ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R09–OAR–2015–0204; FRL–9940–84–Region 9]

Designation of Areas for Air Quality Planning Purposes; California; South Coast; Reclassification as Serious Nonattainment for the 2006 $PM_{2.5}$ NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to reclassify the Los Angeles-South Coast Air Basin (South Coast) Moderate $PM_{2.5}$ 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, nonattainment new source review (NNSR) program revisions and 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 South Coast area as expeditiously as practicable and no later than December 31, 2019.

DATES: This rule is effective on February 12, 2016.

ADDRESSES: The EPA has established docket number EPA–R09–OAR–2015–0204 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 October 20, 2015 (80 FR 63640), 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 South Coast and to reclassify the South Coast nonattainment area, including areas of Indian country within it, from Moderate to Serious nonattainment for these standards, based on the EPA's determination that the area cannot practicably attain these 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 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] As part of our proposed action, we reviewed recent $PM_{2.5}$ monitoring data for the South Coast available in EPA's Air Quality System (AQS) database. These data show that 24-hour $PM_{2.5}$ levels in the South Coast continue to be above 35 μg/m^3, the level of the 2006 $PM_{2.5}$ standards, and the recent trends in the South Coast area's 24-hour $PM_{2.5}$ levels are not consistent with a projection of attainment by the end of 2015.[3]

In the 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 South Coast was designated nonattainment for the 2006 $PM_{2.5}$ NAAQS effective December 14, 2009.[4] Therefore, as a result of our reclassification of the South Coast 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 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. We noted, however, that 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 in a timely manner to ensure expeditious attainment of the NAAQS.[6] Because an up-to-date emissions inventory serves as the foundation for a state's BACM and BACT determinations, the EPA

[1] *See* proposed rule at 80 FR 63640 (October 20, 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.

[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 EPA to reclassify any areas that it determines cannot practicably attain the PM 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 38 ug/m3 in the South Coast, above the level of the 2006 $PM_{2.5}$ NAAQS (35 ug/m3). EPA also calculated ''maximum allowed'' 2015 98th percentile concentrations that would enable the area to attain the 2006 24-hour $PM_{2.5}$ NAAQS by the end of 2015 and found that even conservative estimates of the 98th percentile concentration in 2015 at two monitoring sites—Rubidoux and Mira Loma-Van Buren—were greater than the ''maximum allowed'' concentration. *See* 80 FR 63640, 63653 (October 20, 2015) and Memorandum dated August 21, 2015, Michael Flagg, US EPA Region 9, Air Quality Analysis Office.

[4] 74 FR 58688 (November 13, 2009).

[5] *See* proposed rule at 80 FR 63640 (October 20, 2015).

[6] *Id.* at 63658.

proposed to require the State to submit the emissions inventory required under CAA section 172(c)(3) within 18 months after the effective date of final reclassification. Similarly, because an effective evaluation of BACM and BACT requires evaluation of the precursor pollutants that must be controlled to provide for expeditious attainment, the EPA proposed to require the State to submit any optional precursor insignificance demonstrations by this same date. The EPA proposed to require the State to submit the attainment demonstration required under section 189(b)(1)(A) and all other attainment-related plan elements for the South Coast area no later than three years after the effective date of final reclassification or by December 31, 2018, whichever is earlier.

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 for the South Coast area no later than 18 months after the effective date of final reclassification.

II. Summary of Final Action

Today we are finalizing only our proposal to reclassify the South Coast 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 South Coast and will complete that action at a later time.

As a consequence of our reclassification of the South Coast area as Serious nonattainment 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. 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 plan for the South Coast area, including nonattainment new source review (NNSR) SIP revisions to address the statutory requirements for Serious areas under subpart 4, no later than 18 months after the effective date of this reclassification.

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

III. Public Comments and EPA Responses

Because we are finalizing only our proposal to reclassify the South Coast area as Serious nonattainment for the 2006 $PM_{2.5}$ NAAQS, we are responding only to comments pertaining to the reclassification and its consequences. The EPA received several comment letters on our proposed actions, only one of which contains comments relevant to the reclassification. The comment letter was submitted by Earthjustice on behalf of the Center for Biological Diversity, Coalition for Clean Air, Communities for a Better Environment, East Yard Communities for Environmental Justice, and Sierra Club (''Earthjustice'') on November 19, 2015, prior to the close of the comment period on our proposal.[7]

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 South Coast and will respond to comments pertaining to our proposed action on the submitted plan at that time.

