



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-HQ-OAR-2021-0741; FRL-8426-01-OAR]

RIN 2060-AV33

Determinations of Attainment by the Attainment Date, Extension of the Attainment Date, and Reclassification of Areas Classified as Serious for the 2008 Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes three actions pursuant to section 181(b)(2) of the Clean Air Act (CAA) related to seven areas classified as “Serious” for the 2008 ozone National Ambient Air Quality Standards (NAAQS). First, the Agency proposes to determine that one area attained the 2008 ozone NAAQS by the July 20, 2021, attainment date. Second, the Agency proposes to deny a request for a 1-year attainment date extension for one area and to determine that the area failed to attain the 2008 ozone NAAQS by the attainment date, while also taking comment on granting that request. Third, the Agency proposes to determine that five areas failed to attain the 2008 ozone NAAQS by the attainment date and do not qualify for a 1-year attainment date extension.. The effect of failing to attain by the attainment date is that such areas will be reclassified by operation of law to “Severe” upon the effective date of the final reclassification notice. Except for one separate tribal area, states will need to submit state implementation plan (SIP) revisions that meet the statutory and regulatory requirements for any areas reclassified as Severe for the 2008 ozone NAAQS. The EPA proposes deadlines for submission of those SIP revisions and for implementation of the related control requirements. Additionally, for any areas reclassified as Severe, where not already prohibited, the CAA would prohibit the sale of conventional gasoline and require that federal reformulated gasoline instead be sold beginning 1 year after the effective date of the reclassification. This

action, when finalized, will fulfill the EPA’s statutory obligation to determine whether ozone nonattainment areas attained the NAAQS by the attainment date and to publish a document in the *Federal Register* identifying each area that is determined as having failed to attain and identifying the reclassification. Several areas included in this proposed rule are also addressed in a separate rulemaking to determine whether areas classified as “Marginal” for the 2015 ozone NAAQS attained the standard by the applicable attainment date of August 3, 2021 (*see* Docket ID EPA-HQ-OAR-2021-0742).

DATES: Comments. Written comments must be received on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Virtual public hearing. The virtual hearing will be held on **[INSERT DATE 25 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may send comments, identified by Docket ID No. EPA-HQ-OAR-2021-0741, by any of the following methods:

- Federal eRulemaking Portal: <https://www.regulations.gov/> (our preferred method).
Follow the online instructions for submitting comments.
- E-mail: a-and-r-docket@epa.gov. Include Docket ID No. EPA-HQ-OAR-2021-0741 in the subject line of the message.
- Fax: (202) 566-9744.
- Mail: U.S. Environmental Protection Agency, EPA Docket Center, Office of Air and Radiation Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- Hand Delivery or Courier (by scheduled appointment only): EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue, NW, Washington, DC 20004.
The Docket Center’s hours of operations are 8:30 a.m. – 4:30 p.m., Monday – Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking.

Comments received may be posted without change to <https://www.regulations.gov/>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the “Public Participation” heading of the **SUPPLEMENTARY INFORMATION** section of this document. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are open to the public by appointment only to reduce the risk of transmitting COVID-19. Our Docket Center staff also continues to provide remote customer service via email, phone, and webform. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at <https://www.epa.gov/dockets>.

Submitting Confidential Business Information (CBI). Do not submit information containing CBI to the EPA through <https://www.regulations.gov/>. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on any digital storage media that you mail to the EPA, mark the outside of the digital storage media as CBI and then identify electronically within the digital storage media the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI directly to the public docket through the procedures outlined in *Instructions* above. If you submit any digital storage media that does not contain CBI, mark the outside of the digital storage media clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and the EPA’s electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2. Our preferred method to receive CBI is for it to be transmitted to electronically using email attachments, File Transfer Protocol (FTP), or other online file sharing services (e.g., Dropbox, OneDrive, Google Drive). Electronic submissions must be transmitted directly to the

OAQPS CBI Office using the email address, oaqpscbi@epa.gov, and should include clear CBI markings as described above. If assistance is needed with submitting large electronic files that exceed the file size limit for email attachments, and if you do not have your own file sharing service, please email oaqpscbi@epa.gov to request a file transfer link. If sending CBI information through the postal service, please send it to the following address: OAQPS Document Control Officer (C404-02), OAQPS, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA-HQ-OAR-2021-0741. The mailed CBI material should be double wrapped and clearly marked. Any CBI markings should not show through the outer envelope.

Virtual public hearing. The virtual hearing will be held on **[INSERT DATE 25 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. The hearing will be held in three sessions: 9:00 am to noon (Eastern time), 1:00 p.m. to 3:00 p.m. (Eastern time), and 6:00 p.m. to 8:00 p.m. (Eastern time). We invite the public to register to speak using <https://www.epa.gov/ground-level-ozone-pollution/2008-ozone-national-ambient-air-quality-standards-naaqs-nonattainment> or (919) 541-0641. The EPA will confirm your approximate speaking time by **[INSERT DATE 24 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** and we will post a list of registered speakers in approximate speaking order at: <https://www.epa.gov/ground-level-ozone-pollution/2008-ozone-national-ambient-air-quality-standards-naaqs-nonattainment>. If we reach a point in any session where all present, registered speakers have been called on and no one else wishes to provide testimony we will adjourn that session early. Refer to the **SUPPLEMENTARY INFORMATION** section for additional information.

FOR FURTHER INFORMATION CONTACT: For information about this proposed rule, contact Robert Lingard, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Policy Division, C539-01 Research Triangle Park, NC 27709; by telephone number: (919) 541-5272; email address: lingard.robert@epa.gov; or Emily Millar, U.S. EPA, Office of Air Quality

Planning and Standards, Air Quality Policy Division, C539-01 Research Triangle Park, NC 27709; telephone number: (919) 541-2619; email address: *millar.emily@epa.gov*.

SUPPLEMENTARY INFORMATION:

Participation in virtual public hearing. Because of current Centers for Disease Control and Prevention recommendations, as well as state and local orders for social distancing to limit the spread of COVID-19, the EPA cannot hold in-person public meetings at this time.

The EPA will begin pre-registering speakers and attendees for the hearing upon publication of this document in the *Federal Register*. The EPA will accept registrations on an individual basis. To register to speak at the virtual hearing, individuals may use the online registration form available via the EPA's 2008 Ozone National Ambient Air Quality Standards (NAAQS) Nonattainment Actions web page for this hearing (<https://www.epa.gov/ground-level-ozone-pollution/2008-ozone-national-ambient-air-quality-standards-naaqs-nonattainment>) or contact Pam Long at 919-541-0641 or *long.pam@epa.gov*. The last day to pre-register to speak at the hearing will be **[INSERT DATE 24 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. On **[INSERT DATE 24 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, the EPA will post a general agenda for the hearing that will list pre-registered speakers in approximate order at:

<https://www.epa.gov/ground-level-ozone-pollution/2008-ozone-national-ambient-air-quality-standards-naaqs-nonattainment>.

The EPA will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearings to run either ahead of schedule or behind schedule.

Each commenter will have 3 minutes to provide oral testimony. The EPA encourages commenters to provide the EPA with a copy of their oral testimony electronically (via email) by emailing it to Pam Long at *long.pam@epa.gov*. The EPA also recommends submitting the text of your oral comments as written comments to the rulemaking docket.

The EPA may ask clarifying questions during the oral presentations but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the public hearing.

Please note that any updates made to any aspect of the hearing is posted online at <https://www.epa.gov/ground-level-ozone-pollution/2008-ozone-national-ambient-air-quality-standards-naaqs-nonattainment>. While the EPA expects the hearing to go forward as set forth previously, please monitor our website or contact Pam Long at 919-541-0641 or long.pam@epa.gov to determine if there are any updates. The EPA does not intend to publish a document in the *Federal Register* announcing updates.

A Spanish interpreter will be provided. If you require the services of an interpreter for any language other than Spanish or special accommodations such as audio description, please pre-register for the hearing with Pam Long and describe your needs by **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. The EPA may not be able to arrange accommodations without advanced notice.

Throughout this document “we,” “us,” or “our” means the EPA.

Table of Contents

- I. Overview and Basis of Proposal
 - A. Overview of Proposal
 - B. What is the background for the proposed actions?
 - C. What is the statutory authority for the proposed actions?
 - D. How does the EPA determine whether an area has attained the 2008 ozone standard?
- II. What is the EPA proposing and what is the rationale?
 - A. Determinations of Attainment by the Attainment Date
 - B. Extension of Serious Area Attainment Date
 - C. Determinations of Failure to Attain and Reclassification
 - D. Severe Area SIP Revisions
- III. Environmental Justice Considerations
- IV. Statutory and Executive Order Reviews
 - A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
 - B. Paperwork Reduction Act (PRA)
 - C. Regulatory Flexibility Act (RFA)
 - D. Unfunded Mandates Reform Act (UMRA)
 - E. Executive Order 13132: Federalism

- F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
- G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks
- H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
- I. National Technology Transfer Advancement Act (NTTAA)
- J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
- K. Judicial Review

I. Overview and Basis of Proposal

A. Overview of Proposal

The EPA is required to determine whether areas designated nonattainment for an ozone NAAQS attained the standard by the applicable attainment date, and to take certain steps for areas that failed to attain (*see* Clean Air Act (CAA) section 181(b)(2)). For a concentration-based standard, such as the 2008 ozone NAAQS,¹ a determination of attainment is based on a nonattainment area's design value (DV).²

The 2008 ozone NAAQS is met at an EPA regulatory monitoring site when the DV does not exceed 0.075 parts per million (ppm). For areas classified as Serious nonattainment for the 2008 ozone NAAQS, the attainment date was July 20, 2021. Because the DV is based on the three most recent, complete calendar years of data, attainment must occur no later than December 31 of the year prior to the attainment date (*i.e.*, December 31, 2020, in the case of Serious nonattainment areas for the 2008 ozone NAAQS). As such, the EPA's proposed determinations for each area are based upon the complete, quality-assured, and certified ozone monitoring data from calendar years 2018, 2019, and 2020.

¹ Because the 2008 primary and secondary NAAQS for ozone are identical, for convenience, the EPA refers to them in the singular as "the NAAQS" or "the standard."

² A DV is a statistic used to compare data collected at an ambient air quality monitoring site to the applicable NAAQS to determine compliance with the standard. The DV for the 2008 ozone NAAQS is the 3-year average of the annual fourth highest daily maximum 8-hour average ozone concentration. The DV is calculated for each air quality monitor in an area and the area's DV is the highest DV among the individual monitoring sites in the area.

This proposed action addresses seven of the nine nonattainment areas that were classified as Serious for the 2008 ozone NAAQS as of the Serious area attainment date of July 20, 2021.^{3,4} The remaining two areas will be addressed in separate actions, as follows:

(1) The Nevada County (Western Part), California, Serious nonattainment area is not included in this proposed action. On September 17, 2021, the California Air Resources Board (CARB) submitted exceptional events (EE) demonstrations for 11 days in 2018 with exceedances of the standard, and on November 18, 2021, CARB submitted EE demonstrations for five days in 2020 with exceedances of the standard. The EPA's action on these demonstrations may affect a determination of attainment by the attainment date for this area.⁵

³ Prior to July 20, 2021, two additional Serious areas were reclassified from Serious to Severe, and thus are not addressed in this action. The San Diego County, California, nonattainment area was reclassified from Serious to Severe effective July 2, 2021, in response to a voluntary reclassification request submitted by the state of California (*see* 86 FR 29522, June 2, 2021). SIP revisions addressing Severe area requirements for San Diego County will be due no later than July 2, 2022. The Eastern Kern, California, nonattainment area was reclassified from Serious to Severe effective July 7, 2021, in response to a voluntary reclassification request submitted by the state of California (*see* 86 FR 30204, June 7, 2021). In a separate action, the EPA finalized a rule establishing that SIP revisions addressing Severe area requirements for Eastern Kern would be due no later than 18 months from the effective date of reclassification (*i.e.*, January 7, 2023) and that any new RACT rules for Eastern Kern must be implemented as expeditiously as practicable but no later than 18 months following the RACT SIP due date (*i.e.*, July 7, 2024) (*see* 86 FR 47580, August 26, 2021). Both the San Diego County and Eastern Kern areas must attain the 2008 ozone standard by July 20, 2027.

⁴ In separate rulemakings, the EPA is proposing to redesignate all portions of the Chicago-Naperville, IL-IN-WI Serious nonattainment area to attainment for the 2008 ozone NAAQS based upon complete, quality-assured, and certified ozone monitoring data from calendar years 2019, 2020, and 2021: Wisconsin portion (87 FR 6806, February 7, 2022); Indiana portion (87 FR 12033, March 3, 2022); and, Illinois portion (87 FR 13668, March 10, 2022). If all portions of the area are redesignated prior to EPA finalizing this proposal, EPA would not finalize its proposed action for this area.

