§ 110.50d [Amended]

■ 20. In § 110.50d, redesignate paragraph (a) as an undesignated paragraph and remove paragraph (b).

§ 110.51 [Amended]

■ 21. In § 110.51, remove the note for the section.

§ 110.52 [Amended]

■ 22. In § 110.52, remove the note for the section.

§ 110.53 [Amended]

■ 23. In § 110.53, remove the note for the section.

§ 110.55 [Amended]

■ 24. In § 110.55, remove the notes following paragraph (b), (c), (e), (e–1), (e–2) and (g).

§ 110.55a [Amended]

■ 25. In § 110.55a, remove the note for the section.

§ 110.55b [Amended]

■ 26. In § 110.55b, remove the note for the section.

§ 110.56 [Amended]

■ 27. In § 110.56, remove the note for the section.

§ 110.58 [Amended]

■ 28. In § 110.58, remove the note for the section.

§ 110.59 [Amended]

■ 29. In § 110.59, remove the note following paragraph (g).

§ 110.60 [Amended]

■ 30. In § 110.60, remove the notes to paragraphs (a)(2) and (13); (b)(5) and (6); (c)(3); (5) and (6); (d)(2), and (5), and remove paragraphs (c)(13)(i) and (ii), (d)(7)(i) and (ii), and (d)(9)(i) and (ii).

Dated: March 22, 2021.

T.G. Allan Jr.,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 2021–06487 Filed 4–7–21; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–R09–OAR–2021–0148; FRL–10022–15–Region 9]

Designation of Areas for Air Quality Planning Purposes; California; San Diego County Ozone Nonattainment Area; Reclassification to Severe

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Under the Clean Air Act (CAA or Act), the Environmental Protection Agency (EPA) is proposing to approve a request from the State of California to reclassify the San Diego County ozone nonattainment area from ''Serious'' to ''Severe'' for the 2008 ozone National Ambient Air Quality Standards (NAAQS) and from ''Moderate'' to ''Severe'' for the 2015 ozone NAAQS. Following consultation with tribes, the EPA is also proposing to reclassify in the same manner as state land, 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 located within the boundaries of the San Diego County ozone nonattainment area. Upon final reclassification of the San Diego County ozone nonattainment area as a Severe area for the 2008 and 2015 ozone NAAQS, the applicable attainment dates would be as expeditious as practicable but no later than July 20, 2027, for the 2008 ozone NAAQS, and August 3, 2033, for the 2015 ozone NAAQS. With respect to Severe state implementation plan (SIP) element submittal dates that have passed, the EPA is proposing to establish a deadline of no later than 12 months from the effective date of reclassification for submittal of revisions to the San Diego County portion of the California SIP to meet additional requirements for Severe ozone nonattainment areas to the extent that such revisions have not already been submitted.

DATES: Any comments on this proposal must arrive by May 10, 2021.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–R09–OAR–2021–0148, at *http://www.regulations.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, or 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 the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: T. Khoi Nguyen, Air Planning Office (AIR–2), EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 947–4120, or by email at *nguyen.thien@epa.gov.*

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

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I. Reclassification as Severe Nonattainment and Severe Area SIP Requirements

A. Reclassification as Severe and Applicable Attainment Dates

Effective July 20, 2012, the EPA designated and classified the San Diego County nonattainment area in California under the CAA as ''Marginal'' nonattainment for the 2008 ozone NAAQS.[1] The San Diego County ozone nonattainment area included 18 tribal reservations located within the geographic boundary of the county. Our classification of San Diego County as a Marginal ozone nonattainment area established a requirement that the area attain the 2008 ozone NAAQS as expeditiously as practicable, but no later than three years from the date of designation as nonattainment, *i.e.,* July 20, 2015. In May 2016, the EPA determined that San Diego County failed to attain the 2008 ozone NAAQS by the Marginal attainment date and

[1] 77 FR 30088 (May 21, 2012). The 2008 ozone NAAQS is 0.075 parts per million (ppm), daily maximum 8-hour average. The 2008 ozone NAAQS is met at an ambient air quality monitoring site when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.075 ppm. See 40 CFR 50.15.

