6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA-R09-OAR-2019-0840; FRL-9996-12-Region 9]

Designation of Areas for Air Quality Planning Purposes; California; Coachella Valley 8-Hour Ozone Nonattainment Area; Reclassification to Extreme

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Under the Clean Air Act (CAA or the "Act"), the Environmental Protection Agency (EPA) is granting a request from the State of California to reclassify the Coachella Valley ozone nonattainment area from "Severe-15" to "Extreme" for the 1997 8-hour ozone national ambient air quality standards (NAAQS). This action does not reclassify any areas of Indian country within the boundaries of the Coachella Valley 1997 ozone nonattainment area.

DATE: This rule is effective on **[Insert date of publication in the Federal Register]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R09-OAR-2019-0840. All documents in the docket are listed on the *https://www.regulations.gov* web site. Although listed in the index, some information is not publicly available, e.g., confidential business information (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 through *https://www.regulations.gov*, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional information.

For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Tom Kelly, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972-3856 or by email at *kelly.thomasp@epa.gov*.

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

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I. Reclassification of Coachella Valley to Extreme Ozone Nonattainment

Effective June 15, 2004, we classified a portion of Riverside County (Coachella Valley) under the CAA as "Serious" for the 1997 8-hour ozone NAAQS.[1] Our classification of Coachella Valley as a Serious ozone nonattainment area established a requirement that the area attain the 1997 ozone NAAQS as expeditiously as practicable, but no later than eight years from designation, i.e., June 15, 2012. On November 28, 2007, the California Air Resources Board (CARB) requested that the EPA reclassify the Coachella Valley nonattainment area from Serious to Severe-15. The EPA granted the reclassification, effective June 4, 2010, with an attainment date of not later than June 15, 2019.[2] On June 11, 2019, CARB submitted a request that the EPA reclassify the Coachella Valley area from Severe-15 to Extreme for the 1997 ozone NAAQS.

[1] See 69 FR 23858 (April 30, 2004).
[2] See 75 FR 24409 (May 5, 2010).

We are approving CARB's reclassification request under section 181(b)(3) of the Act, which provides for "voluntary reclassification."[3] The provision for voluntary reclassification has been brought forward as part of the transition from the 1-hour ozone standard to the 1997 8-hour ozone standard.[4] Because the plain language of section 181(b)(3) mandates that we approve such a request, the EPA is granting CARB's request for voluntary reclassification under section 181(b)(3) for the Coachella Valley nonattainment area for the 1997 ozone NAAQS, and the EPA is reclassifying the area from Severe-15 to Extreme. Because of this action, the Coachella Valley must now attain the 1997 ozone NAAQS as expeditiously as practicable, but no later than twenty years from the date of designation as nonattainment, i.e., June 15, 2024. We will propose a schedule for required plan submittals for Coachella Valley under the new classification in a separate action.

The EPA revoked the 1997 ozone NAAQS with the promulgation of the 2008 ozone NAAQS,[5] and certain requirements of the 1997 ozone NAAQS continue to apply as anti-backsliding measures under CAA section 172(e). The United States Court of Appeals for the District of Columbia Circuit's decision in *South Coast Air Quality Management District v. EPA*, 882 F.3d 1138 (D.C. Cir. 2018) ("*South Coast II*") recently addressed the EPA's obligation to reclassify areas for the revoked 1997 ozone NAAQS where those areas failed to attain by their attainment date.[6] The Court held that the EPA is required to continue to reclassify areas that fail

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[3] 42 U.S.C. 7511(b)(3).
[4] 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.
[5] 80 FR 12263 (March 6, 2015).
[6] *South Coast Air Quality Management Dist. v. EPA*, 882 F.3d 1138, 1147-48 (D.C. Cir. 2018). The term "*South Coast II*" is used in reference to the 2018 court decision to distinguish it from a decision published in 2006 also referred to as "*South Coast*." The earlier decision involved a challenge to the EPA's Phase 1 implementation rule for the 1997 ozone standard. *South Coast Air Quality Management Dist. v. EPA*, 472 F.3d 882 (D.C. Cir. 2006).

to attain by the relevant attainment deadlines because mandatory reclassification under CAA section 181(b)(2) must be retained as an anti-backsliding control after revocation.[7] The Court did not address voluntary reclassifications requested by states, but such reclassifications are consistent with the general scheme for implementing CAA emissions controls to achieve attainment and taking this action will serve to clarify the area's anti-backsliding obligations with respect to the revoked 1997 standards.

Within the geographic boundaries of Coachella Valley is Indian country under the jurisdiction of the Agua Caliente Band of Cahuilla Indians, the Augustine Band of Cahuilla Mission Indians, the Cabazon Band of Mission Indians, the Santa Rosa Band of Cahuilla Indians, the Torres Martinez Desert Cahuilla Indians, and the Twenty-Nine Palms Band of Mission Indians. Because the State of California does not have jurisdiction over Indian country located within its borders, CARB's request to reclassify the Coachella Valley does not apply to these areas of Indian country. The EPA implements federal CAA programs, including reclassifications, in Indian country consistent with our discretionary authority under sections 301(a) and 301(d)(4) of the CAA. The EPA has not received a reclassification request from any tribe with jurisdiction within the Coachella Valley, and this action does not reclassify any areas of Indian country within the Coachella Valley.[8] In this action, we are adding regulatory text to 40 CFR part 81 to distinguish the areas of Indian country that will retain the Severe-15 classification from the state areas that are included in the reclassification to Extreme.

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[7] *South Coast II*, 882 F.3d at 1147-48.

[8] The EPA has notified the Agua Caliente Band of Cahuilla Indians, the Augustine Band of Cahuilla Mission Indians, the Cabazon Band of Mission Indians, the Santa Rosa Band of Cahuilla Indians, the Torres Martinez Desert Cahuilla Indians, and the Twenty-Nine Palms Band of Mission Indians of CARB's intention to seek a voluntary reclassification, and we clarified that CARB's reclassification request includes only state lands and that the EPA's approval of the request will not apply to Indian country.

The EPA has determined that this action falls under the "good cause" exemption in section 553(b)(3)(B) of the Administrative Procedure Act (APA) which, upon finding "good cause," authorizes agencies to dispense with public participation where public notice and comment procedures are "impracticable, unnecessary or contrary to the public interest." The EPA has determined that public notice and comment for this action is unnecessary because our action to approve voluntary reclassification requests under CAA section 181(b)(3) is nondiscretionary both in its issuance and in its content. As such, notice and comment rulemaking procedures would serve no useful purpose.

The EPA also finds that there is good cause under APA section 553(d)(3) for this reclassification to become effective on the date of publication. Section 553(d)(3) of the APA allows an effective date of less than 30 days after publication "as otherwise provided by the agency for good cause found and published with the rule." 5 U.S.C. 553(d)(3). The purpose of the 30-day waiting period prescribed in APA section 553(d)(3) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. This rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. The schedule for required plan submittals for Coachella Valley under the new classification will be proposed in a separate action. For this reason, the EPA finds good cause under APA section 553(d)(3) for this reclassification to become effective on the date of publication.

II. Statutory and Executive Order Reviews

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

is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because it is not significant under Executive Order 12866. With respect to lands under state jurisdiction, voluntary reclassifications under CAA section 181(b)(3) of the CAA are based solely upon requests by the state, and the 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 these reasons, this final 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 final 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 final 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 the 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, and because tribes are not subject to implementation plan submittal deadlines that apply to states as a result of reclassifications.

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal

government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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. This reclassification action relates to ozone, a pollutant that is regional in nature, and is not the type of action that could result in the types of local impacts addressed in Executive Order 12898.

This final 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, nor 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 final action does not alter the relationship or the distribution of power and responsibilities established in the CAA.

This 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.

Reclassification actions do not involve technical standards and thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This 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.).

The Congressional Review Act (CRA), 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. This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. The CRA allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and comment rulemaking procedures are impracticable, unnecessary or contrary to the public interest (5 U.S.C. 808(2)). The EPA has made a good cause finding for this rule as discussed in section I of this preamble, including the basis for that finding. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

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 after date of publication in the *Federal Register*]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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 in 40 CFR Part 81

Environmental protection, Air pollution control, Intergovernmental relations, Ozone.

Dated: June 12, 2019.