⁵ CAA section 319(b) defines an exceptional event as an event that (i) affects air quality; (ii) is not reasonably controllable or preventable; (iii) is an event caused by human activity that is unlikely to recur at a particular location or a natural event; and (iv) is determined by the Administrator through the process established in regulation to be an EE. CARB submitted its initial notification and demonstrations pursuant to 40 CFR 50.14, which establishes the process by which states may request that the Administrator determine that air quality monitoring data showing exceedances or violations of the NAAQS that are directly due to an EE may be

The EE initial notification, EE demonstrations, and the EPA’s response to the initial notification are provided in the docket for this rulemaking (Docket ID EPA-HQ-OAR-2021-0741). The proposed action to determine attainment for the Nevada County (Western Part), California, area by the Serious attainment date for the 2008 ozone NAAQS will be addressed in a separate *Federal Register* document.

(2) The Ventura, California, Serious nonattainment area is also not included in this proposed action. On December 8, 2021, CARB submitted EE demonstrations for five days in 2020 with exceedances of the standard . The EPA’s action on these demonstrations may affect a determination of attainment by the attainment date for this area. The EE initial notification, EE demonstrations and the EPA’s response to the initial notification are provided in the docket for this rulemaking. The proposed action to determine attainment for the Ventura County, California, area by the Serious attainment date for the 2008 ozone NAAQS will be addressed in a separate *Federal Register* document.

Table 1 of this action provides a summary of the ozone air quality DVs and the EPA’s proposed air quality-based determinations for the seven Serious areas addressed in this action.

Table 1 — 2008 Ozone NAAQS Serious Nonattainment Area Evaluation Summary

2008 NAAQS nonattainment area	2018-2020 DV (ppm)	2008 NAAQS attained by the Serious area attainment date	2020 4th Highest daily maximum 8-hr average (ppm)	Area failed to attain 2008 NAAQS but state requested 1-year attainment date extension based on 2020 4th highest daily maximum 8-hr average ≤ 0.075 ppm
Chicago-Naperville, IL-IN-WI*	0.077	Failed to Attain	0.079	No

excluded from certain regulatory determinations, including whether a nonattainment area has met the NAAQS by its deadline.

Dallas-Fort Worth, TX**	0.076	Failed to Attain	0.077	No
Denver-Boulder-Greeley-Ft. Collins-Loveland, CO	0.081	Failed to Attain	0.087	No
Greater Connecticut, CT	0.073	Attained	0.071	N/A
Houston-Galveston-Brazoria, TX	0.079	Failed to Attain	0.075	Yes
Morongo Band of Mission Indians	0.099	Failed to Attain	0.103	No
New York-N. New Jersey-Long Island, CT-NJ-NY	0.082	Failed to Attain	0.080	No

* In a letter to the Illinois Environmental Protection Agency dated July 30, 2021, EPA Region 5 indicated that it did not concur on EE demonstrations for the Chicago-Naperville area submitted to the EPA on February 1, 2021; a copy of this letter and the supporting EPA technical review is provided in the docket for this rulemaking.

** In a letter to the Texas Commission on Environmental Quality dated June 30, 2021, EPA Region 6 indicated that it did not concur on EE demonstrations for the Dallas-Fort Worth area submitted to the EPA on May 28, 2021; a copy of this letter and the supporting EPA technical review is provided in the docket for this rulemaking.

The data used to calculate both the 2018-2020 DVs and the 2020 fourth highest daily maximum 8-hour averages are provided in the technical support document (TSD) provided in the docket for this rulemaking.⁶

The EPA proposes to find that the Greater Connecticut, Connecticut, Serious nonattainment area attained by the attainment date based on the 2018-2020 DV presented in Table 1 of this action, which does not exceed 0.075 ppm. The EPA also proposes to deny a request for a 1-year attainment date extension for the Houston-Galveston-Brazoria, Texas, nonattainment area (herein referred to as the Houston area) taking into account applicable statutory and regulatory criteria,⁷ current air quality trends, and potential environmental justice (EJ) concerns within the area (Section II.B of this action). Finally, the EPA proposes to determine that the five remaining Serious areas with a 2018-2020 DV greater than 0.075 ppm did not attain by the attainment date and do not qualify for a 1-year attainment date extension. If the EPA determines that a nonattainment area classified as Serious failed to attain by the attainment date, CAA section 181(b)(2)(B) requires the EPA to publish the identity of each such area in the

⁶ “Technical Support Document Regarding Ozone Monitoring Data — Determinations of Attainment, 1-Year Attainment Date Extensions, and Reclassifications for Serious Areas under the 2008 8-Hour Ozone National Ambient Air Quality Standards (NAAQS),” available in the docket for this rulemaking.

⁷ See CAA section 181(a)(5) and 40 CFR 51.1107.

Federal Register no later than 6 months following the attainment date and identify the reclassification level.

Furthermore, as required under CAA section 181(b)(2)(A), if the EPA finalizes the determinations that these areas failed to attain by the attainment date, they will be reclassified as Severe by operation of law. Also, these determinations will trigger contingency measures approved into the area's SIP. Section 172(c)(9) of the CAA requires that these measures must take effect without any further action by the state or the EPA. Accordingly, implementation of the contingency measures must commence upon the effective date of the EPA's determination that an area failed to timely attain (*see* 80 FR 12264, 12285, March 6, 2015). The reclassified areas will then be subject to the Severe area requirement to attain the 2008 ozone NAAQS as expeditiously as practicable, but not later than July 20, 2027.

Once reclassified as Severe, the relevant states must submit to the EPA the SIP revisions for these areas that satisfy the statutory and regulatory requirements applicable to Severe areas established in CAA section 182(d) and in the 2008 Ozone NAAQS SIP Requirements Rule (*see* 80 FR 12264, March 6, 2015).⁸ Because the deadlines specified in section 182(d) have passed for plan submissions applicable to areas initially classified as Severe for the 2008 ozone NAAQS, the EPA is exercising the discretion granted under CAA section 182(i) to propose adjusting the deadlines for submitting SIP revisions that would otherwise apply under CAA section 182(d). As discussed in Section II.D of this action, the EPA proposes an overall 36-month schedule for both submission of SIP revisions addressing all required elements of a Severe area plan and implementation of any related emissions controls, including reasonably available control

⁸ In *South Coast Air Quality Mgmt. Dist. v. EPA*, 882 F.3d 1138 (D.C. Cir. 2018), the D.C. Circuit granted in part and denied in part petitions for review challenging the 2008 Ozone NAAQS SIP Requirements Rule. Among other things, the D.C. Circuit vacated the portion of the rule that allowed states to select an alternative baseline year (*i.e.*, a year other than 2011) for purposes of calculating reasonable further progress. *See id.* at 882 F.3d at 1152-53. The South Coast Air Quality Management District petitioned the Court for rehearing on this issue and the Court denied that petition. *South Coast*, No. 15-1123, Order No. 1750751 (D.C. Cir. September 14, 2018).

technology (RACT) and transportation-related measures. Under the CAA and the Tribal Authority Rule (TAR),⁹ tribes may, but are not required to, submit implementation plans to the EPA for approval. Accordingly, for the Morongo Band of Mission Indians nonattainment area, the Morongo Tribe would not be required to submit any tribal implementation plan (TIP) revisions applicable to Severe areas established in CAA section 182(d) and in the 2008 Ozone SIP Requirements Rule.

B. What is the background for the proposed actions?

On March 12, 2008, the EPA issued its final action to revise the NAAQS for ozone to establish new 8-hour standards (*see* 73 FR 16436, March 27, 2008). In that action, the EPA promulgated identical revised primary and secondary ozone standards designed to protect public health and welfare that specified an 8-hour ozone level of 0.075 ppm. Specifically, the standards require that the 3-year average of the annual fourth highest daily maximum 8-hour average ozone concentration may not exceed 0.075 ppm.

Effective on July 20, 2012, the EPA designated 46 areas throughout the country as nonattainment for the 2008 ozone NAAQS (*see* 77 FR 30088, May 21, 2012; and 77 FR 34221, June 11, 2012). In a separate action, the EPA assigned classification thresholds and attainment dates based on the severity of each nonattainment area's ozone problem, determined by the area's DV (*see* 77 FR 30160, May 21, 2012).¹⁰ The attainment dates for Serious and Severe nonattainment areas are 9 years and 15 years, respectively, from the effective date of the final designation, July 20, 2012.¹¹ Thus, the attainment date for Serious nonattainment areas for the 2008 ozone NAAQS was July 20, 2021, and the attainment date for Severe areas is July 20,

⁹ *See* CAA section 301(d) and 40 CFR part 49.

¹⁰ Initial classifications for the 46 areas designated nonattainment for the 2008 ozone NAAQS included 36 Marginal, three Moderate, two Serious, three Severe, and two Extreme areas.

¹¹ *See* 40 CFR 51.1103(a) and 80 FR 12264, 12267 (March 6, 2015).

2027. In a separate action effective on September 23, 2019, the EPA reclassified seven of the 11 Moderate areas to Serious for failing to attain the NAAQS by the July 20, 2018, Moderate area attainment date (*see* 84 FR 44238, August 23, 2019). In that action, two Moderate areas received 1-year attainment date extensions. These two areas were later redesignated to attainment (Inland Sheboygan County, Wisconsin — 85 FR 41400, July 10, 2020, and Shoreline Sheboygan County, Wisconsin — 85 FR 41405, July 10, 2020).

C. What is the statutory authority for the proposed actions?

The statutory authority for the actions proposed in this document is provided by the CAA, as amended (42 U.S.C. 7401 *et seq.*). Relevant portions of the CAA include, but are not necessarily limited to, sections 181(a)(5), 181(b)(2) and 182(i).

CAA section 107(d) provides that when the EPA establishes or revises a NAAQS, the Agency must designate areas of the country as nonattainment, attainment, or unclassifiable based on whether an area is not meeting (or is contributing to air quality in a nearby area that is not meeting) the NAAQS, meeting the NAAQS, or cannot be classified as meeting or not meeting the NAAQS, respectively. Subpart 2 of part D of title I of the CAA governs the classification, state planning, and emissions control requirements for any areas designated as nonattainment for a revised primary ozone NAAQS. In particular, CAA section 181(a)(1) requires each area designated as nonattainment for a revised ozone NAAQS to be classified at the same time as the area is designated based on the extent of the ozone problem in the area (as determined based on the area's DV). Classifications for ozone nonattainment areas range from "Marginal" to "Extreme." CAA section 182 provides the specific attainment planning and additional requirements that apply to each ozone nonattainment area based on its classification. CAA section 182, as interpreted by the EPA's implementing regulations at 40 CFR 51.1108 through 51.1117, also establishes the timeframes by which air agencies must submit and implement SIP revisions to satisfy the applicable attainment planning elements, and the timeframes by which nonattainment areas must attain the 2008 ozone NAAQS. For reclassified areas, CAA section

182(i) provides that the Administrator may adjust applicable deadlines other than attainment dates if such adjustment is necessary or appropriate to assure consistency among the required submissions. Therefore, the EPA proposes in Section II.D of this action to adjust the deadlines for SIP revisions for any newly reclassified Severe nonattainment areas.

Section 181(b)(2)(A) of the CAA requires that within 6 months following the applicable attainment date, the EPA shall determine whether an ozone nonattainment area attained the ozone standard based on the area's DV as of that date. Upon application by any state, the EPA may grant a 1-year extension of the attainment date for qualifying areas upon application by any state (Section II.B of this action). In the event an area fails to attain the ozone NAAQS by the applicable attainment date and is not granted a 1-year attainment date extension, CAA section 181(b)(2)(A) requires the EPA to make the determination that the ozone nonattainment area failed to attain the ozone standard by the applicable attainment date, and reclassifies the area by operation of law to the higher of: (1) the next higher classification for the area, or (2) the classification applicable to the area's DV as of the determination of failure to attain.¹² Section 181(b)(2)(B) of the CAA requires the EPA to publish the determination of failure to attain and accompanying reclassification in the *Federal Register* no later than 6 months after the attainment date, which in the case of the Serious nonattainment areas considered in this proposal was January 20, 2022.

Once an area is reclassified, each state that contains a reclassified area is required to submit certain SIP revisions in accordance with its more stringent classification. The SIP revisions are intended to, among other things, demonstrate how the area will attain the NAAQS as expeditiously as practicable, but no later than the Severe area attainment date of July 20, 2027. Per CAA section 182(i), each state containing an ozone nonattainment area reclassified as Severe

¹² All nonattainment areas named in this action that failed to attain by the attainment date would be classified to the next higher classification, Severe. None of the affected areas has a DV that would otherwise place an area in a higher classification (also, *see* CAA section 181(b)(2)(A) exception for Extreme areas).

under CAA section 181(b)(2) shall submit SIP revisions consistent with the schedules contained in CAA section 182(b) for Moderate areas, 182(c) for Serious areas and 182(d) for Severe areas, but the EPA “may adjust applicable deadlines (other than attainment dates) to the extent such adjustment is necessary or appropriate to assure consistency among the required submissions.” In Section II.D of this action, the EPA explains its proposal to adjust such deadlines.