Comment 1: Earthjustice argues that section 188(b)(1) establishes specific outside deadlines for the EPA's reclassification of appropriate areas as Serious nonattainment and ''does not provide general authority to reclassify areas anytime EPA chooses before the attainment deadline.'' Citing CAA section 188(b)(1)(B), Earthjustice asserts that the EPA's discretionary authority to reclassify a Moderate area as a Serious area before the attainment deadline is available only within 18 months after the required date for the submission of a Moderate area SIP, which in turn is due within 18 months after the area's designation as nonattainment. Because the South Coast area was designated nonattainment for the 2006 p.m.2.5 NAAQS on December 14, 2009, according to Earthjustice, the Moderate area SIP for the area was due June 14, 2011, and the ''deadline for approving a voluntary reclassification request'' was therefore December 14, 2012. Thus, Earthjustice argues, ''EPA no longer has authority under the statute to use section 188(b)(1) to voluntarily reclassify the South Coast basin and provide four years for submission of a serious area plan.''

In support of these arguments, Earthjustice quotes from EPA's 1992 General Preamble,[8] which states that ''[f]or areas designated nonattainment after enactment of the 1990 [Clean Air Act Amendments], EPA must reclassify appropriate areas as serious within 18 months of the required submittal date for the moderate area SIP'' and that, read together with the statutory requirement to submit such SIPs within 18 months after nonattainment designations, the Act requires EPA to reclassify these areas as serious within three years of the nonattainment designation.

Response 1: We disagree with the commenter's argument that the EPA's discretionary authority in section 188(b)(1) is limited to the timeframes set forth in sections 188(b)(1)(A) and (B).

The EPA is reclassifying the South Coast area as Serious nonattainment pursuant to the general authority in CAA section 188(b)(1),[9] not pursuant to section 188(b)(1)(B). As explained in the 1992 General Preamble, ''[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).[10] 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.''[11] 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.[12] The EPA reiterated this interpretation of section 188(b)(1) in the 1994 p.m.–10

[7] *See* letter with attachments dated November 19, 2015 to Ms. Wienke Tax, US Environmental Protection Agency Region 9, from Adriano L. Martinez, Earthjustice, Los Angeles Office.

[8] ''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) (the ''General Preamble'').

[9] Unlike the ''voluntary reclassification'' provision in CAA section 181(b)(3), which requires EPA to grant the request of any state to reclassify an ozone nonattainment area in that state to a higher classification, the ''discretionary reclassification'' provision in CAA section 188(b)(1) grants EPA general authority to reclassify areas in accordance with the statutory criteria therein, independent of state requests.

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

[11] *Id.*

[12] General Preamble, 57 FR 13498, 13537.

Addendum [13] and in several discretionary reclassification actions subsequent to the 1990 CAA Amendments.[14]

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.[15] 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 December 31, 1994,'' [16] 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).[17] 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.[18]

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.[19] In the PM–10 Addendum, 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.'' [20] The EPA recently finalized a discretionary reclassification action for a $PM_{2.5}$ nonattainment shortly before the applicable attainment date, consistent with this interpretation of CAA section 188(b)(1).[21]

The commenter quotes selectively from a portion of the General Preamble addressing areas designated nonattainment after enactment of the 1990 CAA Amendments but fails to acknowledge both the more extensive discussion of section 188(b)(1) that precedes the quoted text, as explained above, and the text in the PM–10 Addendum that reiterates the Agency's interpretation of section 188(b)(1)(B) specifically. Moreover, both the statutory text in CAA section 188(b)(1)(B) and the interpretive language in the General Preamble that the commenter quotes explicitly state that the EPA's obligation under CAA section 188(b)(1)(B) is to reclassify ''appropriate'' areas within 18 months after the required date for the State's submission of a SIP for the Moderate Area.[22] Congress granted the EPA broad discretion to identify the areas that are ''appropriate'' for such reclassification [23] and to reclassify additional areas after the timeframes specified in subsections (A) or (B). Thus, the fact that the EPA did not find the South Coast area ''appropriate'' for discretionary reclassification within the timeframe specified in section 188(b)(1)(B) does not preclude the EPA's discretionary reclassification of the area at a later date, based on a determination that the area cannot practicably attain the $PM_{2.5}$ NAAQS by the applicable attainment date.

