY 2014, resources for Scholarships and Fellowships decreased by $14.8 million in the FY 2015 President's budget. The $15 million requirement for University Grants will be allocated consistent with the FY 2015 appropriation in the FY 2015 final fee rule. Additionally, the budgetary resources in FY 2015 would slightly increase due to a reduction in decommissioning billings under 10 CFR part 170, which would lower the offset under decommissioning activities for total fee-relief resources.

Table III summarizes the fee-relief activities for FY 2015. The FY 2014 amounts are provided for comparison purposes. (Individual values may not sum to totals due to rounding.)

TABLE III—FEE-RELIEF ACTIVITIES

[Dollars in millions]

Fee-relief activities	FY 2014 Budgeted costs	FY 2015 Budgeted costs
1. Activities not attributable to an existing NRC licensee or class of licensee:		
a. International activities	$11.2	$10.0
b. Agreement State oversight	12.6	12.4
c. Scholarships and Fellowships	18.9	4.1
d. Medical Isotope Production	3.1	5.0
2. Activities not assessed under 10 CFR part 170 licensing and inspection fees or 10 CFR part 171 annual fees based on existing law or Commission policy:		
a. Fee exemption for nonprofit educational institutions	11.9	10.6
b. Costs not recovered from small entities under 10 CFR 71.16(c)	8.4	9.2
c. Regulatory support to Agreement States	17.9	19.0
d. Generic decommissioning/reclamation (not related to the power reactor and spent fuel storage fee classes)	17.1	17.7
e. *In Situ* leach rulemaking and unregistered general licensees	*1.0*	*1.3*
f. Potential Department of Defense remediation program MOU activities	0.0	0.0
Total fee-relief activities	102.1	89.3
Less 10 percent of the NRC's total FY budget (less non-fee items)	*−103.4*	*103.9*
Fee-Relief Adjustment to be Allocated to All Licensees' Annual Fees	−1.3	−14.6

Table IV shows how the NRC would allocate the $14.6 million fee-relief assessment adjustment to each license fee class. As explained previously, the NRC would allocate this fee-relief adjustment to each license fee class based on their percentage of the budget for their fee class compared to the NRC's total budget. The fee-relief surplus adjustment is subtracted from the required annual fee recovery for each fee class.

Separately, the NRC has continued to allocate the LLW surcharge based on the volume of LLW disposal of three classes of licenses: operating reactors, fuel facilities, and materials users. Because LLW activities support NRC licensees and Agreement States, the costs of these activities are recovered through annual fees.

Table IV also shows the allocation of the LLW surcharge activity. For FY 2015, the total budget allocated for LLW activity is $4 million. (Individual values may not sum to totals due to rounding.)

TABLE IV—ALLOCATION OF FEE–RELIEF ADJUSTMENT AND LLW SURCHARGE, FY 2015

[Dollars in millions]

	LLW Surcharge		Fee-relief adjustment		Total
	Percent	$	Percent	$	$
Operating Power Reactors	32	1.3	86.0	−12.6	−11.3
Spent Fuel Storage/Reactor Decommissioning	0	0	3.7	−0.5	−0.5
Research and Test Reactors	0	0	0.3	0.0	0.0
Fuel Facilities	54	2.2	5.2	−0.8	1.4
Materials Users	14	0.6	3.1	−0.5	0.1
Transportation	0	0	0.5	−0.1	−0.1
Rare Earth Facilities	0	0	0.0	0.0	0.0
Uranium Recovery	0	0	1.2	−0.2	−0.2
Total	100	4.0	100	−14.6	−10.6

Revised Annual Fees

The NRC is required to establish rebaselined annual fees, which includes updating the number of NRC licensees in the FY 2015 fee calculations. Therefore, the NRC proposes to revise its annual fees in §§ 171.15 and 171.16 for FY 2015 to recover approximately 90 percent of the NRC's FY 2015 budget authority, less non-fee amounts and the estimated amount to be recovered through 10 CFR part 170 fees. The total estimated 10 CFR part 170 collections for this proposed rule total are $324.3 million, a decrease of $8.3 million from the FY 2014 fee rule, primarily within the fuel facilities and spent fuel storage fee classes. These decreases are later explained in detail within each fee class. The total amount to be recovered through annual fees from current licensees for this proposed rule is $601.9 million, an increase of $17.8

million from the FY 2014 final rule. The FY 2015 Final Fee Rule will reflect an estimated annual fee collection of $562.2 million. The required annual fee collection in FY 2014 was $584.2 million.

In the agency's FY 2006 final fee rule (71 FR 30721; May 30, 2006), the Commission determined that the agency should proceed with a presumption in favor of rebaselining when calculating annual fees each year. Rebaselining involves a detailed analysis of the NRC's budget, with the NRC allocating budgeted resources to fee classes and categories of licensees. The Commission expects that for most years there will be budgetary and other changes that warrant the use of the rebaselining method.

For FY 2015, the NRC's total fee recoverable budget, as mandated by law, is $935.3 million, an increase of $4.5 million compared to FY 2014. The FY 2015 budget was allocated to the appropriate fee class based on budgeted activities. As compared with the FY 2014 annual fees, the FY 2015 rebaselined fees increase for most fee classes—operating reactors, spent fuel storage and reactor decommissioning, fuel facilities, research and test reactors, some materials users, DOE transportation activities, and most uranium recovery licensees.

The factors affecting all annual fees include the distribution of budgeted costs to the different classes of licenses (based on the specific activities the NRC will perform in FY 2015), the estimated 10 CFR part 170 collections for the various classes of licenses, and allocation of the fee-relief surplus adjustment to all fee classes. The percentage of the NRC's budget not subject to fee recovery remains at 10 percent for FY 2015, the same as FY 2014.

Table V shows the rebaselined fees for FY 2015 for a representative list of categories of licensees. The FY 2014 amounts are provided for comparison purposes. (Individual values may not sum to totals due to rounding.)

TABLE V—REBASELINED ANNUAL FEES

Class/category of licenses	FY 2014 Final annual fee	FY 2015 Proposed annual fee	Estimated FY 2015 final fee
Operating Power Reactors	$4,999,000	$5,087,000	$4,750,000
+ Spent Fuel Storage/Reactor Decommissioning	224,000	237,000	234,000
Total, Combined Fee	5,223,000	5,324,000	4,984,000
Spent Fuel Storage/Reactor Decommissioning	224,000	237,000	234,000
Research and Test Reactors (Nonpower Reactors)	84,500	88,500	84,700
High Enriched Uranium Fuel Facility	7,175,000	9,424,000	8,198,000
Low Enriched Uranium Fuel Facility	2,469,000	3,243,000	2,821,000
UF_6 Conversion and Deconversion Facility	1,466,000	1,925,000	1,675,000
Conventional Mills	33,800	40,700	35,300
Typical Materials Users:			
Radiographers (Category 3O)	29,800	26,900	25,700
Well Loggers (Category 5A)	13,600	14,900	14,300
Gauge Users (Category 3P)	6,800	8,200	7,900
Broad Scope Medical (Category 7B)	35,700	38,500	37,300

The work papers (ADAMS Accession No. ML15021A198) that support this proposed rule show in detail the allocation of the NRC's budgeted resources for each class of licenses and how the fees are calculated. The work papers are available as indicated in Section XIII, ''Availability of Documents,'' of this document.

Paragraphs a. through h. of this section describe budgetary resources allocated to each class of licenses and the calculations of the rebaselined fees. Individual values in the tables presented in this section may not sum to totals due to rounding.

a. Fuel Facilities

The FY 2015 budgeted costs to be recovered in the annual fees assessment to the fuel facility class of licenses (which includes licensees in fee categories 1.A.(1)(a), 1.A.(1)(b), 1.A.(2)(a), 1.A.(2)(b), 1.A.(2)(c), 1.E., and 2.A.(1) under § 171.16) are approximately $38.6 million. This value is based on the full cost of budgeted resources associated with all activities that support this fee class, which is reduced by estimated 10 CFR part 170 collections and adjusted for allocated generic transportation resources and fee-relief. In FY 2015, the LLW surcharge for fuel facilities is added to the allocated fee-relief adjustment (see Table IV, ''Application of Fee-Relief Adjustment and LLW Surcharge, FY 2015,'' in Section II, ''Discussion,'' of this document). The summary calculations used to derive this value are presented in Table VI for FY 2015, with FY 2014 values shown for comparison. (Individual values may not sum to totals due to rounding.)

TABLE VI—ANNUAL FEE SUMMARY CALCULATIONS FOR FUEL FACILITIES

[Dollars in millions]

Summary fee calculations	FY 2014 Final	FY 2015 Proposed
Total budgeted resources	$47.2	$48.2
Less estimated 10 CFR part 170 receipts	−16.7	−11.3
Net 10 CFR part 171 resources	30.5	36.9
Allocated generic transportation	0.6	0.8
Fee-relief adjustment/LLW surcharge	1.1	1.4
Billing adjustments	*−0.6*	*−0.05*

TABLE VI—ANNUAL FEE SUMMARY CALCULATIONS FOR FUEL FACILITIES—Continued

[Dollars in millions]

Summary fee calculations	FY 2014 Final	FY 2015 Proposed
Reclassification of licensee current year fee billing received:	*−2.2*	*0*
Total remaining required annual fee recovery	29.5	38.6

In FY 2015, the fuel facilities annual fee increased in part due to a slight rise in budgetary resources. The primary cause for the FY 2015 increase was reduced 10 CFR part 170 billings from construction delays. The NRC allocates the total remaining annual fee recovery amount to the individual fuel facility licensees, based on the effort/fee determination matrix developed for the FY 1999 final fee rule (64 FR 31447; June 10, 1999). In the matrix included in the publicly-available NRC work papers, licensees are grouped into categories according to their licensed activities (*i.e.,* nuclear material enrichment, processing operations, and material form) and the level, scope, depth of coverage, and rigor of generic regulatory programmatic effort applicable to each category from a safety and safeguards perspective. This methodology can be applied to determine fees for new licensees, current licensees, licensees in unique license situations, and certificate holders.

This methodology is adaptable to changes in the number of licensees or certificate holders, licensed or certified material and/or activities, and total programmatic resources to be recovered through annual fees. When a license or certificate is modified, it may result in a change of category for a particular fuel facility licensee, as a result of the methodology used in the fuel facility effort/fee matrix. Consequently, this change may also have an effect on the fees assessed to other fuel facility licensees and certificate holders. For example, if a fuel facility licensee amends its license/certificate to reflect cessation of licensed activities (*e.g.,* decommissioning or license termination), then that licensee will not be subject to 10 CFR part 171 costs applicable to the fee class, and the budgeted generic costs for the safety and/or safeguards components that continue to be associated with the license will have to be spread among the remaining fuel facility licensees/certificate holders.

The methodology is applied as follows. First, a fee category is assigned, based on the nuclear material possessed or used, and/or the activity or activities authorized by license or certificate. Although a licensee/certificate holder may elect not to fully use a license/certificate, the license/certificate is still used as the source for determining authorized nuclear material possession and use/activity. Second, the category and license/certificate information are used to determine where the licensee/certificate holder fits into the matrix. The matrix depicts the categorization of licensees/certificate holders by authorized material types and use/activities.

Each year, the NRC's fuel facility project managers and regulatory analysts determine the level of effort associated with regulating each of these facilities. This is done by assigning, for each fuel facility, separate effort factors for the safety and safeguards activities associated with each type of regulatory activity. The matrix includes 10 types of regulatory activities, including enrichment and scrap/waste-related activities (see the work papers for the complete list). Effort factors are assigned as follows: 1 (low regulatory effort), 5 (moderate regulatory effort), and 10 (high regulatory effort). The NRC then totals separate effort factors for safety and safeguards activities for each fee category.

The effort factors for the various fuel facility fee categories are summarized in Table VII. The value of the effort factors shown, as well as the percent of the total effort factor for all fuel facilities, reflects the total regulatory effort for each fee category (not per facility). This results in spreading of costs to other fee categories.