D. How does the EPA determine whether an area has attained the 2008 ozone standard?

Under the EPA regulations at 40 CFR part 50, appendix P, the 2008 ozone NAAQS is attained at a site when the 3-year average of the annual fourth highest daily maximum 8-hour average ambient air quality ozone concentration (*i.e.*, DV) does not exceed 0.075 ppm. When the DV does not exceed 0.075 ppm at each ambient air quality monitoring site within the area, the area is deemed to be attaining the ozone NAAQS. The rounding convention in Appendix P dictates that concentrations shall be reported in parts per million to the third decimal place, with additional digits to the right being truncated. Thus, a computed 3-year average ozone concentration of 0.076 ppm is greater than 0.075 ppm and would exceed the standard, but a DV of 0.0759 is truncated to 0.075 and attains the 2008 ozone NAAQS.

The EPA's determination of attainment is based upon data that have been collected and quality-assured in accordance with 40 CFR part 58 and recorded in the EPA's Air Quality System (AQS).¹³ Ambient air quality monitoring data for the 3-year period preceding the year of the attainment date (2018-2020 for the 2008 ozone NAAQS Serious areas) must meet the data completeness requirements in Appendix P.¹⁴ The completeness requirements are met for the 3-year period at a monitoring site if daily maximum 8-hour average concentrations of ozone are

¹³ The EPA maintains the AQS, a database that contains ambient air pollution data collected by the EPA, state, local, and tribal air pollution control agencies. The AQS also contains meteorological data, descriptive information about each monitoring station (including its geographic location and its operator) and data quality assurance/quality control information. The AQS data is used to (1) assess air quality, (2) assist in attainment/non-attainment designations, (3) evaluate SIPs for nonattainment areas, (4) perform modeling for permit review analysis, and (5) prepare reports for Congress as mandated by the CAA. Access is through the Web site at <https://www.epa.gov/aqs>.

¹⁴ See 40 CFR part 50, appendix P, section 2.3(b).

available for at least 90 percent of the days within the ozone monitoring season, on average, for the 3-year period, and no single year has less than 75 percent data completeness.

II. What is the EPA proposing and what is the rationale?

The EPA proposes this action to fulfill its statutory obligation under CAA section 181(b)(2) to determine whether seven Serious ozone nonattainment areas attained the 2008 ozone NAAQS as of the attainment date of July 20, 2021. The EPA evaluated air quality monitoring data submitted by the appropriate state and local air agencies to determine the attainment status of the seven areas as of the applicable attainment date of July 20, 2021. This section describes the separate determinations and actions being proposed in this document.

A. Determinations of Attainment by the Attainment Date

The EPA proposes to determine, in accordance with CAA section 181(b)(2)(A) and the provisions of the 2008 Ozone NAAQS SIP Requirements Rule (40 CFR 51.1103), that the Greater Connecticut, CT, area attained the 2008 ozone NAAQS by the Serious area attainment date of July 20, 2021, based on its 2018-2020 DV (Table 1 of this action).

The EPA's Clean Data Policy,¹⁵ as codified for the 2008 ozone NAAQS at 40 CFR 51.1118, suspends the requirements for states to submit certain attainment planning SIPs such as the attainment demonstration, including reasonably available control measures (RACM), reasonable further progress (RFP), and contingency measures for so long as an area continues to attain the standard. The EPA determined previously that the Greater Connecticut, CT, area was attaining the 2008 ozone standard and, therefore, suspended the requirements for the state to submit an attainment demonstration and associated RACM, RFP plans, contingency measures, and other attainment planning elements, in accordance with 40 CFR 51.1118.¹⁶ Per that Clean Data Determination, these requirements will remain suspended until the area is redesignated to

¹⁵ More information about the Clean Data Policy and redesignation guidance is available at <https://www.epa.gov/ozone-pollution/redesignation-and-clean-data-policy-cdp>.

¹⁶ For the Greater Connecticut, CT, area, the final 2008 ozone NAAQS Clean Data Determination was effective on August 12, 2020 (85 FR 41924, July 13, 2020).

attainment for the 2008 ozone NAAQS (at which time the submission requirements would no longer apply), or the EPA determines that the area has violated the 2008 ozone standard, at which time the Clean Data Determination would be rescinded and the state would again be required to submit such Serious area elements for the Greater Connecticut, CT, nonattainment area.

This proposed determination of attainment by the attainment date does not constitute formal redesignation to attainment as provided for under CAA section 107(d)(3). Redesignations to attainment require the states responsible for ensuring attainment and maintenance of the NAAQS to meet the requirements under CAA section 110 and part D, including submitting for EPA approval a maintenance plan to ensure continued attainment of the standard for 10 years following redesignation, as provided under CAA section 175A.

The EPA requests comment on this proposed determination of attainment by the attainment date for the Greater Connecticut, CT, area. Further technical analysis supporting this proposed determination is in the TSD for this action, which is provided in the docket for this rulemaking.

B. Extension of Serious Area Attainment Date

1. Summary of proposed action for the Houston area

By way of letter dated April 5, 2021, the Texas Commission on Environmental Quality (TCEQ) requested an extension of the Houston area Serious area attainment date, which is provided in the docket for this rulemaking.¹⁷ In this action, the EPA is proposing to deny TCEQ's request, but is also soliciting comment on whether it would be appropriate to grant the state's request.

By proposing to deny the requested 1-year attainment date extension for the Houston area and determining that the area failed to attain by the Serious area attainment date, this action, if

¹⁷ Baer, Tonya, Director, Office of Air, TCEQ. "Request for a One-Year Extension of the Houston-Galveston-Brazoria (HGB) 2008 Eight-Hour Ozone Standard Attainment Date." April 5, 2021.

finalized, would result in the area being reclassified as Severe. As described below, CAA section 181(a)(5) makes clear that the Administrator may exercise reasoned discretion to deny a request for a 1-year extension even where the statutory criteria for an extension are met. Here, even though the state meets the two statutory criteria for an extension, we propose to find that other considerations weigh in favor of not granting the state's request for an extension. First, as discussed in Section II.B.2.b of this action, preliminary data indicate that the area will not attain by an extended attainment date of July 20, 2022, nor is the area likely to qualify for a second extension. The EPA is concerned that extending the July 20, 2021, attainment date by an additional year, when preliminary data indicate the area will not reach attainment with that extension, would delay attainment planning requirements (including emissions control requirements) that are necessary for the area to expeditiously attain the NAAQS. Second, as discussed in Section II.B.2.b of this action, screening level analyses of portions of the Houston area indicate that individuals residing and working near the Houston Ship Channel and violating regulatory ozone monitoring sites may already be exposed to a significant pollution burden. Delays in implementing the more stringent requirements associated with reclassification would delay related air quality improvements and human health benefits for residents across the Houston area, including those that may already bear a disproportionate burden of pollution. Under these circumstances, we propose that it is a reasonable exercise of the Administrator's discretion under CAA section 181(a)(5) to deny the state's request.

2. Proposal to deny the requested 1-year attainment date extension and determine the Houston area failed to timely attain.

a. Summary and legal background

Section 181(a)(5) of the CAA provides the EPA the discretion to (*i.e.*, "the Administrator may") extend an area's applicable attainment date by 1 additional year upon application by any state if the state meets the two criteria under CAA section 181(a)(5) as interpreted by the EPA in 40 CFR 51.1107.

With respect to the first criterion, the EPA interprets the provision as having been satisfied if a state can certify that it is in compliance with its approved implementation plan. *See Delaware Dept. of Nat. Resources and Env'tl. Control v. EPA*, 895 F.3d 90, 101 (D.C. Cir. 2018) (holding that the CAA requires only that an applying state with jurisdiction over a nonattainment area comply with the requirements in its applicable SIP, not every requirement of the Act); *see also Vigil v. Leavitt*, 381 F.3d 826, 846 (9th Cir. 2004). A state may meet this requirement by certifying its compliance, and in the absence of such certification, the EPA may make a determination as to whether the criterion has been met. *See Delaware*, 895 F.3d at 101-102. TCEQ certified that it is complying with its applicable SIP in its attainment date extension request, which is provided in the docket for this rulemaking.

With respect to the second criterion, the EPA has interpreted CAA section 181(a)(5)(B)'s exceedance-based air quality requirement for purposes of a concentration-based standard like the 2008 8-hour ozone NAAQS (*see* 40 CFR 51.1107). For the 2008 ozone NAAQS, the EPA has interpreted the air-quality criterion of CAA section 181(a)(5)(B) to mean that, for the first attainment date extension, an area's fourth highest daily maximum 8-hour value for the attainment year must not exceed the level of the standard (0.075 ppm).¹⁸ The Houston area's fourth highest daily maximum 8-hour value for 2020 was 0.075 ppm.

However, CAA section 181(a)(5) gives the EPA the discretion to either grant or deny a state's requested 1-year attainment date extension even where an area meets both of the statutory criteria. Specifically, that provision states, "Upon application by any State, the Administrator *may* extend for 1 additional year . . . [the attainment date] if" the two criteria are met. CAA section 181(a)(5) (emphasis added). Under this provision, the two enumerated criteria are necessary conditions, but, by granting discretion, the statute contemplates that in certain circumstances, it may still be reasonable to deny a state's request even if both conditions are met.

¹⁸ *See* 40 CFR 51.1107 pertaining to determining eligibility under CAA section 181(a)(5)(B) for the first and the second 1-year attainment date extensions for the 2008 ozone NAAQS.

The D.C. Circuit recently upheld the EPA’s interpretation of a similarly constructed CAA provision, finding that “[t]he statute requires this showing to be made, but once it has been made, the statute provides only that EPA ‘may’ expand the region, not that it ‘shall’ or ‘must’ do so. . . . In other words, this requirement is a necessary but not sufficient condition for expansion of the region.” *New York v. EPA*, 921 F.3d 257, 298 (D.C. Cir. 2019) (internal citations omitted).

With respect to CAA section 181(a)(5), the D.C. Circuit has acknowledged that the provision grants the EPA discretion to look beyond the enumerated factors. *Delaware*, 895 F.3d 90, 100 (D.C. Cir. 2018) (noting that despite its holding that the EPA was not *required* to determine every state in a multi-state nonattainment area’s compliance with its SIP under section 181(a)(5)(A), “EPA nevertheless *retained discretion* to consider Delaware’s compliance, given that the Act only dictates that EPA ‘may’ grant an extension when the statute’s requirements are met”) (emphasis added). The court added that the EPA’s exercise of discretion under this provision is subject to arbitrary-and-capricious review, such that the Agency “must cogently explain why it has exercised *its discretion* in a given manner.” *Id.* (emphasis in original) (citing *Motor Vehicle Mfrs. Ass’n of the U.S., Inc. v. State Farm Auto. Ins. Co.*, 463 U.S. 29, 48 (1983)). The statute does not compel the Agency to grant an extension when the two criteria are met, and it is reasonable to exercise our discretionary authority in light of the Act’s goals.

CAA section 181(a)(5), which establishes the extension process for ozone nonattainment areas, mirrors the extension process established in the general nonattainment area provisions at CAA section 172(a)(2)(C), and is appropriately read in light of the Act’s focus on the expeditious attainment of the NAAQS—both in subpart 2 specifically¹⁹ and in Part D more generally. The ultimate goal of Part D of the CAA, which governs planning requirements for nonattainment areas, and the responsibility of states and the EPA under that section of the Act, is to drive progress in nonattainment areas towards attainment as expeditiously as practicable but

¹⁹ CAA section 181(a)(1).

by no later than the maximum attainment dates prescribed by the Act.²⁰ We think the EPA's discretion under the extension provision should also be exercised consistent with the broader purposes of the Act "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population"²¹ and Congress's "primary goal" in enacting the Clean Air Act to encourage and promote actions "for pollution prevention."²² The EPA therefore proposes to evaluate TCEQ's request mindful of the intent of the CAA's Part D nonattainment planning requirements to promote expeditious attainment to protect public health, as well as the Act's broader purposes.

In proposing this approach, we recognize that the CAA, and in particular those provisions of the Act related to implementation of requirements that are designed to achieve criteria pollutant standards (*i.e.*, attain the NAAQS), embodies principles of cooperative federalism. After the EPA sets the NAAQS to be protective of human health and the environment, the states, subject to the general nonattainment planning requirements of part D, subpart 1 and the pollutant-specific planning requirements of the additional subparts (in this case, part D, subpart 2), are generally permitted flexibility in deciding how to achieve those standards. However, within this context, we think the discretion provided by CAA section 181(a)(5) permits the EPA to weigh a state's prerogative to plan for attainment with other important considerations such as ensuring expeditious attainment of the NAAQS or mitigating particular impacts an action might have. CAA section 181(a)(5) is intended to provide flexibility where an area is close to achieving

²⁰ See, e.g. CAA section 171(1) (defining reasonable further progress as annual incremental reductions in emissions of the relevant air pollutant . . . for the purpose of ensuring attainment of the applicable [NAAQS] by the applicable date"); CAA section 172(a)(2)(A) (establishing attainment dates for the primary NAAQS as "the date by which attainment can be achieved as expeditiously as practicable, but no later than 5 years from the date such area was designated nonattainment under [107(d)] of this title . . ."); CAA section 172(c)(1) (requiring implementation of all reasonably available control measures as expeditiously as practicable and that plans provide for attainment of the NAAQS); CAA section 172(c)(6) (requiring state plans to include enforceable emission limitations, and such other control measures, means or techniques, as well as schedules and timetables for compliance, as may be necessary or appropriate to provide for attainment of the NAAQS by the applicable attainment date).

²¹ CAA section 101(b)(1).

²² CAA section 101(c).

attainment and can likely do so with a bit more time, but we do not think it is appropriate to employ that process in a way that frustrates the goal of expeditious attainment, particularly where additional burden from delaying expeditious attainment would fall on already overburdened populations, as will be discussed later in this section. It is fully consistent with EPA's role in overseeing the state planning process to exercise its discretion to ensure that extensions under CAA section 181(a)(5) advance, rather than frustrate, the Act's ultimate goal of expeditious attainment to protect public health.

In this case, we do not think an attainment date extension would serve the purposes of the NAAQS extension provision, Part D's focus on timely attainment, or the Act's broader emphasis on public health protection. As discussed further in section II.B.2.b, Houston does not need only a little additional time to come into attainment of the 2008 ozone NAAQS; even with an extension, preliminary air quality data for 2021 indicate that the area will not attain. Granting an extension under these circumstances would amount only to delaying today's determination and reclassification, and ultimately could delay expeditious attainment of the NAAQS. As discussed further in section II.B.2.c., we also think it is reasonable for the EPA to consider whether those who will bear the additional burden caused by the extension are already overburdened by pollution, and we provide screening analyses indicating populations in the Houston area may be exposed to higher levels of ozone pollution and other burdens of pollution, relative to other Americans. We therefore propose to deny TCEQ's request for an extension, after considering that it is not prudent in this case to delay controls that are designed to achieve expeditious attainment of the NAAQS, and that delay would impact populations that may already bear a disproportionately high pollution burden, relative to the rest of the United States.

b. Air quality trends

The NAAQS are set at levels necessary to protect public health with an adequate margin of safety and to protect public welfare, and expeditious attainment of the standards would result in public health benefits across the Houston area. As shown in Table 1 of this action, the

Houston nonattainment area did not attain the 2008 ozone NAAQS by the Serious area attainment date of July 20, 2021, based on its final 2018-2020 DV of 0.079 ppm. Moreover, while the Houston area meets the specific air quality criterion for an initial 1-year extension under 40 CFR 51.1107(a)(1), the area met that criterion with no room to spare — its attainment year fourth highest daily maximum 8-hour average concentration was 0.075 ppm (Table 1 of this action), *i.e.*, right at the level of the 2008 ozone NAAQS. Preliminary 2021 ozone monitoring data indicate the area likely will not attain the 2008 ozone NAAQS by July 20, 2022, nor qualify for a second 1-year extension. As of December 31, 2021, the Houston area’s preliminary 2019-2021 DV was 0.077 ppm and the preliminary 2021 fourth highest daily maximum 8-hour value was 0.083 ppm.²³ With respect to a second 1-year extension, in order to qualify, an area's fourth highest daily maximum 8-hour value, averaged over both the original attainment year and the first extension year, must be 0.075 ppm or less (40 CFR 51.1107(a)(2)). Based on 2021 preliminary data, the average of the two extension years for Houston would be 0.079 ppm.²⁴

In addition, even if Houston were able to qualify for a second extension to July 20, 2023, historical air quality trends suggest it could be difficult for the area to attain the 2008 ozone standard by that date. As shown in Table 2, historical DVs for the area (2014-2020) have fluctuated between 0.078 and 0.081 ppm without a consistent downward trend during this time period,²⁵ and the area would need a DV of 0.075 ppm to attain.

Table 2—Houston Nonattainment Area Historical Ozone DVs

Values (ppm) for DV Period						
2012-2014	2013-2015	2014-2016	2015-2017	2016-2018	2017-2019	2018-2020
0.080	0.080	0.079	0.081	0.078	0.081	0.079

We note that in addition to the state’s obligation to attain the 2008 ozone NAAQS, Houston is also well out of attainment of the 2015 ozone NAAQS, which is set at 0.070 ppm.

²³ Current TCEQ data report is available at https://www.tceq.texas.gov/cgi-bin/compliance/monops/8hr_attainment.pl.

²⁴ $0.083 \text{ ppm [2021 preliminary fourth high]} + 0.075 \text{ ppm [2020 fourth high]} = 0.158/2 = 0.079 \text{ ppm}$.

²⁵ Also at <https://www.epa.gov/air-trends/air-quality-design-values>.

CAA emissions reduction measures associated with reclassification that are designed to help Houston achieve attainment of the less stringent 2008 ozone NAAQS would also aid the area in attaining the newer, more stringent 2015 ozone standard. The EPA is proposing in a separate action to find that the Houston area failed to attain the 2015 ozone NAAQS by its Marginal area attainment date of August 3, 2021; if finalized, the area would be reclassified as Moderate for the 2015 ozone NAAQS and subject to a new attainment date of August 3, 2024, for that NAAQS. We are concerned that granting the state's request for an attainment date extension for the 2008 ozone NAAQS, when the area's 2020 fourth high daily maximum average concentration just barely met the regulatory criterion and the preliminary 2021 fourth high daily maximum average concentration is above the regulatory criterion, would not facilitate the area's expeditious attainment of that standard. As noted, the purpose of the Act's extension provisions is to provide limited flexibility in the attainment date for areas that are close to attaining the NAAQS and likely could do so with a bit more time. We do not think that purpose is served by extending the attainment date where the preliminary data indicate that an extension that would simply delay a determination that the area failed to timely attain the 2008 ozone NAAQS, which would in turn delay the implementation of Severe area permitting and control requirements that may be necessary for the area's attainment.

c. Environmental justice

Where the statute has provided the Administrator a discretionary authority in the attainment date extension provisions, we think it is reasonable to consider the existing environmental burden in the area in question, and what impact our action may have on that burden. Granting the state's request would by definition prolong the ozone air quality problem; it would extend the deadline by which the Houston area must achieve the applicable air quality standards that were set at a level to protect public health (and in fact have been further tightened since). Consideration of the existing pollution burden already borne by the population that will be impacted by our action is a relevant factor of reasoned decisionmaking. The EPA therefore

performed screening analyses to better understand the pollution burdens borne by the population that will be affected by the requested extension in order to fully understand the potential public health ramifications of the extension. That analysis demonstrated that there are populations in the Houston area that are potentially already significantly overburdened by pollution compared to the wider U.S. population, and who would be adversely affected by an extension of the attainment date.

Our proposed action is also consistent with multiple executive orders addressing environmental justice as well as an April 7, 2021 directive by the EPA Administrator.^{26,27} In that directive, the Administrator instructed all EPA offices to take immediate and affirmative steps to incorporate EJ considerations into their work, including assessing impacts to pollution-burdened, underserved, and Tribal communities in regulatory development processes and considering regulatory options to maximize benefits to these communities.²⁸

Screening Analyses

To conduct the screening analyses, we used the EJSCREEN tool, an EJ mapping and screening tool that provides EPA with a nationally consistent dataset and approach for combining various environmental and demographic indicators, to undertake these analyses.²⁹ The EJSCREEN tool presents these indicators at a Census block group (CBG) level.³⁰ An individual

²⁶ Message from the EPA Administrator, Our Commitment to Environmental Justice (issued April 7, 2021) at <https://www.epa.gov/sites/production/files/2021-04/documents/regan-messageoncommitmenttoenvironmentaljustice-april072021.pdf>.

²⁷ See EO 13985 (“Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,” issued January 20, 2021, available at <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/> and 86 FR 7009 (January 25, 2021)) and EO 12898 (“Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations,” issued February 11, 1994, available at https://www.epa.gov/sites/production/files/2015-02/documents/exec_order_12898.pdf and 59 FR 7629 (February 16, 1994)).

²⁸ The EPA has defined environmental justice as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation and enforcement of environmental laws, regulations and policies.” See <https://www.epa.gov/environmentaljustice/learn-about-environmental-justice>.

²⁹ EJ SCREEN tool is available at <https://www.epa.gov/ejscreen/what-ejscreen>.

³⁰ See <https://www.census.gov/programs-surveys/geography/about/glossary.html>.

CBG is a cluster of contiguous blocks within the same census tract and generally contains between 600 and 3,000 people. EJSCREEN is not a tool for performing in-depth risk analysis, but is instead a screening tool that provides an initial representation of indicators related to EJ and is subject to uncertainty in some underlying data (*e.g.*, some environmental indicators are based on monitoring data which are not uniformly available; others are based on self-reported data).³¹ To help mitigate this uncertainty, we have summarized EJSCREEN data within larger “buffer” areas covering multiple block groups and representing the average resident within the buffer areas, as well as a summary report covering the 8-county Houston nonattainment area included in the docket for this rulemaking. We present ozone DVs for 2018-2020 as an indicator of potential ozone pollution exposure,³² as well as additional EJSCREEN environmental indicators to help screen for locations where residents may experience a higher overall pollution burden than would be expected for a block group with the same total population. These additional indicators of overall pollution burden include estimates of ambient particulate matter (PM_{2.5}) concentration, a score for traffic proximity and volume, percentage of pre-1960 housing units (lead paint indicator), and scores for proximity to Superfund sites, risk management plan (RMP) sites, and hazardous waste facilities.³³ EJSCREEN also provides information on

³¹ In addition, EJSCREEN relies on the five-year block group estimates from the U.S. Census American Community Survey. The advantage of using five-year over single-year estimates is increased statistical reliability of the data (*i.e.*, lower sampling error), particularly for small geographic areas and population groups. For more information, see https://www.census.gov/content/dam/Census/library/publications/2020/acs/acs_general_handbook_2020.pdf.

³² The ozone metric in EJSCREEN represents the summer seasonal average of daily maximum 8-hour concentrations (parts per billion, ppb) and was not used in our EJ analyses because it does not represent summertime peak ozone concentrations, which are instead represented here by the DV metric. Ozone DVs are the basis of attainment determinations in this proposed action, and in this case we consider it a more informative indicator of pollution burden relative to the overall Houston area and the U.S. as a whole.

³³ For additional information on environmental indicators and proximity scores in EJSCREEN, see “EJSCREEN Environmental Justice Mapping and Screening Tool: EJSCREEN Technical Documentation,” Chapter 3 and Appendix C (September 2019) at https://www.epa.gov/sites/default/files/2021-04/documents/ejscreen_technical_document.pdf.

demographic indicators, including percent low-income, communities of color, linguistic isolation, and less than high school education.

We focused these analyses on portions of the Houston nonattainment area in close proximity to the Port of Houston's Ship Channel and its industrial sources and activities, and on portions of the Houston nonattainment area surrounding violating ozone regulatory air quality monitor sites. We examined the extent to which residents living in these areas are exposed to high ozone concentrations and may be exposed to other pollution sources, relative to the Houston area and the U.S. population as a whole.³⁴

Screening Analysis Results for Port of Houston Ship Channel

We elected to center an analysis on the Port of Houston's Ship Channel because we are aware of the dense concentration of industrial and commercial facilities and infrastructure located along the Channel.³⁵ Houston and the surrounding areas experience some of the highest economic and population growth rates in the U.S., and the Port of Houston region is ranked the highest in the U.S. for total waterborne cargo tonnage. Each year, more than 247 million tons of cargo move through the greater Port of Houston, carried by more than 8,200 vessels and 215,000 barges. The Port of Houston includes the public terminals owned, managed, operated, and leased by the Port of Houston Authority and the 150-plus private industrial companies along the 52-mile-long Houston Ship Channel. Typical sources of air emissions from port-related operations include heavy-duty vehicles, cargo handling equipment, locomotives, harbor vessels, ocean-going vessels, and liquids loading and unloading operations.

³⁴ Ozone pollution is not generally directly emitted but is formed near the ground when precursor pollutants chemically react in sunlight; these ozone precursors include nitrogen oxides (NO_x) and volatile organic compounds (VOCs) emitted by vehicles and industrial sources, and can include VOCs that are hazardous air pollutants (HAPs).