Furthermore, under the commenter's interpretation of section 188(b)(1)(B), the EPA would have no authority to reclassify a Moderate area to Serious at any time between the date 3 years after designation (18 months after the required date for the State's submission of a Moderate Area SIP) and the applicable attainment date, which under section 188(c)(1) may be as late as the end of the sixth calendar year after the area's designation as nonattainment. Thus, for a period of up to 3 years, the EPA would be unable to reclassify such an area to Serious in order to require the State to adopt BACM measures and other Serious Area plan elements, even if information before the Agency indicated the area could not attain the NAAQS by the moderate area attainment date. Such a reading of section 188(b)(1) would frustrate the Congressional intent to ensure that areas that cannot attain the NAAQS in a timely manner adopt the best available controls and develop revised plans to provide for expeditious attainment. EPA's interpretation of section 188(b)(1) as a general grant of discretionary reclassification authority is reasonable in light of the overarching requirement in subpart 4 to ensure attainment of the NAAQS as expeditiously as practicable.

In sum, we disagree with the commenter's contention that the EPA's authority to reclassify a Moderate area as a Serious area under CAA section 188(b)(1) is available only within 18 months after the due date for the State's Moderate Area SIP. As the EPA explained in the General Preamble, in the PM–10 Addendum, and in several actions reclassifying PM–10 and $PM_{2.5}$ nonattainment areas as Serious areas under CAA section 188(b)(1), the EPA has consistently interpreted section 188(b)(1) as a general expression of delegated rulemaking authority that authorizes the Agency to reclassify any Moderate area as a Serious area at any

[13] ''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'').

[14] *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 p.m.2.5 NAAQS signed March 27, 2015).

[15] 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.

[16] General Preamble, 57 FR 13498, 13537.

[17] *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)).

[18] 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 . . .'').

[19] General Preamble, 57 FR at 13537 and PM–10 Addendum, 59 FR at 41999.

[20] PM–10 Addendum, 59 FR 41998, 41999 at n. 4 (August 16, 1994).

[21] *See* 80 FR 18528 (April 7, 2015) (final discretionary reclassification of San Joaquin Valley for 1997 p.m.2.5 NAAQS signed March 27, 2015).

[22] *See* CAA section 188(b)(1)(B) (requiring, for areas designated nonattainment after enactment of the 1990 CAA Amendments, that the Administrator ''reclassify appropriate areas'' within 18 months after the required date for the State's submission of a SIP for the Moderate Area).

[23] As EPA explained in its 1993 reclassification of ''appropriate'' initial PM–10 nonattainment areas from Moderate to Serious under section 188(b)(1)(A), the Act does not specify what information EPA must consider in exercising the authority delegated to it by section 188(b)(1) and thus grants EPA broad discretion to consider any relevant information, including information in SIP submittals. 58 FR 3334, 3336 at n. 7 (Jan. 8, 1993).

time before the applicable attainment date, based on a determination that the area cannot practicably attain the relevant NAAQS by that date.

Comment 2: Earthjustice argues that even if the EPA had discretion to reclassify the South Coast area under section 188(b)(1), a December 31, 2018 deadline for the Serious Area plan is ''arbitrary in the extreme'' and inconsistent with other deadlines that EPA has proposed to establish. First, Earthjustice asserts that the EPA's proposed deadline ignores the statutory requirement to demonstrate attainment by the most expeditious attainment date and allows the District to ''assume the maximum amount of time without any such demonstration.'' Second, Earthjustice claims that the EPA's proposed approach ''undermines the strict schedule established in subpart 4'' and cannot be reconciled with either December 14, 2016 or December 31, 2017, the statutory SIP submission deadlines that allegedly apply following voluntary reclassification or failure to attain, respectively. Third, Earthjustice argues that there is no basis for claiming that the District needs 3 years to prepare a serious area plan, in light of the 18-month deadlines in sections 189(a)(2)(B) and 189(b)(2) for moderate area plans and serious area plans, respectively, and the 18-month timeframe allowed in section 179(a) for states to cure disapprovals or failures to submit. Finally, Earthjustice argues that the proposed deadline is internally inconsistent with other components of the EPA's proposal, including the requirements for RFP and quantitative milestones, and undermines the EPA's and the public's ability to ensure timely compliance with these requirements.

Response 2: We disagree with the commenter's argument that the outside deadline for submitting a Serious area attainment plan for the 2006 $PM_{2.5}$ NAAQS following discretionary reclassification is December 14, 2016. This argument is premised on the commenter's assertion that the EPA's discretionary authority to reclassify the area under CAA section 188(b)(1) was available only within three years after the area's designation as nonattainment (*i.e.,* until December 14, 2012), and that CAA section 189(b)(2) established a deadline 4 years after this date (December 14, 2016) for the State to submit its Serious area attainment plan. The EPA did not reclassify the South Coast area by December 14, 2012 and was not obligated to do so under CAA section 188(b)(1), as explained above in Response 1. Thus, section 189(b)(2) does not establish a December 14, 2016 outer deadline for submission of the Serious area attainment plan.

