relevant issues''). More information on the NAAQS review process is provided at: *http://www.epa.gov/ttn/naaqs/*. In workshop discussions, scientific experts will be expected to highlight significant new and emerging research on oxides of nitrogen and sulfur and make recommendations to the Agency regarding the design and scope of this review. The goal of the workshop is to ensure that EPA focuses on the key issues relevant to EPA's review of the NAAQS and considers the most meaningful new science to inform our understanding of these issues. Workshop discussions will provide important input as EPA considers the appropriate design and scope of major elements of the review that will inform the Agency's policy assessment. These elements include an integrated review plan (IRP) identifying the key policy-relevant issues; an integrated science assessment (ISA); and a risk and exposure assessment (REA). We intend that workshop discussions will build upon the following three publications:

- *Secondary National Ambient Air Quality Standards for Nitrogen Dioxide; Final Rule* (*40 CFR part 50 [EPA–HQ–OAR–2007–1145], April 3, 2012*). The preamble to the final rule included detailed discussions of policy-relevant issues central to the last review.
- *Integrated Science Assessment for Oxides of Nitrogen and Sulfur—Ecological Criteria (EPA 600/R–08/082F, December 2008).*
- *Risk and Exposure Assessment to Support the Review of the NO_2 Primary National Ambient Air Quality Standard (EPA 452/R–09/008a, September 2009).*

You can obtain copies of these and other related documents at: *http://www.epa.gov/ttn/naaqs/standards/no2so2sec/index.html*.

Drawing from the workshop discussions, EPA will develop a draft IRP. The IRP, in addition to summarizing the schedule and process for the review, will present approaches for evaluating the relevant scientific information; assessing risks to the environment; and addressing the key policy-relevant issues. The Clean Air Scientific Advisory Committee (CASAC) will be asked to review the draft IRP, and the public will have the opportunity to comment on it as well. The final IRP will be used as a framework to guide the review.

Dated: February 4, 2014.

Abdel Razak M. Kadry,

Acting Deputy Director, National Center for Environmental Assessment.

[FR Doc. 2014–03116 Filed 2–12–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2005–AL–0002; FRL–9906–38–Region–4]

Approval and Promulgation of Implementation Plans: Alabama: Error Correction and Disapproval of Revisions to the Visible Emissions Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to correct, pursuant to the Clean Air Act (CAA or Act), its erroneous approval of revisions to Alabama's State Implementation Plan (SIP) that amended the visible emissions rule applicable to certain stationary sources. The State of Alabama, through the Alabama Department of Environmental Management (ADEM), submitted the SIP revisions in question to EPA on September 11, 2003, and August 22, 2008. EPA took final action approving these SIP revisions on October 15, 2008. EPA is now reconsidering its previous approval and is proposing to determine that EPA's October 2008 approval of these SIP revisions was in error. Consequently, EPA is also proposing to disapprove the aforementioned SIP revisions.

DATES: Written comments must be received on or before March 17, 2014.

ADDRESSES: Submit your comments identified by Docket ID No. EPA–R04–OAR–2005–AL–0002, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: R4-RDS@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* EPA–R04–OAR–2005–AL–0002, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. ''EPA–R04–OAR–2005–AL–0002.'' 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 through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to 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. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to

schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Joel Huey, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9104. Mr. Huey can also be reached via electronic mail at *huey.joel@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. Background for These Proposed Actions

The State of Alabama, through ADEM, submitted SIP revisions to EPA on September 11, 2003, and August 22, 2008, to revise Alabama's SIP-approved visible emissions rule. EPA took final action approving Alabama's September 11, 2003, and August 22, 2008, SIP revisions (hereafter also referred to as the ''Submittals'') on October 15, 2008. *See* 73 FR 60957. Subsequently, on April 6, 2011, EPA took final action to disapprove Alabama's Submittals. *See* 76 FR 18870. EPA's disapproval action was later vacated by the United States Court of Appeals for the Eleventh Circuit (hereafter also referred to as the ''Court'' or the ''Eleventh Circuit Court of Appeals''). See below for more details on the Court's decision. A copy of this decision is in the docket [1] for this proposed rulemaking. The Court decision put back in effect EPA's October 2008, approval action. Today, EPA is reconsidering its October 2008 approval action, and is proposing to determine, pursuant to section 110(k)(6) of the CAA, that EPA's October 2008 approval of Alabama's SIP revisions (submitted September 11, 2003, and August 22, 2008) to change its EPA-approved visible emission rule (referred to hereafter as the ''previous rule'') was in error. Consequently, EPA is also proposing to disapprove the aforementioned SIP revisions.

More detail on EPA's rationale for today's proposed actions is provided below. Specifically, Section II, below, outlines EPA's basis for proposing to determine that EPA erred in October 2008 when it approved the Submittals and thus the current, or ''revised,'' SIP rule. Section III provides the basis for EPA's proposed disapproval of the Submittals. Today's proposed disapproval action is consistent with the analysis that EPA laid out in the April 6, 2011, final disapproval action for these Submittals but is more specific than that action with regard to the errors EPA has determined were made by the 2008 approval action.

A. Background on Court Decision Related to EPA's Previous Actions on Alabama's Visible Emission Rule Changes

As mentioned above, EPA took action on October 15, 2008, to approve changes to Alabama's visible emissions rule that were submitted in SIP revisions on September 11, 2003, and August 22, 2008. *See* 73 FR 60957. Subsequently, on April 6, 2011, EPA took final action to disapprove Alabama's Submittals. *See* 76 FR 18870. EPA's April 6, 2011, final action was challenged in the Eleventh Circuit Court of Appeals by Alabama Power Company (joined through intervention by the State of Alabama). This case was ultimately consolidated with the pending but stayed challenges by the Alabama Environmental Council (AEC) and others to EPA's October 2008 approval of the Submittals. Following briefing and oral argument, the Eleventh Circuit Court of Appeals issued a 2–1 decision on March 6, 2013, vacating EPA's April 2011 disapproval action and affirming EPA's October 2008 approval action. *See Alabama Environmental Council* v. *EPA,* 711 F.3d 1277 (11th Cir. 2013). The majority opinion found that CAA section 110(k)(6) permits EPA to revise a SIP provision approved ''in error'' without any further submission from the State, so long as EPA provides the State and the public with its error determination and the basis thereof. *See* 711 F3d at 1287. Specifically, the Court explained: ''Thus, if the EPA chooses to invoke Section 110(k)(6) to revise a prior action, Congress has required the EPA to articulate an 'error' and provide 'the basis' of its determination that an error occurred.'' *Id.* Today, EPA is reconsidering its action in October 2008 to approve Alabama's Submittals, and is now proposing to determine pursuant to CAA 110(k)(6), that EPA's October 15, 2008, approval of Alabama's September 11, 2003, and August 22, 2008, SIP revisions related to visible emissions was in error, consistent with section 110(k)(6). Today, EPA is initiating a comment period regarding issues presented in this notice for the following reasons: (1) to provide the public with the basis of EPA's determination of what errors occurred; and (2) to outline EPA's rationale for disapproval of Alabama's Submittals. An overview of EPA's previous actions and other relevant background is provided below.

B. Background on Error Corrections Under CAA Section 110(k)(6)

Section 110(k)(6) of the CAA provides EPA with the authority to make corrections to actions that are subsequently found to be in error. The key provisions of section 110(k)(6) for present purposes are that the Administrator has the authority to ''determine[]'' when a SIP approval was ''in error,'' and when the Administrator does so, may then revise the SIP approval ''as appropriate,'' in the same manner as the prior action, and do so without requiring any further submission from the State. As mentioned above, the Eleventh Circuit Court affirmed EPA's authority to use section 110(k)(6) to revise a prior action related to a state's implementation plan. *See* 711 F3d at 1287. While CAA section 110(k)(6) provides EPA with the authority to correct its own ''error,'' nowhere does this provision or any other provision in the CAA define what qualifies as ''error.'' Thus, EPA believes that the term should be given its plain language, everyday meaning, which includes all unintentional, incorrect or wrong actions or mistakes.