³⁵ The American Society of Civil Engineers describes the Houston Ship Channel as stretching from the Gulf of Mexico through Galveston Bay and up the San Jacinto River, ending four miles east of downtown Houston, and supporting the second largest petrochemical complex in the world; see <https://www.asce.org/project/houston-ship-channel/>.

The EPA prepared three EJSCREEN reports covering buffer areas of approximately 1-, 2- and 3-mile diameters around the analyzed section of the Channel, and a report covering the 8-county Houston nonattainment area.³⁶ The analyzed section falls between the Channel's upstream terminus (referred to as the Turning Basin) and a selected downstream boundary corresponding with the Washburn Tunnel (Federal Road), which connects the Houston suburbs of Galena Park and Pasadena. In addition to residential sections of Galena Park and Pasadena, the buffer areas also include, *e.g.*, parts of the Second Ward, Greater East End, Pecan Park and Harrisburg/Manchester communities. Table 3 presents a summary of results from the EPA's screening-level analysis for the Houston Ship Channel area compared to the overall Houston nonattainment area and the U.S. as a whole (the four detailed EJSCREEN reports are provided in the docket for this rulemaking). Table 3 also includes ozone DVs that were not reported by EJSCREEN (see Footnote 28).

Table 3—Houston Ship Channel EJSCREEN Analysis Summary

Variables	Values for Buffer Areas (diameter), the Houston Nonattainment Area, and the U.S. (percentile within U.S. where indicated)				
	1 mile	2 miles	3 miles	Houston Area	U.S.
<i>Pollution Burden Indicators</i>					
Ozone DV for 2018-2020*	69 ppb (78th %ile)	69 ppb (78th %ile)	69 ppb (78th %ile)	79 ppb (95th %ile)	65 ppb (—)
Particulate matter (PM _{2.5}), annual average	9.97 µg/m ³ (89th %ile)	9.93 µg/m ³ (89th %ile)	9.92 µg/m ³ (89th %ile)	9.25 µg/m ³ (72nd %ile)	8.55µg/m ³ (—)
Traffic proximity and volume score**	620 (72nd %ile)	1100 (83rd %ile)	1300 (85th %ile)	245 (48th %ile)	750 (—)
Lead paint (percentage pre-1960 housing)	0.65% (85th %ile)	0.61% (83rd %ile)	0.59% (82nd %ile)	0.09% (36th %ile)	0.28% (—)
Superfund proximity score**	0.26 (90th %ile)	0.31 (91st %ile)	0.35 (92nd %ile)	0.09 (56th %ile)	0.13 (—)
RMP proximity score**	4.1 (98th %ile)	4.5 (98th %ile)	4 (97th %ile)	0.95 (69th %ile)	0.74 (—)
Hazardous waste proximity score**	4.7 (83rd %ile)	4.8 (83rd %ile)	4.5 (82nd %ile)	0.71 (41st %ile)	5 (—)
<i>Demographic Indicators</i>					
People of color population	95% (94th %ile)	95% (93rd %ile)	93% (92nd %ile)	49% (64th %ile)	39% (—)
Low-income population	59%	56%	55%	30%	33%

³⁶ The Houston-Galveston-Brazoria, Texas nonattainment area for the 2008 ozone NAAQS is comprised of the following eight counties: Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller County. *See also* <https://www3.epa.gov/airquality/greenbook/hbcs.html#TX>.

	(87th %ile)	(85th %ile)	(84th %ile)	(51st %ile)	(—)
Linguistically isolated population	31% (97th %ile)	30% (97th %ile)	26% (96th %ile)	6% (72nd %ile)	4% (—)
Population with less than high school education	48% (97th %ile)	46% (97th %ile)	44% (97th %ile)	15% (67th %ile)	13% (—)
Population under 5 years of age	7% (66th %ile)	8% (69th %ile)	8% (72nd %ile)	7% (63rd %ile)	6%
Population over 64 years of age	12% (40th %ile)	10% (29th %ile)	9% (27th %ile)	12% (38th %ile)	15% (—)

* The buffer areas are assigned the DV for the single monitor site within the analyzed buffer diameter (Clinton). The Houston nonattainment area DV is based on the highest DV among the individual monitor sites in the area (Aldine).

** The traffic proximity and volume indicator is a score calculated by daily traffic count divided by distance in meters to the road. The Superfund proximity, RMP proximity, and hazardous waste proximity indicators are all scores calculated by site or facility counts divided by distance in kilometers.

Our screening-level analysis of the Houston Ship Channel area strongly suggests that communities within the selected buffer areas bear a disproportionate overall pollution burden as indicated by high percentile values for ozone and multiple EJSCREEN environmental indicators.

Screening Analysis Results for Violating Regulatory Ozone Monitor Sites

The EPA also ran an EJSCREEN analysis focused on areas within the Houston nonattainment area that are highly exposed to ozone pollution. Specifically, we selected representative locations by examining historical DV trends for the 20 regulatory ozone monitoring sites in the Houston area (five most recent DV periods covering 2014-2016 to 2018-2020), identifying the monitor sites most frequently included in the top three highest DVs, and preparing 1-mile diameter buffer area reports for the resulting four sites. The four analyzed monitor sites and their number of top-3 DV periods were Aldine (5 of 5 DV periods), Bayland Park (4 of 5 DV periods), Galveston 99th Street (3 of 5 DV periods), and Conroe Relocated (2 of 5 DV periods).³⁷

Table 4 presents a summary of results from the EPA's screening-level analysis of 1-mile diameter buffer areas around the four analyzed regulatory ozone monitor sites in the Houston area compared to the overall Houston nonattainment area and the U.S. as a whole (detailed

EJSCREEN reports are provided in the docket for this rulemaking). Table 4 also presents ozone DV information for the monitor sites (see Footnote 28).

Table 4—Houston Area Violating Ozone Monitor EJSCREEN Analysis Summary

Variables	Values for Monitor Site (1-mile Buffer), the Houston Nonattainment Area, and the U.S. (percentile within U.S. where indicated)					
	Aldine	Bayland Park	Galveston 99th St.	Conroe Relocated	Houston Area	U.S.
<i>Pollution Burden Indicators</i>						
Ozone DV for 2018-2020	79 ppb (95th %ile)	76 ppb (92nd %ile)	74 ppb (90th %ile)	74 ppb (90th %ile)	79 ppb* (95th %ile)	65 ppb (—)
Particulate matter (PM _{2.5}), annual average	10 µg/m ³ (90th %ile)	9.95 µg/m ³ (89th %ile)	8 µg/m ³ (32nd %ile)	9.62 µg/m ³ (84th %ile)	9.25 µg/m ³ (72nd %ile)	8.55µg/m ³ (—)
Traffic proximity and volume score**	800 (78th %ile)	870 (79th %ile)	380 (62nd %ile)	84 (32nd %ile)	245 (48th %ile)	750 (—)
Superfund proximity score**	0.092 (63rd %ile)	0.14 (78th %ile)	0.1 (68th %ile)	0.83 (97th %ile)	0.09 (56th %ile)	0.13 (—)
RMP proximity score**	0.13 (23rd %ile)	0.37 (53rd %ile)	1.2 (80th %ile)	0.97 (75th %ile)	0.95 (69th %ile)	0.74 (—)
Hazardous waste proximity score**	2.1 (66th %ile)	0.94 (49th %ile)	0.083 (11th %ile)	1.2 (53rd %ile)	0.71 (41st %ile)	5 (—)
<i>Demographic Indicators</i>						
People of color population	96% (94th %ile)	84% (86th %ile)	31% (50th %ile)	38% (56th %ile)	49% (64th %ile)	39% (—)
Low-income population	61% (89th %ile)	60% (88th %ile)	35% (60th %ile)	28% (49th %ile)	30% (51st %ile)	33% (—)
Linguistically isolated population	54% (99th %ile)	29% (97th %ile)	1% (50th %ile)	7% (79th %ile)	6% (72nd %ile)	4% (—)
Population with less than high school education	54% (98th %ile)	33% (92nd %ile)	8% (47th %ile)	19% (77th %ile)	15% (67th %ile)	13% (—)
Population under 5 years of age	8% (71st %ile)	9% (81st %ile)	2% (11th %ile)	7% (65th %ile)	7% (63rd %ile)	6% (—)
Population over 64 years of age	9% (24th %ile)	7% (16th %ile)	17% (66th %ile)	15% (55th %ile)	12% (38th %ile)	15% (—)

* The Houston nonattainment area DV for 2018-2020 is based on the highest DV among the individual monitor sites in the area (Aldine).

** The traffic proximity and volume indicator is a score calculated by daily traffic count divided by distance in meters to the road. The Superfund proximity, RMP proximity, and hazardous waste proximity indicators are all scores calculated by site or facility counts divided by distance in kilometers.

Ozone DV information for the four Houston area ozone monitor sites with the highest historical ozone DVs indicates that these areas bear a disproportionate ozone pollution burden when compared to the U.S. as a whole. The average U.S. ozone DV for the 2018-2020 timeframe was 65.4 ppb; for the four Houston monitors examined, ozone DVs were 9-14 ppb higher during the same time period. We also note that, while Table 4 indicates the Houston area ozone DV for 2018-2020 was 0.079 ppm, that DV is based on the reading from the Aldine monitor (area DVs

are based on the monitor in the area with the highest recorded values). Ozone air quality near these monitors is considerably worse than the rest of Houston; for the five most recent DV periods considered in these analyses, approximately 75 percent of the Houston area ozone monitor sites have had attaining DVs.³⁸ Residents living near these monitors are therefore subject to ozone concentrations that are well in excess of the national average, and high even relative to the rest of Houston. The screening-level analysis with respect to other pollution burdens (as reflected in the environmental indicators from EJSCREEN) shows that communities around violating monitors may also experience significant burdens with respect to, *e.g.*, particulate matter pollution and proximity to traffic.

Conclusion

As discussed earlier, screening analyses for portions of the Houston nonattainment area indicated that there are populations in the area that may be exposed to a significant and disproportionate burden of ozone pollution and other sources of pollution, relative to the greater Houston area and the U.S. as a whole. Recognizing that CAA section 181(a)(5) permits some exercise of discretion beyond the enumerated criteria, the EPA believes it is appropriate to consider existing pollution burdens in the area when deciding whether to grant an extension. Given the EPA's findings regarding the area's air quality trends, our consideration of existing pollution burdens in the area weighs in favor of electing the more protective approach of not extending the attainment date.

d. Stakeholder input and Agency outreach

EPA's screening analyses for both the Houston Ship Channel and areas surrounding violating ozone monitors indicated the presence of significant populations of low-income

³⁸ See Table 5 (Site Status) of the spreadsheet containing EPA's final 2020 Ozone Design Values report, available at <https://www.epa.gov/air-trends/air-quality-design-values#report> and provided in the docket for this rulemaking.

individuals, communities of color, individuals with less than a high school education, and linguistically isolated individuals, relative to the greater Houston area and to the U.S. as a whole.

As part of the EPA's outreach for this proposed rule, we will notify our national EJ contacts and the advocacy organizations with whom we have engaged previously on Houston-area EJ concerns about the availability of the pre-publication version of this proposed rule, the conduct of a 60-day public comment period, and the anticipated timing of a virtual public hearing (see the **SUPPLEMENTARY INFORMATION** section of this document). The EPA will also make available a fact sheet in English and Spanish-language versions for this proposed rule, explaining the proposed actions and their implications in non-technical terms to better engage a broad audience that includes residents that may be particularly impacted by existing pollution or would be impacted by the EPA's determination. We are hopeful these steps will improve the capacity of all residents in the Houston area to participate in this proposed rulemaking.³⁹

e. Proposed action

Based on the analysis of air quality trends and EJ considerations presented above, the EPA proposes to deny the requested 1-year extension of the attainment date and to find that the Houston area failed to attain by the July 20, 2021, Serious area attainment date. This proposal is based on a number of considerations that, taken together, weigh in favor of proposing to deny the state's request, even though the area meets the statutory criteria for an extension. Specifically, the EPA's assessment of air quality trends in the Houston area indicates the area likely will not qualify for a second 1-year extension of the attainment date, nor will the area likely timely attain by a first extended attainment date of July 20, 2022. We are also cognizant of the area's obligations to attain the newer, more stringent 2015 standard. In addition, the EPA's screening-

³⁹ For additional discussion of factors affecting public participation in the environmental decision-making process *see* "Guidance on Considering Environmental Justice During the Development of Regulatory Actions," Part 1, Section F (May 2015) at <https://www.epa.gov/sites/default/files/2015-06/documents/considering-ej-in-rulemaking-guide-final.pdf>.

level analyses of communities near the Houston Ship Channel and of communities around violating ozone regulatory monitor sites in the Houston area indicate communities that are exposed to elevated ozone levels relative to other parts of Houston and the country, and may be exposed to additional pollution burdens as well.

