

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Parts 52 and 81**

[EPA–R09–OAR–2019–0145; FRL–10015–43–Region 9]

**Approval and Promulgation of Implementation Plans; Designation of Areas for Air Quality Planning Purposes; California; South Coast Moderate Area Plan and Reclassification as Serious Nonattainment for the 2012 PM<sub>2.5</sub> NAAQS****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve or conditionally approve portions of a state implementation plan (SIP) revision submitted by California to address Clean Air Act (CAA or “Act”) requirements for the 2006 and 2012 fine particulate matter (PM<sub>2.5</sub>) national ambient air quality standards (NAAQS or “standards”) in the Los Angeles–South Coast Air Basin (“South Coast”) PM<sub>2.5</sub> nonattainment area. Specifically, the EPA is approving all but the contingency measure element of the submitted SIP revision as meeting all applicable Moderate area requirements for the 2012 annual PM<sub>2.5</sub> NAAQS, and conditionally approving the contingency measure element as meeting both the Moderate area contingency measure requirement for the 2012 annual PM<sub>2.5</sub> NAAQS and the Serious area contingency measure requirement for the 2006 24-hour PM<sub>2.5</sub> NAAQS. In addition, the EPA is approving 2019 and 2022 motor vehicle emissions budgets for use in transportation conformity analyses for the 2012 annual PM<sub>2.5</sub> NAAQS. The EPA is also reclassifying the South Coast PM<sub>2.5</sub> nonattainment area, including reservation areas of Indian country and any other area of Indian country within it where the EPA or a tribe has demonstrated that the tribe has jurisdiction, as a Serious nonattainment area for the 2012 annual PM<sub>2.5</sub> NAAQS based on the EPA’s determination that the area cannot practicably attain the standard by the applicable Moderate area attainment date of December 31, 2021. As a consequence of this reclassification, California is required to submit a Serious area attainment plan that includes a demonstration of attainment of the 2012 annual PM<sub>2.5</sub> NAAQS in the South Coast area as expeditiously as practicable and no later than December 31, 2025.

**DATES:** This rule will be effective on December 9, 2020.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2019–0145. All documents in the docket are listed on the <https://www.regulations.gov> website. 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 availability information. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Ashley Graham, Air Planning Office (AIR–2), EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972–3877, or by email at [graham.ashleyr@epa.gov](mailto:graham.ashleyr@epa.gov).

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

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**I. Background**

Epidemiological studies have shown statistically significant correlations between elevated levels of PM<sub>2.5</sub> (particulate matter with a diameter of 2.5 microns or less) and premature mortality. Other important health effects associated with PM<sub>2.5</sub> exposure include aggravation of respiratory and cardiovascular disease, changes in lung function, and increased respiratory symptoms. Individuals particularly sensitive to PM<sub>2.5</sub> exposure include older adults, people with heart and lung disease, and children.<sup>1</sup> PM<sub>2.5</sub> can be emitted directly into the atmosphere as

a solid or liquid particle (“primary PM<sub>2.5</sub>” or “direct PM<sub>2.5</sub>”) or can be formed in the atmosphere as a result of various chemical reactions among precursor pollutants such as nitrogen oxides, sulfur oxides, volatile organic compounds, and ammonia (“secondary PM<sub>2.5</sub>”).<sup>2</sup>

The EPA first established annual and 24-hour NAAQS for PM<sub>2.5</sub> on July 18, 1997.<sup>3</sup> The annual standard was set at 15.0 micrograms per cubic meter (µg/m<sup>3</sup>) based on a 3-year average of annual mean PM<sub>2.5</sub> concentrations, and the 24-hour (daily) standard was set at 65 µg/m<sup>3</sup> based on the 3-year average of the annual 98th percentile values of 24-hour PM<sub>2.5</sub> concentrations at each monitor within an area.<sup>4</sup> On October 17, 2006, the EPA revised the level of the 24-hour PM<sub>2.5</sub> NAAQS to 35 µg/m<sup>3</sup> based on a 3-year average of the annual 98th percentile values of 24-hour concentrations.<sup>5</sup> On January 15, 2013, the EPA revised the annual standard to 12.0 µg/m<sup>3</sup> based on a 3-year average of annual mean PM<sub>2.5</sub> concentrations.<sup>6</sup> We refer to this standard as the 2012 PM<sub>2.5</sub> NAAQS.