Additionally, the legislative history of CAA section 110(k)(6) is silent regarding the definition of error, but the timing of the enactment of the provision suggests a broad interpretation. The provision was enacted shortly after the U.S. Court of Appeals for the Third Circuit (hereafter referred to as the ''Third Circuit Court'') decision in *Concerned Citizens of Bridesburg* v. *U.S. EPA* (hereafter referred to as ''Bridesburg''), 836 F.2d 777 (3rd Cir. 1987). In *Bridesburg,* the Third Circuit Court adopted a narrow interpretation of EPA's authority to correct errors unilaterally. The Third Circuit Court stated that such authority was limited to typographical and other similar errors, and stated that any other change to a SIP must be accomplished through a SIP revision. *Id.* at 786.

In *Bridesburg,* EPA determined that it lacked authority to include odor regulations as part of a SIP unless the

[1] EPA notes that while the docket for today's action includes the most recent previous EPA actions (and other information) related to Alabama's changes to its visible emissions rule, EPA is not reopening comment on issues related to those previous actions, and is only taking comment on issues proposed in today's rulemaking.

odor regulations had a significant relationship to achieving a national ambient air quality standard (NAAQS), and so the Agency directly acted to remove the 13-year-old odor provisions from the Pennsylvania SIP. *Id.* at 779–80. Specifically, EPA found the previous approval of the odor provisions into the SIP was an inadvertent error, and thus used its ''inherent authority to correct an inadvertent mistake'' to withdraw its prior approval of the odor regulations without seeking approval of the change from Pennsylvania. *Id.* at 779–80, 785. After noting that Congress had not contemplated the need for revision on the grounds cited by EPA, *id.* at 780, the Third Circuit Court found that EPA's ''inherent authority to correct an inadvertent mistake'' was limited to corrections such as ''typographical errors,'' and that instead EPA was required to use the SIP revision process to remove the odor provision from the SIP. *Id.* at 785–86.

When the Third Circuit Court made its determination in *Bridesburg* in 1987, there was no provision explicitly addressing EPA's error correction authority under the CAA. In 1990, Congress added section 110(k)(6) to the CAA. The legislative history of the CAA says little about the provision, and does not mention *Bridesburg.* Even so, the terms of the provision make it evident that Congress authorized EPA to undertake a broader set of revisions when correcting errors than the *Bridesburg* court read the pre-existing CAA to authorize, and that Congress did not intend to codify the holding of the *Bridesburg* decision. This is apparent because CAA section 110(k)(6) both: (1) authorizes EPA to correct SIP approvals and other actions that were ''in error,'' which, as noted previously, broadly covers any mistake, and thereby contrasts with the holding in the *Bridesburg* decision that EPA's pre-section 110(k)(6) authority was limited to correction of typographical or similar mistakes; and (2) provides that the error correction need not be accomplished via the SIP revision or SIP call process, which also contrasts with the holding of the *Bridesburg* decision requiring a SIP revision. By the same token, because the *Bridesburg* decision stood for the proposition that EPA could not correct anything more than a narrow range of typographical errors, had Congress intended to codify the decision in *Bridesburg,* it is logical that Congress would have described the type of error that EPA was authorized to correct in the same limited way that the decision did. In this manner, the fact that Congress adopted CAA section 110(k)(6) against the backdrop of the *Bridesburg* case confirms that the provision cover a broad range of errors.

EPA has used CAA section 110(k)(6) as authority to make substantive corrections to remove a variety of provisions from federally-approved SIPs that are not related to the attainment or maintenance of NAAQS or any other CAA requirement. *See, e.g.,* ''Approval and Promulgation of Implementation Plans; Kentucky: Approval of Revisions to the State Implementation Plan,'' 75 FR 2440 (January 15, 2010) (correcting the SIP by removing a provision, approved in 1982, used to address hazardous or toxic air pollutants); ''Approval and Promulgation of Implementation Plans; New York,'' 73 FR 21546 (April 22, 2008) (issuing a direct final rule to correct a prior SIP correction from 1998 that removed general duties from the SIP but neglected to remove a reference to ''odor'' in the definition of ''air contaminant or air pollutant''); ''Approval and Promulgation of Implementation Plans; New York,'' 63 FR 65557 (November 27, 1998) (issuing direct final rule to correct SIP by removing a general duty ''nuisance provision'' that had been approved in 1984); ''Correction of Implementation Plans; American Samoa, Arizona, California, Hawaii, and Nevada State Implementation Plans,'' 63 FR 34641 (June 27, 1997) (correcting five SIPs by deleting a variety of administrative provisions concerning variances, hearing board procedures, and fees that had been approved during the 1970s).

CAA section 110(k)(6), by its terms—specifically, the use of the terms ''[w]henever'' and ''may''—authorizes, but does not require, EPA to make the specified finding. As a result, EPA has discretion in determining whether and when to make the specified finding and to utilize authority of section 110(k)(6). *See New York Public Interest Research Group* v. *Whitman,* 321 F.3d 316, 330–31 (2d Cir. 2003) (opening phrase ''Whenever the Administrator makes a determination'' in CAA section 502(i)(1) grants EPA ''discretion whether to make a determination''); *Her Majesty the Queen in Right of Ontario* v. *EPA,* 912 F.2d 1525, 1533 (D.C. Cir. 1990) (''whenever'' in CAA section 115(a) ''impl[ied] a degree of discretion'' in whether EPA had to make a finding). In addition, EPA has used CAA section 110(k)(6) authority to correct errors of a non-technical nature. Most recently, EPA withdrew its approval of SIP prevention of significant deterioration (PSD) programs in 24 states to the extent they apply PSD to Greenhouse Gas-emitting sources below the thresholds in the final Tailoring Rule.[2]

C. Differences Between Alabama's Previous SIP Opacity Rule and the Revised Rule Requested in Alabama's 2003 and 2008 Submittals

Under both the pre-existing opacity restrictions in Alabama's SIP and the changes requested in Alabama's 2003 and 2008 submittals, the maximum number of six-minute periods [3] above the general 20 percent opacity limit allowed per day is the same—24. The maximum ''average daily opacity'' allowed under the previous rule is the same as the specific cap under the submittals—22 percent. On a quarterly basis, the total of exempt opacity exceedances allowed under the previous rule is 10 percent of operating time but is specifically capped under the submittals at 2 percent of operating time, while the maximum ''average quarterly opacity'' allowed is approximately the same—22 percent under the previous rule, and 21.6 percent under the submittals.[4]

However, there are two significant differences [5] between the previous rule and the revised rule. The first significant difference is that the revised rule allows for maximum visible emissions of up to 100 percent opacity during 24 six-minute periods per day, while the previous rule allowed for maximum visible emissions of up to only 40 percent opacity during 24 six-minute periods per day. *See* Alabama Administrative Code (AAC) 335–3–4–.01(4) (revised rule). The second significant difference is that the revised rule allows opacity above the general 20 percent SIP standard for up to 2.4 consecutive hours (*i.e.,* an aggregate of 24 six-minute periods per calendar day), while the previous rule allowed

[2] See ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting Sources in State Implementation Plans; Final Rule,'' 75 FR 82536 (December 30, 2010) (Narrowing Rule).

[3] Unless otherwise noted, this notice refers to exempt periods other than those provided by the previous rule for startup, shutdown, load change and rate change (or other short intermittent periods upon terms approved by ADEM's Director and included in a State-issued permit), which were part of the existing SIP-approved rule and remained unchanged under the October 15, 2008, final action rule.

[4] See previous rule AAC 335–3–4–.01(1)(b) and current rule AAC 335–3–4–.01(4) and 335–3–4–.01(5).

[5] One of the technical support documents (TSDs) provided for this action explains in detail the differences between the current and prior visible emissions rules. EPA considered all the differences in reaching its decision today. EPA is simply identifying two significant differences that are particularly relevant to the analysis of the submittal. *See* EPA–R04–OAR–2005–AL–0002–0093.

exceedances of the 20 percent SIP standard for intervals of only 0.1 consecutive hours (*i.e.,* one six-minute period per hour).[6] A critical consideration, therefore, is whether the significant increase of the maximum allowable opacity from 40 percent to 100 percent for up to 2.4 consecutive hours per day could result in more PM emissions were sources to take advantage of the changed limits.

D. Background on Alabama's Visible Emission Rule and EPA's Previous Action on Alabama's Submittals Related to Visible Emissions

EPA first approved Alabama's visible emissions rule into the Alabama SIP in 1972. *See* 37 FR 10842, 10847 (May 31, 1972). The State submitted the visible emissions rule as part of its SIP for attainment and maintenance of the total suspended particulates (TSP) NAAQS (the predecessor to the Particulate Matter (PM) NAAQS). The State has revised its visible emission rule three times in support of those goals.