Denying the extension request and determining that the Houston area failed to attain the 2008 ozone NAAQS by its attainment date would, by operation of law, reclassify the area to Severe for the 2008 ozone NAAQS. Per Congress's scheme for ozone implementation under part D, subpart 2 of the CAA, such a reclassification would trigger a set of more protective Severe area attainment planning requirements. Such requirements would include the immediate implementation of more stringent Severe area nonattainment new source review (NNSR) permitting requirements for new and modified major stationary sources. These Severe area NNSR permitting requirements would expand required implementation of lowest achievable emission rate (LAER) to smaller sources (changing the major source threshold of potential to emit from 50 tpy to 25 tpy) in addition to imposing more stringent requirements to offset new emissions with emissions reductions from existing sources (offset ratio of 1.3:1, rather than 1.2:1).⁴⁰ The reclassification would also require Texas to develop, submit, and implement RACT controls on additional sources, by lowering the major source threshold for RACT applicability to the potential to emit 25 tpy (CAA section 182(d)).

The more stringent Severe area attainment planning requirements are designed to promote expeditious attainment of the ozone NAAQS, which would benefit all residents of the Houston area. As discussed previously, preliminary air quality data for 2021 indicates that the area likely will not attain by the extended attainment date nor will it likely qualify for a second extension. Given the preliminary 2021 data and air quality trends in the area, it is likely that the Houston area will be subject to these more stringent requirements and the question before the

⁴⁰ NNSR major source thresholds and LAER are defined in 40 CFR 51.165(a)(1)(iv)(A) and (a)(1)(xiii), respectively; emission offset ratios are defined in appendix S to 40 CFR part 51 paragraph IV.G.2.

Agency is whether to impose them sooner rather than later. We propose that avoiding delay of the requirements is appropriate under these circumstances in order to facilitate the area attaining as expeditiously as practicable, and applying a protective approach is particularly warranted where the Agency has identified populations that may already be overburdened with pollution.

The EPA is soliciting comments on our proposal to deny TCEQ's requested 1-year attainment date extension for the Houston Serious nonattainment area.

3. Solicitation of comment on granting the requested 1-year attainment date extension for the Houston area

As noted above, we have evaluated the information submitted by TCEQ and the information indicates that the Houston area meets the two statutory criteria for the 1-year extension under CAA section 181(a)(5) and 40 CFR 51.1107(a)(1). We take comment on whether the EPA should grant the requested 1-year extension of the July 20, 2021, Serious area attainment date for the Houston area.

If made effective, the attainment date for the Houston area would be extended to July 20, 2022. This means the area would remain classified as Serious for the 2008 ozone NAAQS unless and until the EPA makes a determination that the area failed to attain the NAAQS by the new attainment date (based on the area's 2019-2021 DV) and thus reclassifies the area to Severe by operation of law, or redesignates the area to attainment. The EPA solicits comments on granting the 1-year attainment date extension for the Houston Serious nonattainment area.

C. Determinations of Failure to Attain and Reclassification

The EPA proposes to determine that five Serious nonattainment areas failed to attain the 2008 ozone NAAQS by the attainment date of July 20, 2021. These areas are not eligible for a 1-year attainment date extension because they do not meet the extension criteria under CAA section 181(a)(5) as interpreted by the EPA in 40 CFR 51.1107. The areas' ozone DVs for 2018-2020 are shown in Table 1 of this action.

If we finalize our action as proposed, each of these areas will be reclassified as Severe nonattainment for the 2008 ozone NAAQS, the next higher classification, as provided under CAA section 181(b)(2)(A)(i) and codified at 40 CFR 51.1103. These areas would then be required to attain the standard as expeditiously as practicable but no later than 15 years after the initial designation as nonattainment, which in this case would be no later than July 20, 2027. If an area attains the 2008 ozone NAAQS, the relevant state may seek a Clean Data Determination, under which certain attainment planning SIPs for the area would be suspended under 40 CFR 51.1118. If an area meets all the other applicable statutory criteria, the state could seek a redesignation to attainment (Section II.A of this action).

The EPA requests comment on this proposal for determining that these areas did not attain the 2008 ozone NAAQS by the Serious area attainment date.

D. Severe Area SIP Revisions

Serious nonattainment areas that the EPA has determined failed to attain the 2008 ozone NAAQS by the attainment date will be reclassified as Severe by operation of law upon the effective date of the final reclassification action. Each responsible state air agency must submit SIP revisions that satisfy the general air quality planning requirements under CAA section 172(c) and the ozone specific requirements for Severe nonattainment areas under CAA section 182(d), as interpreted and described in the final SIP Requirements Rule for the 2008 ozone NAAQS (*see* 40 CFR 51.1100 *et seq.*). This section provides discussion of particular Severe area plan elements (RACT and RACT, fee program, and transportation-related requirements), and proposes submission and implementation deadlines for Severe area SIP revisions required by reclassification. As noted previously, tribes are not required to submit TIP revisions to address Severe area plan elements.

1. Required submission elements

SIP requirements that apply to Severe areas are cumulative of CAA requirements for lower area classifications (*i.e.*, Marginal through Serious) and include additional Severe area

requirements as interpreted and described in the final SIP Requirements Rule for the 2008 ozone NAAQS (*see* CAA sections 172(c)(1) and 182(a)-(d), and 40 CFR 51.1100 *et seq.*). For areas reclassified as Severe, SIP submissions must address the more stringent major source threshold of 25 tons per year (tpy)⁴¹ for RACT and NNSR, and the more stringent NNSR emissions offset ratio of 1.3:1.⁴² In order to fulfill their Severe area SIP submission requirements, states may, where appropriate, certify that existing SIP provisions for an area are adequate to address one or more Severe area requirements. Such certifications must be submitted as a SIP revision.⁴³ We are providing additional discussion in the following sections for these Severe area requirements: (a) RACM and RACT; (b) fee program for major sources if the Severe area fails to attain (CAA section 185); and (c) vehicle miles traveled offset demonstration and related elements (CAA section 182(d)(1)). Although not a required SIP submission, we are also providing a discussion of federal reformulated gasoline requirements (CAA section 211(k)(10)(D)) that would apply in newly reclassified Severe areas (Section II.D.1.d of this action).

a. RACM and RACT

States with jurisdiction over all or a portion of an ozone nonattainment area classified as Moderate or higher must provide an analysis of — and adopt all — RACM, including RACT, needed for purposes of meeting RFP and timely attaining the ozone NAAQS in that area. EPA interprets the RACM provision to require a demonstration that the state has adopted all

⁴¹ “For any Severe Area, the terms ‘major source’ and ‘major stationary source’ include (in addition to the sources described in section 7602 of this title) any stationary source or group of sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 25 tons per year of volatile organic compounds.” CAA section 182(d).

⁴² *See* CAA section 182(d)(2). If a state’s plan requires all existing major sources in the nonattainment area to use best available control technology for VOCs consistent with CAA section 169(3), the required offset ratio is 1.2 to 1.

⁴³ Air agencies should review any existing regulation that was previously approved by the EPA to determine whether it is sufficient to fulfill obligations triggered by the revised ozone NAAQS. This review should include determining whether the nonattainment area boundary for the current ozone NAAQS is consistent with the boundary for the previous standards. Where an air agency determines that an existing regulation is adequate to meet applicable nonattainment area planning requirements of CAA section 182 (or ozone transport region RACT requirements of CAA section 184) for a revised ozone NAAQS, that air agency’s SIP revision may provide a written statement certifying that determination in lieu of submitting new revised regulations.

technologically and economically feasible measures (including RACT) to meet RFP requirements and to demonstrate attainment as expeditiously as practicable and thus that no additional measures that are reasonably available will advance the attainment date or contribute to RFP for the area (80 FR 12264, 12282 March 6, 2015). For areas reclassified as Severe, such an analysis should primarily include an evaluation of currently available RACT controls for sources that emit or have the potential to emit 25 tpy or more, consistent with the Severe area classification. CAA section 182(d) establishes a major source threshold of 25 tpy for areas designated Severe. Under CAA section 182(b)(2)(C), states must provide a SIP submission to adopt RACT for all major sources of VOC located in the nonattainment area, and section 182(f) applies this requirement to NO_x. As such, areas classified as Severe must adopt RACT for all sources in the nonattainment area that emit, or have the potential to emit, at least 25 tpy of VOC or NO_x. The EPA recognizes that in the context of a reclassification to Severe, these areas should already have RACT in place to address the lower classifications' requirements (those required when the areas were previously classified as Moderate and/or Serious); RACT should already be implemented in these areas for sources that emit, or have the potential to emit, at least 50 tpy of VOC or NO_x. CAA subpart 2 requirements are cumulative and Severe areas are required to address not only those requirements listed in CAA section 182(d) but also in sections 182(a) and (c), to the extent those requirements are not superseded by the more stringent requirements in section 182(d) and/or have not been previously addressed. However, states with areas reclassified as Severe should be primarily focused on identifying and adopting new RACT measures required to control sources with the potential to emit between 25 to 50 tpy of VOC or NO_x.

The EPA has long taken the position that the statutory requirement for states to assess and adopt RACT for sources in ozone nonattainment areas classified Moderate and higher

generally exists independently from the attainment planning requirements for such areas.⁴⁴ In addition to the independent RACT requirement, states have a statutory obligation to evaluate potential RACM and adopt such measures needed to meet RFP requirements and to demonstrate attainment as expeditiously as practicable when also considering emissions reductions associated with the implementation of RACT on sources in the area.⁴⁵ Therefore, to the extent that a state adopts new or additional RACT controls to meet RFP requirements or to demonstrate attainment as expeditiously as practicable, those states must include such RACT revisions with the other SIP elements due as part of the attainment plan required under CAA sections 172(c) and 182(d).

b. Fee program for Severe areas that fail to attain in the future

CAA section 185 requires that states develop SIP revisions for Severe and Extreme areas that provide that, if the area fails to timely attain the ozone NAAQS in the future, each major stationary source of VOCs located in the area shall (except in the case of an attainment date extension) pay a fee to the State as a penalty for such failure. Section 185(b) of the CAA specifies the method for computing the fee amount. The fee is payable for each calendar year beginning after the attainment date, until the area is redesignated as an attainment area for ozone. Each such plan revision should include procedures for assessment and collection of such fees.

⁴⁴ See Memo from John Seitz, “Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard” (1995), at 5 (explaining that Subpart 2 requirements linked to the attainment demonstration are suspended by a finding that a nonattainment area is attaining but that requirements such as RACT must be met whether or not an area has attained the standard); *see also* 40 CFR 51.1118 (suspending attainment demonstrations, RACM, RFP, contingency measures, and other attainment planning SIPs with a finding of attainment).

⁴⁵ Though not directly a part of a nonattainment area RACM analysis, the EPA has interpreted CAA section 172(c)(6) to require that air agencies also consider the impacts of emissions from sources outside an ozone nonattainment area (but within a state’s boundaries) and must include in the RACM analysis other control measures on these intrastate sources if doing so is necessary to provide for attainment of the applicable ozone NAAQS within the area by the applicable attainment date. For discussion of this “other control measures” provision *see also* the final rule to implement the 2015 ozone NAAQS (83 FR 63015, December 6, 2018, and 40 CFR 51.1312(c)), the Phase 2 proposed rulemaking (68 FR 32829, June 2, 2003) and final rule to implement the 8-hour ozone NAAQS (70 FR 71623, November 29, 2005), and the final rule to implement the PM_{2.5} NAAQS (81 FR 58035, August 24, 2016).

The EPA's fee program provisions, codified for the 2008 ozone NAAQS at 40 CFR 51.1117, require states with ozone nonattainment areas initially classified Severe or Extreme to submit a SIP revision that meets the requirements of CAA section 185 within 10 years of the effective date of an area's nonattainment designation. For nonattainment areas reclassified as Severe or Extreme⁴⁶ from a lower classification after the date of their initial nonattainment designation, the EPA retains the ability to set an alternative deadline for the CAA section 185 SIP submission, which is discussed in Section II.D.2 of this action.

c. Vehicle miles traveled offset demonstration and related elements

CAA section 182(d)(1)(A) requires a state with a Severe or Extreme ozone nonattainment area to submit a SIP revision that identifies and adopts specific enforceable transportation control strategies and transportation control measures (TCMs) to offset any growth in emissions from growth in vehicle miles traveled (VMT) or number of vehicle trips in such area.⁴⁷ The EPA has provided guidance titled, "Implementing Clean Air Act Section 182(d)(1)(A): Transportation Control Measures and Transportation Control Strategies to Offset Growth in Emissions Due to Growth in Vehicle Miles Travelled."⁴⁸ The guidance describes how to demonstrate whether there has been any growth in emissions from growth in VMT or growth in the number of vehicle trips. The EPA has also developed a tool for use with the MOVES3 emission factor model that allows states to perform the calculations described in the guidance.⁴⁹ If the demonstration shows that there has been an increase in emissions due to growth in VMT or vehicle trips, the state must adopt transportation control strategies or TCMs to offset the identified increase in emissions due

⁴⁶ The EPA interprets CAA section 181(b)(2)(A) as prohibiting reclassification of any nonattainment area by operation of law to Extreme for failure to timely attain; however, states may request, and the Administrator shall grant, a state's request for voluntary area reclassification to Extreme under CAA section 181(b)(3).

⁴⁷ Transportation control strategies include diesel engine and vehicle replacement programs and TCMs include mass transit improvements and bicycle and pedestrian programs.

⁴⁸ Guidance on implementing the CAA section 182(d)(1)(A) requirement for offsetting growth in emissions due to growth in VMT is available at <https://www.epa.gov/state-and-local-transportation/transportation-related-documents-state-and-local-transportation>.

⁴⁹ The MOVES3 VMT offset tool is available at <https://www.epa.gov/moves/tools-develop-or-convert-moves-inputs#special-inputs>.

to growth in VMT or vehicle trips in the nonattainment area and submit those transportation control strategies or TCMs as a SIP revision.

CAA section 182(d)(1)(A) additionally requires that states with Severe and Extreme ozone nonattainment areas submit a SIP revision that identifies and adopts specific enforceable transportation control strategies and TCMs to obtain reductions in motor vehicle emissions as necessary, in combination with other emission reduction requirements, to comply with RFP requirements. Finally, CAA section 182(d)(1)(A) requires states to consider measures specified in CAA section 108(f) and choose from among those measures and implement such measures as necessary to demonstrate attainment with the relevant ozone NAAQS. CAA section 182(d)(1)(A) also requires that in considering these measures, states should ensure adequate access to downtown, other commercial, and residential areas and should avoid measures that increase or relocate emissions and congestion rather than reduce them. Section II.D.2 of this action discusses the proposed SIP submission and implementation deadlines for the VMT offset demonstration and any necessary transportation control strategies and TCMs for newly reclassified Severe areas.

d. Reformulated gasoline

The CAA prohibits the sale of conventional gasoline in any ozone nonattainment area that is reclassified as Severe and requires that federal reformulated gasoline (RFG) must instead be sold. The prohibition on the sale of conventional gasoline takes effect 1 year after the effective date of the reclassification (*see* CAA section 211(k)(10)(D)). Many of the areas discussed in today's proposal already sell RFG because of their 1987-1989 DVs for the 1-hour ozone NAAQS⁵⁰ or because states opted areas into RFG under CAA section 211(k)(6)(A). Areas already subject to federal RFG requirements are listed in 40 CFR 1090.285(a)-(d). Following is a discussion of how subject areas would be impacted if the EPA finalizes its proposed

⁵⁰ CAA section 211(k)(10)(D) required that the "... 9 ozone nonattainment areas having a 1980 population in excess of 250,000 and having the highest ozone DV during the period 1987 through 1989 shall be 'covered areas' for purposes of this subsection."

determinations of failure to attain and reclassifications to Severe for the 2008 ozone NAAQS. It is important to note that for any areas that are reclassified as Severe for the 2008 ozone NAAQS, states would not promulgate state fuel rules for implementing federal RFG because the CAA requirements would be implemented as written. Air agencies are thus not required to submit a SIP revision addressing RFG requirements, and we are not proposing related SIP submission and implementation deadlines. The EPA would instead publish another final rule at a later date to appropriately revise the lists of RFG covered areas in 40 CFR 1090.285 for administrative purposes (*see* 40 CFR 1090.290(e)).

New York-N. New Jersey-Long Island, NY-NJ-CT

The New York-N. New Jersey-Long Island, NY-NJ-CT area (herein referred to as the New York City area) is one of the nine federal RFG areas where the sale of conventional gasoline is currently prohibited because of its 1987-1989 1-hour ozone NAAQS DV. However, there are some geographic differences between the New York-Northern New Jersey-Long Island-Connecticut federal RFG area and the 2008 ozone NAAQS nonattainment area. Warren County, NJ and all of Fairfield, Middlesex and New Haven Counties in Connecticut are part of the 2008 ozone NAAQS nonattainment area but are not included in the current New York-Northern New Jersey-Long Island-Connecticut federal RFG area. However, the sale of conventional gasoline is already prohibited in these four counties as follows. Warren County, NJ is an RFG opt-in area (*see* 40 CFR 1090.285(c)). A portion of Fairfield County, Connecticut is already part of the New York-Northern New Jersey-Long Island-Connecticut federal RFG area and the remainder of Fairfield County is already part of the Greater Connecticut, CT, federal RFG area. Finally, Middlesex and New Haven Counties in Connecticut are already part of the Greater Connecticut, CT, federal RFG area (*see* 40 CFR 1090.285(a)).

Therefore, if the New York City area is reclassified as Severe for the 2008 ozone NAAQS, it will not result in any changes to where federal RFG is sold in the nonattainment area.

Chicago-Naperville, IL-IN-WI

The Chicago-Naperville, IL-IN-WI area (herein referred to as the Chicago area) is one of the nine federal RFG areas where the sale of conventional gasoline is prohibited because of its 1987-1989 1-hour ozone NAAQS DV (*see* 40 CFR 1090.285(a)). However, there is one difference between the Chicago-Gary-Lake County federal RFG area and the Chicago 2008 ozone NAAQS nonattainment area. Part of Kenosha County, WI is included in the Chicago 2008 ozone nonattainment area. The sale of conventional gasoline is already prohibited in Kenosha County, WI because it is part of the Milwaukee-Racine federal RFG area. Therefore, if the Chicago area is reclassified as Severe for the 2008 ozone NAAQS, it will not result in any changes to where federal RFG is sold in the nonattainment area (*see* 40 CFR 1090.285(a)).

Houston-Galveston-Brazoria, TX

The Houston-Galveston-Brazoria area (herein referred to as the Houston area) is one of the nine federal RFG areas where the sale of conventional gasoline is prohibited because of its 1987-1989 1-hour ozone NAAQS DV (*see* 40 CFR 1090.285(a)). The Houston 2008 ozone NAAQS nonattainment area and the Houston-Galveston-Brazoria federal RFG area are identical. Therefore, whether or not the Houston area is reclassified as Severe for the 2008 ozone NAAQS, it will not result in any changes to where federal RFG is sold in the nonattainment area.

Dallas-Fort Worth, TX

The sale of conventional gasoline is already prohibited in Collin, Dallas, Denton, and Tarrant Counties because Texas chose to opt the 4-county Dallas-Fort Worth 1-hour ozone nonattainment area into RFG (*see* 57 FR 46316, October 8, 1992, and 40 CFR 1090.285(c)). If the 10-county Dallas-Fort Worth 2008 ozone NAAQS nonattainment area is reclassified as Severe, the prohibition on the sale of conventional gasoline under CAA section 211(k)(10)(D) and the sale of federal RFG would apply to the 10-county nonattainment area 1 year after the effective date of the reclassification.

Denver-Boulder-Greeley-Ft. Collins-Loveland, CO

If the Denver-Boulder-Greeley-Ft. Collins-Loveland area (herein referred to as the Denver area) is reclassified as Severe for the 2008 ozone NAAQS, the prohibition on the sale of conventional gasoline would apply to the entire area under CAA section 211(k)(10)(D). This would be a new requirement for the area as federal RFG is not currently required to be sold in any part of the Denver 2008 ozone NAAQS nonattainment area. The sale of federal RFG would apply to the entire nonattainment area 1 year after the effective date of the reclassification.

Morongo Band of Mission Indians area

If the Morongo Band of Mission Indians area is reclassified as Severe for the 2008 ozone NAAQS, the prohibition on the sale of conventional gasoline would apply in the area. However, the Morongo Band of Mission Indians area is within the Los Angeles-Anaheim-Riverside federal RFG area, which is one of the nine areas where the sale of conventional gasoline is already prohibited because of its 1987-1989 1-hour ozone NAAQS DV (*see* 40 CFR 1090.285(a)). Therefore, if this proposal is finalized and the Morongo Band of Mission Indians area is reclassified as Severe for the 2008 ozone NAAQS, it will not result in any changes to federal RFG requirements for the nonattainment area.

2. Submission and implementation deadlines

On July 20, 2012, when final nonattainment designations became effective for the 2008 ozone NAAQS, states responsible for areas initially classified as Severe were required to prepare and submit SIP revisions by deadlines relative to that effective date. For those areas, the submission deadlines ranged from 2 to 10 years after July 20, 2012, depending on the SIP element required (*e.g.*, 2 years for the RACT SIP and VMT offset demonstration, 4 years for the attainment demonstration, 10 years for the section 185 fee program). Initial Severe areas were also required to implement RACT as expeditiously as practicable but no later than January 1 of the 5th year after July 20, 2012 (*i.e.*, January 1, 2017). Except for the section 185 fee program submission deadline, those deadlines have passed, and the EPA proposes to use its discretion under CAA section 182(i) to adjust the SIP deadlines that would otherwise apply. We discuss

submission and implementation deadlines for areas reclassified as Severe in the following sections: (a) submission deadline for SIP revisions, and (b) implementation deadline for required controls.

a. Submission deadline for SIP revisions

The EPA proposes that states submit SIP revisions addressing all Severe area requirements (Section II.D.1 of this action) no later than 18 months after the effective date of the final reclassification action. With the exception of SIP revisions addressing CAA section 185 fee program requirements (discussed as follows in this section), the SIP revision submission deadlines for areas initially classified as Severe have passed (*see* 40 CFR 51.1100 *et seq.*).

For newly reclassified Severe areas, the EPA believes that an 18-month deadline for the attainment planning requirements “is necessary and appropriate” to assure consistency among these submissions (per CAA section 182(i)). For ozone areas reclassified by operation of law under CAA section 181(b)(2) from Moderate to Serious, we have generally established 12-month SIP submission deadlines.⁵¹ However, we now propose that an 18-month schedule for submission of SIP revisions is appropriate for reclassifications from Serious to Severe given the longer interval to the “maximum” attainment date associated with areas reclassified from Serious to Severe as compared to areas reclassified from Moderate to Serious.⁵² That is, there is generally a 3-year interval between the attainment dates for areas reclassified from Moderate to Serious (with exceptions for areas that states can demonstrate can attain the NAAQS more quickly and for areas once they are granted attainment date extensions). However, there is a 6-year interval between maximum attainment dates for areas reclassified from Serious to Severe

⁵¹ *See, e.g.*, 75 FR 79302 (December 20, 2010) (Dallas-Ft. Worth, Texas, reclassification to Serious for the 1997 8-hour 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 (January 30, 2003) (St. Louis, Missouri, reclassification to Serious for the 1979 1-hour ozone NAAQS).

⁵² Nonattainment areas are required to attain the ozone NAAQS as expeditiously as practicable but not later than the applicable attainment date (*see* CAA section 181(a)(1)); this “not later than” date is also referred to as the maximum attainment date.

(see 40 CFR 51.1103). Given the longer interval between the Serious and Severe maximum attainment dates, we find that providing a longer period for submission of SIP revisions addressing Severe area requirements for reclassified areas is appropriate and will allow air agencies time to finish reviews of available control measures, adopt revisions to necessary control strategies, address other SIP requirements and complete the public notice process necessary to adopt and submit timely SIP revisions. As discussed in Section II.D.2.b of this action, we are proposing that any controls that air agencies determine are needed for meeting CAA requirements must be implemented as expeditiously as practicable but no later than 18 months from the proposed SIP submission deadline. In combination with our proposed submission deadline, the proposed overall 36-month schedule for controls implementation could result in meaningful emissions reductions by the Severe area attainment DV time period (2024-2026).

RACM and RACT. The EPA proposes that the SIP revision to address RACM and RACT requirements will be due 18 months after the effective date of reclassification, consistent with all other required Severe area plan elements. We believe this deadline would provide a reasonable planning schedule and consistency across submissions (per CAA section 182(i)) while not unduly delaying implementation of additional needed controls. As noted previously, states with areas reclassified as Severe should be primarily focused on identifying and adopting new RACT measures required to control sources with the potential to emit between 25 to 50 tpy of VOC or NO_x. The slightly longer timeframe to prepare and adopt SIP revisions for reclassified Severe areas (compared to approximately 12 months for previous 2008 ozone reclassification actions) could result in states determining that additional controls are reasonable (compared to what controls the state may be able to assess in a shorter 12-month timeframe), which could then help expedite air quality improvements in these areas. We believe an 18-month submission deadline would best balance the goals of more robust SIP revisions and — in combination with our proposed controls implementation deadline — expeditious and meaningful emissions reductions

for areas reclassified as Severe (Section II.D.2.b of this action). The EPA requests comment on this proposed deadline for RACM and RACT submissions.

CAA section 185 fee programs. The EPA proposes that the SIP revision to address the section 185 fee program requirements will be due 18 months after the effective date of reclassification, consistent with all other required Severe area plan elements. As previously described, the due date for the section 185 fee programs for the 2008 NAAQS for an area initially classified as Severe is 10 years from the effective date of designation, or July 20, 2022, as codified at 40 CFR 51.1117. This 2022 date was chosen because it followed the approach laid out in CAA section 182(d)(3), which established a section 185 fee program due date of December 31, 2000, for areas classified Severe by operation of law under the 1990 CAA Amendments (*see* 80 FR 12264, 12266, March 6, 2015). CAA section 181(a) assigned these same areas an attainment date of November 15, 2005. These deadlines are intended to ensure that the section 185 fee program was submitted to EPA for approval well in advance of (*i.e.*, just short of 5 years before) the attainment date. This allowance gives EPA time to review and act on the program submission, which in turn ensures that the air agency's fee program infrastructure will be in place in advance of the actual Severe area attainment date. This is important in ensuring smooth implementation of the program if the area fails to timely attain, because collection of fees is required under section 185 to begin for the calendar year immediately following the Severe area attainment date. For the 2008 NAAQS, the July 20, 2022, date for initial Severe areas is consistent with that approach. However, Congress did not specify dates for areas reclassified as Severe, and we believe there are timing considerations that warrant a later date here. A later date would also provide consistency with other proposed Severe area SIP submission deadlines for the areas currently being reclassified.

Applying the July 20, 2022, date to areas reclassified as Severe would result in an unreasonably short time for air agencies to develop their section 185 fee programs, especially since these agencies will also be working to address all the other Severe area requirements

discussed in this action. Accordingly, the EPA believes it is reasonable to set the section 185 fee program due date at 18 months after reclassification, in line with the other elements. Although this will reduce implementation lead time compared to that in CAA section 182(d)(3) and 40 CFR 51.1117 for initially classified Severe areas, we anticipate that this timing would still be adequate to get the fee program in place ahead of the Severe area attainment date. The EPA recognizes the effort required to develop a section 185 fee program, but we also note the opportunities to synchronize the adoption process for the section 185 program with that of the other Severe area requirements. Providing longer than 18 months for submission of the section 185 program element would create inconsistent deadlines and would reduce the lead time for implementing the program by an even greater amount than the EPA's proposal. Accordingly, we are proposing a deadline of 18 months for submission of the section 185 fee program element. The EPA requests comment on this proposed deadline.

VMT offset demonstration and related elements. The EPA proposes that a SIP revision to address the VMT offset demonstration will be due 18 months after the effective date of reclassification, consistent with all other Severe area requirements. If the demonstration shows that a state must adopt transportation control strategies or TCMs to offset any identified increase in emissions due to growth in VMT or vehicle trips, we are proposing that the transportation control strategies and/or TCMs be submitted at that same time as the SIP revision to address the VMT offset demonstration. The EPA requests comment on this proposed deadline.

b. Implementation deadline for required controls

As required by 40 CFR 51.1108(d) the state must provide for implementation of all control measures needed for attainment no later than the beginning of the attainment year ozone season.⁵³ Further, the EPA proposes that any controls that air agencies determine are needed for

⁵³ "Attainment year ozone season" is defined as the ozone season immediately preceding a nonattainment area's maximum attainment date (*see* 40 CFR 51.1100(h)), with the attainment year being the calendar year corresponding with that final ozone season for determining attainment.

meeting CAA requirements must be implemented as expeditiously as practicable but no later than 18 months from the proposed SIP submission deadline. These controls would include any identified RACT, and any needed transportation control strategies or TCMs indicated in the VMT offset demonstration. In combination with our proposed submission deadline for Severe area SIP revisions (no later than 18 months after the effective date of the final reclassification action, as discussed in Section II.D.2.a of this action), air agencies and affected sources would have an overall schedule of 36 months to identify, adopt, and implement new pollution controls.

The EPA's proposed implementation deadline is intended to balance the time needed for sources to install and implement new required controls with the time needed for resulting emissions reductions to meaningfully contribute to RFP and timely attainment in newly reclassified Severe areas. As a general matter, the Act requires implementation of RACM and RACT requirements needed for timely attainment "as expeditiously as practicable" (*see* CAA section 172(c)(1)). The EPA's implementing regulations for the 2008 ozone NAAQS require that, for areas initially classified as Moderate or higher, a state shall provide for implementation of RACM and RACT as expeditiously as practicable but no later than January 1 of the 5th year after the effective date of designation (*see* 40 CFR 51.1112(a)(3)), which corresponded with the beginning of the attainment year for initial Moderate areas (January 1, 2017). The modeling and attainment demonstration requirements for 2008 ozone NAAQS areas classified Moderate or higher require that a state must provide for implementation of all control measures needed for attainment no later than the beginning of the attainment year ozone season (*see* 40 CFR 51.1108(d)). These regulations allow a comparable amount of time for sources to meet RACT requirements as originally anticipated under the 1990 CAA Amendments (*see* CAA section 182(b)(2)), with the objective that RACT measures be in place to influence an area's attainment year air quality and DV. Although the CAA does not establish an implementation deadline for transportation control strategies or TCMs (*see* CAA section 182(d)(1)(A)), we believe the same

timing rationale would apply and that it would be appropriate to align the implementation deadline for RACT and these transportation-related controls.

In the case of newly reclassified Severe areas, the longer interval between the Serious and Severe maximum attainment dates means that the proposed 36-month schedule for controls implementation could result in meaningful emissions reductions even earlier in the attainment DV time period (2024-2026). For areas implementing both the 2008 and the 2015 ozone standards, we believe allowing adequate time to identify and implement additional controls will help nonattainment areas attain both standards more expeditiously.

The EPA requests comment on aligning the implementation deadlines for RACT and transportation-related controls and requiring that any controls needed for meeting RFP or timely attainment of the 2008 ozone NAAQS be implemented as expeditiously as practicable but no later than 18 months after the proposed SIP submission deadline. We also request comment on providing an overall 36-month schedule for SIP submission and controls implementation.

III. Environmental Justice Considerations

As discussed in Section II.B of this action, the EPA proposes to deny a request for a 1-year attainment date extension for the Houston-Galveston-Brazoria, Texas, nonattainment area and to determine that the area failed to attain the 2008 ozone NAAQS by the attainment date. The proposal to deny the extension request is based on our assessment of air quality trends in the Houston area, and, given our findings that the area is not likely to attain by an extended attainment date or qualify for a second extension, our consideration of the impact of our action on existing pollution burdens in the area. Screening-level EJ analyses indicate an already disproportionate pollution burden for communities near the Houston Ship Channel and communities around violating ozone regulatory monitor sites in the Houston area. Denying the state's request to extend the attainment date would result in the area's reclassification to Severe, and in more timely application in this area of the Act's more stringent controls associated with that higher classification. Expeditious attainment of the NAAQS will protect all those residing,

working, attending school, or otherwise present in those areas, including communities of color and low-income communities.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563:

Improving Regulation and Regulatory Review

This action is exempt from review by the Office of Management and Budget because it responds to the CAA requirement to determine whether areas designated nonattainment for an ozone NAAQS attained the standard by the applicable attainment date, and to take certain steps for areas that failed to attain.

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060-0695. This action proposes to: (1) find that certain Serious ozone nonattainment areas listed in Table 1 of this action failed to attain the 2008 NAAQS by the applicable attainment date; (2) identify those areas subject to reclassification as Severe ozone nonattainment areas by operation of law upon the effective date of the reclassification notice; and (3) adjust any applicable implementation deadlines. Thus, the proposed action does not establish any new information collection burden that has not already been identified and approved in the EPA's information collection request.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. The proposed determinations of attainment and failure to attain the 2008 ozone NAAQS (and resulting reclassifications), and the proposed determination either to grant or to deny a 1-year attainment date extension do not in and of themselves create any new requirements beyond

what is mandated by the CAA. Instead, this rulemaking only makes factual determinations, and does not directly regulate any entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531-1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The division of responsibility between the Federal government and the states for purposes of implementing the NAAQS is established under the CAA.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action has tribal implications. However, it will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law.

The EPA has identified tribal areas within the nonattainment areas covered by this proposed rule, that would be potentially affected by this rule. Specifically, two of the nonattainment areas addressed in this proposal have tribes located within their boundaries: the Greater Connecticut, CT, area (Mashantucket Pequot Tribal Nation and Mohegan Indian Tribe), and the New York-Northern New Jersey-Long Island, CT-NJ-NY area (Shinnecock Indian Nation). One of the nonattainment areas addressed in this document is a separate tribal nonattainment area (Morongo Band of Mission Indians, California area).

The EPA has concluded that the proposed rule may have tribal implications for these tribes for the purposes of Executive Order 13175, but would not impose substantial direct costs upon the tribes, nor would it preempt tribal law. As noted previously, a tribe that is part of an area that is reclassified from Serious to Severe nonattainment is not required to submit a TIP

revision to address new Severe area requirements. However, if the EPA finalizes the determinations of failure to attain proposed in this action, the NNSR major source threshold and offset requirements would change for stationary sources seeking preconstruction permits in any nonattainment areas newly reclassified as Severe (Section II.D.1 of this action), including on tribal lands within these nonattainment areas. Areas that are already classified Severe for a previous ozone NAAQS are already subject to these higher offset ratios and lower thresholds, so a reclassification to Severe for the 2008 ozone NAAQS would have no effect on NNSR permitting requirements for tribal lands in those areas.

The EPA has communicated or intends to communicate with the potentially affected tribes located within the boundaries of the nonattainment areas addressed in this proposal, including offering government-to-government consultation, as appropriate.

G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

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

I. National Technology Transfer Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

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

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or

indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994).

The documentation for this determination is presented in Section II.B of this action, “Extension of Serious Area Attainment Date,” and summarized in Section III of this action, “Environmental Justice Considerations,” and the relevant documents have been placed in the public docket for this action.

With respect to the determinations of whether areas have attained the NAAQS by the attainment date, the EPA has no discretionary authority to address EJ in these determinations. The CAA directs that within 6 months following the applicable attainment date, the Administrator shall determine, based on the area’s design value as of the attainment date, whether the area attained the standard by that date. CAA section 181(b)(2)(A). Except for any Severe or Extreme area, any area that the Administrator finds has not attained the standard by that date shall be reclassified by operation of law to either the next higher classification or the classification applicable to the area’s design value. *Id.*

K. Judicial Review

Section 307(b)(1) of the CAA governs judicial review of final actions by the EPA. This section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit: (i) When the agency action consists of “nationally applicable regulations promulgated, or final actions taken, by the Administrator,” or (ii) when such action is locally or regionally applicable, if “such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.” For locally or regionally applicable final actions, the CAA reserves to the EPA complete discretion whether to invoke the exception in (ii).⁵⁴

⁵⁴ In deciding whether to invoke the exception by making and publishing a finding that this action, if finalized, is based on a determination of nationwide scope or effect, the Administrator intends to take into account a number of policy considerations, including his judgment balancing the benefit of obtaining the D.C. Circuit’s authoritative centralized review versus allowing development of the issue in other contexts and the best use of agency resources.

The EPA is proposing findings regarding attainment of the NAAQS in nonattainment areas within nine states located in six of the ten EPA regions pursuant to a uniform process and standard. The EPA is also proposing to establish SIP submission and implementation deadlines for all newly reclassified areas in the identified states using a common, nationwide method. The jurisdictions that would be affected by this action, if finalized, represent a wide geographic area and fall within several different judicial circuits.

If the Administrator takes final action on this proposal, then, in consideration of the effects of the action across the country, the EPA views this action to be “nationally applicable” within the meaning of CAA section 307(b)(1). In the alternative, to the extent a court finds this proposal, if finalized, to be locally or regionally applicable, the Administrator intends to exercise the complete discretion afforded to him under the CAA to make and publish a finding that this action is based on a determination of “nationwide scope or effect” within the meaning of CAA section 307(b)(1).⁵⁵

List of Subjects

40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Designations and classifications, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, and Volatile organic compounds.

40 CFR Part 81

Environmental protection, Administrative practice and procedure, Air pollution control, Designations and classifications, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, and Volatile organic compounds.

⁵⁵ In the report on the 1977 Amendments that revised CAA section 307(b)(1), Congress noted that the Administrator’s determination that the “nationwide scope or effect” exception applies would be appropriate for any action that has a scope or effect beyond a single judicial circuit. *See* H.R. Rep. No. 95–294 at 323–24, reprinted in 1977 U.S.C.C.A.N. 1402–03.

Michael Regan,
Administrator.

[FR Doc. 2022-07509 Filed: 4/12/2022 8:45 am; Publication Date: 4/13/2022]