Following promulgation of a new or revised NAAQS, the EPA is required by CAA section 107(d) to designate areas throughout the nation as attaining or not attaining the NAAQS. On November 13, 2009, the EPA designated the South Coast area as nonattainment for the 2006 PM<sub>2.5</sub> NAAQS.<sup>7</sup> The EPA classified the area as Moderate nonattainment on June 2, 2014 and reclassified it as Serious nonattainment for these NAAQS on January 13, 2016.<sup>8</sup> On January 15, 2015, the EPA designated and classified the South Coast area as Moderate nonattainment for the 2012 PM<sub>2.5</sub> NAAQS.<sup>9</sup> The South Coast area is also designated and classified as Moderate

<sup>2</sup> EPA, Air Quality Criteria for Particulate Matter, No. EPA/600/P–99/002aF and EPA/600/P–99/002bF, October 2004.

<sup>3</sup> 62 FR 38652 (codified at 40 CFR 50.7).

<sup>4</sup> The primary and secondary standards were set at the same level for both the 24-hour and the annual PM<sub>2.5</sub> standards.

<sup>5</sup> 71 FR 61144.

<sup>6</sup> 78 FR 3086.

<sup>7</sup> 74 FR 58688 (codified at 40 CFR 81.305).

<sup>8</sup> 79 FR 31566 and 81 FR 1514. The EPA promulgated these PM<sub>2.5</sub> nonattainment area classifications in response to a 2013 decision of the Court of Appeals for the D.C. Circuit remanding the EPA’s prior implementation rule for the PM<sub>2.5</sub> NAAQS and directing the EPA to promulgate implementation rules pursuant to subpart 4 of part D, title I of the Act. *Natural Resources Defense Council v. EPA*, 706 F.3d 428 (D.C. Cir. 2013).

<sup>9</sup> 80 FR 2206 (codified at 40 CFR 81.305).

<sup>1</sup> 78 FR 3086, 3088 (January 15, 2013).

nonattainment for the 1997 annual and 24-hour PM<sub>2.5</sub> NAAQS.<sup>10</sup>

The local air district with primary responsibility for developing a plan to attain the PM<sub>2.5</sub> NAAQS in the South Coast area is the South Coast Air Quality Management District (SCAQMD or “District”). The District works cooperatively with the California Air Resources Board (CARB) in preparing these plans. Authority for regulating sources in the South Coast is split between the District, which has responsibility for regulating stationary and most area sources, and CARB, which has responsibility for regulating most mobile sources and some categories of consumer products.

On July 2, 2020, we proposed to approve or conditionally approve portions of a SIP revision submitted by California to address CAA requirements for the PM<sub>2.5</sub> NAAQS in the South Coast nonattainment area.<sup>11</sup> The submitted SIP revision, the “Final 2016 Air Quality Management Plan (March 2017),” was adopted by the SCAQMD Governing Board on March 3, 2017 and submitted by CARB to the EPA on April 27, 2017.<sup>12</sup> We refer to those portions of this SIP submission that address the Serious area requirements for the 2006 PM<sub>2.5</sub> NAAQS and the Moderate area requirements for the 2012 PM<sub>2.5</sub> NAAQS as the “2016 PM<sub>2.5</sub> Plan” or “Plan.” The EPA previously approved those portions of the 2016 PM<sub>2.5</sub> Plan that pertain to the requirements for implementing the 2006 PM<sub>2.5</sub> NAAQS, except for the contingency measure component of the Plan.<sup>13</sup>