Historically, Alabama has had areas with attainment problems for the various PM NAAQS. Originally, EPA designated some areas in Alabama as nonattainment for the TSP NAAQS. In 1987, EPA replaced the TSP NAAQS with the PM_{10} NAAQS, and all areas of Alabama were designated as attainment for those NAAQS. *See* 56 FR 11101 and 58 FR 67734. All areas of Alabama remain designated attainment for the PM_{10} NAAQS. In 1997, EPA promulgated new annual and 24-hour particulate matter NAAQS, using $PM_{2.5}$ as the indicator. Effective April 5, 2005, EPA designated portions of Alabama, in the Birmingham and Chattanooga areas, as nonattainment for the 1997 $PM_{2.5}$ NAAQS.[7] [8] The Chattanooga nonattainment area for the 1997 $PM_{2.5}$ NAAQS included a portion of Jackson County, Alabama. *See* 70 FR 944. Alabama's visible emissions rules at AAC 335–3–4–.01(4) continue to be a part of the Alabama SIP for attainment and maintenance of the PM NAAQS.

As mentioned above, Alabama submitted SIP revisions on September 11, 2003, and August 22, 2008, with changes to its visible emission rule. Specifically, the Submittals affect the applicable visible emissions limits at approximately 19 stationary source facilities.[9] These 19 facilities include older coal-fired utilities, cement manufacturing facilities, and pulp and paper facilities, among others. Five of these facilities are located in or near areas (e.g., Birmingham) that as of 2008 exceeded applicable $PM_{2.5}$ NAAQS.[10] In addition, Widows Creek Fossil Plant, operated by the Tennessee Valley Authority (TVA)), is located in the Chattanooga nonattainment area for the 1997 Annual $PM_{2.5}$ NAAQS. Other facilities affected by Alabama's visible emissions rule may also impact these or other areas.

Opacity may be defined as the degree to which emissions reduce the transmission of light and obscure the view of an object in the background. *See* 40 CFR 60.2. ''Visible emissions'' are pollutant discharges from a source that can be seen with the naked eye and are commonly measured as a percent of opacity. Opacity is an important emissions reduction tool because it provides information regarding pollutants leaving an emissions source and the effectiveness of the control equipment designed to capture those pollutants. In general, the more particles which scatter or absorb light that pass through an emissions point, the more light will be blocked, thus increasing the opacity percentage of the emissions plume. However, variables such as the size, number, and composition of the particles in the emissions can result in variations in the percentage of opacity.

Historically, visible emissions have been an important tool for implementation of PM NAAQS and, in particular, for the implementation and enforcement of PM limits on sources to help attain the NAAQS. The monitoring of visible emissions remains a useful technique for indicating the overall operation and maintenance of a facility and its emissions control devices and was employed even before modern instruments that measure PM on a direct, continuous basis existed. Observation of greater than normal visible emissions, particularly on a recurring basis, indicates that incomplete combustion or other changes to the process or the control device is or was occurring; such changes frequently lead to increased PM emissions. Although opacity is not a criteria pollutant, opacity standards continue to be used as an indicator of the effectiveness of emission controls for PM emissions, or to assist with implementation and enforcement of PM emission standards for purposes of attaining PM NAAQS. Further, well-maintained and well-operated sources should be able to achieve visible emissions that comply with opacity limits. For example, data submitted by one previous commenter to EPA's actions on Alabama's visible emission rule show routine source operation with opacity of about five percent.[11] Conversely, visible emissions at much higher percentages (such as those allowed by Alabama's revised rule), particularly on a recurring basis, may indicate that a source is emitting more PM and may be in violation of applicable SIP or permit PM mass limits as well. Alabama's Submittals would authorize sources to emit visible emissions of up to 100 percent opacity (the previous maximum opacity was 40 percent) for up to 2.4 consecutive hours per day [12] (the previous consecutive maximum time for sources to exceed the generally applicable 20 percent opacity standard was 6 minutes per hour). To be approvable, these changes must be consistent with CAA sections 110(l) and 193.

On October 15, 2008, EPA took final action to incorporate into the Alabama

[6] See previous rule AAC 335–3–4–.01(1)(b) and current rule AAC 335–3–4–.01(4).

[7] On January 22, 2013, EPA redesignated the Birmingham Area to attainment for the 1997 $PM_{2.5}$ NAAQS, so this area is currently a ''maintenance'' area for the 1997 $PM_{2.5}$ NAAQS. *See* 78 FR 4341.

[8] In 2006, EPA promulgated new $PM_{2.5}$ NAAQS, significantly tightening the 24-hour standards. Effective December 14, 2009, the Birmingham area was designated nonattainment for the 24-hour $PM_{2.5}$ NAAQS, as revised in 2006. In 2013, EPA redesignated the Birmingham Area to attainment for the 2006 24-hour $PM_{2.5}$ NAAQS (78 FR 5306, January 25, 2013). A portion of Jackson County, Alabama in association with the Chattanooga area remains designated as nonattainment for the 1997 Annual $PM_{2.5}$ NAAQS. EPA is currently evaluating Alabama's request for EPA to redesignate the portion of Jackson County, Alabama that is nonattainment to attainment for the 1997 Annual $PM_{2.5}$ NAAQS, and the State's associate maintenance plan.

[9] At this time, it is EPA's understanding that the rule at issue applies to 19 facilities. Due to the applicability portions of the rule, the rule could apply to fewer facilities over time, but likely will not apply to any more.

[10] As noted later in this rulemaking and above, EPA is proposing to determine that the Agency made an error in approving Alabama's visible emission rule changes in the October 15, 2008, rulemaking. EPA notes that based on the most recently quality-assured data for Alabama that some areas of Alabama, including Birmingham, exceed the 2012 $PM_{2.5}$ Annual NAAQS.

[11] Alabama Power Company in Attachment T from the docket (Docket No. EPA–R04–OAR–2005–AL–0002–0082.1) shows that over a three-year period its units did not exceed 5 percent opacity for 55.4 percent of the operating time, 10 percent opacity for 89 percent of the operating time, and 15 percent opacity for 97.6 percent of the operating time. In addition, the U.S. District Court for the Northern District of Alabama found in 2009 that at TVA's Plant Colbert, Units 1–4 typical baseline opacity measured about 5–8 percent during normal unit operation, and Unit 5 was projected to operate below 5 percent opacity even with a partially malfunctioning control device and below 10 percent ''under extreme conditions that are unlikely to ever occur.'' *Sierra Club* v. *TVA,* 592 F. Supp. 2d 1357, 1367 (N.D. AL 2009).

[12] The Submittals allow up to 2.4 hours per day of operation at opacity levels in excess of 20 percent, provided that the total of such periods do not exceed 2 percent of operating time in a quarter, excluding periods of startup, shutdown, load change and rate change (or other short intermittent periods upon terms approved by ADEM's Director and included in a State-issued permit).

SIP, the changes to Alabama's visible emissions rule included in the Submittals. *See* 73 FR 60957. EPA's rationale for its approval is discussed in that final action. EPA's approval of the SIP revisions relied on two main findings: ''(1) the revision would not increase the allowable average opacity levels; and (2) the relationship between changes in opacity and increases or decreases in ambient $PM_{2.5}$ levels cannot be quantified readily for the sources subject to this SIP revision, and is particularly uncertain for short-term analyses.'' *See* 73 FR 60959. EPA's October 15, 2008, final action was effective on November 14, 2008 (by its terms, the Alabama rule change became effective, and thus applicable to sources, on May 14, 2009).

Following the October 2008 final action, EPA received two petitions for reconsideration submitted on behalf of AEC and other parties (Petitioners), one on December 12, 2008, and one on February 25, 2009. EPA considered these petitions under section 553(e) of the Administrative Procedures Act (APA) and the CAA. The first petition for reconsideration raised procedural and substantive concerns with EPA's October 2008 final action.[13] EPA denied the December 12, 2008, petition via letter on January 15, 2009. The second petition incorporated by reference the issues raised in the first petition and also identified additional substantive and procedural concerns not included in the first petition.[14] EPA granted the second petition for reconsideration of the October 2008 final action via letter on April 3, 2009. In that letter, EPA explained that it anticipated initiating a new rulemaking process to provide additional opportunities for public comment on issues raised in the petition for reconsideration. On December 12, 2008, Petitioners filed a lawsuit in the Eleventh Circuit Court of Appeals challenging EPA's October 2008 final action. The Court subsequently stayed the litigation pending the conclusion of EPA's reconsideration process.