reclassified the area from Marginal to Moderate, with an attainment date of not later than July 20, 2018.[2] In August 2019, the EPA determined that San Diego County failed to attain the 2008 ozone NAAQS by the Moderate attainment date, and reclassified the area from Moderate to Serious, with an attainment date of not later than July 20, 2021.[3]

Additionally, effective August 3, 2018, the EPA designated and classified the San Diego County nonattainment area in California under the CAA as ''Moderate'' nonattainment for the 2015 ozone NAAQS.[4] Consistent with the area designation for the 2008 ozone NAAQS, the San Diego County ozone nonattainment area for the 2015 ozone NAAQS included 18 tribal reservations located within the geographic boundary of the county. Our classification of San Diego County as a Moderate ozone nonattainment area established a requirement that the area attain the 2015 ozone NAAQS as expeditiously as practicable, but no later than six years from the date of designation as nonattainment, *i.e.,* August 3, 2024.

On January 12, 2021, the California Air Resources Board (CARB) submitted a request to the EPA seeking a voluntary reclassification of San Diego County.[5] CARB requested that the EPA reclassify San Diego County from Serious to Severe for the 2008 ozone NAAQS and from Moderate to Severe for the 2015 ozone NAAQS.[6] The State requested reclassification to Severe, rather than Serious, based on air quality modeling results that demonstrate that the most expeditious attainment dates for ozone corresponded with the attainment dates for areas classified as Severe for the 2008 and 2015 ozone NAAQS.

We are proposing to approve CARB's reclassification request under section 181(b)(3) of the Act, which provides for ''voluntary reclassification'' because the plain language of section 181(b)(3) mandates that we approve such a request. Upon final reclassification, the applicable attainment dates will be as expeditiously as practicable, but no later than fifteen years from the date of designation as nonattainment, *i.e.,* July 20, 2027 for the 2008 ozone NAAQS and August 3, 2033 for the 2015 ozone NAAQS.

B. Clean Air Act Requirements for Severe Ozone Nonattainment Area Plans

1. Severe Area Plan Requirements

Under CAA section 182(d), an attainment plan for a Severe area must include the elements required for a Serious area as well as additional plan elements for a Severe area. Where applicable, the plan elements should reflect the reduction of the major source threshold under section 182(d) to 25 tons per year for a Severe area. The requirements for a Severe area plan include, but are not limited to: (1) Base year emissions inventory (CAA sections 172(c)(3) and 182(a)(1)); (2) an emissions statement rule (CAA section 182(a)(3)(B)); (3) New Source Review (NSR) (CAA sections 172(c)(5), 173, 182(a)(2)(C), 182(d) and 182(d)(2)); (4) additional reasonably available control technology (RACT) rules to address sources subject to the lower Severe area major source threshold (CAA section 182(b)(2)); (5) reasonably available control measures (RACM) (CAA section 172(c)(1)); (6) attainment demonstration (CAA sections 172(c)(1) and 182(c)(2)(A)); (7) a reasonable further progress (RFP) demonstration showing ozone precursor reductions of at least 3 percent per year until the attainment date (CAA sections 172(c)(2), 182(b)(1), 182(c)(2)(B)); (8) contingency measures (CAA sections 172(c)(9) and 182(c)(9)); (9) vehicle inspection & maintenance (CAA section 182(c)(3)); (10) Clean Fuels Fleet program (CAA sections 182(c)(4)(A) and 246); (11) enhanced ambient air monitoring (CAA section 182(c)(1)); (12) transportation control strategies and measures to offset emissions increases from vehicle miles traveled (CAA section 182(d)(1)(A)); and (13) CAA Section 185 Fee Program (CAA sections 182(d)(3) and 185).