Upon further consideration and in light of the specific circumstances in the South Coast $PM_{2.5}$ 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 plan for the 2006 $PM_{2.5}$ NAAQS in the South Coast air basin. An 18-month deadline for submission of these SIP elements is 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.[24] 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 South Coast area in a similar timeframe, considering the benefits of streamlining these planning processes to the extent possible.

In addition, as the commenter notes, 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 188(b)(2).[25] 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 South Coast 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.[26] Furthermore, the 18-month SIP submission deadline that we are finalizing in this action requires California to submit its Serious Area plan for the South Coast area before the statutory SIP submission deadline that would apply upon reclassification by operation of law under section 188(b)(2).[27]

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 South Coast area from Moderate to Serious nonattainment for the 2006 24-hour $PM_{2.5}$ standards of 35 $\mu g/m^3$, based on the EPA's determination that the South Coast 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 South Coast area was designated nonattainment for the 2006 $PM_{2.5}$ standards effective December 14, 2009.[28] Therefore, as a result of our reclassification of the South Coast area as a Serious nonattainment area, the attainment date under section 188(c)(2) of the Act for the 2006 $PM_{2.5}$ standards in this area is as expeditiously as practicable but no later than December 31, 2019.

[24] The EPA designated and classified the South Coast Air Basin 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.

[25] CAA 189(a)(2)(B) and 189(b)(2).

[26] 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.

[27] 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).

[28] See 74 FR 58688 (November 13, 2009).

B. Reclassification of Reservation Areas of Indian Country

Seven Indian tribes are located within the boundaries of the South Coast $PM_{2.5}$ nonattainment area: the Cahuilla Band of Indians, the Morongo Band of Cahuilla Mission Indians, the Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, the Ramona Band of Cahuilla, the San Manuel Band of Serrano Mission Indians of the San Manuel Reservation, the Santa Rosa Band of Cahuilla Indians, and the Soboba Band of Luiseno Indians.

We have considered the relevance of our final action to reclassify the South Coast nonattainment area as Serious nonattainment for the 2006 $PM_{2.5}$ standards to each tribe located within the South Coast 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 country [29] and any other areas of Indian country where the EPA or a tribe has demonstrated that the tribe has jurisdiction located within the South Coast nonattainment area.[30] 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 South Coast 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 standard 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 South Coast nonattainment area to Serious for the 2006 $PM_{2.5}$ NAAQS.

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 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 to invite government-to-government consultation on this rulemaking effort.[31] The EPA did not receive requests for consultation or comments on our proposed rule from any tribe. We continue to invite Indian tribes in the South Coast 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 South Coast 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 within 18 months of reclassification 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 $PM_{2.5}$ 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'' [32] 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.'' As stated above in section I, the EPA proposed to require the State to submit certain elements of the Serious area plan within 18 months of reclassification and other elements within 3 years of reclassification. For

[29] ''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.''

[30] See 80 FR 63640, at 63659, 63660 (October 20, 2015).

[31] As 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.

[32] 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 PM_{10} (CAA section 189(b)(3)).

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 required components of the Serious Area plan for the South Coast area, including NNSR SIP revisions to address the statutory requirements for Serious areas under subpart 4, no later than 18 months after the effective date of this reclassification.

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

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 South Coast 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 South Coast 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. Seven Indian tribes are located within the boundaries of the South Coast nonattainment area for the 2006 $PM_{2.5}$ NAAQS: the Cahuilla Band of Indians, the Morongo Band of Cahuilla Mission Indians, the Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, the Ramona Band of Cahuilla, the San Manuel Band of Serrano Mission Indians of the San Manuel Reservation, the Santa Rosa Band of Cahuilla Indians, and the Soboba Band of Luiseno Indians. We note that only one of the tribes located in the South Coast nonattainment area (the Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation) 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 regulation 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 South Coast nonattainment area inviting government-to-government consultation on the rulemaking effort. No Indian tribe has expressed an interest in discussing this action with the EPA. We continue to invite Indian tribes in the South Coast 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 South Coast 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 South Coast 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 February 12, 2016.

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 March 14, 2016. 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, Incorporation by reference.