As part of our July 2, 2020 action, we proposed to approve the following elements of the 2016 PM<sub>2.5</sub> Plan as meeting the CAA Moderate area requirements for the 2012 PM<sub>2.5</sub> NAAQS: The 2012 base year emissions inventories, the reasonably available control measure/reasonably available control technology (RACM/RACT) demonstration, the demonstration that attainment by the Moderate area attainment date of December 31, 2021 is impracticable, the reasonable further progress (RFP) demonstration, the quantitative milestones, the motor vehicle emissions budgets for 2019 and 2022, and SCAQMD’s commitments to adopt and implement specific rules and measures to achieve emission reductions and to submit the rules and measures to CARB for transmittal to the EPA as a revision to the SIP. We also proposed to conditionally approve the contingency measure element of the 2016 PM<sub>2.5</sub> Plan as meeting the Serious area planning requirements for the 2006 PM<sub>2.5</sub> NAAQS and the Moderate area planning requirements for the 2012 PM<sub>2.5</sub> NAAQS. Lastly, we proposed to reclassify the South Coast PM<sub>2.5</sub> nonattainment area, including reservation areas of Indian country, as Serious nonattainment for the 2012 PM<sub>2.5</sub> standard.<sup>14</sup>

With respect to the contingency measure requirement, in our proposed rule, we noted that the EPA’s longstanding interpretation of section 172(c)(9) that states may rely on already-implemented measures as contingency measures (if they provide emissions reductions in excess of those needed to meet any other nonattainment plan requirements) was rejected by the Ninth Circuit Court of Appeals in a case referred to as *Bahr v. EPA* (“*Bahr*”).<sup>15</sup> In *Bahr*, the Ninth Circuit concluded that contingency measures must be measures that would take effect at the time the area fails to make RFP or to attain by the applicable attainment date, not before.<sup>16</sup> Thus, within the geographic jurisdiction of the Ninth Circuit, states cannot rely on already-implemented control measures to comply with the contingency measure requirements under CAA sections 172(c)(9).

Our proposed conditional approval of the contingency measure element of the 2016 PM<sub>2.5</sub> Plan relied on specific commitments: (1) From the District to modify an existing rule, Rule 445 (“Wood Burning Devices”), to lower the wood burning curtailment threshold

upon any of the four EPA determinations (*i.e.*, “findings of failure”) listed in 40 CFR 51.1014(a); (2) from the District to submit the revised rule to CARB for transmittal to the EPA by the earlier of (a) one year from the date of the EPA’s conditional approval of the contingency measures for the 2012 annual PM<sub>2.5</sub> standard, or (b) 60 days after the date the EPA makes a determination that the South Coast area has failed to attain the 2006 24-hour PM<sub>2.5</sub> standards but no later than one year after the date of the EPA’s conditional approval of the contingency measures for these standards;<sup>17</sup> and (3) from CARB to submit the revised District rule to the EPA as a SIP revision by the earlier of these two dates.<sup>18</sup> For more information about these submittals, please see our proposed rule.

With respect to reclassification, 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 EPA designated the South Coast area as nonattainment for the 2012 PM<sub>2.5</sub> standard effective April 15, 2015.<sup>19</sup> 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 2012 PM<sub>2.5</sub> NAAQS in this area is as expeditiously as practicable but no later than December 31, 2025.

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.<sup>20</sup> 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),<sup>21</sup> no later than 18 months after

<sup>10</sup> 70 FR 944 (January 5, 2005) (codified at 40 CFR 81.305). In November 2007, California submitted the 2007 PM<sub>2.5</sub> Plan to provide for attainment of the 1997 PM<sub>2.5</sub> standards in the South Coast. On November 9, 2011, the EPA approved all but the contingency measures in the 2007 PM<sub>2.5</sub> Plan (76 FR 69928), and on October 29, 2013, the EPA approved a revised contingency measure SIP for the area (78 FR 64402). On July 25, 2016, the EPA determined that the South Coast area had attained the 1997 annual and 24-hour PM<sub>2.5</sub> NAAQS based on 2011–2013 monitoring data, suspending any remaining attainment-related planning requirements for purposes of the 1997 PM<sub>2.5</sub> NAAQS in this area (81 FR 48350).

<sup>11</sup> 85 FR 40026.

<sup>12</sup> Letter dated April 27, 2017, from Richard Corey, Executive Officer, CARB, to Alexis Strauss, Acting Regional Administrator, EPA Region IX, with enclosures.

<sup>13</sup> 84 FR 3305 (February 12, 2019). As part of this action, the EPA found that, for purposes of the 2006 PM<sub>2.5</sub> NAAQS, the requirement for contingency measures to be undertaken if the area fails to make RFP under CAA sections 172(c)(9) was moot as applied to the 2017 milestone year because CARB and the District had demonstrated to the EPA’s satisfaction that the 2017 milestones in the plan had been met. The EPA took no action with respect to the RFP contingency measures for the 2020 milestone year or attainment contingency measures for these NAAQS.

<sup>14</sup> 85 FR 40026.

<sup>15</sup> *Bahr v. EPA*, 836 F. 3d 1218, 1235–1237 (9th Cir. 2016).

<sup>16</sup> *Id.* at 1235–1237.

<sup>17</sup> Letter dated February 12, 2020, from Wayne Nastri, Executive Officer, SCAQMD, to Richard Corey, Executive Officer, CARB.

<sup>18</sup> Letter dated March 3, 2020, from Michael T. Benjamin, Chief, Air Quality Planning and Science Division, CARB, to Amy Zimpfer, Associate Director, Air Division, EPA Region IX (transmitting letter dated February 12, 2020, from Wayne Nastri, Executive Officer, SCAQMD, to Richard Corey, Executive Officer, CARB).

<sup>19</sup> 80 FR 2206 (codified at 40 CFR 81.305).

<sup>20</sup> 85 FR 40026.

<sup>21</sup> The EPA defines BACM as, among other things, the maximum degree of emissions reduction

reclassification. Because an up-to-date emissions inventory serves as the foundation for a state's BACM and BACT determinations, the EPA proposed to also 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 in the area, 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 the end of the eighth calendar year after designation—*i.e.*, by December 31, 2023. We noted that although section 189(b)(2) generally provides for up to four years after a discretionary reclassification for the state to submit the required attainment demonstration, given the timing of the reclassification action less than two years before the Moderate area attainment date, it is appropriate in this case for the EPA to establish an earlier SIP submission deadline to assure timely implementation of the statutory requirements.<sup>22</sup>

## II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period that ended on August 3, 2020. During this period, the EPA received comments from three anonymous commenters.<sup>23</sup> None of the comments received are relevant to the EPA's action.

achievable for a source or source category, which is determined on a case-by-case basis considering energy, environmental, and economic impacts. 59 FR 41998, 42010 and 42014 (August 16, 1994). BACM must be implemented for all categories of sources in a Serious PM<sub>2.5</sub> nonattainment area unless the state adequately demonstrates that a particular source category does not contribute significantly to nonattainment of the PM<sub>2.5</sub> standard. *Id.* at 42011–42012.

<sup>22</sup> *Id.* at 40054–40055.

<sup>23</sup> The docket for this rulemaking contains these comment letters, with the exception of sixteen attachments to one comment letter that contain copyright and trademark claims. The EPA did not receive any comments regarding the impact of the Safer Affordable Fuel Efficient (SAFE) actions (84 FR 51310 (September 27, 2019) and 85 FR 24174 (April 30, 2020)) on the South Coast 2016 PM<sub>2.5</sub> Plan.

## III. Final Action

### A. Moderate Area Planning Requirements

For the reasons discussed in detail in the proposed rule and summarized herein, under CAA section 110(k)(3), the EPA is taking final action to approve or conditionally approve portions of the 2016 PM<sub>2.5</sub> Plan submitted by the State of California. We are finalizing approval of the following elements of the 2016 PM<sub>2.5</sub> Plan as meeting the Moderate area requirements for the 2012 PM<sub>2.5</sub> NAAQS:

- The base year emissions inventories as meeting the requirements of CAA section 172(c)(3);
- the RACM/RACF demonstration as meeting the requirements of CAA sections 172(c)(1) and 189(a)(1)(C);
- the demonstration that attainment by the Moderate area attainment date of December 31, 2021 is impracticable as meeting the requirements of CAA section 189(a)(1)(B)(ii);
- the RFP demonstration as meeting the requirements of CAA section 172(c)(2);
- the quantitative milestones as meeting the requirements of CAA section 189(c);
- the motor vehicle emissions budgets for 2019 and 2022, because they are derived from an approvable RFP demonstration and meet the requirements of CAA section 176(c) and 40 CFR part 93, subpart A;<sup>24</sup> and
- the SCAQMD's commitments to adopt and implement specific rules and measures in accordance with the schedule provided in Chapter 4 of the 2016 PM<sub>2.5</sub> Plan to achieve the emission reductions shown therein, and to submit these rules and measures to CARB for transmittal to the EPA as a revision to the SIP, as stated on page 9 of SCAQMD Governing Board Resolution 17–2.

The EPA is also finalizing a conditional approval of the contingency measure element of the 2016 PM<sub>2.5</sub> Plan as meeting the requirements of CAA section 172(c)(9) for the 2006 PM<sub>2.5</sub> NAAQS and for the 2012 PM<sub>2.5</sub> NAAQS. We note that the EPA determined on September 16, 2020, that the South Coast area had failed to timely attain the 2006 PM<sub>2.5</sub> NAAQS,<sup>25</sup> and that CARB is required to submit specified revisions to Rule 445 (“Wood Burning Devices”) as

<sup>24</sup> In our July 2, 2020 action, we proposed to limit the duration of our approval of the budgets in the 2016 PM<sub>2.5</sub> Plan to the period before the effective date of the EPA's adequacy finding for any subsequently submitted budgets per a request from CARB (85 FR 40026, 40053). We did not receive any comments on our proposal to limit the duration of the budgets and are finalizing our approval of the budgets for this limited period, as proposed.

<sup>25</sup> 85 FR 57733 (September 16, 2020).

a SIP revision to the EPA no later than 60 days after this date, consistent with the terms of its commitment under CAA section 110(k)(4).<sup>26</sup>

### B. 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 2012 annual PM<sub>2.5</sub> standard, based on the agency's determination that the South Coast area cannot practicably attain the standard by the Moderate area attainment date of December 31, 2021.

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 2012 PM<sub>2.5</sub> NAAQS effective April 15, 2015.<sup>27</sup> Therefore, as a result of our reclassification of the South Coast area as a Serious nonattainment area, section 188(c)(2) of the Act requires that the area attain the 2012 PM<sub>2.5</sub> NAAQS as expeditiously as practicable but no later than December 31, 2025.

### C. Reclassification of Reservation Areas of Indian Country

When the South Coast area was designated nonattainment for the 2012 PM<sub>2.5</sub> NAAQS, five Indian tribes were located within the boundaries of the nonattainment area: The Cahuilla Band of Mission Indians of the Cahuilla Reservation, the Morongo Band of Mission Indians, the Ramona Band of Cahuilla, the San Manuel Band of Mission Indians, and the Soboba Band of Luiseno Indians. At that time, the main body of land belonging to the Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation was expressly excluded from the South Coast 2012 PM<sub>2.5</sub> nonattainment area. However, since designation, the tribe has acquired the Meadowbrook parcel, which is located approximately 30 miles northwest of the northern boundary of the Reservation and is located within the South Coast PM<sub>2.5</sub> nonattainment area.<sup>28</sup>

<sup>26</sup> Letter dated March 3, 2020, from Michael T. Benjamin, Chief, Air Quality Planning and Science Division, CARB, to Amy Zimpfer, Associate Director, Air Division, EPA Region IX (transmitting letter dated February 12, 2020, from Wayne Nastri, Executive Officer, SCAQMD, to Richard Corey, Executive Officer, CARB).

<sup>27</sup> 80 FR 2206 (codified at 40 CFR 81.305).

<sup>28</sup> 85 FR 40026, 40055.

We have considered the relevance of our final action to reclassify the South Coast area as Serious nonattainment for the 2012 PM<sub>2.5</sub> standard for 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<sup>29</sup> 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.<sup>30</sup> In this final action, the EPA is therefore exercising its 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 Indian country located within such an 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<sub>2.5</sub> 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 2012 PM<sub>2.5</sub> standard.

Generally, the effect of reclassification is to lower the applicable “major source” emissions thresholds for direct PM<sub>2.5</sub> and PM<sub>2.5</sub> precursors for purposes of the nonattainment new source review (NNSR) program and the Title V operating permit program from 100 tpy to 70 tpy,<sup>31</sup> thus subjecting more new or modified stationary sources to these requirements. Reclassification also

lowers the de minimis threshold under the CAA’s General Conformity requirements from 100 tpy to 70 tpy.<sup>32</sup> In this case, however, reclassification does not change the “major source” thresholds because, as a result of the EPA’s January 2016 reclassification of the South Coast area as a “Serious” nonattainment area for the 2006 PM<sub>2.5</sub> NAAQS, the area is already subject to the 70 tpy major source threshold for Serious PM<sub>2.5</sub> nonattainment areas in CAA section 189(b)(3).<sup>33</sup> Likewise, reclassification does not affect the applicable General Conformity de minimis thresholds, because the South Coast area is already subject to the 70 tpy de minimis threshold for PM<sub>2.5</sub> and all PM<sub>2.5</sub> precursors as a result of the EPA’s previous reclassification of the area as Serious for the 2006 PM<sub>2.5</sub> NAAQS.<sup>34</sup>

The EPA contacted tribal officials early in the process of developing this action to provide time for tribal officials to have meaningful and timely input into its development.<sup>35</sup> On March 12, 2020, during two separate conference calls, the EPA participated in formal consultation with the Morongo Band of Mission Indians and staff-level consultation with the Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, following requests from these tribes. During these calls, EPA staff presented information about the nonattainment designation for the 2012 PM<sub>2.5</sub> NAAQS in the South Coast area and about the SCAQMD’s request, and EPA and tribal representatives together discussed the tribe’s questions about the implications of the request for each tribe. At the close of each call, the tribes indicated that they had no further questions and the Morongo Band of Mission Indians later requested that the EPA close formal consultation. On April 30, 2020, the EPA sent a letter to the Morongo Band of Mission Indians closing formal consultation.<sup>36</sup> No other Indian tribe has expressed an interest in discussing this action with the EPA. A summary of the tribal consultation is included in the docket for this action.<sup>37</sup>

We notified tribal officials when the proposed action published in the **Federal Register** and 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 seek EPA approval of relevant tribal programs under the CAA, none of the affected tribes will be required to submit an implementation plan as a result of this reclassification.

#### *D. PM<sub>2.5</sub> Serious Area SIP Requirements*

As a consequence of our reclassification of the South Coast area as a Serious nonattainment area for the 2012 PM<sub>2.5</sub> NAAQS, California is required to submit additional SIP revisions to satisfy the statutory requirements that apply to Serious PM<sub>2.5</sub> nonattainment areas, including the requirements of subpart 4 of part D, title I of the Act.

The Serious area SIP elements for the 2012 PM<sub>2.5</sub> NAAQS that California is required to submit are as follows:

1. Provisions to assure that BACM, including BACT for stationary sources, for the control of direct PM<sub>2.5</sub> and PM<sub>2.5</sub> precursors shall be implemented no later than four 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, 2025, or where the state is seeking an extension of the attainment date under section 188(e), a demonstration that attainment by December 31, 2025 is impracticable and that the plan provides for attainment by the most expeditious alternative date practicable and no later than December 31, 2030 (CAA sections 189(b)(1)(A), 188(c)(2), and 188(e));
3. Plan provisions that require RFP (CAA 172(c)(2));
4. Quantitative milestones that are to be achieved every three years until the area is redesignated attainment and that 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<sub>2.5</sub> also apply to major stationary sources of PM<sub>2.5</sub> precursors, except where the state demonstrates to the EPA’s satisfaction that such sources do not contribute significantly to PM<sub>2.5</sub> 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 PM<sub>2.5</sub> and all PM<sub>2.5</sub> precursors in the area (CAA 172(c)(3));

<sup>29</sup> “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.”

<sup>30</sup> 85 FR 40026, 40055–40056.

<sup>31</sup> CAA sections 189(b)(3) and 501(2)(B).

<sup>32</sup> 40 CFR part 93, subpart B.

<sup>33</sup> 81 FR 1514 (January 13, 2016).

<sup>34</sup> Id. and 40 CFR 93.153(b).

<sup>35</sup> As discussed in more detail in our proposed rule, the EPA sent letters to tribal officials inviting government-to-government consultation. These letters can be found in the docket.

<sup>36</sup> Letter dated April 30, 2020, from Elizabeth Adams, Director, Air and Radiation Division, EPA Region IX, to Robert Martin, Tribal Chairman, Morongo Band of Mission Indians.

<sup>37</sup> Memo dated April 14, 2020, from Ashley Graham, Air Planning Office, Air and Radiation Division, EPA Region IX, to Docket No. EPA–R09–OAR–2019–0145.

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 lower the applicable “major stationary source”<sup>38</sup> thresholds from 100 tpy to 70 tpy (CAA section 189(b)(3)) and to satisfy the subpart 4 control requirements for major stationary sources of PM<sub>2.5</sub> precursors (CAA section 189(e)).<sup>39</sup>

As discussed above in Section I, section 189(b)(2) of the CAA requires a state to submit the required BACM provisions no later than 18 months after the effective date of final reclassification. Because an effective BACM evaluation requires an up-to-date emissions inventory and an evaluation of the precursor pollutants that must be controlled to provide for expeditious attainment in the area, we are also requiring the State to submit the emissions inventory required under CAA section 172(c)(3) and any optional precursor insignificance demonstrations by this same date. Although section 189(b)(2) generally provides for up to four years after a discretionary reclassification for the state to submit the required attainment demonstration, given the timing of the reclassification action less than two years before the Moderate area attainment date, we are establishing a deadline of December 31, 2023 for 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.

We note that the 2016 PM<sub>2.5</sub> Plan submitted on April 27, 2017, includes a Serious area attainment demonstration, an emissions inventory, attainment-related plan elements, and BACM/BACT provisions, which the EPA intends to evaluate and act on through subsequent rulemakings, as appropriate.

#### IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission

<sup>38</sup> 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 tpy of PM<sub>10</sub> (CAA sections 189(b)(3)).

<sup>39</sup> As discussed in our proposed rule, California submitted NNSR SIP revisions for the South Coast to address the subpart 4 NNSR requirements for Serious PM<sub>2.5</sub> nonattainment areas on May 8, 2017, and the EPA conditionally approved these NNSR SIP revisions on November 30, 2018 (83 FR 61551). The State fulfilled the commitment that provided the basis for the EPA’s conditional approval of these NNSR SIP revisions by submitting a revised version of Rule 1325 (“Federal PM<sub>2.5</sub> New Source Review Program”) on April 24, 2019.

that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a).

Thus, in reviewing SIP submissions, the EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves, or conditionally approves, state plans as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practical and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal

governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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 action 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).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 8, 2021. 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

##### 40 CFR Part 52

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

##### 40 CFR Part 81

Environmental protection, Air pollution control, Particulate matter.

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

Dated: October 10, 2020.

**John Busterud,**  
Regional Administrator, Region IX.

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.*

## Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(517)(ii)(B)(7) to read as follows:

### § 52.220 Identification of plan—in part.

(c) \* \* \*  
(517) \* \* \*  
(ii) \* \* \*  
(B) \* \* \*  
(7) The following portions of the “Final 2016 Air Quality Management Plan (March 2017),” adopted March 3, 2017: Chapter 5 (“PM<sub>2.5</sub> Modeling Approach”), pages 5–17 through 5–27; Appendix III (“Base and Future Year Emission Inventory”), Attachment A (“Annual Average Emissions by Source Category in South Coast Air Basin”) for PM<sub>2.5</sub>, NO<sub>x</sub>, SO<sub>2</sub>, VOC, and NH<sub>3</sub> for years 2012, 2019, 2021, and 2022, and Attachment D, tables D–1, D–7, D–11, and D–13; Appendix IV–A (“SCAQMD’s Stationary and Mobile Source Control Measures”), Table IV–A–4 and Section 2 (“PM<sub>2.5</sub> Control Measures”); Appendix IV–C (“Regional Transportation Strategy and Control Measures”), Section III (“Reasonably Available Control Measure Analysis”); Appendix V (“Modeling and Attainment Demonstration”), Chapter 6 (“Annual PM<sub>2.5</sub> Attainment Demonstration”) and Attachment 7 (“Annual Unmonitored Area Analysis Supplement”); Appendix VI–A (“Reasonably Available Control Measures (RACM)/Best Available Control Measures (BACM) Demonstration”), pages VI–A–5 through VI–A–11, pages VI–A–22 through VI–A–

32, pages VI–A–36 through VI–A–38, Attachment VI–A–1 (“Evaluation of SCAQMD Rules and Regulations”), Attachment VI–A–2 (“Control Measure Assessment”), and Attachment VI–A–3 (“California Mobile Source Control Program Best Available Control Measures/Reasonably Available Control Measures Assessment”); Appendix VI–B (“Impracticability Demonstration for Request for “Serious” Classification for 2012 Annual PM<sub>2.5</sub> Standard”); Appendix VI–C (“Reasonable Further Progress (RFP) and Milestone Years”), pages VI–C–5 through VI–C–14, and Attachment VI–C–1 (“California Existing Mobile Source Control Program”); Appendix VI–D (“General Conformity and Transportation Conformity Budget”), pages VI–D–2 through VI–D–4, excluding tables VI–D–1 and VI–D–2; and Appendix VI–F (“PM Precursor Requirements”).

\* \* \* \* \*

■ 3. Section 52.248 is amended by adding paragraph (k) to read as follows:

### § 52.248 Identification of plan—conditional approval.

\* \* \* \* \*

(k) The EPA is conditionally approving the California State Implementation Plan (SIP) for the South Coast with respect to the contingency measure requirement in CAA section 172(c)(9) for both the Serious area plan for the 2006 PM<sub>2.5</sub> NAAQS and the Moderate area plan for the 2012 PM<sub>2.5</sub> NAAQS. The conditional approval is based on a commitment from the South Coast Air Quality Management District (District) in a letter dated February 12, 2020, to adopt specific rule revisions,

and a commitment from the California Air Resources Board (CARB) dated March 3, 2020, to submit the amended District rule to the EPA by the earlier of one year after the date of the EPA’s conditional approval of the contingency measures for the 2012 annual PM<sub>2.5</sub> standard, or 60 days after the date the EPA determines that the South Coast area has failed to attain the 2006 24-hour PM<sub>2.5</sub> standards but no later than one year after the date of the EPA’s conditional approval of the contingency measures for these standards. The EPA determined on September 16, 2020, that the South Coast area had failed to attain the 2006 24-hour PM<sub>2.5</sub> standards. Therefore, CARB must submit the amended District rule to the EPA by November 16, 2020. If the District or CARB fail to meet their commitments, the conditional approval is treated as a disapproval.

## 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.*

## Subpart C—Section 107 Attainment Status Designations

■ 5. In § 81.305, amend the table “California—2012 Annual PM<sub>2.5</sub> NAAQS [Primary],” by revising the entries under “Los Angeles-South Coast Air Basin, CA” to read as follows:

### § 81.305 California.

\* \* \* \* \*

## CALIFORNIA—2012 ANNUAL PM<sub>2.5</sub> NAAQS [Primary]

Designated area <sup>1</sup>	Designation		Classification	
	Date <sup>2</sup>	Type	Date <sup>2</sup>	Type
Los Angeles-South Coast Air Basin, CA: Los Angeles County (part) .....		Nonattainment .....	December 9, 2020	Serious.

CALIFORNIA—2012 ANNUAL PM<sub>2.5</sub> NAAQS—Continued  
[Primary]

Designated area <sup>1</sup>	Designation		Classification	
	Date <sup>2</sup>	Type	Date <sup>2</sup>	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.				
Orange County .....	.....	Nonattainment .....	December 9, 2020	Serious.
Riverside County (part) .....	.....	Nonattainment .....	December 9, 2020	Serious.
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.				
San Bernardino County (part) .....	.....	Nonattainment .....	December 9, 2020	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.				
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *

<sup>1</sup> Includes areas of Indian country located in each county or area, except as otherwise specified.

<sup>2</sup> This date is April 15, 2015, unless otherwise noted.

\* \* \* \* \*

[FR Doc. 2020-23033 Filed 11-6-20; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

[Docket No. 180117042-8884-02; RTID 0648-XA627]

#### Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; fishery reopening.

**SUMMARY:** NMFS reopens the General category fishery for two days within the October through November 2020 General category subquota period. This action is intended to provide a reasonable opportunity to harvest the full annual U.S. bluefin tuna (BFT) quota without exceeding it, while maintaining an equitable distribution of fishing opportunities across time periods. This action applies to Atlantic tunas General category (commercial) permitted vessels and Atlantic Highly