As noted previously, on January 12, 2021, CARB submitted a request to the EPA seeking a voluntary reclassification of the San Diego County ozone nonattainment area from Serious to Severe for the 2008 ozone NAAQS and from Moderate to Severe for the 2015 ozone NAAQS. In addition to this request, the State also submitted, as a revision to the San Diego County portion of the California SIP, the plan adopted by the San Diego County Air Pollution Control District (SDCAPCD or ''District'') intended to address all the applicable requirements for the 2008 and 2015 ozone NAAQS for the San Diego County ozone nonattainment area as a Severe ozone nonattainment area, other than RACT and the Section 185 Fee Program.[7] On December 29, 2020, CARB submitted a SIP revision intended to address the Severe Area RACT requirement for the San Diego County ozone nonattainment area for the 2008 and 2015 ozone NAAQS.[8]

We have reviewed the two SIP revisions submitted by CARB to address the Severe area requirements for the San Diego County ozone nonattainment area for the 2008 and 2015 ozone NAAQS (other than the Section 185 Fee Program) and find that the revisions address the applicable requirements.[9] However, we have not yet determined that either SIP submittal is complete under CAA section 110(k)(1)(B), and thus, we are proposing a schedule for submittal (as described in detail below) of SIP revisions to address applicable SIP requirements if, and to the extent, we ultimately find the two SIP revisions incomplete. For the Section 185 Fee Program in San Diego County, if the area is reclassified to Severe, the applicable SIP submittal deadline would be July 20, 2022, for the 2008 ozone NAAQS and August 3, 2028, for the 2015 ozone NAAQS.[10]

For areas initially designated Severe, the CAA and the EPA's ozone SIP Requirements Rules (SRR) for the 2008 and 2015 ozone NAAQS[11] generally provide, depending on the element, up to four years from the date of designation to submit the required SIP elements to the EPA. The statutory deadline for all SIP submissions for areas initially designated as Severe for the 2008 ozone NAAQS was July 20, 2016 (excluding the Section 185 Fee Program). The statutory deadlines for SIP submissions for areas initially designated as Severe for the 2015 ozone NAAQS vary from two to four years

[2] 81 FR 26697 (May 4, 2016).

[3] 84 FR 44238 (August 23, 2019).

[4] 83 FR 25776 (June 4, 2018). The 2015 ozone NAAQS is 0.070 ppm, daily maximum 8-hour average. The 2015 ozone NAAQS is met at an ambient air quality monitoring site when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.070 ppm. See 40 CFR 50.19.5

[5] Letter dated January 8, 2021, from Richard W. Corey, Executive Officer, CARB, to John Busterud, Regional Administrator, EPA Region IX (submitted electronically January 12, 2021).

[6] Throughout this document, we use ''Severe'' as the terminology for the proposed classification, referring to Severe areas that have 15 years to attain the ozone standards. If the proposed action is finalized, the ozone area designation tables in 40 CFR part 81 will specify ''Severe-15'' to distinguish the classification from ''Severe-17''.

[7] SDCAPCD, ''2020 Plan for Attaining the National Ambient Air Quality Standards for Ozone in San Diego County'' (October 2020).

[8] Letter dated December 28, 2020, from Richard W. Corey, Executive Officer, CARB, to John W. Busterud, Regional Administrator, EPA Region IX (submitted electronically December 29, 2020), with attachments, including SDCAPCD's 2020 Reasonably Available Control Technology Demonstration for the National Ambient Air Quality Standards for Ozone in San Diego County (October 2020).

[9] See EPA Region IX, Memorandum to File EPA–R09–OAR–2021–0148, dated March 19, 2021 for our review of the San Diego County 2020 ozone plan.

[10] See 40 CFR 51.1117 and 40 CFR 51.1317.

[11] The EPA promulgated the SRR for the 2008 and 2015 ozone NAAQS at 40 CFR part 52, subpart AA and subpart CC, respectively.

(excluding the Section 185 Fee Program). The RFP and attainment demonstrations, among other SIP elements, for the 2015 ozone NAAQS are due on August 3, 2022.

Under its general CAA section 301(a) authority and with respect to all SIP requirements for which the SIP submittal deadlines have passed, the EPA is proposing to establish a new deadline of 12 months from the effective date of the final action for this reclassification for the State to submit SIP revisions addressing the Severe area requirements for San Diego County for the 2008 ozone NAAQS if, and to the extent that, the EPA finds the two SIP revisions that have already been submitted are incomplete. This timeframe is consistent with how the EPA has established SIP submission deadlines under CAA section 182(i) for ozone areas reclassified by operation of law under CAA section 181(b)(2).[12] The EPA has also considered that for pollutants other than ozone, the CAA provides 12 months for states to submit revised attainment demonstrations when an area fails to attain by its attainment date.[13] This timeframe generally allows for the time necessary for states and local air districts to finish reviews of available control measures, adopt revisions to necessary attainment strategies, address other SIP requirements, and complete the public notice process necessary to adopt and submit timely SIP revisions.