Michael Stoker,
Regional Administrator,
Region IX.

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

PART 81—DESIGNATION FOR AREAS FOR AIR QUALITY PLANNING PURPOSES

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

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

Subpart C—[Amended]

2. In § 81.305 the table entitled "California—1997 8-Hour Ozone NAAQS (Primary and Secondary)" is amended by revising the entry for "Riverside Co. (Coachella Valley), CA" and adding footnote g to read as follows:

§ 81.305 California.

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California—1997 8-Hour Ozone NAAQS (Primary and Secondary)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
* * *	*	*	*	*
Riverside Co. (Coachella Valley), CA				
Riverside County (part) [g]		Nonattainment	6/12/19	Subpart 2/Extreme.
That portion of Riverside County which lies to the east of a line described as follows: Beginning at the Riverside-San Diego County boundary and running north along the range line common to Range 4 East and Range 3 East, San Bernardino Base and Meridian; then east along the Township line common to Township 8 South and Township 7 South; then north along the range line common to Range 5 East and Range 4 East; then west along the Township line common to Township 6 South and Township 7 South to the southwest				

corner of Section 34, Township 6 South, Range 4 East; then north along the west boundaries of Sections 34, 27, 22, 15, 10, and 3, Township 6 South, Range 4 East; then west along the Township line common to Township 5 South and Township 6 South; then north along the range line common to Range 4 East and Range 3 East; then west along the south boundaries of Sections 13, 14, 15, 16, 17, and 18, Township 5 South, Range 3 East; then north along the range line common to Range 2 East and Range 3 East; to the Riverside-San Bernardino County line.				
And that portion of Riverside County which lies to the west of a line described as follows: That segment of the southwestern boundary line of Hydrologic Unit Number 18100100 within Riverside County, further described as follows: Beginning at the Riverside-Imperial County boundary and running north along the range line common to Range 17 East and Range 16 East, San Bernardino Base and Meridian; then northwest along the ridge line of the Chuckwalla Mountains, through Township 8 South, Range 16 East and Township 7 South, Range 16 East, until the Black Butte Mountain, elevation 4504′; then west and northwest along the ridge line to the southwest corner of Township 5 South, Range 14 East; then north along the range line common to Range 14 East and Range 13 East; then west and northwest along the ridge line to				

Monument Mountain, elevation 4834′; then southwest and then northwest along the ridge line of the Little San Bernardino Mountains to Quail Mountain, elev. 5814′; then northwest along the ridge line to the Riverside-San Bernardino County line.				
Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation [e]		Nonattainment	([2])	Subpart 2/Severe-15.
Augustine Band of Cahuilla Indians [e]		Nonattainment	([2])	Subpart 2/Severe-15.
Cabazon Band of Mission Indians [e]		Nonattainment	([2])	Subpart 2/Severe-15.
Santa Rosa Band of Cahuilla Indians [e]		Nonattainment	([2])	Subpart 2/Severe-15.
Torres Martinez Desert Cahuilla Indians [e]		Nonattainment	([2])	Subpart 2/Severe-15.
Twenty-Nine Palms Band of Mission Indians of California [e]		Nonattainment	([2])	Subpart 2/Severe-15.
* * *	*	*	*	*

[a] Includes Indian Country located in each county or area, except as otherwise specified.

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[e] Includes Indian country of the tribe listed in this table. Information pertaining to areas of Indian country in this table is intended for CAA planning purposes only and is not an EPA determination of Indian country status or any Indian country boundary. The EPA lacks the authority to establish Indian country land status, and is making no determination of Indian country boundaries, in this table.

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[g] Excludes Indian country of the Agua Caliente Band of Cahuilla Indians, the Augustine Band of Cahuilla Mission Indians, the Cabazon Band of Mission Indians, the Santa Rosa Band of

Cahuilla Indians, the Torres Martinez Desert Cahuilla Indians, and the Twenty-Nine Palms Band of Mission Indians in Riverside County.

[1] This date is 30 days after November 13, 2009, unless otherwise noted.

[2] This date is July 2, 2014, unless otherwise noted.

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[FR Doc. 2019-14612 Filed: 7/9/2019 8:45 am; Publication Date: 7/10/2019]