



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R09-OAR-2014-0636; FRL-9940-83-Region 9]

**Designation of Areas for Air Quality Planning Purposes;
California; San Joaquin Valley; Reclassification as Serious
Nonattainment for the 2006 PM_{2.5} NAAQS**

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to reclassify the San Joaquin Valley (SJV) Moderate nonattainment area, including areas of Indian country within it, as a Serious nonattainment area for the 2006 PM_{2.5} national ambient air quality standards (NAAQS), based on the EPA's determination that the area cannot practicably attain these NAAQS by the applicable attainment date of December 31, 2015. As a consequence of this reclassification, California must submit, no later than 18 months from the effective date of this reclassification, a Serious area attainment plan including a demonstration that the plan provides for attainment of the 2006 24-hour PM_{2.5} standards in the SJV area as expeditiously as practicable and no later than December 31, 2019. The State must also submit, no later than 12 months after the effective date of this reclassification, nonattainment new source review (NNSR)

SIP revisions to implement the 2006 PM_{2.5} NAAQS in the SJV area, to the extent those requirements have not previously been met.

DATES: This rule is effective on [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

ADDRESSES: The EPA has established docket number EPA-R09-OAR-2014-0636 for this action. Generally, documents in the docket for this action are available electronically at <http://www.regulations.gov> or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105-3901. While all documents in the docket are listed at <http://www.regulations.gov>, some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps, multi-volume reports), and some may not be publicly available in either location (e.g., confidential business information (CBI)). To inspect the docket materials in person, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Wienke Tax, Air Planning Office (AIR-2), U.S. Environmental Protection Agency, Region 9, (415) 947-4192, tax.wienke@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. Proposed Action

On January 13, 2015 (80 FR 1816), the EPA proposed to approve portions of California's Moderate area plan to address the 2006 primary and secondary 24-hour PM_{2.5} NAAQS in the SJV and to reclassify the SJV nonattainment area, including areas of Indian country within it, from Moderate nonattainment to Serious nonattainment for these standards, based on the EPA's determination that the area cannot practicably attain the NAAQS by the applicable attainment date of December 31, 2015.¹ Under section 188(b)(1) of the CAA, prior to an area's attainment

¹ See proposed rule at 80 FR 1816 (January 13, 2015) for a more detailed discussion of the background for this action, including the history of the PM_{2.5} NAAQS established in 2006, health effects and sources of PM_{2.5}, designation of the SJV as nonattainment for the PM_{2.5} standards, and the EPA's actions on the submittals from the state of California to address the nonattainment area planning requirements for the 2006 PM_{2.5} NAAQS in the SJV.

date, the EPA has discretionary authority to reclassify as a Serious nonattainment area "any area that the Administrator determines cannot practicably attain" the PM_{2.5} NAAQS by the Moderate area attainment date.² On March 4, 2013, the State submitted a Moderate area attainment plan demonstrating that the SJV area cannot practicably attain the 2006 PM_{2.5} standards by the applicable Moderate area attainment date of December 31, 2015. The EPA's proposed reclassification of the SJV area was based upon our evaluation of the State's submission and ambient air quality data for the 2013-2014 period indicating that it is not practicable for certain monitoring sites within the SJV area to show PM_{2.5} design values at or below the level of the 2006 PM_{2.5} NAAQS by December 31, 2015.³

² Section 188(b)(1) of the Act is a general expression of delegated rulemaking authority. See "State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 57 FR 13498 (April 16, 1992) (hereafter "General Preamble") at 13537, n. 15. Although subparagraphs (A) and (B) of section 188(b)(1) contain specific timeframes for the EPA to reclassify any areas that it determines cannot practicably attain the PM_{2.5} standards by the applicable attainment date, these subparagraphs do not restrict the general authority to reclassify an area, as appropriate, at any time before the attainment date but simply specify that, at a minimum, the EPA's authority must be exercised at certain times. See *id.*

³ The PM_{2.5} monitoring data that EPA reviewed indicate that 24-hour PM_{2.5} design values are at 65 ug/m³ in the SJV, which is well above the level of the 2006 PM_{2.5} NAAQS (35 ug/m³). EPA also calculated "maximum allowed" 2015 concentrations that would enable the area to attain the 2006 24-hour PM_{2.5} NAAQS by the end of 2015 and found that all monitoring sites examined - Bakersfield-California Ave, Bakersfield-Planz Rd., Fresno-Garland, Fresno-Pacific, and Hanford - would have to record negative PM_{2.5} concentrations in 2015 to show PM_{2.5} design values at or below the level of the 2006 PM_{2.5} NAAQS. See 80 FR 1816, 1834 and n. 69 (January 13, 2015).

In our proposed rule, we explained that, under section 188(c)(2) of the Act, the attainment date for a Serious area "shall be as expeditiously as practicable but no later than the end of the tenth calendar year beginning after the area's designation as nonattainment..." The SJV was designated nonattainment for the 2006 PM_{2.5} NAAQS effective December 14, 2009.⁴ Therefore, as a result of our reclassification of the SJV area as a Serious nonattainment area, the attainment date under section 188(c)(2) of the Act for the 2006 PM_{2.5} NAAQS in this area is as expeditiously as practicable but no later than December 31, 2019.

Our proposed rule also identified the additional Serious area attainment plan elements that California would, upon reclassification, have to submit to satisfy the statutory requirements that apply to Serious areas, including the requirements of subpart 4 of part D, title I of the Act.⁵ The EPA explained that, under section 189(b)(2) of the Act, the State must submit the required provisions to implement best available control measures (BACM), including best available control technology (BACT), no later than 18 months after reclassification and must submit the required attainment demonstration no later than 4 years after reclassification.