To the extent SIP revisions are required to address Severe area requirements for which the SIP submittal deadlines have not passed, the deadlines from our SRRs for the 2008 and 2015 ozone NAAQS would continue to apply. For instance, upon final reclassification, the August 3, 2022 deadline[14] would continue to apply for the RFP and attainment demonstrations for the 2015 ozone NAAQS, if the EPA finds the relevant SIP revision already submitted are incomplete.[15] In addition, as noted previously, the Section 185 Fee Program SIP submittal would be due July 20, 2022, for the 2008 ozone NAAQS and August 3, 2028, for the 2015 ozone NAAQS.

2. NSR and Title V Program Revisions

Typically, when we reclassify or approve a reclassification request to a higher ozone classification, the state must amend its NSR rules to reflect the lower NSR major source thresholds and higher NSR offset ratio corresponding to the higher classification. However, with respect to the San Diego County ozone nonattainment area, the District will not be required to amend its NSR rules upon reclassification to Severe because the version of the rules that the District adopted in 2019 and that the EPA approved in 2020 already include the Severe area major source thresholds and offset ratios.[16] Such thresholds and ratios will apply upon the effective date of the reclassification to Severe.[17] The District must also make any changes in its title V operating permits program for San Diego County necessary to reflect the change in the major source threshold to 25 tons per year for Severe areas. The rationale for the EPA's deadline of one year from the effective date of the final reclassification action is discussed in Section I.B.1.

3. Federal Reformulated Gasoline

Typically, effective one year after the reclassification of any ozone nonattainment area as a Severe ozone nonattainment area, such Severe area shall also be a ''covered area'' for purposes of reformulated gasoline (RFG).[18] San Diego County is already a covered area for RFG, and as such, the use of RFG is currently required under the mobile source requirements in title II of the CAA and the implementing regulations at 40 CFR part 80, subpart D.[19] RFG is gasoline blended to burn more cleanly than conventional gasoline and to reduce emissions of smog-forming and toxic pollutants in the air. California gasoline (California Phase III Reformulated Gasoline or ''CaRFG3'') can also be used to satisfy federal RFG requirements because the EPA has approved CaRFG3 as an equivalent fuel formulation under CAA section 211(k)(4)(B). The RFG requirement will continue to apply within San Diego County upon reclassification to Severe.

II. Reclassification of Areas of Indian Country

Because the State of California does not have jurisdiction over Indian country geographically located within the borders of the state, CARB's request to reclassify the San Diego County nonattainment area does not apply to Indian country under the jurisdiction of the tribes identified in 40 CFR 81.305. The EPA implements federal CAA programs, including reclassifications, in this area of Indian country consistent with our discretionary authority under sections 301(a) and 301(d)(4) of the CAA.

When the EPA designated San Diego County as nonattainment for the 2008 and 2015 ozone NAAQS, we included 18 federally recognized Tribal Nation reservations within the boundaries of the nonattainment area. These reservations include: Barona Group of Capitan Grande of Mission Indians of the Barona Reservation, Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, Capitan Grande Band of Diegueno Mission Indians of California,[20] Ewiiaapaayp Band of Kumeyaay Indians, Iipay Nation of Santa Ysabel, Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, Jamul Indian Village of California, La Jolla Band of Luiseno Indians, La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, Los Coyotes Band of Cahuilla and Cupeno Indians, Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, Pala Band of Mission Indians, Pauma Band of Luiseno Mission Indians of the Pauma and Yuima Reservation, Rincon Band of Luiseno Mission Indians of the Rincon Reservation, San Pasqual Band

[12] See, *e.g.,* 85 FR 2311 (January 15, 2020) (Coachella Valley, California reclassification to Extreme for the 1997 ozone NAAQS); 75 FR 79302 (Dec. 20, 2010) (Dallas-Ft. Worth, Texas, reclassification to Serious for the 1997 ozone NAAQS); 69 FR 16483 (March 30, 2004) (Beaumont-Port Arthur, Texas, reclassification to Serious for the 1979 1-hour ozone NAAQS); 68 FR 4836 (Jan. 30, 2003) (St. Louis, Missouri, reclassification to Serious for the 1979 1-hour ozone NAAQS).

