Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2009–0547. 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 e-mail. 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 e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the 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 during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: Marilyn Powers, at (215) 814–2308, or by e-mail at *powers.marilyn@epa.gov*.

SUPPLEMENTARY INFORMATION: On July 31, 2009 (74 FR 38154), EPA published an NPR to determine that the West Virginia portions of three nonattainment areas have clean data for the 1997 $PM_{2.5}$ NAAQS. In the preamble of this document, EPA inadvertently omitted a partial county that is part of the West Virginia portion of the Parkersburg-Marietta WV–OH nonattainment area. This action corrects the omission of the Grant Tax District in Pleasants County as part of the West Virginia portion of the nonattainment area.

Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this correction to the proposed determination that the West Virginia portions of the Hagerstown-Martinsburg, Parkersburg-Marietta, and Wheeling nonattainment areas have clean data for the 1997 $PM_{2.5}$ standard does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

Correction

In rule document E9–18393, on page 38154, in the issue of July 31, 2009, the second sentence of the Summary is corrected to read: ''These are Berkeley County, part of the Hagerstown-Martinsburg MD-WV nonattainment area; Wood County and the Grant Tax District in Pleasants County, part of the Parkersburg-Marietta WV-OH nonattainment area; and Marshall County and Ohio County, part of the Wheeling WV-OH nonattainment area, hereinafter referred to in this notice as the West Virginia portions of the Hagerstown-Martinsburg, Parkersburg-Marietta, and Wheeling $PM_{2.5}$ nonattainment areas.''

Also, on page 38156, the last sentence of Section III is corrected to read: ''The Hagerstown-Martinsburg nonattainment area (Berkeley County, WV and Washington County, MD), the Parkersburg-Marietta nonattainment area (Wood County, WV, the Grant Tax District in Pleasants County, WV, and Washington County, OH), and the Wheeling nonattainment area (Marshall County, WV, Ohio County, WV, and Belmont County, OH) were designated nonattainment for the 1997 $PM_{2.5}$ NAAQS (see 40 CFR part 81).''

Dated: August 19, 2009.

William C. Early,

Acting Regional Administrator, Region III.

[FR Doc. E9–20735 Filed 8–26–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–R09–OAR–2008–0467; FRL–8950–2]

Designation of Areas for Air Quality Planning Purposes; California; San Joaquin Valley, South Coast Air Basin, Coachella Valley, and Sacramento Metro Ozone Nonattainment Areas; Reclassification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Under the Clean Air Act, EPA is proposing to grant requests by the State of California to reclassify the following four areas designated as nonattainment for the 1997 8-hour ozone national ambient air quality standard: the San Joaquin Valley area from ''serious'' to ''extreme,'' the South Coast Air Basin area from ''severe-17'' to ''extreme,'' and the Coachella Valley and Sacramento Metro areas from ''serious'' to ''severe-15.''

In connection with the reclassifications, EPA is proposing to establish a deadline of no later than 12 months from the effective date of reclassification for submittal of revisions to the Coachella Valley and Sacramento Metro area portions of the California State Implementation Plan (SIP) to meet certain additional requirements for ''severe-15'' 8-hour ozone nonattainment areas. EPA has already received SIP revision submittals addressing most of the additional SIP requirements for these two areas and has received all of the related SIP revision submittals for San Joaquin Valley and the South Coast Air Basin. The Agency is not proposing a SIP revision schedule for any SIP requirements for which SIP submittals have already been received.

A number of Indian tribes have Indian country [1] located within the boundaries of the affected areas. The State of California is not approved to administer any Clean Air Act programs in Indian country, and the relevant Indian tribes have not applied for eligibility to administer programs under the Clean Air Act for their areas. In these circumstances, EPA implements relevant reclassification provisions of the Clean Air Act in these Indian country areas and is proposing that these areas be reclassified in keeping with the classifications of nonattainment areas within which they are located. In connection with this proposed action, EPA has notified the affected tribal leaders and has invited consultation with interested tribes.

[1] ''Indian country'' as defined at 18 U.S.C. 1151 refers to: ''(a) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.''

DATES: Written comments must be received on or before September 28, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2008–0467, by one of the following methods:

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

2. *E-mail: mays.rory@epa.gov.*

3. *Fax:* 415–947–3579.

4. *Mail or deliver:* Rory Mays (AIR–2), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through the *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an anonymous access system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. 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.

Docket: The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed directly below.

FOR FURTHER INFORMATION CONTACT: Rory Mays, Air Planning Office (AIR–2), U.S. Environmental Protection Agency, Region IX, (415) 972–3227, *mays.rory@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, the terms ''we,'' ''us,'' and ''our'' refer to EPA.

Table of Contents

I. What is the subject matter of this proposed rule?

Today's proposed rule provides EPA's response to requests by a state for voluntary reclassifications, under section 181(b)(3) of the Clean Air Act (CAA or ''Act''), for certain areas designated as nonattainment for the 1997 8-hour ozone national ambient air quality standard. Specifically, the State of California has requested reclassification to higher classifications for four 8-hour ozone nonattainment areas. These areas include San Joaquin Valley, South Coast Air Basin, Coachella Valley, and Sacramento Metro. We are reviewing these requests under section 181(b)(3) of the Clean Air Act, which provides for ''voluntary reclassification'' and states: ''The Administrator shall grant the request of any State to reclassify a nonattainment area in that State in accordance with Table 1 of subsection (a) of this section to a higher classification. The Administrator shall publish a notice in the **Federal Register** of any such request and of action by the Administrator granting the request.'' See 40 CFR 51.903(b) (''A State may request a higher classification for any reason in accordance with section 181(b)(3) of the CAA'') and 40 CFR 51.903(a) Table 1.

II. What is the background for this proposed action?

A. What are the National Ambient Air Quality Standards?

The CAA requires EPA to establish a National Ambient Air Quality Standard (NAAQS) for certain pervasive pollutants that ''may reasonably be anticipated to endanger public health and welfare'' and to develop a primary and secondary standard for each NAAQS. The primary standard is designed to protect public health with an adequate margin of safety and the secondary standard is designed to protect public welfare and the environment. EPA has set NAAQS for six common air pollutants, referred to as criteria pollutants: carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, and sulfur dioxide. These standards present state and local governments with the air quality levels an area must meet to comply with the CAA.