⁴ 74 FR 58688 (November 13, 2009).

⁵ See proposed rule at 80 FR 1842 (January 13, 2015).

Given the December 31, 2019, Serious area attainment date applicable to this area under CAA section 188(c)(2), however, we noted that we expect the State to adopt and submit a Serious area plan for these NAAQS well before the statutory SIP submittal deadline in CAA section 189(b)(2).⁶

With respect to the nonattainment new source review (NNSR) program revisions to establish appropriate "major stationary source" thresholds for direct PM_{2.5} and PM_{2.5} precursors in accordance with CAA section 189(b)(3), the EPA proposed to require the State to submit these NNSR SIP revisions no later than 12 months after the effective date of final reclassification, and requested comment on this proposed 12-month timeframe.

II. Summary of Final Action

Today we are finalizing only our proposal to reclassify the SJV area as a Serious nonattainment area for the 2006 PM_{2.5} NAAQS. We are not taking final action at this time on our proposal to approve elements of California's Moderate area plan for the 2006 PM_{2.5} NAAQS in the SJV and will complete that action at a later time.

As a consequence of our reclassification of the SJV area as Serious nonattainment for the 2006 PM_{2.5} NAAQS, California is

⁶ *Id.* at 1843.

required to submit additional SIP revisions to satisfy the statutory requirements that apply to Serious areas, including the requirements of subpart 4 of part D, title I of the Act. For the reasons provided in Section III of this preamble, the EPA is requiring the State to adopt and submit all required components of the Serious Area attainment plan for the SJV no later than 18 months after the effective date of this reclassification.

We are finalizing our proposal to require that California adopt and submit NNSR SIP revisions to implement subpart 4 requirements for the 2006 PM_{2.5} NAAQS in the SJV area no later than 12 months after the effective date of this reclassification, to the extent those requirements have not already been met by the NNSR SIP revisions due May 7, 2016 for purposes of implementing the 1997 PM_{2.5} NAAQS.⁷

The attainment date under section 188(c)(2) of the Act for the 2006 PM_{2.5} NAAQS in this area is as expeditiously as practicable but no later than December 31, 2019.

III. Public Comments and EPA Responses

The EPA received two comment letters on our proposed actions. Comment letters were submitted by the San Joaquin Valley Air Pollution Control District ("SJVAPCD" or "District"), and by Earthjustice on behalf of the Central Valley Air Quality

⁷ See 40 CFR 52.245(c) and 80 FR 18528, 18533 (April 7, 2015).

Coalition, Greenaction, the Association of Irrigated Residents, the Sierra Club - Tehipite Chapter, and Global Community Monitor, ("Earthjustice") on February 27, 2015, prior to the close of the comment period on our proposal.⁸

Because we are finalizing only our proposal to reclassify the SJV area as Serious nonattainment for the 2006 PM_{2.5} NAAQS, we are responding only to comments pertaining to the reclassification and its consequences. We summarize and respond to the relevant comments below. In a separate rulemaking, we will take final action on California's submitted Moderate area plan for the 2006 PM_{2.5} NAAQS in the SJV and will respond to comments pertaining to our proposed action on the submitted plan at that time.

Comment 1: The SJVAPCD supports the EPA's proposal to require the state to submit a revised Nonattainment New Source Review (NNSR) rule within twelve months of the EPA's serious nonattainment reclassification. However, the District asks for the EPA to clarify that this submission will not be required before the EPA can grant an extension of the attainment deadline for the 1997 PM_{2.5} standards under CAA section 188(e). The

⁸ See letter dated February 27, 2015, from Sheraz Gill, Director of Strategies and Incentives at SJVAPCD, to Wienke Tax, EPA Region 9, "Re: Docket No. EPA-R09-OAR-2014-0636, Comments on Proposed Approval and Promulgation of Implementation Plans; Designation of Areas for Air Quality Planning Purposes; California; San Joaquin Valley Moderate Area Plan and Reclassification as Serious Nonattainment for the 2006 PM_{2.5} NAAQS," and letter dated February 27, 2015 from Paul Cort and Adenike Adeyeye, Earthjustice, to Ms. Wienke Tax, Air Planning Office, USEPA Region 9.

District comments that the EPA has provided "no valid justification" for requiring the revised NNSR rule to be submitted before the EPA can approve the attainment deadline extension, and argues that CAA section 188(e) contains "no mention of NSR, either directly or by implication, that would lead one to believe that the updated NSR rule is required prior to approval of the attainment deadline extension." The District asserts that the EPA is asking it to begin an expedited process to adopt a serious area NSR rule before the area has been reclassified as serious nonattainment and without implementation rules or guidance.

Response 1: We are finalizing our proposal to require that California adopt and submit NNSR SIP revisions to implement subpart 4 requirements for the 2006 PM_{2.5} NAAQS in the SJV area no later than 12 months after the effective date of this reclassification. We note that California is required to submit NNSR SIP revisions addressing the requirements for Serious PM_{2.5} nonattainment areas under subpart 4 by May 7, 2016, as a result of our previous reclassification of the SJV as Serious nonattainment for the 1997 PM_{2.5} NAAQS.⁹ Nonattainment NSR SIP revisions that satisfy the Serious Area requirements of CAA

⁹ See 40 CFR 52.245(c) and 80 FR 18528, 18533 (April 7, 2015). We are making minor clarifications to the regulatory text in 40 CFR 52.245(c) to indicate that the May 7, 2016 deadline therein pertains only to NNSR SIP revisions necessary to implement the 1997 PM_{2.5} NAAQS.

sections 189(b)(3) and 189(e) for purposes of the 1997 PM_{2.5} NAAQS may also satisfy these requirements for the 2006 PM_{2.5} NAAQS.

The District's comments about the criteria for an extension of the attainment date for the 1997 PM_{2.5} standards under CAA section 188(e) are not relevant to this action, which pertains only to the SJV area's classification for the 2006 PM_{2.5} NAAQS and related SIP submission deadlines. This reclassification action does not affect the State's obligations with respect to the 1997 PM_{2.5} standards or any other NAAQS. We previously responded to the District's comments concerning the relevance of NNSR SIP revisions to the section 188(e) criteria for an extension of the attainment date for the 1997 PM_{2.5} standards, as part of our final action reclassifying the SJV area as a Serious nonattainment area for the 1997 PM_{2.5} NAAQS (see 80 FR 18528, April 7, 2015).

Comment 2: Earthjustice supports the EPA's proposed reclassification of the SJV to serious nonattainment, but comments that the agency should impose earlier deadlines for the submission of BACM measures and the serious area attainment demonstration. Earthjustice states that CAA section 189(b)(2) requires a state to submit an attainment demonstration for an area within 4 years after the area is reclassified to serious

nonattainment and a BACM plan within 18 months after the area is reclassified. Earthjustice argues that, had the EPA applied the requirements of subpart 4 at the time, the EPA would have had to reclassify the SJV area as Serious within 18 months after the required date for the area's Moderate area plan, i.e., by December 14, 2012, and that the SIP submission deadlines should therefore be measured from this date. According to Earthjustice, this would mean that the BACM measures were due June 14, 2014, and that the serious area attainment demonstration is due December 14, 2016. For this reason, Earthjustice asserts that the EPA should declare the BACM submission already overdue (triggering a sanctions clock), and should require the state to submit its attainment demonstration by no later than December 14, 2016. Earthjustice contends that the EPA's failure to apply these deadlines will "serve to perpetuate EPA's error" in not initially applying subpart 4 requirements to implementation of the PM_{2.5} NAAQS.

Earthjustice further argues that although the EPA did not interpret the schedules in section 189(b)(2) to apply to PM_{2.5} plans prior to the D.C. Circuit's decision in *Natural Res. Def. Council v. EPA*, 706 F.3d 428 (D.C. Cir. 2013) ("NRDC"), the agency's decision to apply these deadlines would not represent improper retroactive application of the statute. In support, Earthjustice cites the U.S. Supreme Court in *Rivers v. Roadway*

Express, Inc., 511 U.S. 298 (1994) for the proposition that judicial construction of a statute interprets the statute's meaning "continuously since the date when it became law," "before as well as after" the court's decision. Notwithstanding disagreements about what constitutes retroactive application of subpart 4 deadlines, however, Earthjustice argues that the EPA should exercise its discretion, as it has done for the NSR SIP deadline, to set a December 14, 2016 deadline for submission of the serious area attainment demonstration.

Response 2: We disagree with the commenter's assertion that the deadlines in CAA section 189(b)(2) for submission of the State's BACM plan and Serious Area attainment plan should be measured from December 14, 2012. Section 189(b)(1) of the Act requires that "each State in which all or part of a Serious Area is located" submit a Serious Area attainment demonstration and BACM provisions. Section 189(b)(2) requires the State to submit the Serious Area attainment demonstration "no later than 4 years after reclassification of the area to Serious" and to submit the BACM provisions "no later than 18 months after reclassification of the area as a Serious Area." These provisions of the Act plainly require that states submit Serious Area SIP elements only for PM_{2.5} nonattainment areas that have been reclassified as Serious under subpart 4.

Prior to this reclassification action, the SJV area was classified as a Moderate Area for the 2006 PM_{2.5} NAAQS and therefore was not subject to the requirements for Serious Area plans in CAA section 189(b) for these NAAQS. Because the EPA did not reclassify the SJV area as a Serious Area effective December 14, 2012, it is not appropriate to establish SIP submission deadlines under section 189(b)(2) based on a December 14, 2012 reclassification date. Moreover, to do so in this instance would mean that the BACM provisions are overdue (as of June 14, 2014) and that the Serious Area attainment demonstration is due December 14, 2016, less than one year after the effective date of this final reclassification action. We do not believe that the *NRDC* court's January 4, 2013 decision should be interpreted so as to retroactively impose on the State subpart 4 requirements and deadlines of which it had no notice.¹⁰

We also disagree with the commenter's argument that, had the EPA applied subpart 4, the EPA would have had to reclassify the SJV area by December 14, 2012. The commenter contends that the EPA's authority to reclassify a Moderate area as Serious

¹⁰ In rulemakings for individual areas subsequent to the *NRDC* decision, the EPA has explained in detail its view that the requirements of the CAA should not be implemented retroactively based upon the court's decision. See, e.g., 78 FR 41698 (July 11, 2013) (final redesignation of Indianapolis to attainment for 1997 annual PM_{2.5} standard). The U.S. District Court for the District of Colorado recently agreed with the EPA's position that the court's decision in *NRDC* does not require retroactive application of Subpart 4 requirements. See *WildEarth Guardians v. Gina McCarthy*, Case No. 13-CV-1275-WJM-KMT (D. Colo., March 11, 2014) (dismissing plaintiff's claim that the EPA missed a non-discretionary deadline based on retroactive application of Subpart 4).

under CAA section 188(b)(1) is available only within the timeframe specified in section 188(b)(1)(B), *i.e.*, within 18 months after the due date for the State's Moderate area SIP. As explained in the 1992 General Preamble, however, "[u]nder the plain meaning of the terms of section 188(b)(1), EPA has general discretion to reclassify *at any time before the applicable attainment date* any area EPA determines cannot practicably attain the standards by such date" (emphases added).¹¹ With respect to the dates specified in subsections (A) and (B) of section 188(b)(1), the EPA specifically explained in the General Preamble that "[t]hese subparagraphs do not restrict the general authority [in section 188(b)(1)] but simply specify that, at a minimum, it must be exercised at certain times."¹² This interpretation of section 188(b)(1) as allowing the EPA to reclassify moderate areas as serious "at any time EPA determines that an area cannot practicably attain the standards by the applicable attainment date" facilitates the statutory objective of attaining the PM-10 standards - *e.g.*, by ensuring that additional control measures such as BACM are implemented sooner and by expediting the application of more stringent new source review requirements.¹³ The EPA reiterated this interpretation of

¹¹ General Preamble, 57 FR 13498, 13537 at n. 15 (April 16, 1992).

¹² *Id.*

¹³ General Preamble, 57 FR 13498, 13537.

section 188(b) (1) in the 1994 PM-10 Addendum¹⁴ and in several discretionary reclassification actions subsequent to the 1990 CAA Amendments.¹⁵

Specifically, with respect to areas designated nonattainment by operation of law upon enactment of the 1990 CAA Amendments (*i.e.*, "initial" PM-10 nonattainment areas), the EPA's longstanding interpretation of section 188(b) (1) (A) has been that "the amended Act specifies certain dates by which EPA must propose to reclassify appropriate moderate areas as serious... and take final action," where the EPA determines that the area cannot "practicably" attain the PM-10 NAAQS by December 31, 1994.¹⁶ The EPA further explained, however, that "EPA also has discretionary authority under section 188(b) (1) to reclassify any of these areas as serious at any time, if EPA determines they cannot practicably attain the PM-10 NAAQS by

¹⁴ "State Implementation Plans for Serious PM-10 Nonattainment Areas, and Attainment Date Waivers for PM-10 Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 59 FR 41998, 41999 (August 16, 1994) (the "PM-10 Addendum").

¹⁵ See 58 FR 3334, 3336 (Jan. 8, 1993) (discharging EPA's statutory duty under section 188(b) (1) (A) to "reclassify appropriate initial moderate PM-10 nonattainment areas as serious by December 31, 1991" but noting EPA's broad discretion under section 188(b) (1) to reclassify additional areas at a later date); see also 80 FR 18528 (April 7, 2015) (final discretionary reclassification of San Joaquin Valley for 1997 PM_{2.5} NAAQS signed March 27, 2015).

¹⁶ General Preamble, 57 FR 13498, 13537. Under section 188(c) (1) of the Act, December 31, 1994 was the latest permissible Moderate area attainment date for an area designated nonattainment for PM-10 by operation of law under the 1990 CAA Amendments.

December 31, 1994,"¹⁷ and provided examples of the circumstances that may warrant such discretionary reclassification at a later date - *i.e.*, after the December 31, 1991 date specified in section 188(b)(1)(A).¹⁸ In the PM-10 Addendum, the EPA stated that "[s]ection 188(b)(1)(A) provides an accelerated schedule by which EPA is to reclassify appropriate initial PM-10 nonattainment areas" but reiterated the Agency's interpretation of section 188(b)(1) as a general grant of authority to also reclassify initial PM-10 areas at later points in time before the attainment date.¹⁹

Likewise, the EPA has long interpreted section 188(b)(1)(B) as establishing a "timeframe within which EPA is to reclassify appropriate areas designated nonattainment for PM-10 subsequent to enactment of the 1990 Amendments" but not as a limitation on EPA's general authority to reclassify such areas at any time before the applicable attainment date.²⁰ In the PM-10 Addendum,

¹⁷ General Preamble, 57 FR 13498, 13537.

¹⁸ *Id.* ("The EPA may exercise this discretion where, for example, EPA originally believed an area could attain the PM-10 NAAQS by December 31, 1994 but later determines that it cannot attain"); see also 56 FR 58656, 58657 (Nov. 21, 1991) (noting that "EPA also has discretion to reclassify any of these areas as serious after December 31, 1991 (e.g., after reviewing the State's PM-10 SIP), if EPA determines they cannot practicably attain the PM-10 NAAQS by December 31, 1994") and 58 FR 3334, 3336 (Jan. 8, 1993) (noting that EPA may *in the future* reclassify additional PM-10 nonattainment areas using its discretionary authority in section 188(b)(1)).

¹⁹ PM-10 Addendum, 59 FR 41998, 41999 (August 16, 1994) ("In the future, EPA anticipates that, generally, any decision to reclassify an initial PM-10 nonattainment area before the attainment date will be based on specific facts or circumstances demonstrating that the NAAQS cannot practicably be attained by December 31, 1994...").

²⁰ General Preamble, 57 FR at 13537 and PM-10 Addendum, 59 FR at 41999.

the EPA reiterated its view that the directive in section 188(b)(1)(B) "does not restrict EPA's general authority, but simply specifies that it is to be exercised, as appropriate, in accordance with certain dates."²¹ The EPA recently finalized a discretionary reclassification action for the SJV PM_{2.5} nonattainment area shortly before the applicable attainment date, consistent with this interpretation of CAA section 188(b)(1).²² In light of the EPA's longstanding and consistent interpretation of section 188(b)(1) as a general grant of discretionary authority to reclassify any Moderate area as a Serious area at any time before the applicable attainment date, based on a determination that the area cannot practicably attain the NAAQS by that date, we disagree with the commenter's claim that the EPA should have reclassified the SJV area as Serious by December 14, 2012.

Upon further consideration and in light of the specific circumstances in the SJV PM_{2.5} nonattainment area, however, the EPA is exercising its discretion to establish a deadline of 18 months from the effective date of this final reclassification action for the State to submit all required components of the Serious Area attainment plan for the 2006 PM_{2.5} NAAQS in the SJV. An 18-month deadline for submission of these SIP elements is

²¹ PM-10 Addendum, 59 FR 41998, 41999 at n. 4 (August 16, 1994).

²² See 80 FR 18528 (April 7, 2015) (final discretionary reclassification of San Joaquin Valley for 1997 PM_{2.5} NAAQS signed March 27, 2015).

appropriate in this instance because it both enables the EPA to evaluate the required attainment plan well before the outermost attainment date applicable to the area under CAA section 188(c)(2) and enables the State to develop its strategy for attaining the 2006 PM_{2.5} NAAQS in conjunction with its development of a plan to provide for attainment of the 2012 primary annual PM_{2.5} NAAQS in this same area, which is due October 15, 2016.²³ Although the State's obligations with respect to implementation of a Moderate area plan for the 2012 PM_{2.5} NAAQS are separate and distinct from its obligations with respect to implementation of a Serious area plan for the 2006 PM_{2.5} NAAQS, it is reasonable in this instance to require the State to develop its control strategies for both PM_{2.5} NAAQS in the SJV area in a similar timeframe, considering the benefits of streamlining these planning processes to the extent possible.

In addition, an 18-month deadline for submission of the Serious area plan is consistent with both the timeframe for initial Moderate area plan submissions upon designation of an area as nonattainment and the timeframe for Serious area plan submissions following an EPA determination of failure to attain and reclassification by operation of law under CAA section

²³ The EPA designated and classified the SJV as Moderate nonattainment for the 2012 primary annual PM_{2.5} NAAQS effective April 15, 2015. 80 FR 2206, 2215-16 (January 15, 2015). Under CAA section 189(a)(2)(B), California is required to adopt and submit a plan to provide for attainment of these NAAQS within 18 months after the nonattainment designation, *i.e.*, by October 15, 2016.

188(b)(2).²⁴ It is reasonable for the EPA to exercise its discretion to establish a similar SIP submission deadline in this instance, given the proximity of this action to the Moderate area attainment date (December 31, 2015) and the likelihood that, should the attainment date pass, the EPA would have to determine under section 188(b)(2) that the SJV area failed to attain the PM_{2.5} NAAQS by that date. Although CAA section 189(b)(2) generally provides for up to 4 years after a discretionary reclassification for the State to submit the required attainment demonstration, we find it appropriate in this case to establish an earlier SIP submission deadline to assure timely implementation of the statutory requirements.²⁵ Furthermore, the 18-month SIP submission deadline that we are finalizing in this action requires California to submit its Serious Area plan for the SJV area before the statutory SIP submission deadline that would apply upon reclassification by operation of law under section 188(b)(2).²⁶

²⁴ CAA sections 189(a)(2)(B) and 189(b)(2).

²⁵ Section 189(b)(2) establishes outer bounds on the SIP submission deadlines and does not preclude the EPA's establishment of earlier deadlines as necessary or appropriate to assure consistency among the required submissions and to implement the statutory requirements, including the requirement that attainment be as expeditious as practicable.

²⁶ Under CAA section 188(b)(2), the EPA must determine within 6 months after the applicable attainment date whether the area attained the NAAQS by that date. If the EPA determines that a Moderate Area is not in attainment after the applicable attainment date, the area is reclassified by operation of law as a Serious Area, and the Serious Area attainment plan is due within 18 months after such reclassification. CAA sections 188(b)(2) and 189(b)(2).

Finally, the EPA is requiring California to submit revised nonattainment NSR program requirements no later than 12 months after final reclassification, to the extent those requirements have not already been met by the NNSR revisions due May 7, 2016 for purposes of implementing the 1997 PM_{2.5} NAAQS in the SJV.²⁷ The Act does not specify a deadline for the State's submission of SIP revisions to meet NNSR program requirements to lower the "major stationary source" threshold from 100 tons per year (tpy) to 70 tpy (CAA section 189(b)(3)) and to address the control requirements for major stationary sources of PM_{2.5} precursors (CAA section 189(e))²⁸ following reclassification of a Moderate PM_{2.5} nonattainment area as Serious nonattainment under subpart 4. Pursuant to the EPA's gap-filling authority in CAA section 301(a) and to effectuate the statutory control requirements in section 189 of the Act, the EPA is requiring the State to submit these NNSR SIP revisions, as well as any necessary analysis of and additional control requirements for major stationary sources of PM_{2.5} precursors, no later than 12 months after the effective date of final reclassification of the SJV area as Serious nonattainment for the 2006 PM_{2.5} NAAQS.

²⁷ See 40 CFR 52.245(c) and 80 FR 18528, 18533 (April 7, 2015).

²⁸ Section 189(e) requires that the control requirements applicable to major stationary sources of PM_{2.5} also apply to major stationary sources of PM_{2.5} precursors, except where the state demonstrates to the EPA's satisfaction that such sources do not contribute significantly to PM_{2.5} levels that exceed the standard in the area.

IV. Final Action

A. Reclassification as Serious Nonattainment and Applicable Attainment Date

In accordance with section 188(b)(1) of the Act, the EPA is taking final action to reclassify the SJV area from Moderate to Serious nonattainment for the 2006 primary and secondary 24-hour PM_{2.5} standards of 35 µg/m³, based on the EPA's determination that the SJV area cannot practicably attain these standards by the applicable attainment date of December 31, 2015.

Under section 188(c)(2) of the Act, the attainment date for a Serious area "shall be as expeditiously as practicable but no later than the end of the tenth calendar year beginning after the area's designation as nonattainment. . . ." The SJV area was designated nonattainment for the 2006 PM_{2.5} NAAQS effective December 14, 2009.²⁹ Therefore, as a result of our reclassification of the SJV area as a Serious nonattainment area, the attainment date under section 188(c)(2) of the Act for the 2006 PM_{2.5} NAAQS in this area is as expeditiously as practicable but no later than December 31, 2019.

B. Reclassification of Reservation Areas of Indian Country

²⁹ See 74 FR 58688 (November 13, 2009).

Eight Indian tribes are located within the boundaries of the San Joaquin Valley PM_{2.5} nonattainment area: The Big Sandy Rancheria of Mono Indians of California, the Cold Springs Rancheria of Mono Indians of California, the North Fork Rancheria of Mono Indians of California, the Picayune Rancheria of Chukchansi Indians of California, the Santa Rosa Rancheria of the Tachi Yokut Tribe, the Table Mountain Rancheria of California, the Tejon Indian Tribe, and the Tule River Indian Tribe of the Tule River Reservation.

We have considered the relevance of our final action to reclassify the SJV nonattainment area as Serious nonattainment for the 2006 PM_{2.5} standards to each tribe located within the SJV area. As discussed in more detail in our proposed rule, we believe that the same facts and circumstances that support the reclassification for the non-Indian country lands also support reclassification for reservation areas of Indian country³⁰ and any other areas of Indian country where the EPA or a tribe has demonstrated that the tribe has jurisdiction located within the

³⁰ "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."

SJV nonattainment area.³¹ In this final action, the EPA is therefore exercising our authority under CAA section 188(b)(1) to reclassify reservation areas of Indian country and any other areas of Indian country where the EPA or a tribe has demonstrated that the tribe has jurisdiction geographically located in the SJV nonattainment area. Section 188(b)(1) broadly authorizes the EPA to reclassify a nonattainment area—including any such area of Indian country located within such area—that the EPA determines cannot practicably attain the relevant standards by the applicable attainment date.

In light of the considerations outlined above and in our proposed rulemaking that support retention of a uniformly-classified PM_{2.5} nonattainment area, and our finding that it is impracticable for the area to attain by the applicable attainment date, we are finalizing our reclassification of the reservation areas of Indian country and any other areas of Indian country where the EPA or a tribe has demonstrated that the tribe has jurisdiction within the San Joaquin Valley nonattainment area to Serious for the 2006 PM_{2.5} standards.

The effect of reclassification would be to lower the applicable “major stationary source” emissions thresholds for direct PM_{2.5} and PM_{2.5} precursors for purposes of the NNSR program

³¹ See 80 FR 1816, at 1843, 1844 (January 13, 2015).

and the Title V operating permit program (CAA sections 189(b)(3) and 501(2)(B)), thus subjecting more new or modified stationary sources to these requirements. The reclassification may also lower the *de minimis* threshold under the CAA's General Conformity requirements (40 CFR part 93, subpart B) from 100 tpy to 70 tpy. Under the General Conformity requirements (40 CFR part 93, subpart B), 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 obtain because of the lower *de minimis* thresholds.

Given the potential implications of the reclassification, the EPA contacted tribal officials early in the process of developing this action to permit them to have meaningful and timely input into its development. The EPA invited tribal officials to consult during the development of the proposed rule and following signature of the proposed rule.³² On February 17, 2015, the EPA received a letter dated January 30, 2015 from the Tejon Tribe requesting information about the proposed reclassification. The EPA subsequently invited the Tejon Tribe

³²As discussed in more detail in our proposed rule, the EPA sent letters to tribal officials inviting government-to-government consultation. The letters can be found in the docket.

several times to participate in a conference call but received no response from the Tribe. No other Indian tribe has expressed an interest in discussing this action with the EPA. We continue to invite Indian tribes in the SJV to contact the EPA with any questions about the effects of this reclassification on tribal interests and air quality. We note that although eligible tribes may opt to 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 this reclassification.

C. PM_{2.5} Serious Area SIP Requirements

As a consequence of our reclassification of the SJV area as a Serious nonattainment area for the 2006 PM_{2.5} NAAQS, California is required to submit additional SIP revisions to satisfy the statutory requirements that apply to Serious areas, including the requirements of subpart 4 of part D, title I of the Act.

The Serious area SIP elements that California must submit are as follows:

1. Provisions to assure that BACM, including BACT for stationary sources, for the control of direct PM_{2.5} and PM_{2.5} precursors shall be implemented no later than 4 years after the area is reclassified (CAA section 189(b)(1)(B));

2. A demonstration (including air quality modeling) that the plan provides for attainment as expeditiously as practicable but no later than December 31, 2019, or where the State is seeking an extension of the attainment date under section 188(e), a demonstration that attainment by December 31, 2019 is impracticable and that the plan provides for attainment by the most expeditious alternative date practicable (CAA sections 188(c)(2) and 189(b)(1)(A));

3. Plan provisions that require reasonable further progress (RFP) (CAA section 172(c)(2));

4. Quantitative milestones which are to be achieved every 3 years until the area is redesignated attainment and which demonstrate RFP toward attainment by the applicable date (CAA section 189(c));

5. Provisions to assure that control requirements applicable to major stationary sources of direct PM_{2.5} also apply to major stationary sources of PM_{2.5} precursors, except where the State demonstrates to the EPA's satisfaction that such sources do not contribute significantly to PM_{2.5} levels that exceed the standard in the area (CAA section 189(e));

6. A comprehensive, accurate, current inventory of actual emissions from all sources of direct PM_{2.5} and all PM_{2.5} precursors in the area (CAA section 172(c)(3));
7. Contingency measures to be implemented if the area fails to meet RFP or to attain by the applicable attainment date (CAA section 172(c)(9)); and
8. A revision to the NNSR program to establish appropriate "major stationary source" ³³ thresholds for direct PM_{2.5} and PM_{2.5} precursors (CAA section 189(b)(3)).

Section 189(b)(2) states, in relevant part, that the State must submit the required BACM provisions "no later than 18 months after reclassification of the area as a Serious Area" and must submit the required attainment demonstration "no later than 4 years after reclassification of the area to Serious." For the reasons provided in Section III of this preamble (Public Comments and EPA Responses), the EPA is requiring the State to adopt and submit all components of the Serious area attainment plan for the 2006 PM_{2.5} NAAQS in the SJV no later than 18 months after the effective date of reclassification.

³³ For any Serious area, the terms "major source" and "major stationary source" include any stationary source that emits or has the potential to emit at least 70 tons per year of PM₁₀ (CAA section 189(b)(3)).

Finally, for the reasons provided in our proposed rule³⁴ and in our response to comments above, we are finalizing our proposal to require the State to submit NNSR SIP revisions to implement subpart 4 Serious Area requirements for the 2006 PM_{2.5} NAAQS in the SJV area no later than 12 months after the effective date of this reclassification, to the extent those requirements have not already been met by the NNSR revisions due May 7, 2016 for purposes of implementing the 1997 PM_{2.5} NAAQS in the SJV.³⁵ Nonattainment NSR SIP revisions that satisfy the Serious Area requirements of CAA sections 189(b)(3) and 189(e) for purposes of the 1997 PM_{2.5} NAAQS may also satisfy these requirements for the 2006 PM_{2.5} NAAQS.

V. Statutory and Executive Order Reviews

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

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

³⁴ See 80 FR 1816, at 1843. (January 13, 2015).

³⁵ See 40 CFR 52.245(c) and 80 FR 18528, 18533 (April 7, 2015).

This action is exempt from review by the Office of Management and Budget (OMB) because it relates to a designation of an area for air quality purposes and will reclassify the SJV from its current air quality designation of Moderate nonattainment to Serious nonattainment for the 2006 PM_{2.5} NAAQS.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. This action does not contain any information collection activities.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. The final rule requires the state to adopt and submit SIP revisions to satisfy the statutory requirements that apply to Serious areas, and would not itself directly regulate any small entities (see section III.C of this final rule).

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate of \$100 million or more and does not significantly or uniquely affect small governments, as described in UMRA (2 U.S.C. 1531-1538).

This action itself imposes no enforceable duty on any state, local, or tribal governments, or the private sector. The final action reclassifies the SJV nonattainment area as Serious nonattainment for the 2006 PM_{2.5} NAAQS, which triggers existing statutory duties for the state to submit SIP revisions. Such a reclassification in and of itself does not impose any federal intergovernmental mandate. The final action does not require any tribes to submit implementation plans.

E. Executive Order 13132: Federalism

This action does not have federalism implications.

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

This action may have tribal implications. However, it will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. Eight Indian tribes are located within the boundaries of the SJV nonattainment area for the 2006 PM_{2.5} NAAQS: The Big Sandy Rancheria of Mono Indians of California, the Cold Springs Rancheria of Mono Indians of California, the North Fork Rancheria of Mono Indians of California, the Picayune Rancheria of Chukchansi Indians of California, the Santa Rosa Rancheria of the Tachi Yokut Tribe, the Table Mountain Rancheria of

California, the Tejon Indian Tribe, and the Tule River Indian Tribe of the Tule River Reservation. We note that none of the tribes located in the SJV nonattainment area has requested eligibility to administer programs under the Clean Air Act. This final action affects the EPA's implementation of the new source review program because of the lower "major stationary source" threshold triggered by reclassification (CAA 189(b)(3)). The final action may also affect new or modified stationary sources proposed in these areas that require federal permits, approvals, or funding. Such projects are subject to the requirements of the EPA's General Conformity rule, and federal permits, approvals, or funding for the projects may be more difficult to obtain because of the lower *de minimis* thresholds triggered by reclassification.

Given these potential implications, consistent with the EPA Policy on Consultation and Coordination with Indian Tribes, the EPA contacted tribal officials early in the process of developing this action to permit them to have meaningful and timely input into its development. The EPA invited tribal officials to consult during the development of the proposed rule and following signature of the proposed rule. As discussed in more detail in our proposed action, we sent letters to leaders of the tribes with areas of Indian country in the SJV

nonattainment area inviting government-to-government consultation on the rulemaking effort. On February 17, 2015, the EPA received a letter dated January 30, 2015 from the Tejon Tribe requesting information about the proposed reclassification. The EPA subsequently invited the Tejon Tribe several times to participate in a conference call but received no response from the Tribe. No other Indian tribe has expressed an interest in discussing this action with the EPA. We continue to invite Indian tribes in the SJV to contact the EPA with any questions about the effects of this reclassification on tribal interests and air quality.

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

The EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it reclassifies the SJV nonattainment area as Serious nonattainment for the 2006 PM_{2.5} NAAQS, which triggers additional Serious area planning requirements under the CAA. This action does not establish an

environmental standard intended to mitigate health or safety risks.

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

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

I. National Technology Transfer and Advancement Act

This action is not subject to the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because it does not involve technical standards.

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

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations. This action reclassifies the SJV nonattainment area

as Serious nonattainment for the 2006 PM_{2.5} NAAQS, which triggers additional Serious area planning requirements under the CAA.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective on **[insert date 30 days from publication in Federal Register]**.

L. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days from publication in Federal Register]**. Filing a

petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects

40 CFR Part 52

Air pollution control, Incorporation by reference,
Intergovernmental relations, Particulate matter.

40 CFR Part 81

Environmental protection, Air pollution control.

Dated: December 22, 2015.

Jared Blumenfeld,
Regional Administrator,
EPA Region 9.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52-- APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for Part 52 continues to read as follows:

Authority:

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

2. Section 52.245 is amended by revising paragraph (c) and adding paragraph (e) to read as follows:

§ 52.245 New Source Review rules.

* * * * *

(c) By May 7, 2016, the New Source Review rules for PM_{2.5} for the San Joaquin Valley Unified Air Pollution Control District must be revised and submitted as a SIP revision. The rules must satisfy the requirements of sections 189(b)(3) and 189(e) and all other applicable requirements of the Clean Air Act for implementation of the 1997 PM_{2.5} NAAQS.

* * * * *

(e) By February 21, 2017, the New Source Review rules for PM_{2.5} for the San Joaquin Valley Unified Air Pollution Control District must be revised and submitted as a SIP revision. The rules must satisfy the requirements of sections 189(b)(3) and 189(e) and all other applicable requirements of the Clean Air Act for implementation of the 2006 PM_{2.5} NAAQS.

3. Section 52.247 is amended by adding paragraph (e) to read as follows:

§ 52.247 Control Strategy and regulations: Fine Particle Matter.

* * * * *

(e) By August 21, 2017, California must adopt and submit a Serious Area plan to provide for attainment of the 2006 PM_{2.5} NAAQS in the San Joaquin Valley PM_{2.5} nonattainment area. The Serious Area plan must include emissions inventories, an attainment demonstration, best available control measures, a reasonable further progress plan, quantitative milestones, contingency measures, and such other measures as may be necessary or appropriate to provide for attainment of the 2006 PM_{2.5} NAAQS by the applicable attainment date, in accordance with the requirements of subparts 1 and 4 of part D, title I of the Clean Air Act.

PART 81-- DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

4. The authority citation for part 81 continues to read as follows:

Authority:

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

5. Section 81.305 is amended in the table titled "California-2006 24-Hour PM_{2.5} NAAQS [Primary and secondary]," by revising the entries under "San Joaquin Valley, CA" to read as follows:

§ 81.305 California.

* * * * *

CALIFORNIA - 2006 24-Hour PM_{2.5} NAAQS [Primary and secondary]

| Designated Area | Designation ^a | | Classification | |
|---|--------------------------|---------------|---|----------|
| | Date ¹ | Type | Date ² | Type |
| * * * * * | | | | |
| San Joaquin Valley, CA: | | | | |
| Fresno County | | Nonattainment | [insert date 30 days after publication in <u>Federal Register</u>] | Serious. |
| Kern County (part) | | Nonattainment | [insert date 30 days after publication in <u>Federal Register</u>] | Serious. |
| That portion of Kern County which lies west and north of a line described as follows: Beginning at the Kern-Los Angeles County boundary and running north and east along the northwest boundary of the Rancho La Libre Land Grant to the point of intersection with the range line common to R. 16 | | | | |

| | | | | |
|---|--|--|--|--|
| <p>W. and R. 17 W., San Bernardino Base and Meridian; north along the range line to the point of intersection with the Rancho El Tejon Land Grant boundary; then southeast, northeast, and northwest along the boundary of the Rancho El Tejon Land Grant to the northwest corner of S. 3, T. 11 N., R. 17 W.; then west 1.2 miles; then north to the Rancho El Tejon Land Grant boundary; then northwest along the Rancho El Tejon line to the southeast corner of S. 34, T. 32 S., R. 30 E., Mount Diablo Base and Meridian; then north to the northwest corner of S. 35, T. 31 S., R. 30 E.; then northeast along the boundary of the Rancho El Tejon Land Grant to the southwest corner of S. 18, T. 31 S., R. 31 E.; then east to the southeast corner of S. 13, T. 31 S., R. 31 E.; then north along the range line common to R. 31 E. and R. 32 E., Mount Diablo Base and Meridian, to</p> | | | | |
|---|--|--|--|--|

| | | | | |
|---|--|---------------|---|----------|
| <p>the northwest corner of S. 6, T. 29 S., R. 32 E.; then east to the southwest corner of S. 31, T. 28 S., R. 32 E.; then north along the range line common to R. 31 E. and R. 32 E. to the northwest corner of S. 6, T. 28 S., R. 32 E., then west to the southeast corner of S. 36, T. 27 S., R. 31 E., then north along the range line common to R. 31 E. and R. 32 E. to the Kern-Tulare County boundary.</p> | | | | |
| Kings County | | Nonattainment | [insert date 30 days after publication in <u>Federal Register</u>] | Serious. |
| Madera County | | Nonattainment | [insert date 30 days after publication in <u>Federal Register</u>] | Serious. |
| Merced County | | Nonattainment | [insert date 30 days after publication in <u>Federal Register</u>] | Serious. |
| San Joaquin County | | Nonattainment | [insert date 30 days after publication in <u>Federal Register</u>] | Serious. |
| Stanislaus County | | Nonattainment | [insert date 30 days after publication in | Serious. |

| | | | | |
|---------------|--|---------------|---|----------|
| | | | <u>Federal Register</u>] | |
| Tulare County | | Nonattainment | [insert date 30 days after publication in <u>Federal Register</u>] | Serious. |
| * * * * * | | | | |

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[FR Doc. 2016-00739 Filed: 1/19/2016 8:45 am; Publication Date: 1/20/2016]