[13] See CAA section 179(d)(1) (providing 12 months for a state to submit a new attainment demonstration after a determination that the area failed to attain by its attainment date).

[14] 40 CFR 51.1308(b).

[15] With respect to implementation of RACT controls in reclassified areas, implementation is required as expeditiously as practicable, but no later than the start of the attainment year ozone season associated with the area's new attainment deadline, or January 1 of the third year after the associated SIP revision submittal deadline, whichever is earlier; or the deadline established by the Administrator in the final action issuing the area reclassification. See 40 CFR 51.1312(a)(3)(ii). In this instance, implementation of RACT would be required as expeditiously as practicable but no later than January 1, 2025, assuming that the final reclassification action is effective in calendar year 2021.

[16] We took final limited approval and limited disapproval of District Rules 20.1–20.4 (adopted by the District on June 26, 2019) at 85 FR 57727 (September 16, 2020). The basis for the limited disapproval was unrelated to the major source thresholds or offset ratios.

[17] See District Rule 20.1 (New Source Review—General Provisions), paragraphs (c)(29) (''Federal Major Modification'') and (c)(30) (''Federal Major Stationary Source''); and District Rule 20.3 (New Source Review—Major Stationary Sources and PSD Stationary Sources), paragraph (d)(5)(ii) (Emissions Offsets).

[18] See CAA section 211(k)(10)(D).

[19] See 40 CFR 80.70(b).

[20] The Capitan Grande Reservation is jointly controlled by the Barona Group of Capitan Grande Band of Mission Indians and Viejas Group of Capitan Grande Band of Mission Indians. Therefore, in our action, we refer to 18 tribal reservations within the San Diego County nonattainment area and 17 tribal governments.

of Diegueno Mission Indians of California, Sycuan Band of the Kumeyaay Nation, and Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation.

The EPA contacted tribal officials to invite government-to-government consultation on this rulemaking.[21] Under the EPA's Consultation Policy, the EPA consults on a government-to-government basis with federally recognized tribal governments when the EPA's actions and decisions may affect tribal interests.[22] At the request of a few tribes, on January 22, 2021, the EPA held an informational meeting on the reclassification request.[23] Three tribes—the La Jolla Band of Luiseno Indians, Ewiiaapaayp Band of Kumeyaay Indians, and Campo Band of Diegueno Mission Indians of the Campo Indian Reservation—requested government-to-government consultation. We provide summaries of the consultation meetings in memoranda included in the docket for this rulemaking.

We have considered the relevance of our proposal to reclassify the San Diego nonattainment area as Severe nonattainment for the 2008 and 2015 ozone standards for each tribe located within San Diego County in conjunction with the concerns raised by tribes during government-to-government consultations. We believe that the same facts and circumstances that support the proposal for the non-Indian country lands also support the proposal for reservation areas of Indian country [24] and any other areas of Indian country where the EPA or a tribe has demonstrated that the tribe has jurisdiction located within San Diego County. The EPA implements federal CAA programs, including reclassifications, in this area of Indian country consistent with our discretionary authority under sections 301(a) and 301(d)(4) of the CAA. Accordingly, the EPA is therefore proposing to reclassify areas of Indian country geographically located in the San Diego County nonattainment area as Severe for the 2008 and 2015 ozone NAAQS.

Ground-level ozone pollution is formed from the reaction of volatile organic compounds (VOC) and oxides of nitrogen (NO_X) in the presence of sunlight. These two pollutants, referred to as ozone precursors, are emitted by many types of sources, including on-and off-road motor vehicles and engines, power plants and industrial facilities, and smaller area sources such as lawn and garden equipment and paints. Scientific evidence indicates that adverse public health effects occur following exposure to ozone, particularly in children and adults with lung disease. Breathing air containing ozone can reduce lung function and inflame airways, which can increase respiratory symptoms and aggravate asthma or other lung diseases.[25]

Ground-level ozone continues to be a pervasive pollution problem in areas throughout the United States. Ozone and precursor pollutants that cause ozone can be transported throughout a nonattainment area. Therefore, boundaries for nonattainment areas are drawn to encompass both areas with direct sources of pollution as well as nearby areas in the same airshed in which ozone can be transported. Initial classifications of nonattainment areas are coterminous with, that is, they match exactly, their boundaries. The EPA believes this approach best ensures public health protection from the adverse effects of ozone pollution. Therefore, it is generally counterproductive from an air quality and planning perspective to have a different classification for a land area located within the boundaries of a nonattainment area, such as the areas of Indian country contained in the ozone nonattainment areas at issue here.