B. What is the standard for 8-hour ozone?

Ozone is a gas composed of three oxygen atoms. It is not usually emitted directly into the air, but at ground level is created by a chemical reaction between volatile organic compounds (VOC) and oxides of nitrogen (NO_X) in the presence of sunlight. On July 18, 1997, EPA promulgated an 8-hour ozone standard of 0.08 parts per million (ppm) to replace the less-protective 0.12 ppm 1-hour ozone standard that was established by EPA in 1979. We revoked the 1-hour ozone standard effective June 15, 2005. See 40 CFR 50.9(b) and 69 FR 23858 (April 30, 2004). Under EPA regulations at 40 CFR part 50, the 8-hour ozone standard is attained when the 3-year average of the annual fourth highest daily maximum 8-hour average ozone concentrations is less than or equal to 0.08 ppm (i.e., 0.084 ppm when rounding is considered). (See 69 FR 23858, April 30, 2004, for further information).[2]

C. What is a SIP and how does it relate to the NAAQS for 8-hour ozone?

Section 110 of the CAA requires states to develop air pollution regulations and control strategies to ensure that air quality meets the NAAQS established by EPA. Each state must submit these regulations and control strategies to EPA for approval and incorporation into the Federally-enforceable State Implementation Plan, or SIP. Each SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive. They may contain state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

We promulgated final rules to implement the 1997 8-hour ozone NAAQS in two phases. The Phase 1 rule, which was issued on April 30, 2004 (69 FR 23951), establishes, among other things, the classification structure and corresponding attainment deadlines, as well as the anti-backsliding principles for the transition from the 1-hour ozone standard to the 8-hour ozone standard.

However, on December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit vacated EPA's Phase 1 rule. See *South Coast Air Quality Management Dist.* v. *EPA,* 472 F.3d 882 (D.C. Cir. 2006). On June 8, 2007, in response to several petitions for rehearing, the D.C. Circuit clarified that the Phase 1 rule was vacated only with regard to those parts of the rule that had been successfully challenged. See *South Coast Air Quality Management Dist.* v. *EPA,* 489 F.3d 1245 (D.C. Cir. 2007). The provisions of the Phase 1 rule that are directly relevant for the purposes of this proposed rule were not among the provisions that were successfully challenged, and they remain effective. Such provisions include the classifications for areas under Title I, Part D, subpart 2 of the CAA and the related 8-hour ozone standard attainment dates.

The Phase 2 rule, which was issued on November 29, 2005 (70 FR 71612), addresses the remaining SIP obligations for the 1997 8-hour ozone NAAQS, including the SIP elements associated with reasonably available control technology (RACT), reasonably available control measures (RACM), reasonable further progress (RFP), modeling and attainment demonstrations, new source review (NSR), vehicle inspection and maintenance programs (I/M), and contingency measures (for failure to meet RFP and the attainment date).

In March 2008, EPA found that some ozone nonattainment areas in the nation had failed to submit attainment demonstrations, Reasonable Further Progress (RFP) plans, and Reasonably Available Control Technology (RACT) SIPs. See 73 FR 15416 (March 24, 2008). For three California 8-hour ozone nonattainment areas (Sacramento Metro, Ventura County and Western Mojave Desert), we found that the areas had not submitted, either in part or in full, the RFP plans that applied by virtue of their current ozone classification (i.e., prior to reclassification). See letter dated March 17, 2008 from Wayne Nastri, Regional Administrator, EPA–Region IX, to Mary D. Nichols, Chairman, California Air Resources Board.

Since our March 17, 2008 findings (published in the **Federal Register** on March 24, 2008), the State of California has submitted the necessary RFP plans for all three areas (i.e., Sacramento Metro, Ventura County and Western Mojave Desert). By letters dated September 19, 2008, October 2, 2008, and October 2, 2008, respectively, we notified California that we had found the Sacramento Metro, Ventura County and Western Mojave Desert plans that were submitted on the dates listed above to be complete and that the related sanctions clocks begun on March 24, 2008 had been permanently stopped. See letters from Deborah Jordan, Director, Air Division, EPA–Region IX to James Goldstene, Executive Officer, California Air Resources Board, dated September 19, 2008, October 2, 2008, and October 2, 2008, respectively.

D. What are the affected California 8-hour ozone nonattainment areas, what are their current classifications, and what is the status of their SIP submittals?

1. Affected Areas and Their Current Classifications

Effective June 15, 2004, we designated nonattainment areas for the 1997 8-hour ozone NAAQS. At the same time, we assigned classifications to many of these areas based upon their ozone ''design value,'' in accordance with the structure of Part D, subpart 2 of Title I of the Clean Air Act.[3] See 69 FR 23858 (April 30, 2004) and 40 CFR 51.903(a). The 8-hour ozone designations and classifications for California areas are codified at 40 CFR 81.305. Classifications for four of those 8-hour ozone nonattainment areas are affected by this proposal. As noted previously, these four areas (and their current classifications) are as follows: San Joaquin Valley (serious), South Coast Air Basin (severe-17), Coachella Valley (serious), and Sacramento Metro (serious).

2. Status of SIP Submittals

Table 1 presents the 1-hour ozone classification (i.e., at the time of

[2] Today's proposed rule deals with the classifications and SIP obligations associated with the 8-hour ozone NAAQS promulgated in 1997. On March 27, 2008, EPA revised the level of the 8-hour ozone standard to 0.075 ppm. See 73 FR 16436 for further information. Designations, classifications, and SIP obligations under the 2008 revised ozone standard will be addressed separately in future EPA rulemakings.

[3] The design value for 8-hour ozone is defined at 40 CFR 51.900(d).

designation for the 8-hour ozone NAAQS) for each of the four areas along with each area's corresponding current and requested 8-hour ozone classification. A comparison of each area's classification under the 1-hour ozone standard with the area's classification under the 8-hour ozone standard (i.e., when reclassified) shows that the affected areas would, upon reclassification, essentially be returning to their respective classifications under the 1-hour standard.[4] As a result, many SIP submittal requirements for these areas have already been met. Most ozone requirements for these areas were addressed in the 1990s in response to the CAA Amendments of 1990, as well as in response to previous ozone reclassifications under the 1-hour standard. In the paragraphs that follow Table 1, we discuss the status of relevant SIP submittals for each of the four areas. In this instance, the term, ''relevant SIP submittals,'' refers to those submittals made to satisfy the specific additional requirements triggered by reclassification, not those that already apply by virtue of an area's current classification.

TABLE 1—EXISTING AND FUTURE OZONE CLASSIFICATIONS

8-Hour ozone nonattainment area	1-Hour ozone classification	Existing 8-hour ozone classification	Requested 8-hour ozone classification
San Joaquin Valley	Extreme	Serious	Extreme.
South Coast Air Basin	Extreme	Severe-17	Extreme.
Coachella Valley	Severe-17	Serious	Severe-15.
Sacramento Metro	Severe-15	Serious	Severe-15.

San Joaquin Valley. On November 16, 2007, the California Air Resources Board (CARB) requested that EPA reclassify the San Joaquin Valley 8-hour ozone nonattainment area from ''serious'' to ''extreme''. This request was accompanied by a submittal of a SIP revision addressing certain additional SIP requirements that would apply to San Joaquin Valley by virtue of reclassification from ''serious'' to ''extreme,'' including RFP, attainment demonstration, contingency measures, and transportation control measures to offset emissions from growth in vehicle miles traveled (CAA section 182(d)(1)(A)). On June 18, 2009, CARB submitted a RACT SIP for San Joaquin Valley addressing stationary sources with potentials to emit 10 tons per year of VOC or NO_X or more (i.e., the threshold for ''major sources'' in ''extreme'' ozone nonattainment areas). On March 17, 2009, CARB submitted NSR rules consistent with the proposed reclassification of this area to ''extreme.'' CARB has previously submitted SIP revisions for San Joaquin Valley addressing the clean fuels for boilers requirement under CAA section 182(e)(3) and the major stationary source fees requirement under CAA section 185. See 74 FR 33933, at 33945 (July 14, 2009) and 74 FR 33950 (July 14, 2009; reproposed August 19, 2009), respectively, for EPA proposed actions on those submittals.

South Coast Air Basin. On November 28, 2007, CARB requested that EPA reclassify the South Coast Air Basin 8-hour ozone nonattainment area from ''severe-17'' to ''extreme.'' This request was accompanied by a submittal of a SIP revision addressing certain additional SIP requirements that would apply to the South Coast Air Basin by virtue of reclassification from ''severe-17'' to ''extreme,'' including RFP, attainment demonstration, and contingency measures. CARB submitted an ''extreme'' RACT SIP for the area on January 31, 2007. CARB has submitted NSR rules consistent with the proposed reclassification of this area to ''extreme.'' See 61 FR 64291 (December 4, 1996) for information regarding South Coast NSR rules. CARB has previously submitted SIP revisions for South Coast Air Basin addressing the clean fuels for boilers requirement under CAA section 182(e)(3). See 61 FR 57775 (November 8, 1996) for EPA's approval of the rule submitted to satisfy the CAA section 182(e)(3) requirement in the South Coast.

Coachella Valley. In that same November 28, 2007 reclassification request and submittal, CARB requested that EPA reclassify the Coachella Valley 8-hour ozone nonattainment area from ''serious'' to ''severe-15.'' The state has made a submittal addressing certain additional SIP requirements that would apply to Coachella Valley by virtue of reclassification from ''serious'' to ''severe-15,'' including RFP, attainment demonstration, contingency measures, and transportation control measures to offset emissions from growth in vehicle miles traveled (CAA section 182(d)(1)(A)).[5] CARB submitted a ''severe-15'' RACT SIP for the area on January 31, 2007. CARB has submitted NSR rules consistent with the proposed reclassification of this area to ''severe-15.'' See 61 FR 64291 (December 4, 1996) for information regarding NSR rules that apply within Coachella Valley. CARB has not yet submitted a SIP revision addressing the CAA section 185 fees requirement for Coachella Valley.

Sacramento Metro. By letter dated February 14, 2008, CARB requested that EPA reclassify three California areas designated nonattainment for the 8-hour ozone standard: Ventura County,[6]

[4] From the standpoint of SIP submittal requirements, there is no distinction between the ''severe-15'' classification and the ''severe-17'' classification.

[5] CARB's November 28, 2007 submittal included an attainment demonstration plan as a ''severe-15'' area for Coachella Valley, but included the RFP plan for informational purposes only, effectively withholding the ''severe-15'' RFP plan from submittal to EPA, due to concerns about litigation and EPA policy on use of out-of-area reductions in RFP plans. CARB subsequently withdrew this withholding request in a letter to EPA dated February 19, 2008. For administrative SIP completeness and final Agency action purposes, EPA intends to treat the RFP plan for Coachella Valley as having been submitted on February 19, 2008.

[6] On May 20, 2008 (73 FR 29073), EPA took final action to grant the State's request to reclassify Ventura County from ''moderate'' to ''serious,'' effective June 19, 2008. See 73 FR 29073 (May 20, 2008). In our May 20, 2008 final rule, we stated that we will propose in a separate document a schedule for required plan submittals for Ventura County under the new classification. However, on June 27, 2008, CARB submitted a SIP revision for Ventura County addressing certain additional SIP requirements that apply to Ventura County by virtue of reclassification from ''moderate'' to ''serious,'' including RACT, RFP, attainment demonstration, and contingency measures. CARB has previously submitted SIP revisions for Ventura County addressing the enhanced monitoring requirement under CAA section 182(c)(1), the enhanced vehicle inspection and maintenance (I/M) requirement under CAA section 182(c)(3), and the clean-fuel vehicles requirement under CAA section 182(c)(4). See 62 FR 1150 (January 8, 1997) and 64 FR 46849 (August 27, 1999) for EPA's approvals related to the I/M program and the clean-fuel vehicles requirement, respectively. In addition, CARB has submitted NSR rules consistent with the reclassification of this area. See 66 FR 76567 (December 7, 2000) for EPA's approval of Ventura County's NSR rules. Since CARB has submitted SIP revisions addressing all of the additional requirements for Ventura County that apply by

Continued

Sacramento Metro,[7] and Western Mojave Desert.[8] With respect to Sacramento Metro, CARB requested reclassification from ''serious'' to ''severe-15.'' On April 17, 2009, CARB submitted a SIP revision for the Sacramento Metro nonattainment area addressing certain additional SIP requirements that would apply to the Sacramento Metro area by virtue of reclassification from ''serious'' to ''severe-15,'' including RFP, attainment demonstration, contingency measures, and transportation control measures to offset emissions from growth in vehicle miles traveled (CAA section 182(d)(1)(A)). CARB has also submitted ''severe-15'' area RACT SIPs (i.e., implementing RACT for sources with potential to emit 25 tons per year of VOC or NO_X or more) for all air districts within the Sacramento Metro area. For New Source Review, CARB has submitted a ''severe-15'' area SIP only for the Yolo-Solano and El Dorado portions of the Sacramento Metro area, and CARB has submitted a SIP revision addressing the CAA section 185 fees requirement only for the Sacramento Metropolitan AQMD portion of the Sacramento Metro area. See 68 FR 51184 (August 26, 2003) for EPA's approval of Sacramento Metropolitan AQMD's fees rule.

E. What are the consequences of reclassifications?

By granting a state's request to reclassify an ozone nonattainment area to a higher classification, EPA must address submittal deadlines for SIP requirements that have become applicable to an area as a result of its higher classification. Such SIP requirements include submittals that demonstrate RACT level of control for all stationary sources with potentials to emit at lower ''major source'' emissions thresholds, RFP, and attainment. We note, however, that while the state is generally provided time to submit SIP revisions, there are certain requirements that would be triggered upon the effective date of the reclassification, such as lower applicability (or ''de minimis'') thresholds under our General Conformity rule (see 40 CFR 93.153(b)(1)). For Federal actions proposed in San Joaquin Valley, the de minimis threshold under EPA's General Conformity rule would drop from 50 tons per year to 10 tons per year for VOC or NO_X. In the South Coast, the de minimis threshold would drop from 25 to 10 tons per year. In Coachella Valley and Sacramento Metro, the de minimis threshold would drop from 50 to 25 tons per year. See 40 CFR 93.153(b)(1). Under EPA's General Conformity rule, Federal agencies bear the responsibility of determining conformity of actions in nonattainment and maintenance areas that require Federal permits, approvals, or funding.

In regards to Title V operating permit programs and the requirements for SIPs regarding review of new or modified major stationary sources (''new source review''), the reclassifications proposed herein would not lower the ''major source'' applicability thresholds required in a revised SIP because the statutory thresholds that applied by virtue of the areas' classifications under the 1-hour ozone standard continue to apply as anti-backsliding measures for the 8-hour ozone standard (*see South Coast Air Quality Management Dist.* v. *EPA*, 472 F.3d 882 (D.C. Cir. 2006) rehearing denied 489 F.3d 1245 (clarifying that the vacatur was limited to the issues on which the court granted the petitions for review)), and the new 8-hour ozone classification for each of the four subject areas, as reclassified, would be the same as the area's corresponding 1-hour ozone classification (see Table 1 above).[9]

III. What action is EPA proposing?

A. Granting the State's Requests for Reclassification

We find that the plain language of section 181(b)(3) mandates that we approve voluntary reclassification requests,[10] and thus, EPA intends to take final action granting the State's request for the following voluntary reclassifications: the San Joaquin Valley area from ''serious'' to ''extreme''; the South Coast Air Basin area from ''severe-17'' to ''extreme''; and the Coachella Valley and Sacramento Metro areas from ''serious'' to ''severe-15.'' Upon the effective date of a final action granting the reclassifications, these four areas will be required to attain the 8-hour ozone NAAQS as expeditiously as practicable, but not later than the applicable maximum attainment period set forth in 40 CFR 51.903(a), Table 1: June 15, 2024 for San Joaquin Valley and the South Coast Air Basin; and June 15, 2019 for Coachella Valley and Sacramento Metro.[11]

B. Reclassification of Indian Country

1. Affected Tribes

Table 2 lists the tribes that have Indian country geographically located in the nonattainment areas at issue in this proposal. As shown in Table 2, 21 tribes are located within the four areas: seven in San Joaquin Valley, seven in South Coast, four in Coachella Valley, and three in Sacramento Metro.

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virtue of reclassification from ''moderate'' to ''serious,'' we will not be proposing a schedule for any additional SIP revisions for Ventura County as a ''serious'' area under the 1997 8-hour ozone standard.

[7] The Sacramento Metro 8-hour ozone nonattainment area includes all of Sacramento County and Yolo County, and portions of El Dorado, Placer, Solano, and Sutter Counties. The applicable air districts include Sacramento Metropolitan Air Quality Management District (AQMD), Yolo-Solano AQMD, El Dorado County AQMD, Placer County Air Pollution Control District (APCD), and Feather River AQMD.

[8] CARB has requested that the Western Mojave Desert 8-hour ozone nonattainment area be reclassified from ''moderate'' to ''severe-17.'' EPA will take action on CARB's reclassification request for Western Mojave Desert in a separate rulemaking.

[9] In EPA's phase 1 ozone implementation rule, EPA made NSR applicability thresholds dependent upon the status and classification of an area under the 8-hour ozone standard. The effect of the ruling in the *South Coast Air Quality Management Dist.* v. *EPA* case is to restore NSR applicability thresholds pursuant to the classifications previously in effect for areas designated nonattainment for the 1-hour ozone standard. See EPA memorandum from Robert J. Meyers, ''New Source Review (NSR) Aspects of the Decision of the U.S. Court of Appeals for the District of Columbia Circuit on the Phase 1 Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standards (NAAQS),'' dated October 3, 2007. As provided in CAA sections 501 and 502(a) and 40 CFR 70.2, 70.3(a), 71.2 and 71.3(a), the thresholds at which a source is required to apply for and operate a Title V operating permit are linked to the NSR ''major source'' applicability threshold.

[10] The reclassification requests submitted by CARB do not explicitly address Indian country located within the various ozone nonattainment areas. We assume that CARB's request relates only to the portions of the nonattainment areas that lie outside of Indian country.

[11] If today's action is finalized as proposed, the new attainment dates would apply area-wide to both State lands and Indian country located therein, but unlike the State of California, the Indian tribes located within the four subject areas would not be subject to specific plan submittal and implementation deadlines under the new ozone classifications, such as plan submittals discussed in subsection III.C of this document.

TABLE 2—INDIAN TRIBES LOCATED IN AREAS SUBJECT TO RECLASSIFICATIONS

San Joaquin Valley	South Coast	Coachella Valley	Sacramento Metro
Big Sandy Rancheria of Mono Indians (including the Big Sandy Rancheria).	Cahuilla Band of Indians (including the Cahuilla Reservation).	Agua Caliente Band of Cahuilla Indians (including the Agua Caliente Indian Reservation).	United Auburn Indian Community (including the Auburn Rancheria).
Cold Springs Rancheria of Mono Indians (including the Cold Springs Rancheria).	Morongo Band of Mission Indians (including the Morongo Reservation).	Augustine Band of Cahuilla Mission Indians (including the Augustine Reservation).	Rumsey Indian Rancheria of Wintun Indians (including the Rumsey Indian Rancheria).
North Fork Rancheria of Mono Indians (including the North Fork Rancheria).	Pechanga Band of Luiseño Mission Indians (including the Pechanga Reservation).	Cabazon Band of Mission Indians (including the Cabazon Reservation).	Shingle Springs Band of Miwok Indians [including the Shingle Springs Rancheria (Verona Tract)].
Picayune Rancheria of Chukchansi Indians (including the Picayune Rancheria).	Ramona Band of Cahuilla (including the Ramona Band).	Torres Martinez Desert Cahuilla Indians (including the Torres-Martinez Reservation).	
Santa Rosa Rancheria Tachi Yokut Tribe (including the Santa Rosa Rancheria).	San Manuel Band of Serrano Mission Indians (including the San Manuel Reservation).		
Table Mountain Rancheria (including the Table Mountain Rancheria).	Santa Rosa Band of Cahuilla Mission Indians (including the Santa Rosa Reservation).		
Tule River Indian Tribe (including the Tule River Reservation).	Soboba Band of Luiseño Mission Indians (including the Soboba Reservation).		

2. Evaluation

We have considered the relevance of the State's reclassification requests to reclassification of these tribes' Indian country located within the various nonattainment areas. Typically, states are not approved to administer programs under the CAA in Indian country, and California has not been approved by EPA to administer any CAA programs in Indian country. CAA actions in Indian country would thus generally be taken either by EPA, or by an eligible Indian tribe itself under an EPA-approved program. In this instance, none of the affected tribes has applied under CAA section 301(d) for treatment-in-a-similar-manner-as-a-state for purposes of reclassification requests under section 181(b)(3), and none operates any relevant EPA-approved CAA regulatory program (*e.g.,* a tribal implementation plan). In addition, the CAA does not require Indian tribes to develop and seek approval of air programs, and—pursuant to our authority in CAA section 301(d)—EPA has interpreted relevant CAA requirements for submission of air programs as not applying to tribes. See 40 CFR section 49.4. In these circumstances, EPA is the appropriate entity to administer relevant CAA programs in Indian country. EPA is proposing to directly administer CAA section 181(b)(3) and reclassify Indian country geographically located in the nonattainment areas that are the subject of the State's reclassification request, consistent with EPA's discretionary authority in CAA sections 301(a) and 301(d)(4) to directly administer CAA programs and protect air quality in Indian country through federal implementation. Section 301(a) authorizes the Administrator ''to prescribe such regulations as are necessary to carry out his functions under the [the Act.]'' Further, section 301(d) provides:

> In any case in which the Administrator determines that the treatment of Indian tribes as identical to States is inappropriate or administratively infeasible, the Administrator may provide, by regulation, other means by which the Administrator will directly administer such provision so as to achieve the appropriate purpose.

While tribes may choose to apply for eligibility to adopt implementation plans and seek reclassification of their areas in a manner similar to states, tribes need not do so. For the following reasons, EPA is proposing to directly administer section 181(b)(3) and reclassify these Indian country areas in order to avoid inappropriate and administratively infeasible results.[12]

Ground-level ozone continues to be a pervasive pollution problem in areas throughout the United States. Ozone and precursor pollutants that cause ozone can be transported throughout a nonattainment area. Therefore, boundaries for nonattainment areas are drawn to encompass both areas with direct sources of the pollution problem as well as nearby areas in the same airshed. Initial classifications of nonattainment areas are coterminous with, that is, they match exactly, their boundaries. EPA believes this approach best ensures public health protection from the adverse effects of ozone pollution. Therefore, it is generally counterproductive from an air quality and planning perspective to have a disparate classification for a land area located within the boundaries of a nonattainment area, such as the Indian country contained in the ozone nonattainment areas at issue here. Moreover, violations of the eight-hour ozone standard, which are measured and modeled throughout the nonattainment areas, as well as shared meteorological conditions, would dictate the same result. Furthermore, emissions changes in lower-classified ozone areas could hinder planning efforts to attain the NAAQS within the overall area through the application of less stringent requirements relative to those that apply in the areas with higher ozone classifications.

Uniformity of classification throughout a nonattainment area is thus a guiding principle and premise when an area is being reclassified. With regard to the Indian country at issue in this proposal, EPA has also taken into account other factors. For example, the likelihood of attainment by the applicable deadline under the current classification is an appropriate

[12] Consistent with this discretionary authority, EPA is also authorized to promulgate such federal implementation plan provisions as are necessary or appropriate to protect air quality in the absence of an approved tribal implementation plan. See 40 CFR section 49.11. EPA is continuing to evaluate air quality issues throughout Indian country located in these nonattainment areas. At this point, we do not believe that it is necessary or appropriate to promulgate an RFP, attainment, or RACT FIP for any of the Indian country areas located within the four nonattainment areas. EPA intends to consult with the relevant Indian tribes regarding this issue.

consideration for reclassifying Indian country within the larger nonattainment areas.[13] If EPA believes it is likely that a given ozone nonattainment area will not attain the ozone NAAQS by the applicable attainment date, then it may be an additional reason why it is appropriate to maintain a uniform classification within the area and thus to reclassify the Indian country consistent with the State's request for the portion of the area within State jurisdiction. On the other hand, if meeting the attainment date were still a reasonable possibility, then it conceivably may be appropriate for EPA to decide to defer reclassification of Indian country notwithstanding the State's request for reclassification of the portion of the nonattainment area subject to State Clean Air Act programs and notwithstanding the generally weighty considerations discussed above that support the retention of a single uniformly-classified nonattainment area as opposed to the creation of islands of differently-classified nonattainment areas within the larger nonattainment area. Depending on the circumstances, other factors may also provide justifications for refraining from reclassifying Indian country in conjunction with granting a State's request for voluntary reclassification of State lands in the same nonattainment area.

With respect to the areas that are the subject of this proposed action, we have evaluated the likelihood of attainment by the area's existing attainment deadline, based on information that is currently available. This evaluation was aided by the fact that CARB has already submitted attainment demonstrations for these four areas that are intended to support later attainment dates under a new, higher classification. In the discussion that follows, EPA is not determining which new attainment date is as expeditious as practicable nor whether these demonstrations are approvable.

San Joaquin Valley. For San Joaquin Valley under the current classification (''serious''), the 8-hour ozone NAAQS attainment date is as expeditious as practicable but not later than June 15, 2013 (i.e., nine years from the effective date of designation). The San Joaquin Valley Unified Air Pollution Control District's *San Joaquin Valley 2007 Ozone Plan* (April 30, 2007) (''2007 Ozone Plan'') contains information on current ozone levels, emissions trends, and the attainment strategy, and provides a basis for assessing the likelihood of attainment prior to June 15, 2013.

The 2007 Ozone Plan describes the meteorological and topographic factors that exacerbate ozone conditions within San Joaquin Valley and that make efforts to improve air quality particularly challenging. It shows that current ozone levels are well above the NAAQS at many locations within the Valley. It projects, based on the results of photochemical modeling, that attainment of the 8-hour ozone NAAQS throughout the Valley will require an additional decrease from existing levels of 75% in NO_X emissions. Most of these reductions are expected to occur from regulatory measures already adopted or expected to be adopted in the relatively near future, but the emissions reductions benefits from many of the measures, particularly those related to mobile sources, rely on vehicle turnover and thus take years to reach their full potential. Thus, based on the information currently available, it appears likely that the area will not attain by June 15, 2013.

The State has requested reclassification of San Joaquin Valley to ''extreme,'' which would extend the 8-hour ozone NAAQS attainment date by 11 years to no later than June 15, 2024. The plan indicates that attainment by June 15, 2019, the attainment date for the next higher classification (i.e., ''severe-15''), is also unlikely given the magnitude of emissions reductions needed for attainment and the reliance on vehicle turnover.[14] In addition, it highlights the need for the highest level of air pollution control to attain the ozone NAAQS within the Valley, and for ozone, the highest level of control is triggered by a classification of ''extreme.'' Therefore, in light of the considerations outlined above that support retention of a uniformly-classified ozone nonattainment area, and additional circumstances arguing for an attainment date well beyond the date applicable under the current classification, we propose to reclassify the Indian country areas within the San Joaquin Valley nonattainment area to ''extreme.''

South Coast. For South Coast under the current classification (''severe-17''), the 8-hour ozone NAAQS attainment date is as expeditious as practicable but not later than June 15, 2021 (i.e., 17 years from the effective date of designation). We have reviewed the South Coast Air Quality Management District's *Final 2007 Air Quality Management Plan* (June 2007) (''2007 AQMP'') for information on current ozone levels, emissions trends, and the attainment strategy to assess the likelihood of attainment prior to June 15, 2021.

The 2007 AQMP describes current ozone conditions and the magnitude of the emissions reductions that would be needed to attain the ozone NAAQS. Despite an extensive array of measures already adopted and implemented to reduce stationary, area and mobile emissions sources, the plan's modeling analysis projects that the South Coast would still need to reduce emissions by approximately 120 tons per year of VOC and 400 tons per year of NO_X from new measures to attain the standard. Given the extent to which sources have already been regulated in the South Coast, the 2007 AQMP relies on new and advanced control technologies, referred to as ''black box'' measures, to reach the lower level of emissions needed for attainment, and such measures necessarily require more lead time than control technologies already in use. Thus, based on the information currently available, it appears likely that additional time beyond 2021 will be necessary to attain the standard.[15]

The State has requested reclassification of South Coast to the next higher level, i.e., to ''extreme,'' which would extend the 8-hour ozone NAAQS attainment date by 3 years to no later than June 15, 2024. In light of the considerations outlined above that support retention of a uniformly-classified ozone nonattainment area, and the information supporting an attainment date beyond the date applicable under the current classification, we propose to reclassify

[13] In this action, we are not reconsidering the boundaries of the nonattainment areas for the 1-hour ozone NAAQS and the 1997 8-hour ozone NAAQS, but we expect to continue to discuss boundary issues with Tribes that have expressed concerns about their inclusion within large nonattainment areas. To date, such Tribes include the Morongo Band of Mission Indians and the Pechanga Band of Luiseño Mission Indians whose concerns relate to their inclusion within the South Coast Air Basin. These two tribes have recently submitted boundary redesignation requests to EPA for which EPA is considering appropriate action.

[14] EPA has not yet taken action on the 2007 Ozone Plan, which was submitted to EPA on November 17, 2007 by the State of California as a revision to the California SIP. We will take action on the 2007 Ozone plan in a separate rulemaking. When we do take action on the plan, EPA will make a determination as to whether the plan provides for expeditious attainment and meets the other requirements for RFP, attainment, and contingency measures (and other measures required under the extreme classification).

[15] The 2007 AQMP was submitted to EPA on November 28, 2007 as a revision to the California SIP. EPA is not making a determination in this document as to whether the plan provides for expeditious attainment and meets the other requirements for RFP, attainment, and contingency measures (and other measures required under the extreme classification) but will do so in a separate rulemaking when we take action on the 2007 AQMP as required under the CAA.

the Indian country areas within the South Coast to ''extreme.''

Coachella Valley. For Coachella Valley under the current classification (''serious''), the 8-hour ozone NAAQS attainment date is as expeditious as practicable but not later than June 15, 2013 (i.e., nine years from the effective date of designation). We have reviewed chapter 8 (''Future Air Quality—Desert Nonattainment Areas'') of the South Coast Air Quality Management District's *Final 2007 Air Quality Management Plan* (June 2007) (''2007 AQMP'') for information on current ozone levels, emissions trends, and the likelihood of attainment prior to June 15, 2013.

The 2007 AQMP describes the nature of the ozone problem in Coachella Valley as primarily a function of transport of ozone and ozone precursors in the Valley from the upwind South Coast. The modeling analysis conducted for the 2007 AQMP shows a gradual decline in ozone concentrations in the wake of declining emissions in the South Coast, but indicates that the pace of the reductions would not result in ozone concentrations that meet the NAAQS until after 2013.[16]

The State has requested reclassification of Coachella Valley to the next higher level, i.e., to ''severe-15,'' which would extend the 8-hour ozone NAAQS attainment date by 6 years to no later than June 15, 2019. In light of the considerations outlined above that support retention of a uniformly-classified ozone nonattainment area and the information supporting an attainment date beyond the date applicable under the current classification, we propose to reclassify the Indian country areas within Coachella Valley to ''severe-15.''

Sacramento Metro. For Sacramento Metro under the current classification (''serious''), the 8-hour ozone NAAQS attainment date is as expeditious as practicable but not later than June 15, 2013 (i.e., nine years from the effective date of designation). We have reviewed the *Sacramento Regional 8-Hour Ozone Attainment and Reasonable Further Progress Plan* (December 19, 2008) (''2008 Sacramento Ozone Plan'') for information on current ozone levels, emissions trends, and the likelihood of attainment prior to June 15, 2013.

The 2008 Sacramento Ozone Plan presents emissions inventories for existing conditions and projects baseline emissions for various future years. These inventories show that mobile sources (on-road and non-road) contribute approximately 60% of the total VOC and 90% of the total NO_X in this nonattainment area. Given the predominance of mobile source emissions in the overall inventory, the plan concludes that the region needs to rely on the longer term emission reductions strategies from state and federal mobile source control programs and that, as a result, the 2013 attainment date cannot be met.[17]

The State has requested reclassification of Sacramento Metro to the next higher level, i.e., to ''severe-15,'' which would extend the 8-hour ozone NAAQS attainment date by 6 years to no later than June 15, 2019. In light of the considerations outlined above that support retention of a uniformly-classified ozone nonattainment area and the information supporting an attainment date beyond the date applicable under the current classification, we propose to reclassify the Indian country areas within Sacramento Metro to ''severe-15.''

3. Effects of Reclassifications on Indian Tribes

For the Tribes whose Indian country lies within the four subject nonattainment areas, the effect of reclassification would be to lower the de minimis threshold under EPA's General Conformity rule (40 CFR part 53, subpart B) as described above in section II.E of this document. As also noted in section II.E of this document, under EPA's General Conformity rule, Federal agencies bear the responsibility of determining conformity of actions in nonattainment and maintenance areas that require Federal permits, approvals, or funding. Such permits, approvals or funding by Federal agencies for projects in these areas of Indian country may be more difficult to attain because of the lower de minimis thresholds.

With respect to review of new or modified major stationary sources (''new source review'') and Title V operating permits, the proposed reclassifications would not lower the applicable ''major source'' thresholds because the thresholds for the purposes of NSR and Title V that had applied by virtue of the areas' classifications under the 1-hour ozone standard continue to apply as anti-backsliding measures under the 8-hour standard (see *South Coast Air Quality Management Dist.* v. *EPA*, 472 F.3d 882 (D.C. Cir. 2006) rehearing denied 489 F.3d 1245 (clarifying that the vacatur was limited to the issues on which the court granted the petitions for review)), and the new 8-hour ozone classification for each of the four subject areas, as reclassified, would be the same as the area's corresponding 1-hour ozone classification (see Table 1 of this document).

EPA implements NSR in Indian country areas located within designated nonattainment areas unless EPA has approved an NSR program for such areas. Where EPA is the implementing agency, EPA implements NSR through promulgation of a Federal Implementation Plan (FIP) establishing an NSR program in a given Indian country area. EPA has not promulgated an NSR FIP for any of the areas of Indian country in the four subject nonattainment areas. EPA could promulgate an NSR FIP for any given Indian country area within the four subject nonattainment areas if a new or modified major stationary source were to locate within these areas, but such a FIP would be based on the same major source applicability thresholds regardless of whether the Indian country areas are reclassified, as explained above.

On August 21, 2006 (71 FR 48696), EPA proposed a FIP that would extend Appendix S (''Emission Offset Interpretive Ruling'') in 40 CFR part 51 to Indian country within nonattainment areas until replaced by an EPA-approved NSR implementation plan for a given area of Indian country. Extension of Appendix S to Indian country would alleviate the potential necessity for EPA to promulgate area-specific NSR FIPs for Indian country located within the four subject nonattainment areas. Please refer to our August 21, 2006 proposed rule for a detailed explanation of NSR in nonattainment areas of Indian country (71 FR 48696, at 48718–48719). Until EPA finalizes action to extend Appendix S to Indian country, EPA may find it necessary or appropriate to promulgate area-specific NSR FIPs for Indian country within the four subject nonattainment areas, depending upon the emissions potential of any proposed new or modified stationary sources in these Indian country areas.

[16] The Coachella Valley 8-hour ozone plan is included within the 2007 AQMP, which was submitted to EPA on November 28, 2007 as a revision to the California SIP. EPA is not making a determination in this document as to whether the plan provides for expeditious attainment and meets the other requirements for RFP, attainment, and contingency measures (and other measures required under the severe-15 classification) but will do so in a separate rulemaking when we take action on the 2007 AQMP as required under the CAA.

[17] The 2008 Sacramento Ozone Plan was submitted to EPA on April 17, 2009 as a revision to the California SIP. EPA is not making a determination in this document as to whether the plan provides for expeditious attainment and meets the other requirements for RFP, attainment, and contingency measures (and other measures required under the severe-15 classification) but will do so in a separate rulemaking when we take action on the 2008 Sacramento Ozone Plan as required under the CAA.

C. Setting Deadlines for Submitting SIP Revisions

For the reasons discussed below for each area, we are proposing SIP submission deadlines for the areas and SIP revisions shown in Table 3.[18]

TABLE 3—SUMMARY OF SIP REVISION SUBMITTAL DEADLINES

8-Hour ozone nonattainment area	Proposed classification	8-Hour ozone SIP element	Submittal due date
Coachella Valley	Severe-15	CAA Section 185 fees	No later than 12 months from the effective date of reclassification.
Sacramento Metro	Severe-15	NSR (Sacramento Metropolitan AQMD, Placer County APCD, Feather River AQMD only).	No later than 12 months from the effective date of reclassification.
		CAA Section 185 fees (El Dorado County AQMD, Placer County APCD, Feather River AQMD, and Yolo-Solano AQMD only).	No later than 12 months from the effective date of reclassification.

San Joaquin Valley. As noted above in section II.D.2 of this document, CARB has submitted SIP revisions addressing all of the additional SIP requirements for San Joaquin Valley consistent with reclassification from ''serious'' to ''extreme.'' EPA therefore is not proposing a schedule for additional SIP revisions in response to the reclassification of this area.

South Coast Air Basin. As noted above in section II.D.2 of this document, CARB has submitted SIP revisions addressing all of the additional SIP requirements for the South Coast Air Basin consistent with reclassification from ''severe-17'' to ''extreme.'' EPA therefore is not proposing a schedule for additional SIP revisions in response to the reclassification of this area.

Coachella Valley. As noted above in section II.D.2 of this document, CARB has submitted SIP revisions addressing all of the additional SIP requirements for Coachella Valley consistent with reclassification from ''serious'' to ''severe-15,'' except for the major stationary source fees requirement under CAA section 185. EPA is proposing to establish a deadline of no later than 12 months from the effective date of reclassification for submittal of a revision to the Coachella Valley portion of the SIP that meets the major stationary source fees requirement under CAA section 185.

Sacramento Metro. As noted above in section II.D.2 of this document, CARB has submitted SIP revisions addressing all but two of the additional SIP requirements for the Sacramento Metro area consistent with reclassification from ''serious'' to ''severe-15.'' CARB has not submitted new source review rules for certain air districts within the Sacramento Metro area consistent with the ''severe-15'' ozone classification. EPA is proposing to establish a deadline of no later than 12 months from the effective date of reclassification for submittal of revisions to the Sacramento Metro portion of the SIP that meet the additional new source review requirements for a ''severe-15'' 8-hour ozone nonattainment area for Sacramento Metropolitan AQMD, Placer County APCD, and Feather River AQMD. CARB has also not submitted SIP revisions addressing the CAA section 185 fees requirement for four of the five districts within the Sacramento Metro area, including El Dorado County AQMD, Placer County APCD, Feather River AQMD, and Yolo-Solano AQMD. EPA is proposing the same deadline for the CAA section 185 fees requirement as for the ''severe-15'' NSR requirement discussed above.

IV. Proposed Action and Request for Public Comment

Pursuant to CAA section 181(b)(3) and 40 CFR 51.903(b), EPA proposes to grant the following reclassification requests by the State of California: the San Joaquin Valley area from ''serious'' to ''extreme''; the South Coast Air Basin area from ''severe-17'' to ''extreme''; and the Coachella Valley and Sacramento Metro areas from ''serious'' to ''severe-15,'' and to change the table for 8-hour ozone in 40 CFR 81.305 accordingly.

In connection with the reclassifications, EPA is proposing to establish a deadline of no later than 12 months from the effective date of reclassification for submittal of revisions to the Coachella Valley portion of the SIP to meet the CAA section 185 fees requirement. EPA is also proposing the same deadline for submittal of revisions to the Sacramento Metro area portion of the SIP to meet the following additional SIP requirements for ''severe-15'' areas: new source review rules consistent with this classification (Sacramento Metropolitan AQMD, Placer County APCD, and Feather River AQMD only) and CAA section 185 fees (El Dorado County AQMD, Placer County APCD, Feather River AQMD, and Yolo-Solano AQMD only). EPA has already received SIP revision submittals addressing most of the additional SIP requirements for these two areas and has received all of the related SIP revision submittals for San Joaquin Valley and the South Coast Air Basin. EPA is not proposing a SIP revision schedule for any SIP requirements for which SIP submittals have already been received.

Finally, consistent with our discretionary authority under CAA sections 301(a) and 301(d)(4), we propose to similarly reclassify Indian country within the four areas consistent with the reclassification requests for the surrounding non-Indian country lands and have invited consultation with interested tribes concerning this issue. We note that although eligible tribes may seek EPA approval of relevant tribal programs under the CAA, none of the affected tribes will be required to submit an implementation plan to address these reclassifications.

EPA requests public comment on this proposal.

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to Executive Order 12866. Voluntary

[18] The deadlines proposed herein relate solely to specific additional requirements triggered by the reclassification for the 8-hour ozone NAAQS and should not be interpreted as relieving an area of any existing obligation that the area has based on its 1-hour ozone classification, or of existing obligations unrelated to attainment that are based on its current 8-hour ozone classification.

reclassifications under section 181(b)(3) of the CAA are based solely upon requests by the State, and EPA is required under the CAA to grant them. These actions do not, in and of themselves, impose any new requirements on any sectors of the economy. In addition, because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by reclassification, reclassification does not impose a materially adverse impact under Executive Order 12866. For this reason, this proposed action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001).

In addition, I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), and that this proposed rule does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), because EPA is required to grant requests by states for voluntary reclassifications and such reclassifications in and of themselves do not impose any federal intergovernmental mandate.

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

Several Indian tribes have Indian country located within the boundaries of the four subject ozone nonattainment areas. EPA implements federal Clean Air Act programs, including reclassifications, in these areas of Indian country. EPA has concluded that this proposed rule might have tribal implications for the purposes of Executive Order 13175, but would not impose substantial direct costs upon the tribes, nor would it preempt Tribal law. As discussed in section III.B.3 of this document, the proposed rule would not affect implementation of new source review for new or modified stationary sources proposed in the Indian country areas proposed for reclassification, but might affect projects proposed in these areas that require Federal permits, approvals, or funding. Such projects are subject to the requirements of EPA's General Conformity rule, and Federal permits, approvals, or funding for the projects may be more difficult to attain because of the lower de minimis thresholds triggered by reclassification.

Given the potential implications, EPA contacted tribal officials early in the process of developing this proposed rule to provide an opportunity to have meaningful and timely input into its development. On July 31, 2008, we sent letters to leaders of the 21 tribes with Indian country areas in the four subject nonattainment areas seeking their input on how we could best communicate with the tribes on the rulemaking effort. We received responses from nine tribes, of whom four indicated interest in face-to-face meetings, as one of several means of communication. We have met with two tribes that sought specific meetings on the reclassifications: Pechanga Band of Luiseño Mission Indians and Morongo Band of Mission Indians. We propose to continue with this process of communicating with the tribes until we promulgate the final rule. EPA specifically solicits additional comment on this proposed rule from tribal officials.

This proposed action also does not have Federalism implications because it does 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 (64 FR 43255, August 10, 1999). This proposed action does not alter the relationship or the distribution of power and responsibilities established in the CAA.

This proposed rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This proposed action is not subject to Executive Order 13045 because it grants a voluntary reclassification, and EPA's approval is mandatory.

As discussed above, a voluntary reclassification under section 181(b)(3) of the CAA is based solely on the request of a State and EPA is required to grant such a request. In this context, it would be inconsistent with applicable law for EPA, when it grants a State's request for a voluntary reclassification, to use voluntary consensus standards. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) also do not apply. In addition, this proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. As stated earlier in this proposed rule, EPA is proposing action granting the State's requests for voluntary reclassifications. The plain language of section 181(b)(3) of the CAA mandates that we ''shall'' approve such a request if it is made in accordance with the requirements of the Act, and, as such, does not provide the Agency with the discretionary authority to address concerns raised outside the Act, including those contained in Executive Order 12898.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Intergovernmental relations, National parks, Ozone, Wilderness areas.

Dated: August 18, 2009.

Laura Yoshii,

Acting Regional Administrator, Region IX.

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