Dated: December 22, 2015.

Jared Blumenfeld,

Regional Administrator, 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 adding paragraph (d) to read as follows:

§ 52.245 New Source Review rules.

* * * * *

(d) By August 14, 2017, the New Source Review rules for $PM_{2.5}$ for the South Coast Air Quality Management 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 14, 2017, California must adopt and submit a Serious Area plan to provide for attainment of the 2006 $PM_{2.5}$ NAAQS in the South Coast $PM_{2.5}$ 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 ''Los Angeles-South Coast Air Basin, CA.''

§ 81.305 California.

* * * * *

§ 81.305 California.

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CALIFORNIA—2006 24-HOUR $PM_{2.5}$ NAAQS

[Primary and secondary]

Designated area	Designation [a]		Classification	
	Date [1]	Type	Date [2]	Type
* * * * * * *				
Los Angeles-South Coast Air Basin, CA:				
Los Angeles County (part)		Nonattainment	02/12/16	Serious.

CALIFORNIA—2006 24-HOUR $PM_{2.5}$ NAAQS—Continued

[Primary and secondary]

Designated area	Designation [a]		Classification	
	Date [1]	Type	Date [2]	Type
That portion of Los Angeles County which lies south and west of a line described as follows: Beginning at the Los Angeles-San Bernardino County boundary and running west along the Township line common to Township 3 North and Township 2 North, San Bernardino Base and Meridian; then North along the range line common to Range 8 West and Range 9 West; then west along the Township line common to Township 4 North and Township 3 North; then north along the range line common to Range 12 West and Range 13 West to the southeast corner of Section 12, Township 5 North and Range 13 West; then west along the south boundaries of Sections 12, 11, 10, 9, 8, and 7, Township 5 North and Range 13 West to the boundary of the Angeles National Forest which is collinear with the range line common to Range 13 West and Range 14 West; then north and west along the Angeles National Forest boundary to the point of intersection with the Township line common to Township 7 North and Township 6 North (point is at the northwest corner of Section 4 in Township 6 North and Range 14 West); then west along the Township line common to Township 7 North and Township 6 North; then north along the range line common to Range 15 West and Range 16 West to the southeast corner of Section 13, Township 7 North and Range 16 West; then along the south boundaries of Sections 13, 14, 15, 16, 17 and 18, Township 7 North and Range 16 West; then north along the range line common to Range 16 West and Range 17 West to the north boundary of the Angeles National Forest (collinear with the Township line common to Township 8 North and Township 7 North); then west and north along the Angeles National Forest boundary to the point of intersection with the south boundary of the Rancho La Liebre Land Grant; then west and north along this land grant boundary to the Los Angeles-Kern County boundary.	.....	Nonattainment	02/12/16	Serious.
Orange County	.....	Nonattainment	02/12/16	Serious.
Riverside County (part)	.....	Nonattainment	02/12/16	Serious.

CALIFORNIA—2006 24-HOUR $PM_{2.5}$ NAAQS—Continued

[Primary and secondary]

Designated area	Designation [a]		Classification	
	Date [1]	Type	Date [2]	Type
That portion of Riverside County which lies to the west 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 (excluding the lands of the Santa Rosa Band of Cahuilla Mission Indians).	.....	Nonattainment	02/12/16	Serious.
That part of the lands of the Santa Rosa Band of Cahuilla Mission Indians which is excluded from the Riverside County (part) nonattainment area.	.....	Nonattainment	02/12/16	Serious.
San Bernardino County (part)	.....	Nonattainment	02/12/16	Serious.
That portion of San Bernardino County which lies south and west of a line described as follows: Beginning at the San Bernardino-Riverside County boundary and running north along the range line common to Range 3 East and Range 2 East, San Bernardino Base and Meridian; then west along the Township line common to Township 3 North and Township 2 North to the San Bernardino-Los Angeles County boundary.	.....	Nonattainment	02/12/16	Serious.

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[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. 2015–33304 Filed 1–12–16; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2015–0718; FRL–9940–29]

Methacrylate Type Copolymer, Compound With Aminomethyl Propanol; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of 2-propenoic acid, 2-methyl-, polymers with tert-Bu acrylate, Me methacrylate, polyethylene glycol methacrylate C_{16}-C_{18}-alkyl ethers and vinylpyrrolidone, tert-Bu 2-ethylhexaneperoxoate-initiated, compounds with 2-amino-2-methyl-1-propanol when used as an inert ingredient in a pesticide chemical formulation. BASF Corporation submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level