Uniformity of classification throughout a nonattainment area is a guiding principle and premise when an area is being reclassified. In this particular case, we are proposing to reclassify the San Diego County nonattainment area and note that the State's reclassification request is based on modeling results that show that a longer timeframe is necessary to attain each ozone standard for the San Diego County nonattainment area. The longer timeframes will provide the time necessary to realize full implementation of the stationary and mobile source regulations contained in the District's attainment plan.[26]

The EPA has carefully considered the views expressed by the Tribes during the consultation process. Although we heard from Tribes their concerns about or opposition to the State's request to reclassify the San Diego nonattainment area, the EPA does not have discretion to deny the State's voluntary reclassification request.[27] We also heard concerns from Tribes that air quality on tribal lands is not accurately represented by the existing regulatory monitors, including Alpine, the design value monitor in the San Diego nonattainment area.

The La Jolla Tribe indicated that they operate a nonregulatory informational monitor, and that the informational monitor shows ozone levels that exceed the NAAQS. This information supports reclassifying the La Jolla Reservation along with the rest of the San Diego ozone nonattainment area. The Campo and Ewiiaapaayp Tribes indicated that the air quality on their reservation is pristine and meets the ozone standards, and they expressed concerns about the nonattainment classification for their respective reservations.

Absent monitoring data or an attainment demonstration, the EPA is relying on our previous analysis, such as the five-factor analysis, that supported our initial nonattainment designation for San Diego County, including areas of Indian country, for the 2008 ozone NAAQS, as well as information in the State's reclassification request, as support for inclusion of the reservations of the Campo and Ewiiaapaayp Tribes in the proposed reclassification action. The EPA included our five-factor analysis for the Campo, Ewiiaapaayp, and La Jolla tribes in the Technical Support Documents or Responses to Comments for the 2008 ozone NAAQS.[28] Several studies have shown ozone transport from the South Coast air basin and the western portions of San Diego County

[21] The consultation letters are included in the docket for this action.

[22] The EPA's Consultation Policy is available at *https://www.epa.gov/tribal/epa-policy-consultation-and-coordination-indian-tribes.*

[23] The informational meeting slides and notes are included in the docket for this action.

[24] ''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.''

[25] ''Fact Sheet—2008 Final Revisions to the National Ambient Air Quality Standards for Ozone'' dated March 2008.

[26] SDCAPCD, ''2020 Plan for Attaining the National Ambient Air Quality Standards for Ozone in San Diego'' County (October 2020), page 2.

[27] CAA section 181(b)(3) provides states with the ability to request voluntary reclassification, and the EPA does not have discretion to deny a voluntary reclassification request from a state.

[28] The EPA's analysis for including the La Jolla Reservation and the Campo Reservation within the nonattainment area are detailed in the EPA's Technical Support Document (TSD) for the 2008 ozone NAAQS designations and was also used to support the 2015 ozone designations. The TSD is available at *https://www.regulations.gov/document/EPA-HQ-OAR-2017-0548-0068.* The EPA's analysis for the Ewiiaapaayp Reservation is detailed in the Response to Comments for the 2008 ozone NAAQS and is available at *https://www.regulations.gov/document/EPA-R04-OAR-2018-0142-0042.*

can impact the inland areas of San Diego County.[29] The EPA therefore found that transport of ozone and its precursors is prevalent within San Diego County, and from adjacent nonattainment areas. We also previously reviewed modeling performed in the 2007 8-hour ozone attainment plan for San Diego County that shows that the inland tribal reservations experience similar air quality as the surrounding inland areas.[30] The EPA also concluded that the reservations for the Campo, Ewiiaapaayp, and La Jolla tribes do not have any geographical or topographical barriers that would prevent air pollution transport from the surrounding San Diego County nonattainment area.[31] We indicated that although the terrain is complex, there are no topographic barriers. Therefore, violations of the eight-hour ozone standard, which are measured and modeled throughout the nonattainment areas, as well as shared meteorological conditions within the nonattainment area indicate that the tribal areas experience similar ozone concentrations. Additionally, the State's reclassification request indicates that although air quality in the region has improved substantially, and is projected to continue to improve, air quality modeling performed by CARB concludes that a longer timeframe is necessary for the entire nonattainment area to attain each ozone standard.[32]