TABLE VII—EFFORT FACTORS FOR FUEL FACILITIES, FY 2015

Facility type (fee category)	Number of facilities	Effort factors (percent of total)	
		Safety	Safeguards
High-Enriched Uranium Fuel (1.A.(1)(a))	2	89 (43.8)	97 (54.5)
Low-Enriched Uranium Fuel (1.A.(1)(b))	3	70 (34.5)	26 (14.6)
Limited Operations (1.A.(2)(a))	1	2 (1.0)	7 (3.9)
Gas Centrifuge Enrichment Demonstration (1.A.(2)(b))	1	3 (1.5)	15 (8.4)
Hot Cell (1.A.(2)(c))	1	6 (3.0)	3 (1.7)
Uranium Enrichment (1.E.)	1	21 (10.3)	23 (12.9)
UF_6 Conversion and Deconversion (2.A.(1))	1	12 (5.9)	7 (3.9)

For FY 2015, the total budgeted resources for safety activities are $19.8 million, excluding the fee-relief adjustment and the reclassification adjustment. This amount is allocated to each fee category based on its percent of the total regulatory effort for safety activities. For example, if the total effort factor for safety activities for all fuel facilities is 100, and the total effort factor for safety activities for a given fee category is 10, that fee category will be allocated 10 percent of the total budgeted resources for safety activities. Similarly, the budgeted resources amount of $17.4 million for safeguards activities is allocated to each fee category based on its percent of the total regulatory effort for safeguards activities. The fuel facility fee class' portion of the fee-relief adjustment, $1.4 million, is allocated to each fee category based on its percent of the total regulatory effort for both safety and

safeguards activities. The annual fee per licensee is then calculated by dividing the total allocated budgeted resources for the fee category by the number of licensees in that fee category. The fee (rounded) for each facility is summarized in Table VIII.

TABLE VIII—ANNUAL FEES FOR FUEL FACILITIES

Facility type (fee category)	FY 2015 Proposed annual fee
High-Enriched Uranium Fuel (1.A.(1)(a))	$9,424,000
Low-Enriched Uranium Fuel (1.A.(1)(b))	3,243,000
Limited Operations (1.A(2)(a))	912,000
Gas Centrifuge Enrichment Demonstration (1.A.(2)(b))	1,824,000
Hot Cell (and others) (1.A.(2)(c))	912,000
Uranium Enrichment (1.E.)	4,459,000
UF_6 Conversion and Deconversion (2.A.(1))	1,925,000

b. Uranium Recovery Facilities

The total FY 2015 budgeted costs to be recovered through annual fees assessed to the uranium recovery class (which includes licensees in fee categories 2.A.(2)(a), 2.A.(2)(b), 2.A.(2)(c), 2.A.(2)(d), 2.A.(2)(e), 2.A.(3), 2.A.(4), 2.A.(5), and 18.B. under § 171.16) are approximately $1.2 million. The derivation of this value is shown in Table IX, with FY 2014 values shown for comparison purposes.

TABLE IX—ANNUAL FEE SUMMARY CALCULATIONS FOR URANIUM RECOVERY FACILITIES

[Dollars in millions]

Summary fee calculations	FY 2014 Final	FY 2015 Proposed
Total budgeted resources	$10.9	$11.6
Less estimated 10 CFR part 170 receipts	*−9.5*	*−10.1*
Net 10 CFR part 171 resources	1.3	1.5
Allocated generic transportation	N/A	N/A
Fee-relief adjustment	−0.0	−0.2
Billing adjustments	*−0.1*	*−0.1*
Total required annual fee recovery	1.2	1.2

In comparison to FY 2014, the proposed FY 2015 budgetary resources for uranium recovery licensees increased due to greater resources required for environmental reviews of uranium mining applications and tribal consultations with uranium recovery licensing actions. Specifically, staff worked to expedite environmental reviews for uranium mining applications by improving the National Historic Preservation Act Section 106 Tribal Consultation process to accelerate NRC consideration of uranium mining applications.

Since FY 2002, the NRC has computed the annual fee for the uranium recovery fee class by allocating the total annual fee amount for this fee class between the DOE and the other licensees in this fee class. The NRC regulates DOE's Title I and Title II activities under the Uranium Mill Tailings Radiation Control Act (UMTRCA). The Congress established the two programs, Title I and Title II, under UMTRCA to protect the public and the environment from uranium milling. The UMTRCA Title I program is for remedial action at abandoned mill tailings sites where tailings resulted largely from production of uranium for the weapons program. The NRC also regulates DOE's UMTRCA Title II program, which is directed toward uranium mill sites licensed by the NRC or Agreement States in or after 1978.

In FY 2015, the annual fee assessed to DOE includes recovery of the costs specifically budgeted for the NRC's UMTRCA Title I and II activities, plus 10 percent of the remaining annual fee amount, including generic/other costs (minus 10 percent of the fee-relief adjustment), for the uranium recovery class. The NRC assesses the remaining 90 percent generic/other costs minus 90 percent of the fee-relief adjustment, to the other NRC licensees in this fee class that are subject to annual fees.

The costs to be recovered through annual fees assessed to the uranium recovery class are shown in Table X.

TABLE X—COSTS RECOVERED THROUGH ANNUAL FEES; URANIUM RECOVERY FEE CLASS

Summary of costs	FY 2015 Proposed annual fee
DOE Annual Fee Amount (UMTRCA Title I and Title II) General Licenses:	$593,233
UMTRCA Title I and Title II budgeted costs less 10 CFR part 170 receipts.	
10 percent of generic/other uranium recovery budgeted costs	78,076
10 percent of uranium recovery fee-relief adjustment	−17,954
Total Annual Fee Amount for DOE (rounded)	653,000
Annual Fee Amount for Other Uranium Recovery Licenses:	702,680
90 percent of generic/other uranium recovery budgeted costs less the amounts specifically budgeted for Title I and Title II activities.	
90 percent of uranium recovery fee-relief adjustment	−161,582
Total Annual Fee Amount for Other Uranium Recovery Licenses	541,098

The NRC will continue to use a matrix, which is included in the work papers, to determine the level of effort associated with conducting the generic regulatory actions for the different (non-DOE) licensees in this fee class. The weights derived in this matrix are used to allocate the approximately $541,098 annual fee amount to these licensees. The use of this uranium recovery annual fee matrix was established in the FY 1995 final fee rule (60 FR 32217; June 20, 1995). The FY 2015 matrix is described as follows.

First, the methodology identifies the categories of licenses included in this fee class (besides DOE). These categories are: Conventional uranium mills and heap leach facilities; uranium *In Situ* Recovery (ISR) and resin ISR facilities, and mill tailings disposal facilities, as defined in Section 11e.(2) of the AEA (11e.(2) disposal facilities); and uranium water treatment facilities.

Second, the matrix identifies the types of operating activities that support and benefit these licensees. The activities related to generic decommissioning/reclamation are not included in the matrix because they are included in the fee-relief activities. Therefore, they are not a factor in determining annual fees. The activities included in the matrix are operations, waste operations, and groundwater protection. The relative weight of each type of activity is then determined, based on the regulatory resources associated with each activity. The operations, waste operations, and groundwater protection activities have weights of 0, 5, and 10, respectively, in the matrix.

Each year, the NRC determines the level of benefit to each licensee for generic uranium recovery program activities for each type of generic activity in the matrix. This is done by assigning, for each fee category, separate benefit factors for each type of regulatory activity in the matrix. Benefit factors are assigned on a scale of 0 to 10 as follows: 0 (no regulatory benefit), 5 (moderate regulatory benefit), and 10 (high regulatory benefit). These benefit factors are first multiplied by the relative weight assigned to each activity (described previously). The NRC then calculates total and per licensee benefit factors for each fee category. Therefore, these benefit factors reflect the relative regulatory benefit associated with each licensee and fee category.

Table XI displays the benefit factors per licensee and per fee category, for each of the non-DOE fee categories included in the uranium recovery fee class as follows:

TABLE XI—BENEFIT FACTORS FOR URANIUM RECOVERY LICENSES

Fee category	Number of licensees	Benefit factor per licensee	Total value	Benefit factor percent total
Conventional and Heap Leach mills (2.A.(2)(a))	1	150	150	9
Basic *In Situ* Recovery facilities (2.A.(2)(b))	8	190	1,520	76
Expanded *In Situ* Recovery facilities (2.A.(2)(c))	1	215	215	11
11e.(2) disposal incidental to existing tailings sites (2.A.(4))	1	85	85	4
Uranium water treatment (2.A.(5))	1	25	25	1
Total	12	665	1,995	100

Applying these factors to the approximately $541,098 in budgeted costs to be recovered from non-DOE uranium recovery licensees results in the total annual fees for each fee category. The annual fee per licensee is calculated by dividing the total allocated budgeted resources for the fee category by the number of licensees in that fee category, as summarized in Table XII.

TABLE XII—ANNUAL FEES FOR URANIUM RECOVERY LICENSEES

[Other than DOE]

Facility type (fee category)	FY 2015 proposed annual fee
Conventional and Heap Leach mills (2.A.(2)(a))	$40,700
Basic *In Situ* Recovery facilities (2.A.(2)(b))	51,500
Expanded *In Situ* Recovery facilities (2.A.(2)(c))	58,300
11e.(2) disposal incidental to existing tailings sites (2.A.(4))	23,100
Uranium water treatment (2.A.(5))	6,800

c. Operating Power Reactors

The total budgeted costs to be recovered from the power reactor fee class in FY 2015 in the form of annual fees is $503.6 million, as shown in Table XIII. The FY 2014 values are shown for comparison. (Individual values may not sum to totals due to rounding.)

TABLE XIII—ANNUAL FEE SUMMARY CALCULATIONS FOR OPERATING POWER REACTORS

[Dollars in millions]

Summary fee calculations	FY 2014 Final	FY 2015 Proposed
Total budgeted resources	$799.3	$809.5
Less estimated 10 CFR part 170 receipts	*−290.9*	*−288.5*
Net 10 CFR part 171 resources	508.4	521.0
Allocated generic transportation	1.1	1.7
Fee-relief adjustment/LLW surcharge	0.6	−11.3

TABLE XIII—ANNUAL FEE SUMMARY CALCULATIONS FOR OPERATING POWER REACTORS—Continued

[Dollars in millions]

Summary fee calculations	FY 2014 Final	FY 2015 Proposed
Billing adjustment	*– 10.2*	*– 7.8*
Total required annual fee recovery	499.9	503.6

The operating power reactor annual fee increase is partially the result of a slight rise in budgetary resources in the FY 2015 President's budget, partially the result of a $2 million 10 CFR part 170 reduction in estimated billings, and partially the result of the December 2014 shutdown of Vermont Yankee. The permanent shutdown of the Vermont Yankee reactor decreases the fleet of operating reactors, which subsequently increases the annual fees for the rest of the fleet. As noted earlier, when the final fee rule incorporates the reduction included in the FY 2015 appropriations, this operating power reactor annual fee will decrease.

The budgeted costs to be recovered through annual fees to power reactors are divided equally among the 99 power reactors licensed to operate, resulting in an FY 2015 annual fee of $5,087,000 per reactor. Additionally, each power reactor licensed to operate would be assessed the FY 2015 spent fuel storage/reactor decommissioning annual fee of $237,000. The total FY 2015 annual fee is $5,324,000 for each power reactor licensed to operate. The annual fees for power reactors are presented in § 171.15.

d. Spent Fuel Storage/Reactors in Decommissioning

For FY 2015, budgeted costs of $28.9 million for spent fuel storage/reactor decommissioning would be recovered through annual fees assessed to 10 CFR part 50 power reactors and to 10 CFR part 72 licensees who do not hold a 10 CFR part 50 license. Those reactor licensees that have ceased operations and have no fuel onsite would not be subject to these annual fees.

The increased annual fee is due to an increase in budgetary resources for rulemaking, a decrease in 10 CFR part 170 billings, and a decrease in the number of licensees. Staff has dedicated significant time working on improvements to 10 CFR part 71 to ensure compatibility with International Atomic Energy Agency (IAEA) transportation and storage standards—this generic rulemaking activity must be recovered through 10 CFR part 171 fees. Furthermore, the estimated 10 CFR part 170 fees decreased because staff finalized major reviews in 2014. Table XIV shows the calculation of this annual fee amount. The FY 2014 values are shown for comparison. (Individual values may not sum to totals due to rounding.)

TABLE XIV—ANNUAL FEE SUMMARY CALCULATIONS FOR THE SPENT FUEL STORAGE/REACTOR IN DECOMMISSIONING FEE CLASS

[Dollars in millions]

Summary fee calculations	FY 2014 Final	FY 2015 Proposed
Total budgeted resources	$32.7	$33.4
Less estimated 10 CFR part 170 receipts	*– 5.4*	*– 4.6*
Net 10 CFR part 171 resources	27.3	28.8
Allocated generic transportation	0.6	1.0
Fee-relief adjustment	0.0	– 0.5
Billing adjustments	*– 0.4*	*– 0.3*
Total required annual fee recovery	27.5	28.9

The required annual fee recovery amount is divided equally among 122 licensees, resulting in an FY 2015 annual fee of $237,000 per licensee.

e. Research and Test Reactors (Non-Power Reactors)

Approximately $350,000 in budgeted costs would be recovered through annual fees assessed to the research and test reactor class of licenses for FY 2015. Table XV summarizes the annual fee calculation for the research and test reactors for FY 2015. The FY 2014 values are shown for comparison. (Individual values may not sum to totals due to rounding.)

TABLE XV—ANNUAL FEE SUMMARY CALCULATIONS FOR RESEARCH AND TEST REACTORS

[Dollars in millions]

Summary fee calculations	FY 2014 Final	FY 2015 Proposed
Total budgeted resources	$2.63	$2.57
Less estimated 10 CFR part 170 receipts	*– 2.28*	*– 2.18*
Net 10 CFR part 171 resources	0.35	0.39
Allocated generic transportation	0.03	0.03

TABLE XV—ANNUAL FEE SUMMARY CALCULATIONS FOR RESEARCH AND TEST REACTORS—Continued

[Dollars in millions]

Summary fee calculations	FY 2014 Final	FY 2015 Proposed
Fee-relief adjustment	−0.01	−0.05
Billing adjustments	*−0.03*	*−0.02*
Total required annual fee recovery	0.34	0.35

The increased annual fee results from the decline in 10 CFR part 170 billings following the completion of licensing actions associated with the Aerotest Radiography and Research Reactor. The resources required for this project are now allocated elsewhere, as these licensing decisions have been challenged and are currently the subject of litigation before the Commission.

The required annual fee recovery amount is divided equally among the four research and test reactors subject to annual fees and results in an FY 2015 annual fee of $88,500 for each licensee.

f. Rare Earth Facilities

The agency is establishing an annual fee in the FY 2015 fee rule for an anticipated rare earth facility that is currently expected to be operational in 2016. No fees are currently expected to be charged in this category in FY 2015; establishing this fee now is intended to promote regulatory predictability and stability for potential licensees in this category. The annual fee for rare earth facilities will be $83,800. Table XVI shows the calculation of the FY 2015 annual fee amount for rare earth facilities.

TABLE XVI—ANNUAL FEE SUMMARY CALCULATIONS FOR RARE EARTH FACILITIES

[Dollars in millions]

Summary fee calculations	FY 2015 Proposed
Total budgeted resources	$0.24
Less estimated 10 CFR part 170 receipts	*−0.15*
Net 10 CFR part 171 resources	0.09
Allocated generic transportation	0.00
Fee-relief adjustment	−0.00
Billing adjustments	*−0.00*
Total required annual fee recovery	0.08

g. Materials Users

For FY 2015, budget costs of $36.8 million for materials users would be recovered through annual fees assessed to 10 CFR parts 30, 40, and 70 licensees. Table XVII shows the calculation of the FY 2015 annual fee amount for materials users licensees. The FY 2014 values are shown for comparison. Note the following fee categories under § 171.16 are included in this fee class: 1.C., 1.D., 1.F., 2.B., 2.C. through 2.F., 3.A. through 3.S., 4.A. through 4.C., 5.A., 5.B., 6.A., 7.A. through 7.C., 8.A., 9.A. through 9.D., and 17. (Individual values may not sum to totals due to rounding.)

TABLE XVII—ANNUAL FEE SUMMARY CALCULATIONS FOR MATERIALS USERS

[Dollars in millions]

Summary fee calculations	FY 2014 Final	FY 2015 Proposed
Total budgeted resources	$32.8	$35.8
Less estimated 10 CFR part 170 receipts	*−$0.9*	*−$1.0*
Net 10 CFR part 171 resources	31.9	34.8
Allocated generic transportation	1.3	2.2
Fee-relief adjustment/LLW surcharge	0.2	0.1
Billing adjustments	*−0.3*	*−0.3*
Total required annual fee recovery	33.1	36.8

To equitably and fairly allocate the $36.8 million in FY 2015 budgeted costs to be recovered in annual fees assessed to the approximately 3,000 diverse materials users licensees, the NRC would continue to base the annual fees for each fee category within this class on the 10 CFR part 170 application fees and estimated inspection costs for each fee category. Because the application fees and inspection costs are indicative of the complexity of the license, this approach would continue to provide a proxy for allocating the generic and other regulatory costs to the diverse categories of licenses based on the NRC's cost to regulate each category. This fee calculation would also continue to consider the inspection frequency (priority), which is indicative of the safety risk and resulting regulatory costs associated with the categories of licenses.

The annual fee for these categories of materials users' licenses is developed as follows: Annual fee = Constant x [Application Fee + (Average Inspection Cost/Inspection Priority)] + Inspection Multiplier x (Average Inspection Cost/Inspection Priority) + Unique Category Costs.

The constant the multiplier necessary to recover approximately $26.5 million in general costs (including allocated generic transportation costs) is 1.49 for FY 2015. The average inspection cost is the average inspection hours for each fee category multiplied by the hourly rate of $277. The inspection priority is the interval between routine inspections, expressed in years. The inspection multiplier is the multiple

necessary to recover approximately $9.2 million in inspection costs, and is 1.73 for FY 2015. The unique category costs are any special costs that the NRC has budgeted for a specific category of licenses. For FY 2015, approximately $243,000 in budgeted costs for the implementation of revised 10 CFR part 35, ''Medical Use of Byproduct Material (unique costs),'' has been allocated to holders of NRC human-use licenses.

The annual fee to be assessed to each licensee also includes a share of the fee-relief assessment of approximately $448,000 allocated to the materials users fee class (see Table IV, ''Allocation of Fee-Relief Adjustment and LLW Surcharge, FY 2015,'' in Section II, ''Discussion,'' of this document), and for certain categories of these licensees, a share of the approximately $560,000 surcharge costs allocated to the fee class. The annual fee for each fee category is shown in § 171.16(d).

h. Transportation

Table XVIII shows the calculation of the FY 2015 generic transportation budgeted resources to be recovered through annual fees. The FY 2014 values are shown for comparison. (Individual values may not sum to totals due to rounding.)

TABLE XVIII—ANNUAL FEE SUMMARY CALCULATIONS FOR TRANSPORTATION

[Dollars in millions]

Summary fee calculations	FY 2014 Final	FY 2015 Proposed
Total Budgeted Resources	$8.0	$10.3
Less Estimated 10 CFR Part 170 Receipts	*−3.1*	*−3.0*
Net 10 CFR Part 171 Resources	4.9	7.3

The NRC must approve any package used for shipping nuclear material before shipment. If the package meets NRC requirements, the NRC issues a Radioactive Material Package Certificate of Compliance (CoC) to the organization requesting approval of a package. Organizations are authorized to ship radioactive material in a package approved for use under the general licensing provisions of 10 CFR part 71, ''Packaging and Transportation of Radioactive Material.'' The resources associated with generic transportation activities are distributed to the license fee classes based on the number of CoCs benefitting (used by) that fee class, as a proxy for the generic transportation resources expended for each fee class.

The total FY 2015 budgetary resources for generic transportation activities, including those to support DOE CoCs, are $7.35 million. The overall increase is due to rulemaking activities involving 10 CFR part 71 Compatibility with IAEA Transportation Standards & Improvements and the increased activities from the development of the Continued Storage Rule and associated Generic Environmental Impact Statement.

Generic transportation resources associated with fee-exempt entities are not included in this total. These costs are included in the appropriate fee-relief category (*e.g.,* the fee-relief category for nonprofit educational institutions).

Consistent with the policy established in the NRC's FY 2006 final fee rule (71 FR 30721; May 30, 2006), the NRC would recover generic transportation costs unrelated to DOE as part of existing annual fees for license fee classes. The NRC would continue to assess a separate annual fee under § 171.16, fee category 18.A., for DOE transportation activities. The amount of the allocated generic resources is calculated by multiplying the percentage of total CoCs used by each fee class (and DOE) by the total generic transportation resources to be recovered.

The distribution of these resources to the license fee classes and DOE is shown in Table XIX. The distribution is adjusted to account for the licensees in each fee class that are fee-exempt. For example, if four CoCs benefit the entire research and test reactor class, but only 4 of 31 research and test reactors are subject to annual fees, the number of CoCs used to determine the proportion of generic transportation resources allocated to research and test reactor annual fees equals (4/31) x 4, or 0.5 CoCs.

TABLE XIX—DISTRIBUTION OF GENERIC TRANSPORTATION RESOURCES, FY 2015

[Dollars in millions]

License fee class/DOE	Number of CoCs benefiting fee class or DOE	Percentage of total CoCs	Allocated generic transportation resources
Total	90.4	100.0	7.35
DOE	20.0	22.1	1.63
Operating Power Reactors	21.0	23.2	1.71
Spent Fuel Storage/Reactor Decommissioning	12.0	13.3	0.98
Research and Test Reactors	0.4	0.4	0.03
Fuel Facilities	10.0	11.1	0.81
Materials Users	27.0	29.9	2.20

The NRC assesses an annual fee to DOE based on the 10 CFR part 71 CoCs it holds and does not allocate these DOE-related resources to other licensees' annual fees, because these resources specifically support DOE. Note that DOE's annual fee includes a reduction for the fee-relief surplus adjustment (see Table IV, ''Allocation of Fee-Relief Adjustment and LLW Surcharge, FY 2015,'' in Section II, ''Discussion,'' of this document), resulting in a total annual fee of $1,511,000 million for FY 2015. The overall increase is due to rulemaking activities involving 10 CFR part 71 Compatibility with IAEA Transportation Standards & Improvements. This

rulemaking is essential for 10 CFR part 71 updates and compliance.

Administrative Changes

The NRC is proposing the following 12 administrative changes:

1. *Increase Direct Hours per Full-Time Equivalent in the Hourly Rate Calculation.* The hourly rate in 10 CFR part 170 is calculated by dividing the cost per direct FTE by the number of direct hours per direct FTE in a year. ''Direct hours'' are hours charged to mission direct activities in the Nuclear Reactor Safety Program and Nuclear Reactor Materials and Waste Program. The FY 2014 final fee rule used 1,375 hours per direct FTE in the hourly rate calculations. The NRC staff reviewed and analyzed time and labor data for FY 2010 through FY 2012 to determine if it should revise the direct hours per FTE for the FY 2015 budget formulation. Between FY 2010 and FY 2012, total direct hours charged by direct employees increased. The increase in direct hours was apparent in all mission business lines. To reflect this increase in productivity as demonstrated by the time and labor data, the staff determined that the number of direct hours per FTE should increase to 1,420 hours for FY 2015. The staff used 1,420 hours in the FY 2015 budget formulation cycle.

2. *Add New Definition for ''Overhead and General and Administrative Costs'' under 10 CFR 170.3, ''Definitions.''* The NRC proposes to add a new definition to describe overhead and general and administrative costs that are included in full cost charges relating to hours charged by resident inspectors and project managers to licensees. The identical definition is also proposed under 10 CFR 171.5, ''Definitions.''

3. *Revise Definition for ''Utilization Facility'' under 10 CFR 170.3, ''Definitions.''* The NRC proposes to revise the definition for ''utilization facility'' to reflect the definition contained in the direct final rule, ''Definition of a Utilization Facility,'' published October 17, 2014 (79 FR 62329) and effective December 31, 2014. The proposed definition would allow the NRC to add SHINE Medical Technologies, Inc.'s proposed accelerator-driven subcritical operating assemblies to the NRC's definition of a ''utilization facility.''

4. *Revise the Assessment of Administrative Time for Project Managers and Resident Inspectors.* The NRC staff has examined the charging of overhead time for project managers and resident inspectors under 10 CFR part 170. The current practice evenly distributes overhead time charges among the sites assigned to the individual. The NRC staff believes this method of distribution does not consider that some licensees generate more direct work than others. The NRC, therefore, proposes to allocate overhead costs to each licensee based on direct time to each docket. This method ensures that a licensee's overhead costs are proportional to the regulatory services rendered by the NRC. This method aligns with the NRC's longstanding fee policy that fees assessed to licensees should, to the maximum extent practicable, reflect the actual costs of NRC regulatory services, and does not penalize licensees who require fewer regulatory services.

5. *Add Fee Subcategories to 10 CFR 170.31 to Reflect a License with Multiple Sites.* The staff proposes to add fee subcategories to 3.L. licenses (broad scope) under 10 CFR 170.31 to assess additional fees to licensees such as the United States Department of Agriculture and the Department of the Army, in order to accurately reflect the cost of services provided by the NRC. The staff spends a disproportionate amount of time on these licensees as compared to other licensees in the same fee category. These two broad scope licenses also have a considerable number of sites throughout the country and operate in a manner similar to master materials licenses under fee category 17. In FY 2014, the staff compared the work efforts expended by the NRC for master materials licenses with multiple sites to NRC work efforts for broad scope licenses with multiple sites. The staff concluded that NRC work efforts for multi-site broad scope licensees are similar to work efforts for master materials licensees. Therefore, consistent with NRC policy that fees assessed to licensees accurately reflect the cost of services provided, the NRC proposes to revise its fee categories to consider the number of sites a broad scope licensee has in establishing fees. An identical change is also proposed to 10 CFR 171.16, ''Annual Fees: Materials Licensees, Holders of Certificates of Compliance, Holders of Sealed Source and Device Registrations, Holders of Quality Assurance Program Approvals, and Government Agencies Licensed by the NRC.''

6. *Modify 10 CFR 170.31, Footnote 6, to Avoid Duplicate Billing.* The NRC proposes to revise footnote 6 to 10 CFR 170.31, ''Schedule of Fees for Materials Licenses and Other Regulatory Services, Including Inspections, and Import and Export Licenses,'' to avoid duplicate billing for fuel cycle facility licensees. The NRC currently charges a single annual fee to fuel cycle facility licensees for major activities. These licensees are not charged additional annual fees for ancillary activities. An identical change is also proposed under 10 CFR 171.16, ''Annual Fees: Materials Licensees, Holders of Certificates of Compliance, Holders of Sealed Source and Device Registrations, Holders of Quality Assurance Program Approvals, and Government Agencies Licensed by the NRC.''

7. *Correct Definition for ''Overhead and General and Administrative Costs'' under 10 CFR 171.5, ''Definitions.''* The NRC proposes to correct the definition for ''Overhead and General and Administrative Costs'' to reflect the FY 2008 merger of the Advisory Committee on Nuclear Waste with the Advisory Committee on Reactor Safeguards.

8. *Revise Fees to Reflect Biennial Review of Fees.* To comply with the Chief Financial Officers Act of 1990, the NRC evaluates, on a biennial basis, the historical professional staff hours used to process a new license application. The NRC also evaluates the inspection time by reviewing hours spent by NRC staff on those materials users' fee categories that are subject to flat application fees. This review also includes new license and amendment applications for import and export licenses. Changes resulting from this biennial review impact 10 CFR part 170 flat fees for the small materials users and import and export licensees.

Two program offices, the Office of Nuclear Material Safety and Safeguards (NMSS) and the Office of International Programs (OIP), have completed their biennial review to the CFO regarding the FY 2015 fees. The NMSS recommended changes to the professional staff hours for most of the small materials users. The OIP also recommended changes to the hours for some import and export license fee categories.

Cumulatively, the FY 2015 biennial review resulted in increased professional staff hours within 11 fee categories and decreased professional staff hours within 11 fee categories. The changes in the number of hours and the hourly rate are components that will be used to determine the 10 CFR part 170 fees for the materials user's licenses as well as import and export applications.

9. *Change Small Entity Fees.* In accordance with NRC policy, the staff conducted a biennial review of small entity fees to determine if the fees should be changed. The small entity fees primarily impact the NRC's small materials licensees. In FY 2015, the staff performed a biennial review using the fee methodology developed in FY 2009 that applies a fixed percentage of 39 percent to the prior 2-year weighted

average of materials users' fees. As a result, the upper tier small entity fee increased from $2,800 to $4,000 and the lower-tier fee increased from $600 to $900. This constitutes a 43 percent and 50 percent increase, respectively. Implementing this increase would have a disproportionate impact upon the NRC's small licensees compared to other licensees. Therefore, the NRC staff revised the increase to 21 percent for the upper-tier fee. The 21 percent increase was applied based on historical trends in the small entity fee and has been used in previous biennial reviews. The NRC staff is amending the upper-tier small entity fee to $3,400 and amending the lower-tier small entity fee to $700 for FY 2015. The staff believes these fees are reasonable and provide relief to small entities while at the same time recovering from those licensees some of the NRC's costs for activities that benefit them.

10. *Increase the NRC's Small Business Lower-Tier Receipts-Based Threshold.* The NRC staff proposes to increase the lower-tier receipts-based threshold from $485,000 to $520,000. This change would reflect approximately the same percentage adjustment as the NRC's upper-tier receipts-based standard adjustment from $7 million to $7.5 million and is consistent with the Small Business Administration's interim final rule, ''Small Business Size Standards: Inflation Adjustment to Monetary Based Size Standards,'' published in the **Federal Register** on June 12, 2014 (79 FR 33647) and effective July 14, 2014.

11. *Add Fee Subcategories to 10 CFR Part 171 to Reflect a License with Multiple Sites.* The NRC proposes to add fee subcategories to 3.L. licenses (broad scope) under 10 CFR 171.16 to assess additional fees to licensees such as the United States Department of Agriculture and the Department of the Army, in order to accurately reflect the cost of services provided by the NRC. The staff spends a disproportionate amount of time on these licensees as compared to other licensees in the same fee category. These two broad scope licenses also have a considerable number of sites throughout the country and operate in a manner similar to master materials licenses under fee category 17. In FY 2014, the staff compared the work efforts expended by the NRC for master materials licenses with multiple sites to NRC work efforts for broad scope licenses with multiple sites. The staff concluded that NRC work efforts for multi-site broad scope licensees are similar to work efforts for master materials licensees. Therefore, consistent with NRC policy that fees assessed to licensees accurately reflect the cost of services provided, the NRC proposes to revise its fee categories to consider the number of sites a broad scope licensee has in establishing fees.

12. *Modify 10 CFR 171.16, Footnote 16, to Avoid Duplicate Billing.* The NRC proposes to revise the footnote description under 10 CFR 171.16, ''Annual Fees: Materials Licensees, Holders of Certificates of Compliance, Holders of Sealed Source and Device Registrations, Holders of Quality Assurance Program Approvals, and Government Agencies Licensed by the NRC,'' to avoid duplicate billing for fuel cycle facility licensees. The NRC's current policy charges a single large annual fee to fuel cycle facility licensees for major activities. These licensees are not charged additional annual fees for ancillary activities.

FY 2015 Billing

The FY 2015 fee rule will be a major rule as defined by the Congressional Review Act of 1996 (5 U.S.C. 801–808). Therefore, the NRC's fee schedules for FY 2015 will become effective 60 days after publication of the final rule in the **Federal Register**. Upon publication of the final rule, the NRC will send an invoice for the amount of the annual fees to reactor licensees, 10 CFR part 72 licensees, major fuel cycle facilities, and other licensees with annual fees of $100,000 or more. For these licensees, payment is due 30 days after the effective date of the FY 2015 final rule. Because these licensees are billed quarterly, the payment amount due is the total FY 2015 annual fee less payments made in the first three quarters of the fiscal year.

Materials licensees with annual fees of less than $100,000 are billed annually. Those materials licensees whose license anniversary date during FY 2015 falls before the effective date of the FY 2015 final rule will be billed for the annual fee during the anniversary month of the license at the FY 2014 annual fee rate. Those materials licensees whose license anniversary date falls on or after the effective date of the FY 2015 final rule will be billed for the annual fee at the FY 2015 annual fee rate during the anniversary month of the license, and payment will be due on the date of the invoice.

IV. Section-by-Section Analysis

The following paragraphs describe the specific amendments proposed by this rulemaking.

10 CFR 170.3, Definitions

The NRC proposes to add a new definition of ''Overhead and General and Administrative Costs'' and revise the definition for ''Utilization facility.''

10 CFR 170.20, Average Cost per Professional Staff-Hour

The NRC proposes to revise this section to reflect the hourly rate for FY 2015.

10 CFR 170.21, Schedule of Fees for Production or Utilization Facilities, Review of Standard Referenced Design Approvals, Special Projects, Inspections, and Import and Export Licenses

The NRC proposes to revise fees for fee category code K. to reflect the FY 2015 proposed hourly rate for flat fee applications.

10 CFR 170.31, Schedule of Fees for Materials Licenses and Other Regulatory Services, Including Inspections, and Import and Export Licenses

The NRC proposes to add subcategories to fee category 3.L. licenses (broad scope) to assess additional fees to licensees such as the United States Department of Agriculture and the Department of the Army, in order to accurately reflect the cost of services provided by the NRC. The NRC also proposes to revise footnote 6 to avoid duplicate billing for fuel cycle facility licensees.

10 CFR 171.5, Definitions

The NRC proposes to correct the definition for ''Overhead and General and Administrative Costs'' to reflect the FY 2008 merger of the Advisory Committee on Nuclear Waste with the Advisory Committee on Reactor Safeguards.

10 CFR 171.15, Annual Fees: Reactor Licenses and Independent Fuel Storage Licenses

The NRC proposes to revise paragraph (b)(1) to reflect the required FY 2015 annual fee to be collected from each operating power reactor by September 30, 2015. The NRC proposes to revise the introductory text of paragraph (b)(2) to reflect FY 2015 in reference to annual fees and fee-relief adjustment. The NRC proposes to revise paragraph (c)(1) and the introductory text of paragraph (c)(2) to reflect the FY 2015 spent fuel storage/reactor decommissioning and spent fuel storage annual fee for 10 CFR part 50 licenses and 10 CFR part 72 licensees who do not hold a 10 CFR part 50 license, and the FY 2015 fee-relief adjustment. The NRC proposes to revise the introductory text of paragraph (d)(1) and paragraphs (d)(2) and (d)(3) to reflect the FY 2015 fee-relief adjustment for the operating reactor power class of

licenses, the number of operating power reactors, and the FY 2015 fee-relief adjustment for spent fuel storage reactor decommissioning class of licenses. The NRC proposes to revise paragraph (e) to reflect the FY 2015 annual fees for research reactors and test reactors.

10 CFR 171.16, Annual Fees: Materials Licensees, Holders of Certificates of Compliance, Holders of Sealed Source and Device Registrations, Holders of Quality Assurance Program Approvals, and Government Agencies Licensed by the NRC

The NRC proposes to revise paragraphs (d) and (e) to reflect FY 2015 annual fees and the FY 2015 fee-relief adjustment. The NRC also proposes to add subcategories to fee category 3.L. licenses (broad scope) to assess additional fees to licensees such as the Department of Agriculture and the Department of the Army, in order to accurately reflect the cost of services provided by the NRC. The NRC also proposes to revise footnote 6 to avoid duplicate billing for fuel cycle facility licensees.

V. Regulatory Flexibility Certification

Section 604 of the Regulatory Flexibility Act requires agencies to perform an analysis that considers the impact of a rulemaking on small entities. The NRC's regulatory flexibility analysis for this proposed rule is available as indicated in Section XIII, Availability of Documents, of this document, and a summary is provided in the following paragraphs.

The NRC is required by the OBRA–90, as amended, to recover approximately 90 percent of its FY 2015 budget authority through the assessment of user fees. The OBRA–90 further requires that the NRC establish a schedule of charges that fairly and equitably allocates the aggregate amount of these charges among licensees.

The FY 2015 proposed rule establishes the schedules of fees necessary for the NRC to recover 90 percent of its budget authority for FY 2015. The proposed rule estimates some increases in annual fees charged to certain licensees and holders of certificates, registrations, and approvals, and in decreases in those annual fees charged to others. Licensees affected by these proposed estimates include those who qualify as small entities under the NRC's size standards in § 2.810.

The NRC prepared a FY 2015 biennial regulatory analysis in accordance with the FY 2001 final rule (66 FR 32467; June 14, 2001). This rule also stated the small entity fees will be reexamined every 2 years and in the same years the NRC conducts the biennial review of fees as required by the Office of Chief Financial Officer Act.

For this proposed rule, small entity fees would increase to $3,400 for the maximum upper-tier small entity fee and increase to $700 for the lower-tier small entity as result of the biennial review which factored in the number of increased hours for application reviews and inspections in the fee calculations. The next small entity biennial review is scheduled for FY 2017.

Additionally, the Small Business Regulatory Enforcement Fairness Act requires all Federal agencies to prepare a written compliance guide for each rule for which the agency is required by 5 U.S.C. 604 to prepare a regulatory flexibility analysis. The NRC, in compliance with the law, has prepared the ''Small Entity Compliance Guide,'' which is available as indicated in Section XIII, Availability of Documents, of this document.

VI. Regulatory Analysis

Under OBRA–90, as amended, and the AEA, the NRC is required to recover 90 percent of its budget authority, or total appropriations of $1,059.5 million, in FY 2015. The NRC established fee methodology guidelines for 10 CFR part 170 in 1978, and more fee methodology guidelines through the establishment of 10 CFR part 171 in 1986. In subsequent rulemakings, the NRC has adjusted its fees without changing the underlying principles of its fee policy in order to ensure that the NRC continues to comply with the statutory requirements for cost recovery in OBRA–90 and the AEA.

In this rulemaking, the NRC continues this long-standing approach. Therefore, the NRC did not identify any alternatives to the current fee structure guidelines and did not prepare a regulatory analysis for this rulemaking.

VII. Backfitting and Issue Finality

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule and that a backfit analysis is not required. A backfit analysis is not required because these amendments do not require the modification of, or addition to, systems, structures, components, or the design of a facility, or the design approval or manufacturing license for a facility, or the procedures or organization required to design, construct, or operate a facility.

VIII. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31883). The NRC requests comment on the proposed rule with respect to the clarity and effectiveness of the language used.

IX. National Environmental Policy Act

The NRC has determined that this rule is the type of action described in 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor environmental assessment has been prepared for this proposed rule.

X. Paperwork Reduction Act

This rule does not contain any information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

XI. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this proposed fee rule, the NRC is proposing to amend the licensing, inspection, and annual fees charged to its licensees and applicants, as necessary, to recover approximately 90 percent of its budget authority in FY 2015, as required by OBRA–90, as amended. This action does not constitute the establishment of a standard that contains generally applicable requirements

XII. Availability of Guidance

The Small Business Regulatory Enforcement Fairness Act requires all Federal agencies to prepare a written compliance guide for each rule for which the NRC is required by 5 U.S.C. 604 to prepare a regulatory flexibility analysis. The NRC, in compliance with the law, prepared the ''Small Entity Compliance Guide'' for the FY 2015 proposed fee rule. This document is available as indicated in Section XIII,

''Availability of Documents,'' of this document.

XIII. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

Document	Adams accession No./Web link
FY 2015 Proposed Rule Work Papers	ML15021A198.
FY 2015 Regulatory Flexibility Analysis	ML15058A385.
FY 2015 U.S. Nuclear Regulatory Commission Small Entity Compliance Guide	ML15058A332.
NUREG–1100, Volume 30, ''Congressional Budget Justification: Fiscal Year 2015'' (March 2014)	*http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1100/v30/.*
NRC Form 526, Certification of Small Entity Status for the Purposes of Annual Fees Imposed under 10 CFR Part 171.	*http://www.nrc.gov/reading-rm/doc-collections/forms/nrc526.pdf.*
Consolidated and Further Continuing Appropriations Act, 2015	*https://www.congress.gov/113/bills/hr83/BILLS-113hr83enr.pdf.*
SECY–05–0164, ''Annual Fee Calculation Method,'' September 15, 2005	ML052580332.
Staff Requirements Memorandum for SECY–14–0082, ''Jurisdiction for Military Radium and U.S. Nuclear Regulatory Commission Oversight of U.S. Department of Defense Remediation of Radioactive Material,'' December 22, 2014.	ML14356A070.

Throughout the development of this rule, the NRC may post documents related to this rule, including public comments, on the Federal rulemaking Web site at *http://www.regulations.gov* under Docket ID NRC–2014–0200. The Federal rulemaking Web site allows you to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) Navigate to the docket folder NRC–2014–0200; (2) click the ''Sign up for Email Alerts'' link; and (3) enter your email address and select how frequently you would like to receive emails (daily, weekly, or monthly).

List of Subjects

10 CFR Part 170

Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

10 CFR Part 171

Annual charges, Byproduct material, Holders of certificates, registrations, approvals, Intergovernmental relations, Nonpayment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR parts 170 and 171.

PART 170—FEES FOR FACILITIES, MATERIALS IMPORT AND EXPORT LICENSES AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

■ 1. The authority citation for part 170 continues to read as follows:

Authority: Independent Offices Appropriations Act sec. 501 (31 U.S.C. 9701); Atomic Energy Act sec. 161(w) (42 U.S.C. 2201(w)); Energy Reorganization Act sec. 201 (42 U.S.C. 5841); Chief Financial Officers Act sec. 205 (31 U.S.C. 901, 902); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act secs. 623, Energy Policy Act of 2005 sec. 651(e), Pub. L. 109–58, 119 Stat. 783 (42 U.S.C. 2201(w), 2014, 2021, 2021b, 2111).

■ 2. In § 170.3, add a new definition for ''Overhead and General and Administrative Costs'' in alphabetical order and revise the definition for ''Utilization facility'' to read as follows:

§ 170.3 Definitions.

* * * * *

Overhead and General and Administrative Costs means:

(1) The Government benefits for each employee such as leave and holidays, retirement and disability benefits, health and life insurance costs, and social security costs;

(2) Travel costs;

(3) Overhead [*e.g.,* supervision and support staff that directly support the NRC's Nuclear Reactor Safety Program and Nuclear Materials Safety and Waste Program; administrative support costs (*e.g.,* rental of space, equipment, telecommunications, and supplies)]; and

(4) Indirect costs that would include, but not be limited to, NRC central policy direction, legal and executive management services for the Commission and special and independent reviews, investigations, and enforcement and appraisal of NRC programs and operations. Some of the organizations included, in whole or in part, are the Commissioners, Secretary, Executive Director for Operations, General Counsel, Congressional and Public Affairs (except for international safety and safeguards programs), Inspector General, Investigations, Enforcement, Small Business and Civil Rights, the Technical Training Center, Advisory Committee on Reactor Safeguards, and the Atomic Safety and Licensing Board Panel. The Commission views these budgeted costs as support for all its regulatory services provided to applicants, licensees, and certificate holders, and these costs must be recovered under Public Law 101–508.

* * * * *

Utilization facility means:

(1) Any nuclear reactor other than one designed or used primarily for the formation of plutonium or U–233; or

(2) An accelerator-driven subcritical operating assembly used for the irradiation of materials containing special nuclear material and described in the application assigned docket number 50–608.

■ 3. Revise § 170.20 to read as follows:

§ 170.20 Average cost per professional staff-hour.

Fees for permits, licenses, amendments, renewals, special projects, 10 CFR part 55 re-qualification and replacement examinations and tests, other required reviews, approvals, and inspections under §§ 170.21 and 170.31 will be calculated using the professional staff-hour rate of $277 per hour.

■ 4. In § 170.21, in the table, revise the fee category K. to read as follows:

§ 170.21 Schedule of fees for production or utilization facilities, review of standard referenced design approvals, special projects, inspections, and import and export licenses.

SCHEDULE OF FACILITY FEES

[See footnotes at end of table]

Facility categories and type of fees	Fees [1] [2]
* * * * * * *	
K. Import and export licenses:	
Licenses for the import and export only of production or utilization facilities or the export only of components for production or utilization facilities issued under 10 CFR part 110.	
1. Application for import or export of production or utilization facilities [4] (including reactors and other facilities) and exports of components requiring Commission and Executive Branch review, for example, actions under 10 CFR 110.40(b).	
Application—new license, or amendment; or license exemption request	$18,000
2. Application for export of reactor and other components requiring Executive Branch review, for example, those actions under 10 CFR 110.41(a).	
Application—new license, or amendment; or license exemption request	$9,700
3. Application for export of components requiring the assistance of the Executive Branch to obtain foreign government assurances.	
Application—new license, or amendment; or license exemption request	$4,400
4. Application for export of facility components and equipment not requiring Commission or Executive Branch review, or obtaining foreign government assurances.	
Application—new license, or amendment; or license exemption request	$5,000
5. Minor amendment of any active export or import license, for example, to extend the expiration date, change domestic information, or make other revisions which do not involve any substantive changes to license terms or conditions or to the type of facility or component authorized for export and, therefore, do not require in-depth analysis or review or consultation with the Executive Branch, U.S. host state, or foreign government authorities.	
Minor amendment to license	$2,800

[1] Fees will not be charged for orders related to civil penalties or other civil sanctions issued by the Commission under § 2.202 of this chapter or for amendments resulting specifically from the requirements of these orders. For orders unrelated to civil penalties or other civil sanctions, fees will be charged for any resulting licensee-specific activities not otherwise exempted from fees under this chapter. Fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the *Code of Federal Regulations* (*e.g.,* 10 CFR 50.12, 10 CFR 73.5) and any other sections in effect now or in the future, regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form.

[2] Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of the final rule will be determined at the professional rates in effect when the service was provided.

* * * * * * *

[4] Imports only of major components for end-use at NRC-licensed reactors are authorized under NRC general import license in 10 CFR 110.27.

■ 5. In § 170.31, revise the table to read as follows:

§ 170.31 Schedule of fees for materials licenses and other regulatory services, including inspections, and import and export licenses.

* * * * *

SCHEDULE OF MATERIALS FEES

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2] [3]
1. Special nuclear material:	
A. (1) Licenses for possession and use of U-235 or plutonium for fuel fabrication activities.	
(a) Strategic Special Nuclear Material (High Enriched Uranium) [Program Code(s): 21130]	Full Cost.
(b) Low Enriched Uranium in Dispersible Form Used for Fabrication of Power Reactor Fuel [Program Code(s): 21210].	Full Cost.
(2) All other special nuclear materials licenses not included in Category 1.A.(1) which are licensed for fuel cycle activities.	
(a) Facilities with limited operations [Program Code(s): 21310, 21320]	Full Cost.
(b) Gas centrifuge enrichment demonstration facilities	Full Cost.
(c) Others, including hot cell facilities	Full Cost.
B. Licenses for receipt and storage of spent fuel and reactor-related Greater than Class C (GTCC) waste at an independent spent fuel storage installation (ISFSI) [Program Code(s): 23200].	Full Cost.
C. Licenses for possession and use of special nuclear material of less than a critical mass as defined in § 70.4 in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers. [4]	
Application [Program Code(s): 22140]	$1,300.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2 3]
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in sealed or unsealed form in combination that would constitute a critical mass, as defined in § 70.4 of this chapter, for which the licensee shall pay the same fees as those under Category 1.A. [4]	
Application [Program Code(s): 22110, 22111, 22120, 22131, 22136, 22150, 22151, 22161, 22170, 23100, 23300, 23310].	$2,600.
E. Licenses or certificates for construction and operation of a uranium enrichment facility [Program Code(s): 21200]	Full Cost.
F. For special nuclear materials licenses in sealed or unsealed form of greater than a critical mass as defined in § 70.4 of this chapter.[4] [Program Code(s): 22155].	Full Cost.
2. Source material:	
A. (1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride or for deconverting uranium hexafluoride in the production of uranium oxides for disposal. [Program Code(s): 11400].	Full Cost.
(2) Licenses for possession and use of source material in recovery operations such as milling, *in-situ* recovery, heap-leaching, ore buying stations, ion-exchange facilities, and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode.	
(a) Conventional and Heap Leach facilities [Program Code(s): 11100]	Full Cost.
(b) Basic *In Situ* Recovery facilities [Program Code(s): 11500]	Full Cost.
(c) Expanded *In Situ* Recovery facilities [Program Code(s): 11510]	Full Cost.
(d) *In Situ* Recovery Resin facilities [Program Code(s): 11550]	Full Cost.
(e) Resin Toll Milling facilities [Program Code(s): 11555]	Full Cost.
(f) Other facilities [Program Code(s): 11700]	Full Cost.
(3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal, except those licenses subject to the fees in Category 2.A.(2) or Category 2.A.(4) [Program Code(s): 11600, 12000].	Full Cost.
(4) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(2) [Program Code(s): 12010].	Full Cost.
(5) Licenses that authorize the possession of source material related to removal of contaminants (source material) from drinking water [Program Code(s): 11820].	Full Cost.
B. Licenses which authorize the possession, use, and/or installation of source material for shielding [6 7 8]	
Application [Program Code(s): 11210]	$1,220.
C. Licenses to distribute items containing source material to persons exempt from the licensing requirements of part 40 of this chapter.	
Application [Program Code(s): 11240]	$2,800.
D. Licenses to distribute source material to persons generally licensed under part 40 of this chapter.	
Application [Program Codes(s): 11230, 11231]	$2,700.
E. Licenses for possession and use of source material for processing or manufacturing of products or materials containing source material for commercial distribution.	
Application [Program Code(s): 11710]	$2,600.
F. All other source material licenses	
Application [Program Code(s): 11200, 11220, 11221, 11300, 11800, 11810]	$2,600.
3. Byproduct material:	
A. Licenses of broad scope for the possession and use of byproduct material issued under parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution.	
Application [Program Code(s): 03211, 03212, 03213]	$13,000.
B. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution.	
Application [Program Code(s): 03214, 03215, 22135, 22162]	$3,600.
C. Licenses issued under §§ 32.72 and/or 32.74 of this chapter that authorize the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources and devices containing byproduct material. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under § 170.11(a)(4).	
Application [Program Code(s): 02500, 02511, 02513]	$5,200.
D. [Reserved]	N/A.
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units).	
Application [Program Code(s): 03510, 03520]	$3,200.
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.	
Application [Program Code(s): 03511]	$6,500.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2] [3]
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.	
Application [Program Code(s): 03521]	$61,800.
H. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter. The category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter.	
Application [Program Code(s): 03254, 03255, 03257]	$6,600.
I. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter.	
Application [Program Code(s): 03250, 03251, 03252, 03253, 03256]	$11,000.
J. Licenses issued under Subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter.	
Application [Program Code(s): 03240, 03241, 03243]	$2,000.
K. Licenses issued under Subpart B of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter.	
Application [Program Code(s): 03242, 03244]	$1,100.
L. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution. Number of locations of use: 1–5.	
(1) Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution. Number of locations of use: 6–20.	
(2) Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution. Number of locations of use: 20 or more.	
Application [Program Code(s): 01100, 01110, 01120, 03610, 03611, 03612, 03613]	$5,500.
M. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for research and development that do not authorize commercial distribution.	
Application [Program Code(s): 03620]	$5,000.
N. Licenses that authorize services for other licensees, except:	
(1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3.P.; and (2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4.A., 4.B., and 4.C.	
Application [Program Code(s): 03219, 03225, 03226]	$6,300.
O. Licenses for possession and use of byproduct material issued under part 34 of this chapter for industrial radiography operations.	
Application [Program Code(s): 03310, 03320]	$3,200.
P. All other specific byproduct material licenses, except those in Categories 4.A. through 9.D. [9]	
Application [Program Code(s): 02400, 02410, 03120, 03121, 03122, 03123, 03124, 03130, 03140, 03220, 03221, 03222, 03800, 03810, 22130]	$2,700.
Q. Registration of a device(s) generally licensed under part 31 of this chapter.	
Registration	$400.
R. Possession of items or products containing radium-226 identified in 10 CFR 31.12 which exceed the number of items or limits specified in that section.[5]	
1. Possession of quantities exceeding the number of items or limits in 10 CFR 31.12(a)(4), or (5) but less than or equal to 10 times the number of items or limits specified.	
Application [Program Code(s): 02700]	$2,500.
2. Possession of quantities exceeding 10 times the number of items or limits specified in 10 CFR 31.12(a)(4), or (5).	
Application [Program Code(s): 02710]	$2,500.
S. Licenses for production of accelerator-produced radionuclides.	
Application [Program Code(s): 03210]	$14,200.
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material. [Program Code(s): 03231, 03233, 03235, 03236, 06100, 06101].	N/A.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2 3]
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material.	
Application [Program Code(s): 03234]	$6,900.
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material.Application [Program Code(s): 03232]	$5,000.
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies	
Application [Program Code(s): 03110, 03111, 03112]	$4,600.
B. Licenses for possession and use of byproduct material for field flooding tracer studies.	
Licensing [Program Code(s): 03113]	Full Cost.
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material.	
Application [Program Code(s): 03218]	$22,100.
7. Medical licenses:	
A. Licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in gamma stereotactic radiosurgery units, teletherapy devices, or similar beam therapy devices.	
Application [Program Code(s): 02300, 02310]	$11,100.
B. Licenses of broad scope issued to medical institutions or two or more physicians under parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license. [10]	
Application [Program Code(s): 02110]	$8,600.
C. Other licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices.	
Application [Program Code(s): 02120, 02121, 02200, 02201, 02210, 02220, 02230, 02231, 02240, 22160]	$4,500.
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities.	
Application [Program Code(s): 03710]	$2,500.
9. Device, product, or sealed source safety evaluation:	
A. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution.	
Application—each device	$5,400.
B. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices.	
Application—each device	$9,000.
C. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution.	
Application—each source	$5,300.
D. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel.	
Application—each source	$1,050.
10. Transportation of radioactive material:	
A. Evaluation of casks, packages, and shipping containers.	
1. Spent Fuel, High-Level Waste, and plutonium air packages	Full Cost.
2. Other Casks	Full Cost.
B. Quality assurance program approvals issued under part 71 of this chapter.	
1. Users and Fabricators:	
Application	$4,200.
Inspections	Full Cost.
2. Users:	
Application	$4,200.
Inspections	Full Cost.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2 3]
C. Evaluation of security plans, route approvals, route surveys, and transportation security devices (including immobilization devices).	Full Cost.
11. Review of standardized spent fuel facilities	Full Cost.
12. Special projects:	
Including approvals, pre-application/licensing activities, and inspections	
Application [Program Code: 25110]	Full Cost.
13. A. Spent fuel storage cask Certificate of Compliance	Full Cost.
B. Inspections related to storage of spent fuel under § 72.210 of this chapter	Full Cost.
14. A. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under parts 30, 40, 70, 72, and 76 of this chapter, including MMLs. Application [Program Code(s): 3900, 11900, 21135, 21215, 21240, 21325, 22200].	Full Cost.
B. Site-specific decommissioning activities associated with unlicensed sites, including MMLs, regardless of whether or not the sites have been previously licensed.	Full Cost.
15. Import and Export licenses:	
Licenses issued under part 110 of this chapter for the import and export only of special nuclear material, source material, tritium and other byproduct material, and the export only of heavy water, or nuclear grade graphite (fee categories 15.A. through 15.E.).	
A. Application for export or import of nuclear materials, including radioactive waste requiring Commission and Executive Branch review, for example, those actions under 10 CFR 110.40(b).	
Application—new license, or amendment; or license exemption request	$18,000.
B. Application for export or import of nuclear material, including radioactive waste, requiring Executive Branch review, but not Commission review. This category includes applications for the export and import of radioactive waste and requires NRC to consult with domestic host state authorities (*i.e.,* Low-Level Radioactive Waste Compact Commission, the U.S. Environmental Protection Agency, etc.)	
Application—new license, or amendment; or license exemption request	$9,700.
C. Application for export of nuclear material, for example, routine reloads of low enriched uranium reactor fuel and/or natural uranium source material requiring the assistance of the Executive Branch to obtain foreign government assurances.	
Application—new license, or amendment; or license exemption request	$4,400.
D. Application for export or import of nuclear material not requiring Commission or Executive Branch review, or obtaining foreign government assurances..	
Application—new license, or amendment; or license exemption request	$5,000.
E. Minor amendment of any active export or import license, for example, to extend the expiration date, change domestic information, or make other revisions which do not involve any substantive changes to license terms and conditions or to the type/quantity/chemical composition of the material authorized for export and, therefore, do not require in-depth analysis, review, or consultations with other Executive Branch, U.S. host state, or foreign government authorities.	
Minor amendment	$1,400.
Licenses issued under part 110 of this chapter for the import and export only of Category 1 and Category 2 quantities of radioactive material listed in Appendix P to part 110 of this chapter (fee categories 15.F. through 15.R.).	
Category 1 (Appendix P, 10 CFR Part 110) Exports:	
F. Application for export of Appendix P Category 1 materials requiring Commission review (e.g. exceptional circumstance review under 10 CFR 110.42(e)(4)) and to obtain government-to-government consent for this process. For additional consent see 15.I.).	
Application—new license, or amendment; or license exemption request	$15,200.
G. Application for export of Appendix P Category 1 materials requiring Executive Branch review and to obtain government-to-government consent for this process. For additional consents see 15.I.	
Application—new license, or amendment; or license exemption request	$8,300.
H. Application for export of Appendix P Category 1 materials and to obtain one government-to-government consent for this process. For additional consents see 15.I.	
Application—new license, or amendment; or license exemption request	$5,500.
I. Requests for each additional government-to-government consent in support of an export license application or active export license.	
Application—new license, or amendment; or license exemption request	$280.
Category 2 (Appendix P, 10 CFR Part 110) Exports:	
J. Application for export of Appendix P Category 2 materials requiring Commission review (e.g. exceptional circumstance review under 10 CFR 110.42(e)(4)).	
Application—new license, or amendment; or license exemption request	$15,200.
K. Applications for export of Appendix P Category 2 materials requiring Executive Branch review.	
Application—new license, or amendment; or license exemption request	$8,300.
L. Application for the export of Category 2 materials	
Application—new license, or amendment; or license exemption request	$4,200.
M. [Reserved]	N/A.
N. [Reserved]	N/A.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2 3]
O. [Reserved]	N/A.
P. [Reserved]	N/A.
Q. [Reserved]	N/A.
Minor Amendments (Category 1 and 2, Appendix P, 10 CFR Part 110, Export):	
R. Minor amendment of any active export license, for example, to extend the expiration date, change domestic information, or make other revisions which do not involve any substantive changes to license terms and conditions or to the type/quantity/chemical composition of the material authorized for export and, therefore, do not require in-depth analysis, review, or consultations with other Executive Branch, U.S. host state, or foreign authorities.	
Minor amendment	$1,400.
16. Reciprocity:	
Agreement State licensees who conduct activities under the reciprocity provisions of 10 CFR 150.20.	
Application	$1,900.
17. Master materials licenses of broad scope issued to Government agencies	
Application [Program Code(s): 03614]	Full Cost.
18. Department of Energy:	
A. Certificates of Compliance. Evaluation of casks, 11packages, and shipping containers (including spent fuel, high-level waste, and other casks, and plutonium air packages).	Full Cost.
B. Uranium Mill Tailings Radiation Control Act (UMTRCA) activities.	Full Cost.

[1] *Types of fees*—Separate charges, as shown in the schedule, will be assessed for pre-application consultations and reviews; applications for new licenses, approvals, or license terminations; possession-only licenses; issuances of new licenses and approvals; certain amendments and renewals to existing licenses and approvals; safety evaluations of sealed sources and devices; generally licensed device registrations; and certain inspections. The following guidelines apply to these charges:

(a) *Application and registration fees.* Applications for new materials licenses and export and import licenses; applications to reinstate expired, terminated, or inactive licenses, except those subject to fees assessed at full costs; applications filed by Agreement State licensees to register under the general license provisions of 10 CFR 150.20; and applications for amendments to materials licenses that would place the license in a higher fee category or add a new fee category must be accompanied by the prescribed application fee for each category.

(1) Applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category.

(2) Applications for new licenses that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application fee for fee category 1.C. only.

(b) *Licensing fees.* Fees for reviews of applications for new licenses, renewals, and amendments to existing licenses, pre-application consultations and other documents submitted to the NRC for review, and project manager time for fee categories subject to full cost fees are due upon notification by the Commission in accordance with § 170.12(b).

(c) *Amendment fees.* Applications for amendments to export and import licenses must be accompanied by the prescribed amendment fee for each license affected. An application for an amendment to an export or import license or approval classified in more than one fee category must be accompanied by the prescribed amendment fee for the category affected by the amendment, unless the amendment is applicable to two or more fee categories, in which case the amendment fee for the highest fee category would apply.

(d) *Inspection fees.* Inspections resulting from investigations conducted by the Office of Investigations and nonroutine inspections that result from third-party allegations are not subject to fees. Inspection fees are due upon notification by the Commission in accordance with § 170.12(c).

(e) *Generally licensed device registrations under 10 CFR 31.5.* Submittals of registration information must be accompanied by the prescribed fee.

[2] Fees will not be charged for orders related to civil penalties or other civil sanctions issued by the Commission under 10 CFR 2.202 or for amendments resulting specifically from the requirements of these orders. For orders unrelated to civil penalties or other civil sanctions, fees will be charged for any resulting licensee-specific activities not otherwise exempted from fees under this chapter. Fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the *Code of Federal Regulations* (*e.g.,* 10 CFR 30.11, 40.14, 70.14, 73.5, and any other sections in effect now or in the future), regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. In addition to the fee shown, an applicant may be assessed an additional fee for sealed source and device evaluations as shown in fee categories 9.A. through 9.D.

[2] Fees will not be charged for orders related to civil penalties or other civil sanctions issued by the Commission under 10 CFR 2.202 or for amendments resulting specifically from the requirements of these orders. For orders unrelated to civil penalties or other civil sanctions, fees will be charged for any resulting licensee-specific activities not otherwise exempted from fees under this chapter. Fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the *Code of Federal Regulations* (*e.g.,* 10 CFR 30.11, 40.14, 70.14, 73.5, and any other sections in effect now or in the future), regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. In addition to the fee shown, an applicant may be assessed an additional fee for sealed source and device evaluations as shown in fee categories 9.A. through 9.D.

[3] Full cost fees will be determined based on the professional staff time multiplied by the appropriate professional hourly rate established in § 170.20 in effect when the service is provided, and the appropriate contractual support services expended.

[4] Licensees paying fees under categories 1.A., 1.B., and 1.E. are not subject to fees under categories 1.C., 1.D. and 1.F. for sealed sources authorized in the same license, except for an application that deals only with the sealed sources authorized by the license.

[5] Persons who possess radium sources that are used for operational purposes in another fee category are not also subject to the fees in this category. (This exception does not apply if the radium sources are possessed for storage only.)

[6] Licensees subject to fees under fee categories 1.A., 1.B., 1.E., or 2.A. must pay the largest applicable fee and are not subject to additional fees listed in this table.

[7] Licensees paying fees under 3.C. are not subject to fees under 2.B. for possession and shielding authorized on the same license.

[8] Licensees paying fees under 7.C. are not subject to fees under 2.B. for possession and shielding authorized on the same license.

[9] Licensees paying fees under 3.N. are not subject to paying fees under 3.P. for calibration or leak testing services authorized on the same license.

[10] Licensees paying fees under 7.B. are not subject to paying fees under 7.C. for broad scope license licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices authorized on the same license.

PART 171—ANNUAL FEES FOR REACTOR LICENSES AND FUEL CYCLE LICENSES AND MATERIALS LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY THE NRC

■ 6. The authority citation for part 171 continues to read as follows:

Authority: Consolidated Omnibus Budget Reconciliation Act sec. 7601, Pub. L. 99–272, as amended by sec. 5601, Pub. L. 100–203, as amended by sec. 3201, Pub. L. 101–239, as amended by sec. 6101, Pub. L. 101–508, as amended by sec. 2903a, Pub. L. 102–486 (42 U.S.C. 2213, 2214), and as amended by Title IV, Pub. L. 109–103 (42 U.S.C. 2214); Atomic Energy Act sec. 161(w), 223, 234 (42 U.S.C. 2201(w), 2273, 2282); Energy Reorganization Act sec. 201 (42 U.S.C. 5841); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005 sec. 651(e), Pub. L. 109–58 (42 U.S.C. 2014, 2021, 2021b, 2111).

■ 7. In § 171.15, revise paragraph (b)(1), the introductory text of paragraph (b)(2), paragraph (c)(1), the introductory text of paragraphs (c)(2) and (d)(1), and paragraphs (d)(2), (d)(3), and (e) to read as follows:

§ 171.15 Annual fees: Reactor licenses and independent spent fuel storage licenses.

* * * * *

(b)(1) The FY 2015 annual fee for each operating power reactor which must be collected by September 30, 2015, is $5,324,000.

(2) The FY 2015 annual fees are comprised of a base annual fee for power reactors licensed to operate, a base spent fuel storage/reactor decommissioning annual fee, and associated additional charges (fee-relief adjustment). The activities comprising the spent storage/reactor decommissioning base annual fee are shown in paragraphs (c)(2)(i) and (ii) of this section. The activities comprising the FY 2015 fee-relief adjustment are shown in paragraph (d)(1) of this section. The activities comprising the FY 2015 base annual fee for operating power reactors are as follows:

* * * * *

(c)(1) The FY 2015 annual fee for each power reactor holding a 10 CFR part 50 license that is in a decommissioning or possession-only status and has spent fuel onsite, and for each independent spent fuel storage 10 CFR part 72 licensee who does not hold a 10 CFR part 50 license, is $237,000.

(2) The FY 2015 annual fee is comprised of a base spent fuel storage/reactor decommissioning annual fee (which is also included in the operating power reactor annual fee shown in paragraph (b) of this section) and a fee-relief adjustment. The activities comprising the FY 2015 fee-relief adjustment are shown in paragraph (d)(1) of this section. The activities comprising the FY 2015 spent fuel storage/reactor decommissioning rebaselined annual fee are:

* * * * *

(d)(1) The fee-relief adjustment allocated to annual fees includes a surcharge for the activities listed in paragraph (d)(1)(i) of this section, plus the amount remaining after total budgeted resources for the activities included in paragraphs (d)(1)(ii) and (d)(1)(iii) of this section are reduced by the appropriations the NRC receives for these types of activities. If the NRC's appropriations for these types of activities are greater than the budgeted resources for the activities included in paragraphs (d)(1)(ii) and (d)(1)(iii) of this section for a given FY, annual fees will be reduced. The activities comprising the FY 2015 fee-relief adjustment are as follows:

* * * * *

(2) The total FY 2015 fee-relief adjustment allocated to the operating power reactor class of licenses is an $11,313,600 fee-relief surplus, not including the amount allocated to the spent fuel storage/reactor decommissioning class. The FY 2015 operating power reactor fee-relief adjustment to be assessed to each operating power reactor is approximately a $114,279 fee-relief surplus. This amount is calculated by dividing the total operating power reactor fee-relief surplus adjustment, $11.3 million, by the number of operating power reactors (99).

(3) The FY 2015 fee-relief adjustment allocated to the spent fuel storage/reactor decommissioning class of licenses is a $533,600 fee-relief assessment. The FY 2015 spent fuel storage/reactor decommissioning fee-relief adjustment to be assessed to each operating power reactor, each power reactor in decommissioning or possession-only status that has spent fuel onsite, and to each independent spent fuel storage 10 CFR part 72 licensee who does not hold a 10 CFR part 50 license, is a $4,374 fee-relief assessment. This amount is calculated by dividing the total fee-relief adjustment costs allocated to this class by the total number of power reactor licenses, except those that permanently ceased operations and have no fuel onsite, and 10 CFR part 72 licensees who do not hold a 10 CFR part 50 license.

(e) The FY 2015 annual fees for licensees authorized to operate a research or test (non-power) reactor licensed under part 50 of this chapter, unless the reactor is exempted from fees under § 171.11(a), are as follows:

Research reactor	$88,500
Test reactor	88,500

■ 8. In § 171.16, revise paragraph (d) and the introductory text of paragraph (e) to read as follows;

§ 171.16 Annual fees: Materials licensees, holders of certificates of compliance, holders of sealed source and device registrations, holders of quality assurance program approvals, and government agencies licensed by the NRC.

* * * * *

(d) The FY 2015 annual fees are comprised of a base annual fee and an allocation for fee-relief adjustment. The activities comprising the FY 2015 fee-relief adjustment are shown for convenience in paragraph (e) of this section. The FY 2015 annual fees for materials licensees and holders of certificates, registrations, or approvals subject to fees under this section are shown in the following table:

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC

[See footnotes at end of table]

Category of materials licenses	Annual fees [1] [2] [3]
1. Special nuclear material:	
A. (1) Licenses for possession and use of U-235 or plutonium for fuel fabrication activities.	
(a) Strategic Special Nuclear Material (High Enriched Uranium) [Program Code(s): 21130]	$9,424,000.
(b) Low Enriched Uranium in Dispersible Form Used for Fabrication of Power Reactor Fuel [Program Code(s): 21210].	$3,243,000.
(2) All other special nuclear materials licenses not included in Category 1.A. (1) which are licensed for fuel cycle activities	

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	Annual fees [1] [2] [3]
(a) Facilities with limited operations [Program Code(s): 21310, 21320]	$912,000.
(b) Gas centrifuge enrichment demonstration facilities	$1,824,000.
(c) Others, including hot cell facilities	$912,000.
B. Licenses for receipt and storage of spent fuel and reactor-related Greater than Class C (GTCC) waste at an independent spent fuel storage installation (ISFSI) [Program Code(s): 23200].	N/A. [11]
C. Licenses for possession and use of special nuclear material of less than a critical mass, as defined in § 70.4 of this chapter, in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers.[15] [Program Code(s): 22140].	$3,300.
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in sealed or unsealed form in combination that would constitute a critical mass, as defined in § 70.4 of this chapter, for which the licensee shall pay the same fees as those under Category 1.A.[15] [Program Code(s): 22110, 22111, 22120, 22131, 22136, 22150, 22151, 22161, 22170, 23100, 23300, 23310].	$8,400.
E. Licenses or certificates for the operation of a uranium enrichment facility [Program Code(s): 21200]	$4,459,000.
F. For special nuclear materials licenses in sealed or unsealed form of greater than a critical mass as defined in § 70.4 of this chapter.[15] [Program Code: 22155].	$7,100.
2. Source material:	
A. (1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride or for deconverting uranium hexafluoride in the production of uranium oxides for disposal. [Program Code: 11400].	$1,925,000.
(2) Licenses for possession and use of source material in recovery operations such as milling, in-situ recovery, heap-leaching, ore buying stations, ion-exchange facilities and in-processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode	
(a) Conventional and Heap Leach facilities [Program Code(s): 11100]	$40,700.
(b) Basic *In Situ* Recovery facilities [Program Code(s): 11500]	$51,500.
(c) Expanded *In Situ* Recovery facilities [Program Code(s): 11510]	$58,300.
(d) *In Situ* Recovery Resin facilities [Program Code(s): 11550]	$0.
(e) Resin Toll Milling facilities [Program Code(s): 11555]	N/A. [5]
(f) Other facilities [4] [Program Code(s): 11700]	$83,800.
(3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal, except those licenses subject to the fees in Category 2.A.(2) or Category 2.A.(4) [Program Code(s): 11600, 12000].	N/A. [5]
(4) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(2) [Program Code(s): 12010].	$23,100.
(5) Licenses that authorize the possession of source material related to removal of contaminants (source material) from drinking water [Program Code(s): 11820].	$6,800.
B. Licenses that authorize possession, use, and/or installation of source material for shielding.[16] [17] [18] [Program Code: 11210].	$3,700.
C. Licenses to distribute items containing source material to persons exempt from the licensing requirements of part 40 of this chapter. [Program Code: 11240].	$7,000.
D. Licenses to distribute source material to persons generally licensed under part 40 of this chapter [Program Code(s): 11230 and 11231].	$6,900.
E. Licenses for possession and use of source material for processing or manufacturing of products or materials containing source material for commercial distribution. [Program Code: 11710].	$8,600.
F. All other source material licenses. [Program Code(s): 11200, 11220, 11221, 11300, 11800, 11810]	$8,000.
3. Byproduct material:	
A. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution [Program Code(s): 03211, 03212, 03213].	$31,700.
B. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution [Program Code(s): 03214, 03215, 22135, 22162].	$13,300.
C. Licenses issued under §§ 32.72 and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources and devices containing byproduct material. This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when included on the same license. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under § 171.11(a)(1). [Program Code(s): 02500, 02511, 02513].	$14,000.
D. [Reserved]	N/A. [5]
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units) [Program Code(s): 03510, 03520].	$10,200.
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes [Program Code(s): 03511].	$12,600.
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes [Program Code(s): 03521].	$112,000.

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	Annual fees [1 2 3]
H. Licenses issued under subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter [Program Code(s): 03254, 03255].	$12,700.
I. Licenses issued under subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter [Program Code(s): 03250, 03251, 03252, 03253, 03256].	$18,900.
J. Licenses issued under subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter [Program Code(s): 03240, 03241, 03243].	$4,900.
K. Licenses issued under subpart B of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter [Program Code(s): 03242, 03244].	$3,500.
L. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution. Number of locations of use: 1–5. [Program Code(s): 01100, 01110, 01120, 03610, 03611, 03612, 03613].	$18,400.
(1) Licenses of broad scope for possession and use of product material issued under parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution. Number of locations of use: 6–20.	$24,600.
(2) Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution. Number of locations of use: 20 or more.	$30,600.
M. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for research and development that do not authorize commercial distribution [Program Code(s): 03620].	$12,800.
N. Licenses that authorize services for other licensees, except: (1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3.P.; and (2) Licenses that authorize waste disposal services are subject to the fees specified in fee categories 4.A., 4.B., and 4.C. [Program Code(s): 03219, 03225, 03226].	$21,700.
O. Licenses for possession and use of byproduct material issued under part 34 of this chapter for industrial radiography operations. This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when authorized on the same license [Program Code(s): 03310, 03320].	$26,900.
P. All other specific byproduct material licenses, except those in Categories 4.A. through 9.D.[19] [Program Code(s): 02400, 02410, 03120, 03121, 03122, 03123, 03124, 03140, 03130, 03220, 03221, 03222, 03800, 03810, 22130].	$8,200.
Q. Registration of devices generally licensed under part 31 of this chapter	N/A. [13]
R. Possession of items or products containing radium-226 identified in 10 CFR 31.12 which exceed the number of items or limits specified in that section: [14]	
1. Possession of quantities exceeding the number of items or limits in 10 CFR 31.12(a)(4), or (5) but less than or equal to 10 times the number of items or limits specified [Program Code(s): 02700].	$8,100.
2. Possession of quantities exceeding 10 times the number of items or limits specified in 10 CFR 31.12(a)(4) or (5) [Program Code(s): 02710].	$8,600.
S. Licenses for production of accelerator-produced radionuclides [Program Code(s): 03210]	$32,000.
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material [Program Code(s): 03231, 03233, 03235, 03236, 06100, 06101].	N/A. [5]
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material [Program Code(s): 03234].	$22,700.
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material [Program Code(s): 03232].	$15,200.
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies [Program Code(s): 03110, 03111, 03112].	$14,900.
B. Licenses for possession and use of byproduct material for field flooding tracer studies. [Program Code(s): 03113]	N/A. [5]
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material [Program Code(s): 03218].	$41,200.
7. Medical licenses:	
A. Licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in gamma stereotactic radiosurgery units, teletherapy devices, or similar beam therapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license. [Program Code(s): 02300, 02310].	$25,500.

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	Annual fees [1] [2] [3]
B. Licenses of broad scope issued to medical institutions or two or more physicians under parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.[9] [Program Code(s): 02110].	$38,500.
C. Other licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.[9] [20] [Program Code(s): 02120, 02121, 02200, 02201, 02210, 02220, 02230, 02231, 02240, 22160].	$13,700.
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities [Program Code(s): 03710].	$8,100.
9. Device, product, or sealed source safety evaluation:	
A. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution.	$8,200.
B. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices.	$13,600.
C. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution.	$8,000.
D. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel.	$1,600.
10. Transportation of radioactive material:	
A. Certificates of Compliance or other package approvals issued for design of casks, packages, and shipping containers	
1. Spent Fuel, High-Level Waste, and plutonium air packages	N/A. [6]
2. Other Casks	N/A. [6]
B. Quality assurance program approvals issued under part 71 of this chapter	
1. Users and Fabricators	N/A. [6]
2. Users	N/A. [6]
C. Evaluation of security plans, route approvals, route surveys, and transportation security devices (including immobilization devices).	N/A. [6]
11. Standardized spent fuel facilities	N/A. [6]
12. Special Projects [Program Code(s): 25110]	N/A. [6]
13. A. Spent fuel storage cask Certificate of Compliance	N/A. [6]
B. General licenses for storage of spent fuel under 10 CFR 72.210	N/A. [12]
14. Decommissioning/Reclamation:	
A. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under parts 30, 40, 70, 72, and 76 of this chapter, including master materials licenses (MMLs) [Program Code(s): 3900, 11900, 21135, 21215, 21240, 21325, 22200].	N/A. [7]
B. Site-specific decommissioning activities associated with unlicensed sites, including MMLs, whether or not the sites have been previously licensed.	N/A. [7]
15. Import and Export licenses	N/A. [8]
16. Reciprocity	N/A. [8]
17. Master materials licenses of broad scope issued to Government agencies [Program Code(s): 03614]	$353,000.
18. Department of Energy:	
A. Certificates of Compliance	$1,511,000. [10]
B. Uranium Mill Tailings Radiation Control Act (UMTRCA) activities	$653,000.

[1] Annual fees will be assessed based on whether a licensee held a valid license with the NRC authorizing possession and use of radioactive material during the current FY. The annual fee is waived for those materials licenses and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses before October 1, 2012, and permanently ceased licensed activities entirely before this date. Annual fees for licensees who filed for termination of a license, downgrade of a license, or for a possession-only license during the FY and for new licenses issued during the FY will be prorated in accordance with the provisions of § 171.17. If a person holds more than one license, certificate, registration, or approval, the annual fee(s) will be assessed for each license, certificate, registration, or approval held by that person. For licenses that authorize more than one activity on a single license (*e.g.,* human use and irradiator activities), annual fees will be assessed for each category applicable to the license.

[2] Payment of the prescribed annual fee does not automatically renew the license, certificate, registration, or approval for which the fee is paid. Renewal applications must be filed in accordance with the requirements of parts 30, 40, 70, 71, 72, or 76 of this chapter.

[3] Each FY, fees for these materials licenses will be calculated and assessed in accordance with § 171.13 and will be published in the **Federal Register** for notice and comment.

[4] Other facilities include licenses for extraction of metals, heavy metals, and rare earths.

[5] There are no existing NRC licenses in these fee categories. If NRC issues a license for these categories, the Commission will consider establishing an annual fee for this type of license.

[6] Standardized spent fuel facilities, 10 CFR parts 71 and 72 Certificates of Compliance and related Quality Assurance program approvals, and special reviews, such as topical reports, are not assessed an annual fee because the generic costs of regulating these activities are primarily attributable to users of the designs, certificates, and topical reports.

[7] Licensees in this category are not assessed an annual fee because they are charged an annual fee in other categories while they are licensed to operate.

[8] No annual fee is charged because it is not practical to administer due to the relatively short life or temporary nature of the license.

[9] Separate annual fees will not be assessed for pacemaker licenses issued to medical institutions that also hold nuclear medicine licenses under fee categories 7.B. or 7.C.

[10] This includes Certificates of Compliance issued to the U.S. Department of Energy that are not funded from the Nuclear Waste Fund.
[11] See § 171.15(c).
[12] See § 171.15(c).
[13] No annual fee is charged for this category because the cost of the general license registration program applicable to licenses in this category will be recovered through 10 CFR part 170 fees.
[14] Persons who possess radium sources that are used for operational purposes in another fee category are not also subject to the fees in this category. (This exception does not apply if the radium sources are possessed for storage only.)
[15] Licensees paying annual fees under category 1.A., 1.B., and 1.E. are not subject to the annual fees for categories 1.C., 1.D., and 1.F. for sealed sources authorized in the license.
[16] Licensees subject to fees under categories 1.A., 1.B., 1.E., or 2.A. must pay the largest applicable fee and are not subject to additional fees listed in this table.
[17] Licensees paying fees under 3.C. are not subject to fees under 2.B. for possession and shielding authorized on the same license.
[18] Licensees paying fees under 7.C. are not subject to fees under 2.B. for possession and shielding authorized on the same license.
[19] Licensees paying fees under 3.N. are not subject to paying fees under 3.P. for calibration or leak testing services authorized on the same license.
[20] Licensees paying fees under 7.B. are not subject to paying fees under 7.C. for broad scope license licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices authorized on the same license.

(e) The fee-relief adjustment allocated to annual fees includes the budgeted resources for the activities listed in paragraph (e)(1) of this section, plus the total budgeted resources for the activities included in paragraphs (e)(2) and (3) of this section, as reduced by the appropriations the NRC receives for these types of activities. If the NRC's appropriations for these types of activities are greater than the budgeted resources for the activities included in paragraphs (e)(2) and (3) of this section for a given FY, a negative fee-relief adjustment (or annual fee reduction) will be allocated to annual fees. The activities comprising the FY 2015 fee-relief adjustment are as follows:

* * * * *

Dated at Rockville, Maryland, this 9th day of March 2015.

For the Nuclear Regulatory Commission.

Maureen E. Wylie,

Chief Financial Officer.

[FR Doc. 2015–06377 Filed 3–20–15; 8:45 am]

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