On October 2, 2009, EPA proposed to initiate a new rulemaking process to reconsider its prior action on the Submittals. *See* 74 FR 50930. In that proposal, EPA articulated two alternative options and sought public comment on both. One option was to affirm the October 2008 final action (thus approving Alabama's SIP revisions) and the other was to amend the October 2008 final action (thus disapproving Alabama's SIP revisions). The bases for each alternative were described in detail in the October 2, 2009, proposed rulemaking. *See* 74 FR 50932–50934. EPA thus undertook full notice and comment again on the substantive issues relevant to the SIP revisions. EPA received numerous comments on its October 2, 2009, proposed rule.

In EPA's April 6, 2011, final action, EPA explained the basis of its determination that the Submittals were not approvable. EPA began by explaining: ''In light of the fact that this SIP revision would apply statewide, including nonattainment areas, EPA has concluded that it cannot approve the SIP revision under section 110(l) if it would worsen air quality by allowing increased emissions of criteria pollutants or precursors to such criteria pollutants.'' *See* 76 FR 18871. EPA then discussed the role of visible emissions in NAAQS attainment and maintenance, highlighting that historically, visible emissions have been an important tool for implementation of the PM NAAQS and, in particular, for the implementation and enforcement of PM limits on sources to help attain, and maintain, the NAAQS. *See* 76 FR 18872. EPA explained that while sources submitted data during the comment period on the October 2009 proposal that suggested routine source operation of about five percent opacity, visible emissions at much higher percentages such as those allowed by the Submittals (which allow for opacity of up to 100 percent), particularly on a recurring basis, may indicate that a source is in violation of particulate matter emission limits in the SIP or individual source permits. *See* 76 FR 18872.

Though EPA's October 2009 **Federal Register** notice requested specific data on the correlation between opacity and particulate matter emissions, EPA received no such data obtained from any of the 19 sources that would be affected by the Submittals. *See* 76 FR 18872 and 74 FR 50934. As EPA explained in the April 6, 2011, final action, the Submittals included two key rule changes to the existing EPA-approved opacity standards that effectively allowed for increases in opacity emissions from the 19 older facilities which may not have state-of-the-art control equipment but which are subject to the rule. The first significant change was the allowance of maximum visible emissions of 100 percent opacity during certain periods while the previous rule allowed for maximum visible emissions of only 40 percent opacity. *See* 76 FR 18874. The second significant change was that the revised rule allowed for opacity to increase up to 100 percent for 2.4 consecutive hours, which Petitioners referred to as the ''bundling'' of high opacity periods, whereas the previous visible emissions standard did not allow for such bundling and restricted the opacity increases to six minutes per hour. *Id.*

As discussed in more detail above, EPA's April 6, 2011, final action was challenged in the Eleventh Circuit Court of Appeals by Alabama Power Company (joined through intervention by the State of Alabama). In a 2–1 decision on March 6, 2013, the Court vacated EPA's April 2011 disapproval action and affirming EPA's October 2008 approval action. *Alabama Environmental Council* v. *EPA,* 711 F.3d 1277 (11th Cir. 2013). The majority opinion found that CAA section 110(k)(6) permits EPA to revise a SIP provision approved ''in error'' without any further submission from the State, so long as EPA provides the state and the public with its error determination and the basis thereof. *See* 711 F.3d at 1281. Specifically, the Court explained: ''Thus, if the EPA chooses to invoke Section 110(k)(6) to revise a prior action, Congress has required the EPA to articulate an 'error' and provide 'the basis' of its determination that an error occurred.'' *Id.* at 1287.

When EPA took action on Alabama's visible emission rule changes in 2008, the Birmingham Area was designated nonattainment for the 1997 Annual $PM_{2.5}$ NAAQS, and EPA was in the

[13] The Petitioners raised eight main issues: (1) EPA was arbitrary and capricious in failing to reopen the public comment period when ADEM made changes to the rule after the close of the public comment period; (2) EPA was arbitrary and capricious in deviating from rulemaking policy regarding documentation of post-comment period meetings between EPA and ADEM and failing to meet with Petitioners in addition to ADEM; (3) EPA was arbitrary and capricious in proposing to approve a SIP revision before the rule had even been developed at the State level; (4) EPA failed to comply with rulemaking procedures by failing to complete the docket prior to finalizing the rulemaking package; (5) The rule should not have been approved because it does not represent reasonably available control technology requirements for SIPs because Alabama has nonattainment areas for $PM_{2.5}$; (6) EPA's approval of the rule is not consistent with either section 110(l) or 193 of the CAA due to likely increases in short-term particulate matter emissions; (7) EPA's final action is not consistent with EPA policies on excess emissions and director's discretion; and (8) The final rule does not comply with 40 CFR part 51 because it is not an ''appropriate'' visible emission limitation.

[14] The Petitioners specifically highlighted two new issues: (1) the DC Circuit's decision in *Sierra Club* v. *EPA,* 551 F.3d 1019 (D.C. Cir. 2008) (Start up, Shut Down (SSM) Maximum Available Control Technology (decision) made the Agency's action on the SIP revision untenable; and (2) new documents added to the docket show that throughout the consideration of this matter, EPA acted in an arbitrary and duplicitous manner in failing to re-notice the rulemaking for public comment given the differences between what EPA required of Alabama in the April 12, 2007, proposal and what Alabama actually submitted for approval in its August 22, 2008, submittal.

process of designating this same area as nonattainment for the 2006 24-hour $PM_{2.5}$ NAAQS. Additionally, a portion of Jackson County (in association with the Chattanooga area) was designated nonattainment for the 1997 Annual $PM_{2.5}$ NAAQS. The geographic location of affected sources covered by the visible emission rules in the EPA-approved SIP is relevant. This is because (as is discussed more fully below) EPA interprets section 110(l) to prohibit approval of SIP revisions that would increase emissions of pollutants for which an area is designated nonattainment, in the absence of offsetting emission reductions or an attainment demonstration addressing the rule changes at issue. Further, under section 193 (which was not considered in the October 2008 approval—a matter that EPA is now proposing to determine was an error), an evaluation of the impacts of changes to Alabama's visible emissions rule was required for the nonattainment areas because the rule was in place prior to the 1990 amendments to the CAA.

II. Errors That EPA Made in the October 15, 2008 Rulemaking Approving Alabama's Visible Emissions SIP Revisions

EPA is proposing to determine, pursuant to CAA section 110(k)(6), that its 2008 approval of Alabama's 2003 and 2008 SIP submittals was in error. EPA is providing the specific error determinations and the basis for each determination below.

A. EPA Erred in Interpreting CAA Section 110(l) as Allowing EPA To Approve a SIP Revision That Relaxes Existing SIP Requirements Based on Uncertainty Regarding Whether the Revision Will Worsen Air Quality

In its 2008 action approving Alabama's 2003 and 2008 SIP submittals, EPA conceded that ''modeling presented by commenters show[ed] the possibility of an impact on the NAAQS under a worst-case scenario.'' *See* 73 FR 60962. EPA noted, however, that ''the modeling *does not convincingly demonstrate the impact of the rule change* on the NAAQS because the level of PM emissions while operating at 100 percent opacity, and the source-specific relationship between opacity and PM emissions, are uncertain and are not demonstrated in the public record.'' *Id.* (emphasis added). EPA further explained that ''the relationship between changes in opacity and increases or decreases in ambient $PM_{2.5}$ levels *cannot be quantified readily* for the sources subject to this SIP revision, and *is particularly uncertain* for short-term analysis.'' *See* 73 FR 60959 (emphasis added). Based in part on this finding of uncertainty regarding the actual air quality impacts of the requested SIP revisions and EPA's interpretation of CAA section 110(l) as only barring EPA's approval of a requested SIP revision if ''the agency finds it will make air quality worse'' (*see* 73 FR 60960), EPA concluded that the proposed revisions satisfied the requirements of CAA section 110(l) with respect to the 24-hour PM NAAQS. *See* 73 FR 60959. In other words, under EPA's 2008 interpretation of section 110(l), a SIP relaxation ''would interfere'' with NAAQS attainment and maintenance only where EPA is able to determine that it is more likely than not that the revision would worsen air quality. Because EPA concluded that data uncertainty prevented it from making that determination with respect to Alabama's SIP revisions, EPA concluded that it was approvable under section 110(l). As explained below, EPA now proposes to conclude that the interpretation of section 110(l) that EPA relied on for purposes of its 2008 approval of Alabama's requested SIP revisions was erroneous. Because EPA's 2008 final action depended on that erroneous statutory interpretation, EPA's approval of Alabama's requested SIP revisions was itself in error.

EPA's proposed conclusion that it erred in interpreting CAA section 110(l) as barring EPA's approval of a SIP relaxation only where EPA is able to conclude that it is more likely than not that the relaxation will make air quality worse is based on its view that this interpretation does not adequately implement section 110(l) in light of the CAA's purpose ''to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population,'' CAA section 101(b)(1). Specifically, given the technical complexity of assessing how a particular SIP revision will impact air quality, it may be difficult—or even impossible—to determine in advance whether a requested SIP revision will make air quality worse. Thus, an interpretation of the phrase ''would interfere'' in CAA section 110(l) that allows EPA to approve a SIP revision that relaxes existing SIP requirements despite significant uncertainty regarding whether the change will worsen air quality could well result in EPA approving SIP revisions that actually do worsen air quality, which would be contrary to the express purpose and requirements of section 110(l). While EPA could then attempt to remedy the problem by issuing a SIP call under CAA section 110(k)(5), compliance with SIP call procedures typically takes more than a year, and sometimes much longer. In the meantime, the public would be exposed to elevated air pollution levels. Thus, EPA finds that its 2008 approach of approving a SIP relaxation despite significant uncertainty as to whether the relaxation ultimately will worsen air quality was in error because such interpretation is inconsistent with section 110(l) and with EPA's responsibility under CAA section 101(b)(1) ''to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare.''

EPA now concludes that it should assume that a SIP revision that relaxes an existing SIP requirement ''would interfere'' with NAAQS attainment and maintenance in the absence of record evidence demonstrating that it would not. This assumption makes sense given that States adopt (and EPA approves) SIP requirements for the purpose of attaining and maintaining the NAAQS. Thus, it should be assumed that any existing SIP requirement is needed for that purpose, and if a State wishes to revise or remove a SIP requirement, such request must be accompanied by a demonstration that the revision would not interfere with NAAQS attainment or maintenance.

EPA's interpretation of CAA section 110(l) does not mean that a small possibility that a SIP revision might allow increased pollution that would interfere with NAAQS attainment or maintenance necessitates EPA's disapproval. EPA recognizes that attainment planning generally requires a high degree of technical judgment and often involves some degree of uncertainty. Thus, under EPA's interpretation of CAA section 110(l), EPA can approve a SIP relaxation if the State demonstrates either that it is unlikely that the revision would allow increased pollution or that any increases allowed by the revision would not be enough to interfere with NAAQS attainment or maintenance. Where data uncertainty prevents such a demonstration, however, EPA will assume that that the relaxation would interfere with NAAQS attainment or maintenance. EPA cannot, as it did in its 2008 action approving Alabama's 2003 and 2008 SIP submittals, rely on uncertainty regarding whether a SIP relaxation would make air quality worse as the basis for concluding that a revision is approvable under CAA section 110(l).

B. Even Applying EPA's 2008 Interpretation of CAA Section 110(l), EPA Erred in Determining That the Record Was Insufficient To Demonstrate That the Requested Revisions Would Interfere With NAAQS Attainment and Maintenance

Even applying its 2008 interpretation of CAA section 110(l)—which EPA now concedes was erroneous—EPA proposes to conclude that it erred in finding that uncertainty regarding the precise relationship between changes in opacity levels and increases or decreases in PM emissions meant that the record was insufficient to support a finding that the requested SIP revisions would interfere with attainment and maintenance of the PM NAAQS (*see* 73 FR 60959). While information in the record was insufficient to quantify the precise impact that the requested revisions would have on PM emissions, EPA now proposes to find that available information was sufficient to conclude that Alabama's SIP revisions would allow longer periods of elevated opacity that would, in some circumstances, allow increased PM emissions and would interfere with NAAQS attainment and maintenance.

Under EPA's 2008 interpretation of CAA section 110(l), a determination that Alabama's requested SIP revisions would more likely than not allow a PM emissions increase would have precluded EPA's approval absent other information demonstrating that such an emissions increase would not interfere with NAAQS attainment and maintenance. However, EPA determined that the uncertainty as to whether the SIP revisions would allow a PM emissions increase was so great that no likelihood could be estimated and found that this uncertainty made the revisions approvable under section 110(l). As discussed below, after reconsidering information in the record, EPA's judgment is that there is a relationship between opacity and PM emissions that supports a finding that Alabama's requested SIP revisions would, more likely than not, authorize increased PM emissions in some cases that would interfere with attainment and maintenance of the PM NAAQS.

First, EPA observes that there is a general relationship between opacity and PM emissions such that an increase in opacity means the concentration of smaller particles, larger particles, or both, increases. *See, e.g.,* Malm, William C., ''Introduction to Visibility,'' Cooperative Institute for Research in the Atmosphere, May 1999 at Chap. 2, p. 8. *See also* Comments of the Utility Air Regulatory Group on EPA's Proposed Approval of Revisions to the Visible Emissions Portion of the Alabama Implementation Plan (Docket I.D EPA–R04–OAR–2005–AL–0002–0012), at 4 (noting that ''an increase in opacity can be a good indication that PM emissions at the stack also are increasing''). Because increases in the quantity of smaller particles may be accompanied by decreases in the quantity of larger particles, and vice versa, opacity increases do not always reflect corresponding increases in the mass of PM emissions. Furthermore, while source-specific relationships between opacity and PM emissions may be obtained through testing, they can be influenced by a variety of circumstances such as fuel composition and types of equipment malfunction that may occur. However, uncertainty about the precise correlation between PM mass emissions and opacity as a general matter does not mean that opacity increases never represent concurrent increases in the mass of PM emissions from a source. To the contrary, given the large increases in maximum allowable opacity and for the periods of time at issue in the SIP revisions contemplated in Alabama's 2003 and 2008 submittals, EPA proposes to conclude that it is likely that the requested SIP revisions would allow increased PM emissions.

Second, EPA notes that Alabama's SIP revisions likely would allow PM emission increases because the revisions authorize higher opacity levels for longer periods than allowed under the existing SIP opacity rule. In EPA's experience, a longer period of high opacity (e.g., 100 percent opacity or other high opacity levels over a time period of an hour or longer) is more likely to indicate a problem with a control device—and, therefore, to correlate with an emission increase—than high opacity over a shorter period (e.g., 20 percent to 40 percent opacity over six minutes). Yet under Alabama's requested SIP revisions, a control device could temporarily shut down or malfunction, resulting in 100 percent opacity for up to 2.4 hours in a single day without causing any violation of the opacity standard. As a result, Alabama's requested SIP revisions undermine one of the primary purposes of opacity limits: To ensure that sources properly maintain and operate their PM control devices.

In contrast, Alabama's previous SIP opacity limit, by requiring consistent compliance at 20 percent and allowing only one excursion of six minutes per hour of up to 40 percent opacity, provides a greater incentive for sources to control their PM emissions with properly maintained and operated control devices. In EPA's judgment, based on experience, a source equipped with properly maintained and operated PM control devices is capable of consistently achieving low opacity levels. This conclusion is supported by the experience with the Colbert plant in Alabama, where the TVA undertook improvements to minimize opacity that included such items as training personnel, tracking opacity more closely, and upgrading equipment. *See Sierra Club* v. *Tennessee Valley Authority,* 592 F. Supp. 2d 1357 (N.D. Ala. 2009). A district court concluded that as a result of these changes, ''Colbert Unit 5 is capable of operating with essentially no non-exempt COMS [Continuous Opacity Monitoring System] readings over 20%.'' *Id.* at 1369. The district court further observed that once TVA became aware that it needed to comply with the opacity limit during all non-exempt periods, ''it immediately and consistently came into compliance with the 20% opacity limit in the SIP.'' *Id.* at 1370.

While various entities provided EPA with modeling results to aid in assessing the impact that Alabama's requested SIP revisions would have on ambient air quality, EPA proposes to conclude that none of the models reliably demonstrates the likely impact of the requested changes to Alabama's visible emissions rule on PM emissions. Significantly, the utility of all of the modeling data is undermined by the lack of source-specific data on the mass-opacity relationship. The docket for this action includes a TSD summarizing the modeling that EPA received and some of the key assumptions and other issues that impacted the utility of the modeling. Because of the weaknesses of the underlying data and assumptions used in the modeling, none of the modeling results are sufficient to rebut the information described above suggesting that Alabama's requested revisions to SIP opacity restrictions would correlate with increased PM emissions.

Taken together, the observations described above lead EPA to conclude there is a relationship between opacity and PM emissions such that the opacity increases allowed by Alabama's requested SIP revisions would more likely than not be associated with increased PM emissions in some cases, thereby worsening air quality. Under EPA's longstanding interpretation of section 110(l), a SIP relaxation that likely would result in increased emissions, particularly in areas that are not attaining the NAAQS, cannot be approved absent a contemporaneous attainment demonstration or other air

quality analyses demonstrating that the revision will not interfere with attainment or maintenance of the NAAQS.

For example, in 2005, EPA proposed to disapprove a SIP revision submitted by Ohio that would have relaxed opacity limitations for sources that utilize a continuous opacity monitoring system. *See* 70 FR 36901 (June 27, 2005). Specifically, Ohio's proposed SIP revision would have expanded the time that such sources could operate with opacity levels above the generally applicable standard in the existing SIP. *See* 70 FR 36902. Under the revision, the time of such additional excess opacity values could represent up to 1.1 percent of a source's operating time per quarter. *Id.* In proposing to disapprove Ohio's requested revision, EPA explained that though the revision would not increase the total allowable time of excess opacity, ''the revised rules allow excess opacity on occasions that excess opacity is currently prohibited, without any compensating prohibitions of emissions that are currently allowed.'' *See* 70 FR 36903. Based on that observation, EPA concluded that ''the revised rule clearly allows emissions that are prohibited by the current SIP.'' *Id.* Noting that CAA section 110(l) prohibits EPA from approving a SIP revision that would interfere with any applicable requirement concerning attainment or any other applicable CAA requirement, EPA explained: ''Ohio provided no analysis or demonstration that the emissions that are allowed by its revised rule but are prohibited by the current SIP would not interfere with attainment or other applicable requirements. Therefore, EPA must disapprove this revised rule.'' [15] *Id.*

As in the case of Ohio's requested relaxation of SIP opacity limits, the record for Alabama's requested SIP revisions lacks additional information sufficient to rebut the presumption that the relaxation of Alabama's SIP opacity requirements would interfere with attainment and maintenance of the PM NAAQS. Following reconsideration and a complete review of the record, EPA proposes to conclude that available information was, in fact, sufficient to support a conclusion that Alabama's requested SIP revisions would interfere with attainment and maintenance of the PM NAAQS. Thus, EPA's 2008 determination that Alabama's requested SIP revisions were approvable under section 110(l) and its action approving the relaxation based on that conclusion were erroneous.

C. EPA Erred by Relying on Its Determination That the Requested SIP Revisions Would Not Change Average Quarterly and Daily Opacity Levels to Support Its Finding That the Revisions Would Not Interfere With Attainment and Maintenance of the Annual and 24-Hour PM NAAQS

Aside from uncertainty, EPA also based its 2008 approval of Alabama's 2003 and 2008 SIP revisions, in part, on its determination that a source's allowable daily average and quarterly average opacity levels would not change as a result of the revisions. *See* 73 FR 60959. With respect to average daily opacity, this conclusion was based on a provision in Alabama's requested SIP revisions providing that a source's average daily opacity may not exceed 22 percent, excluding periods of startup, shutdown, load change and rate change (or other short intermittent periods upon terms approved by ADEM's Director and included in a State-issued permit). *Id.* Though Alabama's Submittals did not include a similar limit on average quarterly opacity, EPA ''calculated the 'average quarterly opacity' allowed under both the existing SIP and the proposed revisions and showed that the proposed revision, with changes specified in the notice [of proposed rulemaking], would result in no greater average quarterly opacity allowed than what is allowed under the current standard.'' *See* 73 FR 60959. As explained below, EPA now proposes to conclude that it erred by relying on average daily and quarterly opacity as a means for evaluating whether the requested SIP revisions would interfere with attainment or maintenance of the annual and 24-hour PM NAAQS.

As discussed above, a primary purpose of opacity limits is to ensure that sources properly maintain and operate their PM control devices. Moreover, longer periods of high opacity are more likely than shorter periods to indicate a control device problem. Under Alabama's requested SIP revisions, a control device could temporarily shut down or malfunction, resulting in 100 percent opacity for up to 2.4 hours, yet the source could still be in compliance with the 22 percent average daily limit (and experience no change in its average quarterly opacity level). For example, in one day, a source that has 24 consecutive six-minute periods of 100 percent opacity but remains below an average of 13 percent opacity for the remaining 216 six-minute periods in the day would meet the 22 percent average daily opacity limit.[16] By ''averaging away'' such long periods of high opacity, Alabama's revised rule allows high opacity to be excused during precisely those periods that are expected to be associated with increased PM emissions. Thus, determining that Alabama's requested SIP revisions would not allow a source to increase its average quarterly or average daily opacity levels provides no basis for determining that the revisions will not allow a source to increase its PM emissions. Because EPA erroneously relied in part on its finding that average quarterly and average daily allowable opacity levels would not be affected by Alabama's requested SIP revisions in finding that the revisions were approvable under section 110(l), EPA proposes to conclude that its 2008 approval action was itself erroneous.

D. EPA Erred in Concluding That Alabama's Requested SIP Revisions Did Not Establish an Automatic Exemption From an Emission Limitation in Violation of CAA Section 302(k)

In approving Alabama's requested SIP revisions in 2008, EPA also erred by failing to recognize that Alabama's requested SIP revisions functionally established an automatic exemption from an emission limitation in violation of CAA section 302(k), 42 U.S.C. 7602(k). If EPA had correctly identified this issue, EPA would not have taken the 2008 action approving Alabama's 2003 and 2008 SIP submittals, nor would it have been authorized to do so. *See* CAA section 110(l) (''The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress . . . *or any other applicable requirement* of this chapter.'' (emphasis added). Therefore, EPA proposes to conclude that its failure to recognize that Alabama's requested SIP revisions violated section 302(k) rendered its 2008 approval action erroneous and in need of correction under CAA section 110(k)(6).

The section 302(k) violation arises from the provision in Alabama's requested SIP revisions that authorizes, for sources that meet the revised rule's criteria, up to 24 six-minute averages of 100 percent opacity per calendar day.[17]

[15] EPA has not yet finalized this proposal. EPA notes that there is also an ongoing error correction process to address whether an unrelated action erroneously approved the SIP revision.

[16] Assuming no excluded periods of startup, shutdown, load change and rate change (or other short intermittent periods upon terms approved by ADEM's Director and included in a State-issued permit), there are 240 six-minute periods in a 24-hour day.

[17] Whether a source could take advantage of the full allocation of 24 six-minute averages per day of 100 percent opacity depends on its operating hours;

See AAC Chapter 335–3–4–.01(4). Because 100 percent opacity is the maximum level of opacity possible, the allowance of up to 24 six-minute averages of 100 percent opacity per calendar day functionally equates to an exemption from the otherwise applicable SIP emission limitation for those periods.[18]

Section 302(k) defines ''emission limitation'' for CAA purposes, in relevant part, as ''a requirement . . . which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis. . . .'' [19] Alabama's opacity rule is incorporated into Alabama's SIP to satisfy CAA section 110(a)(2)(A), which requires that each SIP include ''enforceable *emission limitations and other control measures,* means, or techniques . . . as may be necessary or appropriate to meet the applicable requirements of this chapter.'' (emphasis added). Thus, Alabama's opacity rule constitutes an ''emission limitation'' under the CAA and is subject to that term's definition in CAA section 302(k). By functionally carving out an exemption from the opacity limitation for up to 24 six-minute averages per day, Alabama's requested SIP revisions contravene section 302(k)'s unambiguous requirement that an emission limitation restrict emissions ''on a continuous basis.'' *See, e.g., Sierra Club* v. *EPA,* 551 F.3d 1019, 1027–1028 (D.C. Cir. 2008) (vacating an exemption for startup, shutdown, and malfunction periods contained in federal regulations issued under CAA section 112 on the basis that ''[w]hen sections 112 and 302(k) are read together,'' the CAA ''require[es] that some section 112 standard apply continuously.''); *US Magnesium, LLC* v. *EPA,* 690 F.3d 1157, 1170 (10th Cir. 2012) (denying a petition for review challenging EPA's issuance of a section 110(k)(5) SIP call requiring Utah to revise its SIP to eliminate a provision that automatically exempted sources from SIP compliance during unavoidable equipment breakdowns; the SIP call was based, *inter alia,* on section 302(k)'s requirement that emission limitations apply on a continuous basis).

In a recent proposed rulemaking, EPA explained as a technical, legal and policy matter why rules that authorize automatic exemptions from emissions limits are inconsistent with the CAA and thus, unlawful. 78 FR 12460 (February 22, 2013) (''State Implementation Plans: Response to Petition for Rulemaking; Findings of Substantial Inadequacy; SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction,'' referred to as the ''SSM proposal''). Although the SSM proposal provides a useful synopsis of the applicable requirements under the CAA, EPA's position that the CAA prohibits automatic exemptions from SIP emission limitations has remained unchanged since at least 1982. *See* 78 FR 12489. The rationale provided in the SSM proposal for why SSM exemptions are contrary to the CAA's language and purpose applies equally to Alabama's requested opacity exemption.

When approving Alabama's requested SIP revisions in 2008, EPA responded to a public comment asserting that EPA's approval of Alabama's revised rule would violate section 302(k) in that it ''would be approving an 'automatic exemption' from certain emission limitations that must function on a 'continuous basis.'' *See* 73 FR 60960. At the time, EPA responded that rather than creating an exemption from the rule, Alabama's SIP submittal involved ''revisions to the rule itself.'' *Id.* EPA contended that ''[a] source that meets the requirements of the revised standard will be in continuous compliance with the standard.'' *Id.* EPA also stated: ''The provisions of the CAA and its implementing regulations cited by the commenters do not require that all SIP measures require compliance with the same numerical emission limitation at all times.'' *Id.* Based on that analysis, EPA contended Alabama's requested SIP revisions did not violate section 302(k). *See* 73 FR 60960. EPA now proposes to conclude that its 2008 analysis of whether Alabama's requested SIP revisions violated section 302(k) was erroneous. First, EPA's argument in 2008 that Alabama's revised rule allowing periods of 100 percent opacity is lawful because the amended regulatory language appears in ''the rule itself'' is contrary to CAA section 302(k)'s plain language, which expressly requires that the ''emission limitation'' itself limit emissions on a continuous basis. Section 302(k) is not satisfied simply by requiring continuous compliance with a standard that does not itself apply on a continuous basis. Second, while EPA continues to agree with its statement in 2008 that SIP measures need not ''require compliance with the *same* numerical emission limitation at all times'' (emphasis added), EPA disagrees with the implication in EPA's 2008 response that Alabama's allowance of 100 percent opacity for up to 24 six-minute averages per day constitutes a ''numerical emission limitation'' at all. Rather, as explained above, because 100 percent opacity is the maximum opacity level possible, the revised rule's allowance of up to 24 six-minute averages of 100 percent opacity per calendar day functionally equates to an exemption from the emission limitation for those periods. As a result, many opacity exceedances that would have been violations of the previous rule are now exempted under the revised rule. Thus, EPA now proposes to conclude that the SIP revision requested in Alabama's 2003 and 2008 submittals do, in fact, violate section 302(k), and therefore, that EPA's 2008 action approving Alabama's requested SIP revisions was erroneous.

E. EPA Erred by Failing To Evaluate Whether Alabama's Requested SIP Revisions Complied With CAA Section 193

In approving Alabama's requested SIP revisions in 2008, EPA also erred by failing to consider whether the requested revision was consistent with CAA section 193. Section 193 provides: ''No control requirement in effect . . . before November 15, 1990, in any area which is a nonattainment area for any air pollutant may be modified after November 15, 1990, in any manner unless the modification insures equivalent or greater emission reductions of such air pollutant.'' *See* 42 U.S.C. 7515. Congress added this provision in the 1990 Amendments as part of an effort to ensure adequate support for NAAQS attainment and maintenance. Consistent with the provision's plain text, Congress' intent in adopting this provision was to provide a 'back-up' anti-backsliding provision for nonattainment areas

under the revised rule, periods of opacity above 20 percent are limited to a total of 2.0 percent of the source calendar quarter operating hours for which the opacity standard is applicable and for which the COMS is indicating valid data.

[18] Regulatory provisions previously incorporated into Alabama's SIP (under Alabama rule 335–3–4–.01(1)(c) and (d)) authorize ADEM's Director to approve source-specific exceptions to the opacity standard for startup, shutdown, load change, and rate change or other short, intermittent periods of time upon terms approved by the Director and made part of a source's permit. Because Alabama's 2003 and 2008 SIP submittals did not request a revision to these provisions, EPA did not address these provisions in its 2008 approval action. *See* 73 FR 60958 n. 1. Nothing in this notice should be construed as a determination by EPA that these provisions are consistent with CAA requirements.

[19] In full, CAA section 302(k) defines ''emission limitation as ''a requirement established by the State or the Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction and any design, equipment, work practice or operational standard promulgated under this chapter.''

beyond what was provided by 110(l).[20] Because Alabama's 2003 and 2008 SIP submittals proposed to revise a ''control requirement'' that was ''in effect before November 15, 1990'' and that applied to PM nonattainment areas (see section I.D. above), EPA's 2008 action should have included an analysis for why Alabama's requested SIP revisions did not contravene CAA section 193. Because such an analysis is a critical prerequisite to approving any modification to a pre-1990 control requirement, EPA proposes to conclude that the lack of such an analysis made EPA's 2008 approval of Alabama's 2003 and 2008 SIP submittals erroneous.[21]

III. Basis of EPA's Proposal To Disapprove Alabama's SIP Revisions Related to Visible Emissions

Upon reconsideration of available information, and in light of the errors in EPA's 2008 analysis described above, EPA now proposes pursuant to its error correction authority under CAA section 110(k)(6) to disapprove Alabama's 2003 and 2008 SIP revisions.

A. Alabama's Requested SIP Revisions Are Not Approvable Under CAA Section 110(l)

As explained above, upon reconsideration of the available information, EPA now proposes to conclude that Alabama's requested SIP revisions would interfere with attainment and maintenance of the PM NAAQS and are therefore not approvable under CAA section 110(l). Specifically, in EPA's technical judgment, the increased opacity levels authorized by Alabama's revised rule would, more likely than not, be associated with increased PM emissions in some cases. Under circumstances such as this where EPA concludes that a SIP revision would allow increased emissions, EPA assumes that the relaxation would interfere with NAAQS attainment and maintenance in the absence of a contemporaneous attainment demonstration or other air quality analyses demonstrating that the relaxation will not, in fact, interfere with NAAQS attainment and maintenance. Because Alabama made no such demonstration, EPA proposes to conclude that Alabama's 2003 and 2008 SIP revisions are not approvable under CAA section 110(l). Therefore, pursuant to its error correction authority under CAA section 110(k)(6), EPA now proposes to disapprove Alabama's 2003 and 2008 Submittals.

EPA's proposed conclusion that Alabama's requested SIP revisions ''would interfere'' with PM NAAQS attainment and maintenance and therefore is not approvable under CAA section 110(l) remains the same regardless of whether EPA applies its current interpretation of CAA section 110(l) or its 2008 interpretation. The fundamental difference between these two interpretations pertains to how they address uncertainty regarding whether a SIP relaxation would allow increased emissions. Under the 2008 interpretation, EPA assumed that a SIP relaxation would not interfere with NAAQS attainment and maintenance unless available information demonstrated that, more likely than not, the relaxation would allow increased emissions. Under EPA's current interpretation, EPA assumes that a SIP relaxation would allow increased emissions, and thereby interfere with NAAQS attainment and maintenance, unless available information indicates that, more likely than not, the revision will not allow increased emissions. In other words, in the face of uncertainty, EPA's current interpretation of CAA section 110(l) errs on the side of protecting air quality. However, in EPA's technical judgment, available information is sufficient to demonstrate that, more likely than not, Alabama's 2003 and 2008 Submittals would allow increased PM emissions in some circumstances. Thus, even under EPA's less protective 2008 interpretation, EPA now proposes to conclude that Alabama's 2003 and 2008 Submittals are not approvable under CAA section 110(l).

In addition to interfering with attainment and maintenance of the PM NAAQS, EPA proposes to conclude that Alabama's requested SIP revisions are not approvable under CAA section 110(l) because it interferes with the requirements of CAA section 302(k). Specifically, as explained earlier in this notice, CAA section 302(k) requires that any ''emission limitation'' adopted under the CAA apply ''on a continuous basis,'' and Alabama's SIP opacity rule constitutes an ''emission limitation'' that must meet CAA section 302(k)'s requirements. By authorizing emissions with up to 100 percent opacity for up to 24 six-minute averages per day, Alabama's revised opacity rule effectively exempts sources from compliance with opacity restrictions during those periods. As a result, the revised opacity rule would not apply to sources ''on a continuous basis,'' in contravention of CAA section 302(k). For this additional reason, EPA proposes to conclude that Alabama's 2003 and 2008 SIP submittals are not approvable under CAA section 110(l).

B. Alabama's Requested SIP Revisions Are Not Approvable Under CAA Section 193

Under CAA section 193, ''[n]o control requirement in effect . . . before November 15, 1990, in any area which is a nonattainment area for any air pollutant may be modified after November 15, 1990, in any manner unless the modification insures equivalent or greater emission reductions of such air pollutant.'' As discussed above, because Alabama's opacity requirements were incorporated into the SIP well before November 15, 1990, and because the requested opacity revision applied in nonattainment areas, EPA should have evaluated whether Alabama's 2003 and 2008 Submittals complied with CAA section 193 prior to its 2008 approval action. EPA notes that when correcting an error pursuant to section 110(k)(6), we must evaluate whether there was an error in light of the circumstances that existed at the time of the original action. Subsequent to its 2008 approval action, EPA redesignated most of Alabama's PM nonattainment areas to attainment. Nonetheless, one Alabama area continues to be designated nonattainment for the 1997 $PM_{2.5}$ NAAQS: the Jackson County portion of the Chattanooga nonattainment area.[22] Section 193 is applicable for nonattainment areas until such time that EPA takes final action to redesignate an area to attainment.[23] Thus, whether evaluated under the facts and circumstances of 2008 or today,

[20] *See, e.g.,* Senate Debate on the 1990 Amendments to the CAA Conference Report (Oct. 26, 1990), 1990 CAA Legis. Hist. 1097, 1126–1127 (Comments of Senator Chafee, R–RI, primary drafter of CAA Amendments of 1990).

[21] In EPA's 2011 final action disapproving Alabama's 2003 and 2008 SIP submittals under CAA section 110(l), which the 11th Circuit subsequently vacated, EPA noted that it did not complete a section 193 analysis because the Submittals already were not approvable. EPA also noted that if Alabama's requested SIP revisions did not interfere with NAAQS attainment and maintenance it was unlikely to interfere with other requirements of the Act. However, even assuming for the sake of argument that such statement would suffice as a section 193 analysis had it been included in the 2008 final notice, it was not included in that notice and therefore cannot serve as a basis for the 2008 approval.

[22] While Alabama submitted a SIP revision to EPA that proposes a maintenance plan and a request to redesignate the Jackson County nonattainment area to attainment for the 1997 $PM_{2.5}$ NAAQS, this SIP revision is still under review.

[23] EPA previously determined that this Area met the 1997 $PM_{2.5}$ NAAQS based on air quality data at the time, and also made the determination that this Area attainment the 1997 $PM_{2.5}$ NAAQS by its attainment date. *See* 76 FR 31239 (May 31, 2011) and 76 FR 55774 (September 8, 2011). However, these determinations do not constitute a redesignation of the Area from nonattainment to attainment.

Alabama's requested SIP revisions must satisfy section 193 to be approvable.

Given EPA's conclusion that the opacity increases authorized by Alabama's requested SIP revision would, more likely than not, be associated with increased PM emissions in some cases, CAA section 193 bars EPA's approval unless the State demonstrates that its 2003 and 2008 SIP revisions offset such PM increases with equivalent or greater emission reductions. Nothing in the record for this action indicates that the Submittals include any mechanism to obtain such offsetting PM emission reductions. Therefore, EPA proposes to conclude that Alabama's 2003 and 2008 Submittals do not meet section 193's requirements and, as a result, must be disapproved.

IV. Proposed Actions

Today, EPA is proposing to take action to reconsider its previous approval of Alabama's visible emission rule in October 2008. In summary, EPA is proposing to determine, pursuant to CAA section 110(k)(6), that it erred in approving the Submittals (dated September 11, 2003, and August 22, 2008) in 2008 for the reasons outlined in Section II of this proposed rulemaking. Consequently, EPA is also proposing to disapprove the Submittals. Should this proposed action be finalized, the version of Alabama's visible emissions rule that was approved in the SIP prior to EPA's October 15, 2008, final action will be the ''current'' SIP-approved rule.

V. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

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

B. Paperwork Reduction Act

This proposed action does not impose any new information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., and therefore is not subject to these requirements.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This proposed rule will not have a significant impact on a substantial number of small entities because SIP disapprovals under section 110 of the CAA do not create any new requirements. Therefore, because the Federal SIP disapproval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 US 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

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

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

E. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts state law unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

This proposed rule 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, because it merely proposes to disapprove a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175. This proposed rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this rule.

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

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

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

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

This proposed rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: January 24, 2014.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2014–02938 Filed 2–12–14; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2013–0133; 4500030113]

RIN 1018–AY78

Endangered and Threatened Wildlife and Plants; Remove the Modoc Sucker From the Federal List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule and 12-month petition finding; notice of availability of draft post-delisting monitoring plan.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to remove the Modoc sucker (*Catostomus microps*) from the Federal List of Endangered and Threatened Wildlife. This determination is based on a thorough review of the best available scientific and commercial information, which indicates that the threats to this species have been eliminated or reduced to the point that the species no longer meets the definition of an endangered species or a threatened species under the Endangered Species Act of 1973, as amended (Act). If finalized, the effects of this rule would be to remove the Modoc sucker from the List of Endangered and Threatened Wildlife. This proposed rule, if made final, would also remove the currently designated critical habitat for the Modoc sucker throughout its range. This document also constitutes our 12-month finding on a petition to reclassify the Modoc sucker from endangered to threatened. We are seeking information and comments from the public regarding this 12-month finding and proposed rule. In addition to the proposed rule, we are also seeking information and comments on the draft post-delisting monitoring plan.

DATES: We will accept comments received or postmarked on or before April 14, 2014. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by March 31, 2014.

ADDRESSES: *Comment submission:* You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter FWS–R8–ES–2013–0133, which is the docket number for this rulemaking. Then, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on ''Comment Now!''

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R8–ES–2013–0133; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Information Requested section below for more information).

Document availability: A copy of the Species Report referenced throughout this document can be viewed at *http://ecos.fws.gov/speciesProfile/profile/speciesProfile.action?spcode=E053,* at *http://www.regulations.gov* under Docket No. FWS–R8–ES–2013–0133, or at the Klamath Falls Fish and Wildlife Office's Web site at *http://www.fws.gov/klamathfallsfwo.* The draft post-delisting monitoring plan will be posted on our Endangered Species Program's national Web page (*http://endangered.fws.gov*), and the Klamath Falls Fish and Wildlife Office Web page (*http://fws.gov/klamathfallsfwo*), and on the Federal eRulemaking Portal at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Laurie Sada, Field Supervisor, U.S. Fish and Wildlife Service, Klamath Falls Fish and Wildlife Office, 1936 California Avenue, Klamath Falls, OR 97601; by telephone 541–885–8481, or by facsimile 541–885–7837. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Information Requested

We intend any final action resulting from this proposal to be based on the best scientific and commercial data available, and be as accurate and as effective as possible. Therefore, we request comments or information from other governmental agencies, tribes, the