The EPA recognizes that the Ewiiaapaayp Tribe has submitted letters requesting an error correction for the Tribe's designation as part of the San Diego ozone nonattainment area for the 2008 and 2015 ozone NAAQS and a redesignation as a Class I area and participation in the Prevention of Significant Deterioration (PSD) program.[33] An error correction, redesignation as a Class I area, and the PSD program are all outside the narrow scope of this proposed reclassification action, and therefore the EPA will be reviewing these requests separately and taking action, as appropriate in the future.

In light of the considerations outlined above that support retention of a uniformly-classified ozone nonattainment area, and our proposal to approve the State's voluntary reclassification request, we propose to reclassify the entire San Diego nonattainment area, including reservation areas of Indian country and any other area of Indian country located within it where the EPA or a tribe has demonstrated that the tribe has jurisdiction, as Severe nonattainment for both the 2008 and 2015 ozone NAAQS.

The EPA specifically solicits additional comment on this proposed rule from tribal officials. We note that although eligible tribes may seek EPA approval of relevant tribal programs under the CAA, none of the affected tribes would be required to submit an implementation plan as a result of this reclassification.

III. Summary of Proposed Action and Request for Public Comment

Pursuant to CAA section 181(b)(3), we are proposing to grant CARB's request to reclassify the San Diego County ozone nonattainment area from Serious to Severe for the 2008 ozone NAAQS and from Moderate to Severe for the 2015 ozone NAAQS. With respect to Severe SIP element submittal dates that have passed, the EPA is proposing to establish a deadline of no later than 12 months from the effective date of reclassification for submittal of revisions to the San Diego County portion of the California SIP to meet additional requirements for Severe ozone nonattainment areas to the extent that such revisions have not already been submitted. With respect to the Section 185 Fee Program, upon reclassification to Severe, the deadline for submittal would be July 20, 2022, for the 2008 ozone NAAQS and August 3, 2028, for the 2015 ozone NAAQS pursuant to the EPA's ozone SRRs. Upon reclassification, the new attainment dates for the San Diego County ozone nonattainment area would be as expeditiously as practicable, but no later than July 20, 2027, for the 2008 ozone NAAQS and August 3, 2033, for the 2015 ozone NAAQS.

In addition, the EPA is proposing to reclassify reservation areas of Indian country and any other area of Indian country where the EPA or a tribe has demonstrated that the tribe has jurisdiction within the San Diego County nonattainment area as Severe nonattainment for the 2008 and 2015 ozone NAAQS. Although eligible tribes may seek the EPA's approval of relevant tribal programs under the CAA, none of the affected tribes would be required to submit an implementation plan as a result of this reclassification.

We will accept comments from the public on these proposals for the next 30 days. The deadline and instructions for submission of comments are provided in the **DATES** and **ADDRESSES** sections at the beginning of this preamble.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to Executive Order 12866. With respect to lands under state jurisdiction, voluntary reclassifications under CAA section 181(b)(3) of the CAA are based solely upon requests by the state, and the EPA is required under the CAA to grant them. These actions do not, in and of themselves, impose any new requirements on any sectors of the economy. In addition, because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by reclassification, reclassification does not impose a materially adverse impact under Executive Order 12866. With respect to Indian country, reclassifications do not establish deadlines for air quality plans or plan revisions. For these reasons, this proposed action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001).

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

[29] The EPA previously provided the list of studies on pages 10 and 12 of the TSD for the 2008 ozone NAAQS designations. See also Attachment M of the SDCAPCD's ''2020 Plan for Attaining the National Ambient Air Quality Standards for Ozone in San Diego County'' (October 2020) for a description of prior studies (page M–16) and more details on the meteorological conditions in the nonattainment area.

[30] See pages 10 and 12 of the TSD for the 2008 ozone NAAQS designations.

[31] For the La Jolla Tribe, see page 11 of the TSD for the 2008 ozone NAAQS designations. For the Campo Tribe, see page 14. For the Ewiiaapaayp Tribe, see page 86 of the Response to Comments for the 2008 ozone NAAQS.

[32] See page 2 of the SDCAPCD's ''2020 Plan for Attaining the National Ambient Air Quality Standards for Ozone in San Diego County'' (October 2020). The District's modeling demonstration is provided in Chapter 4.3 and Attachments K and L.

[33] Letter dated February 16, 2021, from Robert Pinto, Sr., Tribal Chairman, Ewiiaapaayp Band of Kumeyaay Indians, to T. Khoi Nguyen, EPA Region IX. Additionally, see letter dated February 26, 2021, from Robert Pinto, Sr., Tribal Chairman, Ewiiaapaayp Band of Kumeyaay Indians, to T. Khoi Nguyen, EPA Region IX following up on the Class I and PSD request.

voluntary reclassifications and such reclassifications in and of themselves do not impose any federal intergovernmental mandate, and because tribes are not subject to implementation plan submittal deadlines that apply to states as a result of reclassifications.

Executive Order 13175 (65 FR 67249, November 9, 2000) requires the EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal Implications'' are defined in section 1(a) of the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' Several Indian tribes have areas of Indian country located within the boundary of the San Diego County ozone nonattainment areas.

The EPA implements federal CAA programs, including reclassifications, in these areas of Indian country consistent with our discretionary authority under sections 301(a) and 301(d)(4) of the CAA. The EPA has concluded that this proposed rule might have tribal implications for the purposes of E.O. 13175 but would not impose substantial direct costs upon the tribes, nor would it preempt Tribal law. This proposed rule does affect implementation of new source review for new or modified major stationary sources proposed to be located in the areas of Indian country proposed for reclassification, and might affect projects 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 the potential implications, the EPA contacted tribal officials early in the process of developing this proposed rule to provide an opportunity to have meaningful and timely input into its development. On December 11, 2020, we sent letters to leaders of the 17 tribal governments representing 18 areas of Indian country in the nonattainment area offering government-to-government consultation and seeking input on how we could best communicate with the tribes on this rulemaking effort. On January 12, 2021, we received a response from one tribe requesting a webinar on this matter on behalf of a few tribes. We held this informational webinar on January 22, 2021. Additionally, we received responses from three tribes requesting formal government-to-government consultation. The consultation letters and the information and notes from the webinar and the three government-to-government consultations are included in the docket for this action. The EPA has carefully considered the views expressed by the Tribes.

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. This proposed reclassification action relates to ozone, a pollutant that is regional in nature, and is not the type of action that could result in the types of local impacts addressed in Executive Order 12898.

This proposed action also does not have federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, nor on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This proposed action does not alter the relationship or the distribution of power and responsibilities established in the CAA.

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

Reclassification actions do not involve technical standards and thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 81

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

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

Dated: April 2, 2021.

Deborah Jordan,

Acting Regional Administrator, Region IX.

[FR Doc. 2021–07223 Filed 4–7–21; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 152

[EPA–HQ–OPP–2020–0537; FRL–10016–29]

RIN 2070–AK55

Pesticides; Modification to the Minimum Risk Pesticide Listing Program and Other Exemptions Under FIFRA Section 25(b)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) is soliciting public comments and suggestions about the petition process for exemptions regarding pesticides from registration and other requirements under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), where the pesticides are determined to be of a character unnecessary to be subject to regulation under FIFRA. The Agency is considering streamlining the petition process and revisions to how the Agency evaluates the potential minimum risk active and inert substances, factors used in classes of exemptions, state implementation of the minimum risk program and the need for any future exemptions or modifications to current exemptions. EPA is also requesting comment on whether the Agency should consider amending existing exemptions or adding new classes of pesticidal substances for exemption, such as peat when used in septic filtration systems.

DATES: Comments must be received on or before July 7, 2021.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2020–0537, through the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI)