

The NPR includes information about the hazard patterns of incidents, such as severity of incidents, and the age and gender of the primary victim.

Relevant data from CPSRMS include incident reports from medical examiners, consumers, death certificates, manufacturers, and media reports. Some of the incident data relied on for the rulemaking were obtained from 53 in-depth investigations (IDIs) conducted by CPSC. Among these IDIs, five involved fatal incidents and 48 involved nonfatal incidents. In the NEISS data, staff identified only three cases with sufficient descriptive information to conclude that the injuries were specifically associated with debris penetration. Due to this small sample size, CPSC was unable to report any estimate of injuries. Instead, these three injury cases from NEISS were counted with the other reported injuries from CPSRMS.

In addition, the Commission is considering five additional IDIs that were completed following publication of the NPR.⁷ Four out of five of these IDIs involved injuries that resulted from debris penetrating through the floorboards and causing impalement, laceration, bruising, or ligament injury.⁸ Three of those four incidents involved hospitalizations.

The Commission invites comments on the incident data and the NPR's analysis of these data. CPSC is making available for review and comment the incident reports relied upon and discussed in the NPR, to the extent allowed by applicable law, along with the associated IDIs and additional IDIs mentioned above. To obtain access to the data, submit a request to: <https://forms.office.com/g/Yz4tNFdhDp>. You will then receive a website link to access the data at the email address you provide. If you do not receive a link within two business days, please contact Han Lim, email: hlim@cpsc.gov. Information on how to submit comments and contact information for CPSC's Office of the Secretary are in the **ADDRESSES** section of this notice.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

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⁷ The IDI numbers associated with these five incidents are 221013HCC1142, 220802HEP8213, 220822HCC1212, 230601HCC1530, and 180125CBB3360.

⁸ The IDI numbers associated with these four injuries are 221013HCC1142, 220802HEP8213, 220822HCC1212, and 230601HCC1530. IDI 180125CBB3360 involved a branch penetrating the floorboard, but no injury occurred.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[EPA-HQ-OAR-2024-0333; FRL-11817-01-OAR]

RIN 2060-AW25

State Implementation Plan Submittal Deadlines and Implementation Requirements for Reclassified Nonattainment Areas Under the Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing deadlines for submission of state implementation plan (SIP) revisions and implementation of the relevant control requirements that will apply for nonattainment areas reclassified as Moderate, Serious, and Severe under the current and any future ozone National Ambient Air Quality Standards (NAAQS) as a result of either failing to attain the standard by the applicable classification attainment date or the EPA granting a voluntary reclassification request. This proposal articulates the implementation requirements and timeframes that will apply for all such areas once reclassified. The EPA is also proposing regulatory revisions to codify its existing interpretation that following reclassification, a state is no longer required to submit SIP revisions addressing certain, but not all, requirements related to the prior classification level for an ozone nonattainment area. In addition, the EPA is articulating in this document how the proposed default deadlines and codification of applicable requirements following reclassification would apply specifically to any nonattainment areas that are reclassified as Serious under the 2015 ozone NAAQS.

DATES: Comments must be received on or before November 4, 2024.

ADDRESSES: You may send comments, identified by Docket ID No. EPA-HQ-OAR-2024-0333, by any of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov/> (our preferred method). Follow the online instructions for submitting comments.
- *Email:* a-and-r-docket@epa.gov. Include Docket ID No. EPA-HQ-OAR-2024-0333 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 "I. Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document. For information on EPA Docket Center services, please visit us online at <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: For information about this proposed rule, contact Erin Lowder, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Policy Division, C535–A Research Triangle Park, NC 27709; telephone number: (919) 541-5421; email address: lowder.erin@epa.gov; or 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.

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," or "our" means the EPA.

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I. Public Participation

Written comments: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2024-0333, at <https://www.regulations.gov> (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit to EPA's docket at <https://www.regulations.gov> any information you consider to be Confidential Business Information (CBI), Proprietary Business Information (PBI), or other information whose disclosure is restricted by statute. 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 or PBI and then identify electronically within the digital storage media the specific information that is claimed as CBI or PBI. In addition to one complete version of the comments that includes information claimed as CBI or PBI, you must submit a copy of the comments that does not contain the information claimed as CBI or PBI directly to the public docket through the procedures outlined in *Instructions*. If you submit any digital storage media that does not contain CBI or PBI, mark the outside of the digital storage media clearly that it does not contain CBI. Information not marked as CBI or PBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI or PBI 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 or PBI 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 or PBI markings as described earlier. 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 or PBI 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-2024-0333. The mailed CBI or PBI material should be double wrapped and clearly marked. Any CBI or PBI markings should not show through the outer envelope.

II. Overview and Basis of Proposal

A. Overview of Proposal

The EPA is proposing default SIP submittal and implementation deadlines for the current and future ozone NAAQS that would apply for mandatory reclassifications (e.g., from Marginal to Moderate, Moderate to Serious, and Serious to Severe), and also for areas voluntarily reclassified as Moderate, Serious, and Severe. These default reclassification SIP submittal and implementation deadlines would apply only in cases where the otherwise applicable deadlines that apply to areas initially designated nonattainment have passed or are less than 18 months in the future from the effective date of such a reclassification. In the near term, if these default deadlines are finalized as proposed, they will apply to any nonattainment areas that are reclassified as Serious under the 2015 ozone NAAQS for failing to attain the standard by the Moderate attainment date of August 3, 2024, unless otherwise established in a separate notice-and-comment rulemaking.

The EPA is proposing a general default SIP submittal deadline for such reclassified areas as the sooner of 18 months from the effective date of the reclassification notice or January 1 of the new classification attainment year, except for SIP revisions addressing

Clean Air Act (CAA) section 185. For the CAA section 185 fee program SIP submittals for areas reclassified as Severe, the EPA is proposing a default deadline of the sooner of 36 months after the effective date of reclassification to Severe or January 1 of the Severe area attainment year. The EPA recognizes that in certain circumstances, states and areas may seek an adjustment of these default deadlines; the EPA therefore proposes that the default SIP submission deadlines could be adjusted where such adjustment is appropriate or necessary, through future notice-and-comment rulemaking in specific EPA actions. Further discussion of these proposed default deadlines is provided in section III.A. of this document.

The EPA is also proposing default deadlines for implementation of emissions control measures required by mandatory reclassifications (e.g., from Marginal to Moderate, Moderate to Serious, and Serious to Severe), and also for voluntary reclassifications to Moderate, Serious, and Severe. The EPA is proposing a default control implementation deadline of the sooner of 18 months after the proposed SIP submittal deadline or the beginning of the relevant attainment year ozone season. Similar to the SIP deadlines, the EPA proposes that these default control measure implementation deadlines could be adjusted where such adjustment is appropriate or necessary subject to notice-and-comment rulemaking in specific EPA actions. Further discussion of these proposed default deadlines is provided in section III.A. of this document. In addition to establishing default SIP submittal and related implementation deadlines, the EPA is proposing regulations to codify its existing interpretation that, following reclassification, a state is no longer required to submit SIP revisions addressing the following requirements related to the prior classification level for an ozone nonattainment area: (1) a demonstration of attainment by the prior attainment date, (2) a reasonably available control measures (RACM) analysis tied to the prior attainment date; and (3) for areas that are voluntarily reclassified before the lower classification's attainment date, contingency measures specifically related to the area's failure to attain by the prior attainment date. As a general matter, this interpretation applies with respect to areas reclassified by operation of law from (1) Marginal to Moderate, (2) Moderate to Serious, and (3) Serious to Severe, and also to any voluntary

reclassification request granted by the EPA for these classifications.¹

Under the CAA, 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* CAA section 181(b)(2)). For a concentration-based standard, such as the 2015 ozone NAAQS,² a determination of attainment is based on a nonattainment area's design value (DV).³ In separate actions, the EPA will determine whether areas classified as Moderate for the 2015 ozone NAAQS factually attained the standard by the applicable attainment date of August 3, 2024, based on their DV as of the attainment date. As required under CAA section 181(b)(2)(A), where the EPA determines that areas failed to timely attain, those areas will be reclassified by operation of law as Serious upon the effective date of the EPA's determination. The reclassified areas will then be required to attain the 2015 ozone NAAQS as expeditiously as practicable, but not later than August 3, 2027 (*see* CAA section 181(a)(1) (table 1) and 40 CFR 51.1303(a) (table 1)). States with jurisdiction over such areas will be required to submit to the EPA the SIP revisions for these areas that satisfy the statutory and regulatory requirements applicable to Serious areas established in CAA section 182(c) and in the 2015 Ozone NAAQS SIP Requirements Rule (*see* 83 FR 62998, December 6, 2018, and 40 CFR 51.1300 *et seq.*).

The EPA proposes in this action to articulate applicable requirements and establish deadlines for submitting SIP revisions that will apply to these reclassified areas, consistent with CAA section 182(i). If the proposed default deadlines discussed in section III.A. of this document are finalized, new SIP revisions for nonattainment areas

¹ This rule does not address voluntary reclassifications to Extreme. The EPA expects that this type of reclassification will be rare. We would address the requirements around such a reclassification on a case-by-case basis, should the need arise.

² Because the 2015 primary and secondary NAAQS for ozone are identical, for convenience, the EPA refers to them in the singular as "the 2015 ozone NAAQS" or as "the standard."

³ A design value 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 2015 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 DV for an area is the highest DV among the individual monitoring sites located in the area. For more information on air quality design values, visit <https://www.epa.gov/air-trends/air-quality-design-values>.

reclassified as Serious under the 2015 ozone NAAQS would be due to the EPA no later than 18 months after the effective date of the relevant reclassification notice or January 1, 2026, whichever is sooner.

Under the CAA and the Tribal Authority Rule (TAR), tribes may, but are not required to, submit implementation plans to the EPA for approval (*see* CAA section 301(d) and 40 CFR part 49). Accordingly, for tribal nonattainment areas, a tribe is not required to submit any tribal implementation plan (TIP) revisions applicable to Serious areas established in CAA section 182(c) and in the 2015 Ozone NAAQS SIP Requirements Rule. Tribes that are part of multi-jurisdictional nonattainment areas are also not required to submit implementation plan revisions applicable to Serious nonattainment areas.

If the proposed default deadlines discussed in section III.A. are finalized as proposed, states would be required to implement any new reasonably available control technology (RACT) required for reclassified Serious areas under the 2015 ozone NAAQS no later than 18 months from the RACT submittal deadline or the beginning of the 2026 attainment year ozone season for that area, whichever is earlier. Additionally, the deadline for any new or revised Enhanced vehicle inspection and maintenance (I/M) programs (for areas that do not need I/M emission reductions to demonstrate attainment by the attainment date or to meet reasonable further progress (RFP) milestones) to be fully implemented would be as expeditiously as practicable but no later than 4 years after the effective date of the reclassification. Lastly, the deadline for submitting the first transportation control demonstration, as required by CAA section 182(c)(5), would be 2 years after the attainment demonstration due date.

B. What is the background for the proposed actions?

On October 26, 2015, the EPA issued its final action to revise the NAAQS for ozone to establish a new 8-hour standard (*see* 80 FR 65452, October 26, 2015).⁴ In that action, the EPA promulgated identical tighter primary and secondary ozone standards designed to protect public health and welfare that specified an 8-hour ozone level of 0.070 ppm. Specifically, the

⁴ On October 26, 2015, the EPA issued its final action to revise the 8-hour NAAQS for ozone from 0.075 ppm to 0.070 ppm. The 0.075 ppm standard that was promulgated in 2008 has not been revoked and is still in effect. *See* 40 CFR 51.1100 *et seq.*

standards require that the 3-year average of the annual fourth highest daily maximum 8-hour average ozone concentration may not exceed 0.070 ppm.

Effective on August 3, 2018, the EPA designated 51 areas throughout the country as nonattainment for the 2015 ozone NAAQS (*see* 83 FR 25776, June 4, 2018).⁵ In a separate action, the EPA assigned classification thresholds and attainment dates based on the severity of an area's ozone levels, determined by the area's design value (DV) (*see* 83 FR 10376, March 9, 2018). In addition, the EPA established the attainment date for Marginal, Moderate, Serious, Severe, and Extreme nonattainment areas as 3 years, 6 years, 9 years, 15 years, and 20 years, respectively, from the effective date of the final designations. Thus, the attainment dates for each nonattainment area classification for the 2015 ozone NAAQS are as follows: August 3, 2021, for Marginal areas; August 3, 2024, for Moderate areas; August 3, 2027, for Serious areas; August 3, 2033, for Severe areas; and August 3, 2038, for Extreme areas.⁶ The EPA also promulgated a rulemaking interpreting the CAA's ozone nonattainment area implementation requirements for the 2015 ozone NAAQS.⁷ The implementation rulemaking articulated the Act's substantive requirements for ozone nonattainment areas for each classification level and established deadlines for submission of plan revisions to address those requirements that were triggered off of the date of the areas' initial designations for the 2015 ozone NAAQS (*e.g.*, 24 months from the effective date of designation).⁸

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, CAA sections 172, 181, 182, and 301(a).

CAA section 107(d) provides that when the EPA establishes or revises a

⁵ Effective on September 24, 2018, the EPA also designated the San Antonio, Texas area as nonattainment for the 2015 ozone NAAQS. *See* 83 FR 35136 (July 25, 2018).

⁶ Effective on September 24, 2018, the EPA classified the San Antonio, Texas area as Marginal by operation of law for the 2015 ozone NAAQS, with an attainment date of September 24, 2021. Upon any reclassification, the attainment deadline associated with each classification level for the San Antonio nonattainment area is based on this September 24, 2018, effective date. *See* 83 FR 35136 (July 25, 2018).

⁷ 83 FR 10382 (March 9, 2018).

⁸ *Id.*; 40 CFR 51.1300–1319.

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. Part D of title I of the CAA establishes the plan requirements that apply to all areas designated nonattainment. The purpose of these plan requirements is ensuring that these areas achieve attainment of the applicable NAAQS by the applicable area attainment date. Subpart 1 of part D sets out the plan requirements for nonattainment areas in general, and 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 172 (in subpart 1) covers nonattainment area plan provisions in general, and CAA section 182 (in subpart 2) provides the specific attainment planning and additional requirements that apply to each ozone nonattainment area based on its classification. Subparts 1 and 2 also establish the timeframes by which air agencies must submit and implement SIP revisions to satisfy the applicable attainment planning elements, and require that such plans "shall provide for attainment of the NAAQS,"⁹ and that the "primary standard attainment date for ozone shall be as expeditiously as practicable" but not later than a maximum attainment date measured from the effective date of the area's designation.¹⁰ The EPA has also promulgated regulations interpreting these requirements for the 2008 ozone NAAQS and the 2015 ozone NAAQS at 40 CFR part 51, subparts X and CC, respectively.

CAA section 182(i) governs the Act's requirements for areas reclassified by operation of law. Specifically, CAA section 182(i) states that areas that are reclassified due to failure to timely attain by the attainment date "shall meet such requirements of subsections (b) through (d) of this section as may be applicable to the area as reclassified,

according to the schedules prescribed in connection with such requirements, except that the Administrator may adjust any applicable deadlines (other than attainment dates) to the extent such adjustment is necessary or appropriate to assure consistency among the submissions." Subsections (b) through (d) of CAA section 182 cover the required SIP revisions for Moderate (182(b)), Serious (182(c)), and Severe (182(d)), and those requirements are generally cumulative (*see, e.g.*, CAA section 182(b) (requiring Moderate areas to make submissions relating to Marginal areas in addition to the revisions for the Moderate classification)). The SIP revisions, control measures, and timing of such submissions and controls are intended to, among other things, ensure that areas will attain the NAAQS as expeditiously as practicable, but no later than the applicable attainment date. As discussed in more detail later in this document, most SIP requirements are not dependent on the attainment date itself, but certain SIP requirements are inherently tied to the applicable attainment date and therefore are no longer required for the lower classification after the area is reclassified.

As noted, CAA section 182(i) also provides the Administrator with authority to adjust applicable deadlines (other than attainment dates) for areas that are reclassified as a result of failure to attain the NAAQS under CAA section 182(b)(2), "to the extent such adjustment is necessary or appropriate to assure consistency among the required submissions." In proposing the adjustment of applicable deadlines for reclassified areas, the EPA considered the timeframes provided under the statute for the submission and implementation of requirements for initial area designations and classifications. Unsurprisingly, many of the nonattainment plan requirements in subparts 1 and 2 establish timing of the submission and implementation of controls such that those plans and controls will influence attainment of the NAAQS within the area by the attainment date.¹¹ The EPA's proposed

submission and implementation schedules for reclassified areas in this document are consistent with the overall schedule of the submission of substantive requirements that are associated with a classification, but adjusts those schedules to fit the abbreviated timeframe available to reclassified areas before the next applicable attainment date. In particular, the EPA's proposed deadlines for implementation of controls and SIP submissions are informed by the need to ensure that the reductions resulting from the Act's requirements are consistently due in time to influence an area's attainment by the attainment date, to the extent the applicable controls are necessary to achieve attainment by that date.

While some areas are reclassified due to failure to attain by the attainment date, others may be reclassified as a result of a state's request. CAA section 181(b)(3) states that "[t]he Administrator shall grant the request of any State to reclassify a nonattainment area in that State . . . to a higher classification." In some cases, states may seek voluntary reclassification to a higher classification early in the designation and planning cycle, and in those cases, the existing SIP submittal and implementation deadlines for the higher classification would continue to apply. In other instances, states may request a voluntary reclassification under CAA section 181(b)(3) where the SIP submittal and implementation deadlines have already passed or will occur in the near future. CAA section 182(i) specifically provides authority to the EPA to adjust applicable deadlines, other than attainment dates, for areas that are reclassified as a result of a failure to attain under CAA section 181(b)(2), but section 182(i) does not specifically reference areas that are voluntarily reclassified under CAA section 181(b)(3). Per CAA section 301(a)(1), the EPA has determined that regulations are necessary to prescribe the SIP submittal and implementation deadlines for such voluntarily reclassified areas, where the deadlines associated with the requested higher classification have already passed or will occur in the near future (*i.e.*, less than 18 months from the effective date of the reclassification).

The EPA's proposed deadlines in this document were also informed by the amount of time that the CAA prescribes when new implementation plans are

¹¹ *See, e.g.*, CAA section 172(c)(6) ("Such plan provisions shall include enforceable emission limitations . . . as well as schedules and timetables for compliance, as may be necessary or appropriate to provide for attainment of such standard in such area by the applicable attainment date specified in this part."); CAA section 182(b)(1)(A)(i) ("Such plan shall provide for such specific annual reductions in emissions of volatile organic compounds and oxides of nitrogen as necessary to attain the [NAAQS] of for ozone by the attainment date applicable under this chapter."); CAA section 182(b)(2) (requiring control measures on major

stationary sources of VOCs or sources of VOCs covered by a CTG to be implemented as expeditiously as practicable but no later than the beginning of the ozone season of the attainment year).

⁹ CAA section 172(c)(1).

¹⁰ CAA section 181(a)(1).

required to be submitted under various circumstances (*see, e.g.*, CAA section 110(k)(5) (allowing EPA to “establish reasonable deadlines (not to exceed 18 months)” after notification that a SIP is inadequate); CAA section 179(d) (subpart 1 requirement that within one year of a finding that a nonattainment area has failed to attain by its attainment date, States must submit a new SIP revision addressing nonattainment plan requirements)).

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

A. Default Deadlines for Reclassified Nonattainment Areas Under the Ozone NAAQS

The EPA is proposing to establish default SIP submittal and implementation deadlines for reclassifications by operation of law pursuant to section 181(b)(2) and voluntary reclassification requests pursuant to section 181(b)(3) for areas reclassified as Moderate, Serious, and Severe for all current and future ozone NAAQS. States responsible for areas initially designated as nonattainment are required to prepare and submit SIP revisions by deadlines relative to the effective date of the rule establishing area designations, and the submission deadlines vary depending on the SIP element required (*e.g.*, the statute provides 3 or 4 years from initial nonattainment designation to submit SIPs for some requirements and 2 years for others). Areas initially designated as nonattainment are also required to implement RACT as expeditiously as practicable, but no later than January 1 of the fifth year after the effective date of designations.

The EPA recognizes that upon reclassification, especially when under CAA section 181(b)(2), a state can be faced with limited time to submit and implement required SIP revisions prior to the next attainment date. In addition, in some cases, the SIP submission and implementation deadlines associated with areas initially classified at a level may have already passed at the time of reclassification, making it impossible to apply, for example, the Moderate area SIP submission and implementation deadlines to areas that are mandatorily reclassified to Moderate upon failure to attain by the Marginal area attainment date. In light of these considerations, the EPA has historically adjusted deadlines pursuant to the general rulemaking authority granted under CAA section 301(a) to prescribe regulations as are necessary to carry out the functions of the Act, and the specific authority

granted by CAA section 182(i).¹² The EPA has promulgated these adjustments of SIP submission and implementation deadlines that apply to reclassified areas with the intent to ensure consistency amongst submissions, encourage meaningful reductions towards expeditious attainment of the NAAQS, and promote planning flexibility where possible, within the fixed outer bound of an area’s new maximum attainment date.

We recognize that because the adjustments in these deadlines are not made until after an area’s attainment date under a lower classification, the time between reclassification and a reclassified area’s new attainment date will inherently provide less time than the period of time provided between initial designation and classification and that classification’s initial attainment date. For example, an area that is initially classified as Marginal is afforded 3 years to attain the NAAQS per CAA section 181(a)(1). If that area fails to attain by the Marginal area attainment date, and the EPA timely issues its finding 6 months after the attainment date per CAA section 181(b)(2), then the area has no more than 2.5 years from that point in time to plan for and attain the NAAQS by its new Moderate area attainment date, which is far less than the 6 years that areas initially classified as Moderate are allotted.

In some cases, though, particularly where a state requests a voluntary reclassification pursuant to CAA section 181(b)(3) and does so well before the area’s attainment date, the existing deadlines associated with the higher classification’s requirements will not have passed and it will be practicable for the state to meet those deadlines without adjustment. The EPA is therefore proposing that, where the existing deadlines are 18 months or more from the effective date of reclassification, the EPA will not adjust such applicable deadlines or set new ones under its CAA section 182(i) and 301(a) authority. The 18-month timeframe is the outer boundary of what the CAA sets as a “reasonable deadline” for SIP revisions required following a

¹² CAA section 182(i) specifically provides authority to the EPA to adjust applicable deadlines, other than attainment dates, for areas that are reclassified as a result of failure to attain under CAA section 182(b)(2), to the extent such adjustment is necessary or appropriate to assure consistency among the required submissions. The provision does not specifically reference areas that are voluntarily reclassified under CAA section 181(b)(3); the EPA is therefore reasonably proposing to adjust deadlines for such areas under its general rulemaking authority in CAA section 301(a), consistent with CAA section 182(i).

finding of inadequacy (*see* CAA section 110(k)(5)), and where that period of time remains for SIP development for a reclassified area, we do not think adjustment is necessary, nor is it needed to assure expeditious attainment of the NAAQS or that the required submissions will be implemented consistently with the Act’s structure. The Act’s establishment of 18 months as an outer boundary in CAA section 110(k)(5) also indicates that Congress judged that this timeframe would be sufficient for states to identify and develop control measures, to draft revisions to address attainment plans and other requirements, and to complete the required public notice process, adopt such revisions, and to submit them to the EPA.

However, we note that the Act does not guarantee states will have 18 months to revise their SIPs following a finding of inadequacy, and nor does this proposal establish that states are entitled to have 18 months to revise plans to address requirements of the new classification. Expeditious attainment of the NAAQS and ensuring that requirements are in place in time to influence attainment by the attainment date will, in many cases, require that states are afforded much less than 18 months to revise SIPs. This will be particularly true where areas fail to attain by their attainment date, especially for the lower classifications where the interval between attainment dates is only 3 years,¹³ and where states fail to request a voluntary reclassification early in the implementation schedule.

The EPA invites comments on its proposal to adjust applicable deadlines where the existing classification deadline has either passed or is less than 18 months away, and whether a different remaining time period for an existing deadline should be considered. The proposed default adjustment of deadlines that would apply in these circumstances will provide advance notice and certainty to any states with nonattainment areas that may fail to attain an ozone NAAQS by the applicable attainment date in the future. Because many of these same timing-related pressures will exist with voluntary reclassifications, the EPA is proposing to also set the same default SIP submission and implementation deadlines to provide certainty to any states that are contemplating making

¹³ The difference in attainment deadlines between Marginal and Moderate classifications is 3 years, between Moderate and Serious areas is 3 years, and between Serious and Severe areas is 6 years. *See* CAA section 181(a) and 40 CFR 51.1302.

such requests. The proposed default deadlines are listed in table 1 for clarity.

TABLE 1—DEFAULT SIP SUBMISSION AND CONTROL MEASURE IMPLEMENTATION DEADLINES FOR RECLASSIFIED OZONE NONATTAINMENT AREAS WHEN THE CLASSIFICATION-RELATED DEADLINES FOR INITIAL DESIGNATIONS PROVIDE INSUFFICIENT TIME

SIP requirement	Proposed default deadline
Default Deadlines for Reclassified Nonattainment Areas	
SIP submittal deadline for all elements, unless addressed differently elsewhere in this table.	Within 18 months after the effective date of the relevant reclassification or January 1 of the applicable attainment year, whichever is sooner.
RACT implementation deadline	Within 18 months from the RACT SIP submittal deadline or the beginning of the applicable attainment year ozone season as defined by 40 CFR appendix D to part 58(i), whichever is sooner.
I/M implementation deadline (Basic and Enhanced)	No later than 4 years after the effective date of the relevant reclassification notice (unless needed for attainment by the attainment date or to demonstrate RFP).
Default Deadlines for Reclassified Severe Nonattainment Areas	
SIP submittal deadline for section 185 fee program element ...	36 months after the effective date of the relevant reclassification notice or no later than January 1 of the applicable attainment year, whichever is sooner.

Establishing default deadlines for areas reclassified under CAA sections 181(b)(2) and 181(b)(3) is necessary and appropriate to ensure states are submitting SIP revisions and implementing control measures triggered by reclassification on a consistent timeline that retains the statute’s framework of applying requirements in time to achieve attainment by the attainment date. Doing so also provides states maximum advance visibility into the time that will be provided for development of SIP revisions and new control measures designed to expeditiously attain the NAAQS. The EPA’s expectation is that providing a consistent framework for SIP development for reclassified areas will establish certainty for states with areas that fail to timely attain, and that such states can begin focusing on identifying meaningful reductions and developing SIPs to obtain those reductions earlier than they would under the EPA’s historical practice of issuing SIP revision submission and control measure implementation deadlines after or in parallel with the determinations that result in area reclassifications. However, we recognize the possibility that in some situations, the default deadlines may not be appropriate or serve the statutory goals of consistency amongst submissions or expeditious attainment of the NAAQS. Therefore, we propose that the EPA would retain authority under CAA sections 301(a) and 182(i) to establish a set of SIP submission and control measure implementation deadlines on a case-by-case basis, through notice-and-comment rulemaking, that deviate from the default deadlines proposed in this

document, if finalized, where appropriate.

1. Default Deadlines for Nonattainment Areas Reclassified as Moderate or Serious

SIP requirements that apply to Moderate areas are generally cumulative of CAA requirements for the Marginal classification and include additional Moderate area requirements (see CAA sections 172(c)(1) and 182(a) and (b)). The EPA has further interpreted and described these requirements in its implementation rules.¹⁴ Similarly, SIP requirements that apply to Serious areas are generally cumulative of CAA requirements for the Marginal and Moderate area classifications and include additional Serious area requirements (see CAA sections 172(c)(1) and 182(a)–(c)). The EPA’s implementation rules also provide further interpretation of the statutory Serious area requirements.¹⁵

a. Default Submission Deadline for Required SIP Revisions

The time period between designation and the maximum attainment date for nonattainment areas initially classified as Moderate or Serious is 6 or 9 years, respectively. In the case of mandatory reclassification after initial area designations pursuant to CAA section 181(b)(2), reclassified Moderate and Serious areas would typically have less than 3 years between the date of reclassification and the area’s new maximum attainment date. Given the

¹⁴ See, e.g., 40 CFR 51.1100 *et seq.* (2008 ozone NAAQS), and 40 CFR 51.1300 *et seq.* (2015 ozone NAAQS).

¹⁵ *Id.*

compressed timeline that reclassified Moderate and Serious areas face, and consistent with past practice,¹⁶ we are proposing to set the SIP submission deadlines for all the various requirements for newly reclassified Moderate and Serious areas as within 18 months of the effective date of the relevant reclassification notice or January 1 of the applicable attainment year, whichever is sooner, unless otherwise specified in a separate notice-and-comment rulemaking establishing a different SIP submission deadline. While not all of the “schedules prescribed in connection with” the various subpart 2 requirements are the same, because the timeframe to attain by the newly applicable attainment date for Moderate and Serious areas is compressed from either 6 or 9 years to less than 3 years, we propose to apply one SIP revision deadline that is at most 18 months from the effective date of reclassification, but in any case no later than January 1 of the attainment year.

As previously stated, the EPA believes that, in most cases, 18 months should provide states sufficient time for assessing, adopting, and implementing emission reduction measures such that any reclassified nonattainment areas can expeditiously attain the ozone NAAQS, consistent with part D’s purpose of achieving expeditious attainment by the attainment date. Similarly, a default SIP submission deadline of January 1 of the applicable attainment year would

¹⁶ See, e.g., “Final Rule—Determinations of Attainment by the Attainment Date, Extensions of the Attainment Date, and Reclassification of Areas Classified as Marginal for the 2015 Ozone National Ambient Air Quality Standards” (87 FR 60897, 60907, October 7, 2022).

promote expeditious attainment of the ozone NAAQS by requiring states to submit SIPs including control measures needed for attainment prior to when those controls are required to be implemented. In addition, establishing January 1 of the attainment year as the outer boundary for states to submit SIP revisions would ensure that reclassified nonattainment areas are subject to consistent deadlines in accordance with CAA section 182(i) and would be in line with past practice. For example, the EPA adopted this approach for Marginal areas reclassified as Moderate for failure to timely attain the 2008 and 2015 ozone NAAQS, to ensure consistency among required SIP submissions.^{17 18} Thus, the proposed deadline is necessary and appropriate to assure that these submissions are consistent with the Act's overall scheme for expeditious attainment of the NAAQS by the attainment date, and that similarly situated states are treated consistently.

In some historical instances, we have also established SIP submission deadlines that align with the beginning of an area's ozone season,¹⁹ which we view as the outer boundary for establishing a SIP submission deadline for a reclassified area, because the beginning of the attainment year ozone season is the maximum deadline under the statutory ozone RACT provision and the EPA's existing regulations interpreting that provision to implement RACT. The EPA does not believe it is reasonable to establish a SIP submission date for controls subsequent to a date when those controls are required under the Act to already be implemented. For many ozone nonattainment areas in the country, January 1 is the beginning of the ozone season. But there are states that have a later start to the ozone season in March, April, or May. We therefore take comment on establishing the later alternative SIP submission deadline for reclassified Moderate and/or Serious areas as the beginning of the attainment year ozone season (rather than January 1 of the attainment year), recognizing that doing so would result in different SIP submission deadlines

for different reclassified areas, depending on when the area's ozone season begins.

The EPA's proposed SIP submission deadline for areas reclassified as Moderate or Serious of no later than 18 months after the effective date of the relevant reclassification notice or January 1 of the applicable attainment year, whichever is earlier, would apply to all newly applicable requirements associated with the reclassification, including SIPs to address RACT and I/M. The EPA's implementing regulations for the 2015 ozone NAAQS established a default RACT SIP submission deadline for areas reclassified Moderate or higher of either 24 months from the reclassification effective date or a deadline established by the Administrator in the reclassification action using its discretion under CAA section 182(i) (*see* 40 CFR 51.1312(a)(2)(ii)). We have found that a RACT SIP submission deadline of 24 months after the effective date of the reclassification action has resulted in SIP submission deadlines that are later than the beginning of the attainment year ozone season, and in some cases, near or after an applicable Moderate or Serious area attainment date. In every case of reclassification under the 2008 and 2015 ozone NAAQS, it has not been possible to provide a RACT SIP submission deadline of 24 months from the effective date of the reclassification for an area that was reclassified as result of failure to attain by the attainment date. We are therefore proposing to remove the existing RACT SIP submission deadline in 40 CFR 51.1312(a)(2)(ii) and replace it with the general default deadlines discussed in this action.

Thus, if this action is finalized as proposed, the default SIP submission deadlines for newly required Basic or Enhanced I/M SIPs, would also become the sooner of 18 months from the effective date of the relevant reclassification notice or January 1 of the applicable attainment year. This is necessary to be consistent with the I/M regulations which provide that an I/M SIP shall be submitted no later than the deadline for submitting the area's attainment SIP.²⁰

b. Default Implementation Deadlines for RACT and I/M

With respect to implementation deadlines, 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 RACT as

expeditiously as practicable, but no later than January 1 of the 5th year after the effective date of designation.²¹ Similarly, the EPA's implementing regulations for the 2015 ozone NAAQS require that, for areas initially classified as Moderate or higher, a state shall provide for implementation of RACT as expeditiously as practicable but no later than January 1 of the fifth year after the effective date of designation.²² The EPA's implementing regulations for the 2015 ozone NAAQS also require that, for RACT required pursuant to reclassification, the state shall provide for implementation of RACT as expeditiously as practicable, but no later than the beginning of the attainment year ozone season associated with the area's new attainment deadline, or January 1 of the third year after the associated SIP submission deadline, whichever is earlier; or the deadline established by the Administrator in the final action issuing the area reclassification.²³ In addition, the modeling and attainment demonstration requirements for 2008 ozone nonattainment areas 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.²⁴ Similarly, the EPA's implementing regulations for the 2015 ozone NAAQS require that the modeling and attainment demonstrations for areas classified Moderate or higher must provide for implementation of all control measures needed for attainment no later than the beginning of the attainment year ozone season, notwithstanding any alternative deadline established per 40 CFR 51.1312.²⁵ Underlying these implementation deadlines is the EPA's consideration that any RACT deadline should, where possible, provide at least one full ozone season in advance of an area's maximum attainment date for implemented controls to achieve emission reductions and positively influence an area's monitored design value.

The EPA recognizes that the beginning of the ozone season varies among states and nonattainment areas. For some nonattainment areas, the ozone season begins in January and for other areas it begins in March, April, or May. Consequently, the beginning of the attainment year ozone season ranges from January to May of the year before

¹⁷ "Final Rule—Determinations of Attainment by the Attainment Date, Extensions of the Attainment Date, and Reclassification of Several Areas for the 2008 Ozone National Ambient Air Quality Standards" (81 FR 26697, 26705, May 4, 2016).

¹⁸ "Final Rule—Determinations of Attainment by the Attainment Date, Extensions of the Attainment Date, and Reclassification of Areas Classified as Marginal for the 2015 Ozone National Ambient Air Quality Standards" (87 FR 60897, 60907, October 7, 2022).

¹⁹ *See, e.g.*, 88 FR 6633 (February 1, 2023) establishing March 1, 2023, as the due date for SIP revisions addressing Moderate requirements for the Detroit, Michigan area.

²⁰ *See* 40 CFR 51.372(b)(2).

²¹ *See* 40 CFR 51.1112(a)(3).

²² *See* 40 CFR 51.1312(a)(3)(i).

²³ *See* 40 CFR 51.1312(a)(3)(ii).

²⁴ *See* 40 CFR 51.1108(d).

²⁵ *See* 40 CFR 51.1308(d).

the area's maximum attainment deadline. The EPA's existing implementing regulations informed the default RACT implementation deadline that we are proposing in this document for any area reclassified as Moderate or Serious. Such proposed default deadline would require states to implement RACT as expeditiously as practicable, but no later than 18 months from the proposed RACT SIP submittal deadline or the beginning of the applicable attainment year ozone season, whichever is earlier. We are proposing that this default deadline would apply instead of the existing regulatory provision in 40 CFR 51.1312(a)(3)(ii), which applied only to the 2015 ozone NAAQS. As we proposed for establishment of SIP submission deadlines, the EPA is also proposing that the regulation would allow the EPA to establish a different deadline in a notice-and-comment rulemaking in order to accommodate fact-specific circumstances, where appropriate.

With respect to the default implementation deadlines for Basic and Enhanced I/M programs required as the result of a mandatory reclassification, states wishing to use emission reductions from their newly required I/M programs for the ozone NAAQS would need to have such programs fully established and start testing as expeditiously as practicable, but no later than the beginning of the applicable attainment year ozone season, consistent with the CAA principle (and logic) that measures that are needed to demonstrate attainment by the attainment date must be in place early enough to impact the air quality design value that will be used to determine whether the area attained by that date. The EPA's implementing regulations for the 2008 and 2015 ozone NAAQS therefore adopt this principle with respect to implementation of I/M when required as a result of a reclassification. However, given the unique nature of I/M programs, there are many challenges, tasks, and milestones that must be met in establishing and implementing an I/M program. The EPA realizes that implementing a new or revised I/M program on an accelerated timeline may be difficult to achieve in practice. Therefore, for states that do not intend to rely upon emission reductions from their newly required Basic or Enhanced I/M program in attainment or RFP SIPs, we are proposing to allow these Basic and Enhanced I/M programs to be fully implemented no later than 4 years after the effective date of reclassification, explained as follows.

Under CAA section 182(i), mandatorily reclassified areas are

generally required to meet the requirements associated with their new classification "according to the schedules prescribed in connection with such requirements." The I/M regulations provide such a prescribed schedule in stating that newly required I/M programs are to be implemented as expeditiously as practicable. The I/M regulations also allow areas newly required to implement I/M up to "4 years after the effective date of designation and classification" to fully implement the I/M program.²⁶ With mandatory reclassifications, this 4-year implementation deadline for newly required I/M programs might extend beyond the corresponding attainment date. However, by proposing such a deadline for mandatorily reclassified areas newly required to implement a Basic or Enhanced I/M program (but not needing I/M emission reductions for attainment or RFP SIP purposes), the EPA maintains that these newly required I/M programs could reasonably be implemented after the area's relevant attainment date if reductions from an I/M program are not necessary for an area to achieve timely attainment of the applicable NAAQS. The EPA has long taken the position that the statutory requirement for states to implement I/M in ozone nonattainment areas classified Moderate and higher generally exists independently from the attainment planning requirements for such areas (see also section III.B.2. of this document).²⁷ This proposed implementation deadline of up to 4 years takes into consideration the numerous challenges and milestones necessary in implementing a Basic or an Enhanced I/M program. The EPA is proposing to establish that the same implementation deadline of up to 4 years for areas not relying on Basic or Enhanced I/M for attainment or RFP SIP purposes is appropriate to also apply to voluntarily reclassified areas, where the higher classification deadlines for those areas have either already passed or are less than 18 months from the effective date of reclassification. This proposed

²⁶ The I/M program implementation deadline at 40 CFR 51.373(d) states: "For areas newly required to implement enhanced I/M as a result of designation under the 8-hour ozone standard, the required program shall be fully implemented no later than 4 years after the effective date of designation and classification under the 8-hour ozone standard." A start date for I/M programs of 4 years after the effective date of designation and classification under the 8-hour ozone standard is also cited in the Basic I/M performance standard at 40 CFR 51.351(c) and (i)(2).

²⁷ John S. Seitz, Memo, "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard," May 10, 1995, at 4.

deadline is not only consistent with the proposed deadline for mandatorily reclassified areas, but it is also consistent with EPA's historical practice.²⁸

The EPA requests comment on a proposed default deadline for reclassified Moderate and Serious areas requiring that any newly required Basic or Enhanced I/M programs be fully implemented as expeditiously as practicable, but no later than 4 years after the effective date of reclassification. The EPA again notes that if a state intends to rely upon emission reductions from its newly required Basic or Enhanced I/M programs in its attainment or RFP SIP, the state will need to have such I/M programs fully implemented no later than the beginning of the applicable attainment year ozone season.

c. Transportation Control Demonstration

CAA section 182(c)(5) requires states with Serious ozone nonattainment areas to submit, 6 years after November 15, 1990, and every 3 years thereafter, a demonstration as to whether current aggregate vehicle mileage, aggregate vehicle emissions, congestion levels, and other relevant parameters are consistent with those used for the area's demonstration of attainment. Six years after November 15, 1990, was 2 years after the statutory deadline established to submit attainment demonstrations for such areas. Because the transportation control demonstration is not itself a control that must be implemented in order for areas to attain by the attainment date, and is ideally spaced from the deadline of the attainment demonstration to allow sufficient time for the state to see whether actual vehicle emissions and parameters square with the projected emissions and parameters in the attainment demonstration modeling, it is appropriate to retain the Act's prescribed schedule without adjustment with respect to this element for reclassified areas. The EPA is therefore proposing that for all reclassified Serious ozone areas, the first transportation control demonstration must be submitted within 2 years after the deadline for the attainment demonstrations for these areas and every 3 years thereafter.

²⁸ See, e.g., 87 FR 60897 (October 7, 2022) (establishing Basic I/M implementation deadlines for areas reclassified from Marginal to Moderate for the 2015 ozone NAAQS); 89 FR 51829 (June 20, 2024) (establishing Enhanced I/M implementation deadlines for certain Texas areas that were voluntarily reclassified from Moderate to Serious for the 2015 ozone NAAQS).

2. Default Deadlines for Nonattainment Areas Reclassified as Severe

SIP requirements that apply to Severe areas are generally 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 Rules for the 2008 and 2015 ozone NAAQS (*see* 80 FR 12264, March 6, 2015; 83 FR 62998, December 6, 2018; CAA sections 172(c)(1) and 182(a)–(d); 40 CFR 51.1100 *et seq.*; and 40 CFR 51.1300 *et seq.*). For areas reclassified as Severe, SIP submissions must address the more stringent major source threshold of 25 tpy²⁹ for RACT and NNSR, and the more stringent NNSR emissions offset ratio of 1.3:1.³⁰ 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.³¹

The EPA is proposing the same default SIP submittal and implementation deadlines for reclassified Severe areas as is proposed in section III.A.1. of this document for reclassified Moderate and Serious areas, with one exception for SIP submissions addressing CAA section 185 fee programs. More specifically, for all newly applicable SIP requirements associated with an area's reclassification to Severe (except SIP submissions addressing section CAA section 185 fee programs), the EPA is proposing a default SIP submittal deadline as the earlier of 18 months after the effective date of the relevant reclassification

²⁹ “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 tpy of volatile organic compounds.” CAA section 182(d).

³⁰ *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.

³¹ 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.

notice or January 1 of the applicable attainment year.³² This proposed SIP submission deadline is consistent with the EPA's historical adjustment of deadlines for ozone areas mandatorily reclassified from Serious to Severe under the 2008 ozone NAAQS as well as areas reclassified to Severe per a voluntary request from the state, for which we have previously established 18-month SIP submission deadlines.³³

It is appropriate to align the default SIP submission and implementation deadlines for reclassified Severe nonattainment areas with those proposed in section III.A.1. of this document for reclassified Moderate and Serious nonattainment areas. The same considerations articulated in section III.A.1. also apply here. Additionally, areas that have been reclassified to Severe are areas that have struggled over time to expeditiously attain the NAAQS, and may face more complex and difficult implementation obstacles than areas classified at lower levels. However, it is the Agency's view that an outer boundary of 18 months remains an appropriate timeframe for states to revise SIPs as needed, even for areas reclassified as Severe. We recognize that the statute's later maximum attainment date associated with higher classifications, and the more stringent requirements imposed upon such areas under subpart 2, reflect the “heavier lift” that Severe areas may face to attain the NAAQS. The longer interval between attainment dates between Serious and Severe would provide states more time than is available for reclassifications between the lower classifications (*i.e.*, Marginal to Moderate or Moderate to Serious) for SIP development and identification and implementation of control measures. However, that same interval also means that establishing an 18-month maximum SIP submission and control measure implementation deadline will result in earlier implementation of the control measures prompted by the Severe area requirements, such that those measures may be in place to impact air quality in multiple ozone seasons before the maximum attainment date, rather than just the last ozone season preceding the attainment date, as may often be the practical outcome of the EPA's proposed deadline for areas in the lower classifications. Increasing the likelihood that Severe area measures will be in

³² This proposed deadline would not apply for voluntarily reclassified areas where the existing Severe area SIP submission deadline is at least 18 months from the effective date of the reclassification. In those instances, the existing Severe area SIP submission deadline would apply.

³³ 87 FR 21825 (April 13, 2022).

place for multiple ozone seasons prior to the attainment date correspondingly increases the likelihood that these reclassified Severe areas will expeditiously attain the NAAQS by the attainment date. The EPA's proposed deadline for reclassified areas, by providing 18 months for SIP development but requiring at least that those revisions and measures be submitted by the last calendar year preceding the attainment date, accommodates the varying positions areas may be in vis-à-vis their attainment date, while also meeting the CAA's requirement under section 182(i) “to assure consistency among the required submissions.”

The EPA is therefore proposing a default deadline for states to submit Severe area SIP revisions of 18 months after the effective date of reclassification or January 1 of the applicable attainment year, whichever is earlier. Specifically, the EPA is proposing that SIP revisions required for all newly reclassified Severe areas must be submitted by the sooner of 18 months after the effective date of reclassification or January 1 of the applicable attainment year, except for SIP revisions required to address the section 185 fee program element, for which the EPA is proposing a submittal deadline of the earlier of 36 months after the effective date of reclassification or January 1 of the applicable attainment year.

Consistent with past practice, the EPA is proposing a later submittal date for the CAA section 185 fee program element than what is proposed for the other requirements because implementation of a CAA section 185 fee program is a penalty for failing to attain the NAAQS by the applicable attainment date.³⁴ Thus, an extended deadline of the earlier of 36 months after the effective date of reclassification or January 1 of the applicable attainment year, could allow states to focus more attention on other elements in the first 18 months following reclassification while also allowing enough time for states to submit, and for the EPA to approve, a CAA section 185 fee program ahead of the applicable Severe area attainment date. However, to the degree that states want to take advantage of the administrative efficiency of adopting the CAA section 185 fee program element along with other required Severe area SIP elements, they have the option to submit their CAA section 185 fee programs earlier, including with the other elements.

CAA section 182(d)(1)(A) requires a state with a Severe ozone nonattainment

³⁴ *See*, 87 FR 60926 at 60932 (October 7, 2022).

area to submit a SIP revision that identifies and adopts specific enforceable transportation controls strategies and transportation control measures (TCMs) to offset any growth in emissions from vehicle miles traveled (VMT) or number of vehicles trips in such area. The EPA has provided guidance to states on how to demonstrate whether there has been any growth in emissions from growth in VMT or growth in the number of vehicle trips.³⁵ In addition, states with Severe ozone nonattainment areas are required to 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. States are also required 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. 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. The EPA proposes that a SIP revision to address the VMT offset demonstration requirement will be due the earlier of 18 months after the effective date of reclassification or January 1 of the applicable attainment year, consistent with all other Severe area requirements. If a 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 or if additional transportation control strategies or TCMs are needed to address RFP or attainment, we are proposing that the transportation control strategies and/or TCMs be submitted at the same time as the SIP revision to address the VMT offset demonstration.

In addition to these submission deadlines, for any controls that air agencies determine are needed for meeting CAA requirements, the EPA is proposing that these controls must be implemented as expeditiously as practicable, but no later than 18 months

from the SIP submission deadline or the beginning of the applicable attainment year ozone season, whichever is earlier. This proposed deadline would generally provide a 36-month schedule for SIP submission and controls implementation for reclassified Severe areas. These proposed default deadlines are consistent with the deadlines established for all other Severe area plan elements that are established under CAA sections 172(c)(1) and 182(a)–(d), and 40 CFR 51.1100 *et seq.* As proposed in section III.A.1. of this document for reclassified Moderate and Serious areas, the EPA is also proposing to reserve the right to establish different SIP submittal and implementation deadlines for reclassified Severe areas in a notice-and-comment rulemaking in order to accommodate fact-specific circumstances, where appropriate.

In addition to the SIP submission deadlines identified in this section, 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) be sold instead. The prohibition on the sale of conventional gasoline takes effect 1 year after the effective date of the reclassification (see CAA sections 211(k)(10)(D) and 211(k)(5)). The prohibition on the sale of conventional gasoline takes effect by operation of law; therefore, states with such reclassified areas are not required to make a SIP submission associated with the RFG requirement.

In summary, the EPA is proposing to establish default SIP submittal and implementation deadlines for reclassifications by operation of law under CAA section 181(a)(2) for areas that fail to attain by the attainment date and are thus reclassified as Moderate, Serious, or Severe for all current and future ozone NAAQS, and also for voluntary reclassifications to these classifications under CAA section 181(a)(3). Establishing default SIP submission deadlines that are triggered from the effective date of reclassification actions will provide consistency among the submissions in the sense that all states with jurisdiction over such areas will be treated uniformly by having the same amount of time to develop and submit SIPs. However, we acknowledge that our proposal could in some cases result in SIP deadlines for reclassified areas falling on different days (because such deadlines will be triggered by reclassification actions that are statutorily required to happen any time in a 6-month window following the attainment date, or are granted under voluntary reclassification requests that may occur at any time).

For areas reclassified as Moderate or Serious, where the initially established deadlines have passed or are less than 18 months from the effective date of reclassification, the EPA is requesting comment on: (1) establishing a default SIP submission deadline for all Moderate and Serious area plan elements of no later than 18 months from the effective date of the relevant reclassification notice or January 1 of the applicable attainment year, whichever is earlier; (2) requiring that RACT be implemented as expeditiously as practicable, but no later than 18 months from the RACT SIP submittal deadline or the beginning of the applicable attainment year ozone season, whichever is earlier; (3) requiring that any newly required Basic or Enhanced I/M programs be fully implemented as expeditiously as practicable, but no later than 4 years after the effective date of reclassification; and (4) requiring that the first transportation control demonstration be submitted 2 years after the due date for the attainment demonstrations for reclassified areas (*i.e.*, January 1 of the applicable attainment year) and every 3 years thereafter.

For areas reclassified as Severe, where the initially established deadlines have passed or are less than 18 months from the effective date of reclassification, the EPA is requesting comment on: (1) establishing a default SIP submission deadline for all Severe area plan elements of 18 months after the effective date of reclassification or January 1 of the applicable attainment year, whichever is earlier, with an exception for section 185 fee program SIPs; (2) establishing a default SIP submission deadline for section 185 fee program SIPs of 36 months from the effective date of reclassification or January 1 of the applicable attainment year, whichever is earlier; and (3) requiring that any controls needed for meeting RFP or timely attainment of the ozone NAAQS be implemented as expeditiously as practicable, but no later than 18 months after the proposed SIP submission deadline or the beginning of the applicable attainment year ozone season, whichever is earlier.

B. Status of Certain Requirements of Former Classification

1. Introduction

The EPA is also proposing to revise regulations to clarify whether, when an ozone nonattainment area is reclassified to a higher classification, certain ozone SIP requirements for that lower, former classification will still be required. The

³⁵ In August 2012, the EPA released guidance on VMT offset demonstrations 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" (EPA-420-B-12-053). This guidance is posted at <https://www.epa.gov/state-and-local-transportation/vehicle-miles-travelled-vmt-offset-demonstration-guidance>.

EPA has previously established its statutory interpretation and position on the status of certain SIP requirements for the previous classification in individual SIP actions, most recently in a reclassification action for three nonattainment areas in Texas.³⁶ This proposal restates these interpretations and proposes regulatory language to codify these interpretations to provide further clarity. Specifically, the EPA is restating its interpretation that ozone nonattainment area planning requirements continue to apply following a change in an area's classification level, except where the EPA has specifically determined that the planning requirement is no longer applicable. Specifically, the EPA's existing interpretation is that only three requirements applicable to the lower, former classification (*i.e.*, Moderate or Serious) are no longer required following a change in the area's classification (*i.e.*, to Serious or Severe, respectively): (1) the attainment demonstration, (2) RACM, and, (3) for areas that are voluntarily reclassified, contingency measures as necessary to address failure to attain by the attainment date.

As described elsewhere in this document, CAA section 182(i) specifies that reclassified areas must meet the requirements "as may be applicable to the area as reclassified" and describes the EPA's authority to adjust applicable deadlines (except attainment dates) for the new classification. In contrast, the CAA does not specify what then happens to the requirements that were applicable to the area as it was formerly classified. Nevertheless, this question commonly arises in the ozone program in circumstances where an area is reclassified—whether mandatorily as a result of failure to attain pursuant to CAA section 181(b)(2) or voluntarily (*i.e.*, at the request of a state) pursuant to CAA section 181(b)(3)—before the EPA determines that the requirements for the former classification have been met by the state. This can occur when reclassification takes effect before a state has submitted a SIP revision addressing the requirements applicable to the former classification, before the EPA has acted on a SIP submission to address such requirements, or where the EPA has disapproved or conditionally approved a SIP submission addressing such requirements. For the purposes of this proposal, the EPA refers to the unresolved requirements applicable to the former classification under any of these scenarios as "leftover" SIP requirements.

As an initial matter, the Agency notes that when the states and EPA timely meet CAA-specified deadlines for submitting and acting on SIPs, and the submissions are approvable, it is possible for there to be no leftover SIP requirements, but this is not guaranteed for every situation. To illustrate a possible circumstance, consider that under the 2015 ozone NAAQS, the Marginal attainment date was August 3, 2021. Assuming the EPA had completed the Marginal determinations of attainment by the attainment date (DAADs) within the 6 months provided by CAA section 181(b)(2) (*i.e.*, within 6 months of the August 3, 2021, attainment date), the reclassifications to Moderate would have taken effect no later than February 2022. The EPA, consistent with the principles articulated in the deadline portion of this document, could have established a SIP due date of January 1, 2023 (*i.e.*, the beginning of the Moderate attainment year), less than 11 months after the reclassification took effect. Had the states in turn made timely and complete submissions by January 1, 2023, the EPA could theoretically have acted to approve or disapprove them within the statutory 12 months allotted, or by January 1, 2024. This would have allowed for the possibility of final action before the Moderate attainment date of August 3, 2024. Assuming, for the sake of illustration, that such SIPs were approvable, final approval before the attainment date would ensure that there would be no leftover Moderate SIP requirements by the time the EPA would be required to complete the Moderate area DAAD (*i.e.*, by February 2025) and reclassify areas to Serious if they fail to attain. However, implementation of the ozone standards does not always follow the most straightforward path. To take the previous example, consider the changed circumstances and timeframe that might occur if the Marginal area qualified for a 1-year extension of the attainment date (under CAA section 181(a)(5) and 40 CFR 51.1307), but ultimately failed to attain by the extended attainment date of August 3, 2022. Even if the EPA issued its DAAD action reclassifying the area immediately after the attainment date (*i.e.*, August 4, 2022), the state would have less than four months between the reclassification and its applicable SIP due date under this proposal (*i.e.*, January 1 of the attainment year, 2023) to develop the SIP revisions, put them out for public notice and comment, legislatively approve them, and submit them to the EPA (*see*, CAA section 110(l)). This

timeframe makes it nearly impossible for the state and the EPA to have approved Moderate area SIPs and controls in place to influence air quality to help the area attain by the Moderate area attainment date (*i.e.*, August 3, 2024). Thus, areas in circumstances like these may end up failing to attain by the Moderate area attainment date and being reclassified as Serious without having their Moderate area SIP revisions submitted and/or approved. Moreover, even where there is no attainment date extension, the CAA timelines under section 182 leave no margin for delay, particularly for areas that are reclassified by operation of law as Moderate or Serious. For such areas, the attainment year typically begins less than a year from when the SIP would be due, and the resulting timeframe for SIP development—which for ozone can involve complex analyses—is typically less than a year. Therefore, despite significant effort invested by the EPA and states to timely meet CAA-specified deadlines for ozone SIPs, these deadlines are sometimes not met, and leftover SIP requirements can result.

Accordingly, the EPA is restating in this national rulemaking its interpretations describing whether and how these types of SIP requirements leftover from lower classifications will still apply following the reclassification to a higher classification (*e.g.*, reclassification from Moderate to Serious). The EPA is also proposing regulatory text to codify these interpretations. If this proposed rule is finalized, it will codify the EPA's existing interpretation that certain requirements applicable to the lower, former classification (*i.e.*, Moderate or Serious) are no longer required following a change in the area's classification. Codifying this interpretation will improve the EPA's and states' abilities to identify and timely meet SIP deadlines.

2. Leftover SIP Requirements

The EPA has assessed the effect of reclassification on each of the SIP requirements—referred to in this document as SIP elements—that apply to Marginal, Moderate, and Serious areas.³⁷ We have concluded that certain SIP elements, discussed in this section, are explicitly tied to the current attainment date, and would therefore be mooted by reclassification. However,

³⁷ As noted previously, this rule does not address voluntary reclassifications from Severe to Extreme. The EPA expects that this type of reclassification will be rare. We would address the status of leftover Severe requirements following a reclassification to Extreme, if any, on a case-by-case basis, should the need arise.

³⁶ 89 FR 51829 (June 20, 2024).

most of the SIP elements required under the former classification are not explicitly tied to the attainment date for that former classification and are therefore unaffected by reclassification. The mere fact that an area is reclassified is not a sufficient basis to determine that a CAA requirement applicable to the prior classification no longer applies and there is no language in the statute which necessitates or even supports such a position. The SIP elements associated with each classification are

generally cumulative from Marginal up to Extreme.³⁸ The requirement to submit such elements remains applicable, and the submittal and implementation deadlines are unchanged. If a state misses the submission deadline for these required SIP elements and has been subsequently reclassified, the EPA is obligated under CAA section 110(k)(1)© to issue a finding that the state has failed to make a complete submission (FFS) and promulgate a FIP unless the state submits, and the EPA

approves, a corrective SIP. Thus, the EPA is not proposing any changes to the current rules with respect to these requirements. For clarity, the requirements associated with a prior classification that the EPA has concluded still apply following a reclassification are listed in table 2. The EPA has been, and will continue, to conduct any CAA-directed oversight on adherence to these listed requirements following reclassification.

TABLE 2—SIP REQUIREMENTS FROM A PRIOR CLASSIFICATION THAT CONTINUE TO APPLY FOLLOWING RECLASSIFICATION

SIP requirement	CAA section	Regulatory cite from 40 CFR (if applicable)
Marginal Area Requirements		
Emissions Inventory	182(a)(3)(A)	§ 51.1315.
Emissions Statement Rule	182(a)(3)(B)	§ 51.1300(p).
Moderate Area Requirements (also includes above Marginal Area Requirements)		
15 percent rate-of-progress (ROP) plan	182(b)(1)(a)	§ 51.1310.
Contingency measures for failure to achieve ROP	172(c)(9)	N/A.
Moderate Area RACT	182(b)(2)	§ 51.1312.
NNSR Moderate Area rules	173	§ 51.165.
Basic I/M	182(b)(4)	40 CFR part 51, subpart S.
Serious Area Requirements (also includes above Moderate Area Requirements)		
RFP	182(c)(2)(B) and (C)	§ 51.1310.
Serious Area RACT	182(b)(2)	§ 51.1312.
Contingency measures for failure to achieve RFP	182(c)(9)	N/A.
Enhanced I/M	182(c)(3)	40 CFR part 51, subpart S.
Clean-fuel Vehicle Programs	182(c)(4)	N/A.
NNSR Serious Area Rules	173	51.165.

The EPA is, however, proposing that following reclassification, there are three elements for nonattainment areas formerly classified as Moderate or Serious that are no longer required for the lower, former classification: (1) the attainment demonstration, (2) RACM, and (3) in the case of voluntary reclassification, contingency measures for failure to attain. These three elements are no longer required because they are explicitly tied to the applicable attainment date. CAA section 181(a)(1) provides that the attainment date for an ozone nonattainment area depends upon its classification. Therefore, when an ozone nonattainment area is reclassified, the attainment date for the prior classification is superseded by the attainment date for the new classification. Thus, once an ozone nonattainment area has been reclassified and as a result has a new statutory attainment deadline, these three elements are no longer required for the

lower, former classification. Requiring a state to submit or the EPA to act on such SIP elements would make no logical or practical sense as described in more detail later in this section.

The first proposed element that is no longer required is the attainment demonstration requirement for the former classification. Following mandatory reclassification upon failure to attain, the former, superseded classification’s attainment date is in the past and is no longer applicable, and it is no longer meaningful to evaluate whether a plan demonstrates that an area would attain by that superseded date. Moreover, it is impossible for a plan to demonstrate that an area would attain by that superseded date. At that point in time, no changes could be made that would change facts that have already come to pass (*i.e.*, that the area has failed to attain by its applicable attainment date). For a voluntary reclassification that becomes effective

before the attainment date, the former attainment date is likewise superseded. There can only be one attainment date that applies at any given time, and the CAA does not require attainment demonstrations for attainment dates that are not applicable to the area. Because the former classification’s attainment date is no longer applicable, it is therefore no longer relevant for the area to demonstrate attainment with respect to it (just as it is not relevant for an area initially classified as Serious to provide an attainment demonstration for a Moderate attainment date). Moreover, following voluntary reclassification, the EPA is no longer required to determine whether the area attained by the former attainment date. The EPA is therefore proposing to codify the Agency’s existing interpretation that the leftover attainment demonstration requirement is no longer required upon reclassification.

³⁸In subpart 2, subsections (b) through (d) of CAA section 182 cover the required SIP revisions for Moderate (182(b)), Serious (182(c)), and Severe

(182(d)), and those requirements are generally cumulative. *See, e.g.*, CAA section 182(b) (requiring Moderate areas to make submissions relating to

Marginal areas in addition to the revisions for the Moderate classification).

The second element that is proposed to be no longer required for the lower, superseded classification is RACM. For ozone NAAQS implementation under subpart 2 of the CAA, the EPA's rules require the RACM element to be submitted with the attainment demonstration.³⁹ The RACM demonstration must show that an area has adopted all reasonably available control measures necessary to demonstrate attainment as expeditiously as practicable and meet RFP.⁴⁰ The EPA has long evaluated RACM in terms of whether, beyond the control strategy associated with the accompanying attainment demonstration, there are any reasonably available control measures that could advance an area's attainment date.⁴¹ The determination of whether a SIP contains all RACM requires an area-specific analysis that there are no additional economically and technologically feasible control measures (alone or cumulatively) that will advance the attainment date.⁴² The EPA's RACM policy, as outlined in the April 16, 1992, General Preamble, indicates that states should consider all candidate measures that are potentially available for the particular nonattainment area that could advance the attainment date by 1 year.⁴³ Thus, the basis for our proposal that the attainment demonstration is no longer required is applicable to the RACM analysis as well. For a mandatory reclassification, this means that the former classification's attainment date is in the past and was not met. Thus, it is not possible or meaningful to conduct an evaluation as to whether attainment could be achieved by the attainment date or advanced. Likewise, once a voluntary reclassification has occurred, it is no longer relevant to assess whether the former attainment date could have been met sooner. Thus, even though it may have been requested prior to the former attainment date, once granted, a voluntary reclassification would still render inapplicable those requirements specifically tied to the former, no longer applicable attainment date. Accordingly, the EPA interprets the

CAA such that following reclassification, both the attainment demonstration and associated RACM analysis must be done with respect to the new and currently applicable attainment date. The CAA does not require attainment demonstrations (and accompanying RACM analysis) for attainment dates associated with any classification that is not applicable to the area.

The third element that the EPA interprets the CAA to no longer require, and therefore proposes to codify into regulatory text through this rule, is the contingency measure requirement with respect to contingency measures that are only tied to the attainment date.⁴⁴ The contingency measure provisions of the CAA require the submittal of measures that would take effect without further action by the EPA or the state if the area fails to make RFP, or fails to attain by the attainment date.⁴⁵ Unlike the first two elements, the EPA is proposing that the contingency measure requirement for failure to attain would no longer be required only in the case of a voluntary reclassification which becomes effective before the attainment date associated with the prior classification. In the case of mandatory reclassification upon failure to attain, the contingency measure requirement for failure to attain would continue to apply.⁴⁶ Furthermore, in no case would reclassification alone make the contingency measure requirement for RFP or milestone failure be no longer applicable. The contingency measure requirement for failure to attain no longer applies in the case of a voluntary reclassification because, in those circumstances, the state requests, and the EPA approves, a reclassification before the attainment date. When the area is voluntarily reclassified before the attainment date, the EPA is no longer required to determine whether the area

attained by the former attainment date. Because the EPA would not issue such a finding of failure to attain, contingency measures for failure to attain by the attainment date associated with the previous classification would not be triggered, and thus no longer have logical significance. The EPA notes, however, that any mandatory or voluntary reclassification triggers the need to submit new contingency measures for failure to attain by the new attainment date, and further notes that there must still be contingency measures available to implement in the event the area fails to meet any RFP milestone associated with the current or former classification.

Aside from these three SIP requirements proposed to be no longer applicable following reclassification, the EPA is not proposing any clarifications or changes to its interpretation regarding the remaining required SIP elements. All other Marginal, Moderate, and Serious area elements continue to be required after these areas are reclassified. These requirements are unaffected because their meaning is not dependent upon the attainment date itself. For completeness, these requirements are listed in table 2. Reclassification does not change the submission requirement or due date for these elements. For example, the Moderate area 15 percent rate-of-progress (ROP) requirement of CAA section 182(b) specifies an amount of reductions that must occur within 6 years of initial designation, and this requirement is not tied to the applicable attainment date, and therefore, is unaffected by supersession of the attainment date. Similarly, the 3 percent RFP requirement of CAA section 182(c)(2)(B) is expressed as an amount of reductions that must occur every 3 years, beginning 6 years after initial designation and continuing until the attainment year. A new, later attainment date would have no effect on the requirement to reduce emissions in years 6, 9, and so on. This same reasoning applies to the requirement to have contingency measures for failure to meet RFP. Where an area is reclassified and the attainment date is superseded, the EPA must still determine the adequacy of a state's demonstration that RFP milestones have been met, which, if inadequate, could trigger the implementation of contingency measures. Accordingly, and as discussed earlier, contingency measure submissions for this element associated with the current or former classification are still required.

Similar reasoning applies to the other elements listed in table 2. RACT, I/M,

³⁹ 40 CFR 51.1312(c)

⁴⁰ *Id.*

⁴¹ See 83 FR 62998, 63008 (December 6, 2018).

⁴² Memorandum of December 14, 2000, from John S. Seitz, Director, Office of Air Quality Planning and Standards, re: "Additional Submission on RACM from States with Severe One-Hour Ozone Nonattainment Area SIPs." https://www.epa.gov/ttn/oarpg/t1/memoranda/121400_racmmemfin.pdf.

⁴³ "State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990; Proposed Rule." 57 FR 13507 (April 16, 1992). The discussion of RACM in that document contains other relevant history concerning the RACM requirement.

⁴⁴ The EPA notes that most state air agencies do not distinguish their contingency measures submissions as to which measures would be triggered by a failure to attain versus a failure to meet RFP, and the EPA does not necessarily encourage this. Because contingency measures will continue to be required for RFP following voluntary reclassification, the practical effect of the contingency measures element no longer being required for failure to attain may be negligible in most cases.

⁴⁵ CAA section 172(c)(9). The RFP contingency measure requirement is further specified in CAA section 182(c)(9) to be undertaken if the area fails to meet any applicable RFP milestone.

⁴⁶ Moreover, the determination that the area failed to attain would actually trigger implementation of these contingency measures. To the extent this requirement is still unmet following such a determination, the lack of contingency measures is a deficiency that states must correct by developing and implementing such measures as soon as reasonably possible (See, e.g., 88 FR 67961.)

NNSR, and clean-fuel vehicle elements are required to be implemented on specific timeframes that are independent of the attainment date and therefore are unaffected by its supersession. Changing the submission requirement or implementation deadlines for these elements that are not tied to the attainment date would delay the implementation of these measures beyond what the CAA intended. While the CAA does provide for later attainment dates for higher classifications, it does not authorize altering requirements that came due as a result of the lower classifications, aside from the very particular situation outlined for the three requirements that are directly dependent on the attainment date. For example, the CAA requirement in section 182(b)(2) to implement RACT for specified sources is implemented and assessed based on whether the RACT rules are implementing what is economically and technologically feasible. In other words, this analysis of whether controls comprise RACT is done irrespective of the attainment deadline and on a timeline that does not change if the attainment deadline is superseded. There is nothing in the CAA to suggest that reclassification, and the associated change in an area's attainment date, should alter the preexisting requirement to submit a SIP implementing RACT level controls and the deadline to implement those controls. This same logic applies to all the identified SIP requirements not specifically tied to the attainment date. This also is consistent with the EPA's current practice with respect to these requirements.

Finally, the EPA notes that once a reclassification occurs, questions may arise as to how the EPA will implement the leftover SIP requirements. First, for the requirements that the EPA has determined still apply, the statutory planning obligations on states and the EPA would remain. Where a state has not submitted a plan addressing these requirements, the EPA would be required to issue an FFS (as it has done for the 2015 NAAQS Moderate SIP elements),⁴⁷ and where a state does not submit an approvable plan for these requirements, there would be FIP and sanctions obligations from any resulting disapprovals. We will continue to work with states to support the development of approvable SIPs for these required elements, and where such SIPs are received, we intend to act on them in a timely manner, notwithstanding that the area has been reclassified since the SIPs came due. There may be opportunities

for states to harmonize certain analyses for the new classification with submittals for the former classification, but these are situationally dependent and beyond the scope of this rule. As to the SIP elements that the EPA interprets to no longer be required for areas that have been reclassified, the EPA can withdraw the existing FFS for these elements and thereby remove associated FIP and sanctions obligations. Similarly, where a submittal is pending before the EPA that contains SIP elements that are no longer required, the EPA expects that a state could withdraw such a submission, with the expectation that the EPA would not issue an FFS as to such no longer required SIP elements. For such submissions that remain pending before the EPA and for which the Agency is required to take action on under CAA section 110(k)(2), or if there are no longer required elements of a submission that the state still wishes the EPA to act on, the EPA would continue to evaluate those submissions in light of its view that the approvability of such a submission no longer depends upon the attainment date associated with the former classification.

C. Serious Area SIP Revisions for the 2015 Ozone NAAQS

Moderate nonattainment areas that the EPA has determined failed to attain the 2015 ozone NAAQS by the attainment date of August 3, 2024, will be reclassified as Serious by operation of law upon the effective date of the relevant final reclassification rule. Upon reclassification, 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 Serious nonattainment areas under CAA section 182(c), as interpreted and described in the 2015 Ozone NAAQS SIP Requirements Rule (*see* 83 FR 62998, December 6, 2018, and 40 CFR 51.1300 *et seq.*). This section describes the required submission elements for Serious nonattainment areas and articulates how, if finalized, the proposed default SIP submission and implementation deadlines in section III.A.1. of this document will apply to all areas reclassified as Serious under the 2015 ozone NAAQS. In separate rulemakings, the EPA will determine whether specific areas classified as Moderate for the 2015 ozone NAAQS attained the standard by the applicable attainment date of August 3, 2024. The uniform deadlines the EPA is proposing to establish in this rulemaking document are intended to apply to all reclassified Serious nonattainment areas, unless otherwise

established in a separate notice-and-comment rulemaking.

1. Required Submission Elements

SIP requirements that apply to areas classified as Serious are generally cumulative of CAA requirements for the Moderate classification and include additional requirements that are specific to areas classified as Serious, as interpreted and described in the final SIP Requirements Rule for the 2015 ozone NAAQS (*see* CAA sections 172(c)(1) and 182(b) and (c), and 40 CFR 51.1300 *et seq.*). The SIP requirements that apply specifically to Serious areas include: Enhanced monitoring (CAA section 182(c)(1) and 40 CFR 58.10); Emissions inventory and emissions statement rule (CAA section 182(a)(1), CAA section 182(a)(3)(A), 40 CFR 51.1300(p), and 40 CFR 51.1315); RFP (CAA section 182(c)(2)(B) and 40 CFR 51.1310); Attainment demonstration and RACM (CAA section 182(c)(2)(A), CAA section 172(c)(6), 40 CFR 51.1308, and 40 CFR 51.1312(c)); RACT (CAA section 182(b)(2) and 40 CFR 51.1312); Nonattainment New Source Review (NSR) (CAA section 172(c)(5), CAA section 173, 40 CFR 51.1314, and 40 CFR 51.165); Enhanced I/M (CAA section 182(c)(3) and 40 CFR part 51, subpart S); Clean-fuel vehicle programs (CAA section 182(c)(4));⁴⁸ and Contingency measures (CAA sections 172(c)(9) and 182(c)(9)). In addition to these required SIP submissions, a demonstration evaluating the need for a transportation control measure program (CAA section 182(c)(5)) is required.

We are providing additional discussion in the following sections for these Serious area requirements: (a) RACT, (b) Nonattainment New Source Review, and (c) Enhanced I/M.

a. RACT

Subpart 2 of part D of title I of the CAA applies a specific RACT requirement for all ozone nonattainment areas that the EPA interprets as being independent of the Attainment Demonstration and RACM elements (*see* CAA section 182(b)(2), 40 CFR 51.1112, and 40 CFR 51.1312). For ozone nonattainment areas reclassified as Serious, the independent analysis addressing RACT level controls for major sources must include an evaluation of controls for sources emitting 50 tons per year (tpy) or more

⁴⁸ In June 2022, the EPA released guidance on clean fuel fleet programs titled "Guidance for Fulfilling the Clean Fuel Fleets Requirement of the Clean Air Act" (EPA-420-B-22-027). This guidance is posted at <https://www.epa.gov/state-and-local-transportation/clean-fuel-fleets-program-guidance>.

⁴⁷ 88 FR 71757 (October 18, 2023).

that are currently reasonably available, consistent with the definition of “major source” or “major stationary source” for areas classified as Serious (*see* CAA sections 182(c)). The RACT analysis must also include an evaluation of currently available RACT for all sources in the nonattainment area that emit, or have the potential to emit, at least 50 tpy of VOC or NO_x, as well as an evaluation of RACT for all sources subject to a Control Techniques Guideline (*see* CAA sections 182(b)(2) and 182(f)). The EPA recognizes that in the context of a reclassification to Serious, these areas should already have RACT in place to address the lower classification’s requirements (*i.e.*, those required when the areas were previously classified as Moderate); RACT should already be implemented in these areas for sources that emit, or have the potential to emit, at least 100 tpy of VOC or NO_x. CAA subpart 2 requirements are generally cumulative and, for Serious areas, states are required to address not only those requirements listed in CAA section 182(c) but also in CAA sections 182(a) and (b), to the extent those requirements are not superseded by the more stringent requirements in CAA section 182(c) and/or have not been previously addressed. However, the primary focus for states with areas reclassified as Serious is expected to be on identifying and adopting new RACT measures required to control sources with the potential to emit between 50 to 100 tpy of VOC or NO_x, as long as the state has already addressed sources with at least 100 tpy of VOC or NO_x. In order to fulfill their Serious area SIP submission requirements under the 2015 ozone NAAQS, states may, where appropriate, certify that existing RACT SIP provisions for an area are adequate to address one or more Serious area requirements. Such certifications must be submitted as a SIP revision.⁴⁹

As a general matter, the EPA expects that any new determination or certification that a state regulation meets RACT should be supported in the record with a state’s assessment of relevant information. We informally refer to this

⁴⁹ 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 reclassification. This review should include determining whether the nonattainment area boundary for the 2015 ozone NAAQS is consistent with the boundary for any previous standards. Where an air agency determines that an existing regulation is adequate to meet any newly applicable nonattainment area planning requirements under CAA section 182, that air agency’s SIP revision may provide a written statement certifying that determination in lieu of submitting new revised regulations.

assessment process as “due diligence review” and consider it a necessary component of approvable RACT SIP revisions. The EPA has articulated this policy previously in its implementation rules for the 2015 and 2008 ozone NAAQS, indicating that states should refer to all relevant information (including recent technical information and information received during the public comment period) that is available at the time that they are developing their RACT SIPs,⁵⁰ and that SIP certifications should explain how an applicable requirement is met by a previously approved regulation.⁵¹

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 demonstration for such areas.⁵² In addition to the independent RACT requirement, states have a statutory obligation to apply 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.⁵³ Therefore, to the extent that a state adopts new or additional control measures as RACT and then relies on the emission reductions caused by those control measures to demonstrate RFP and/or to demonstrate attainment as expeditiously as

⁵⁰ *See* 83 FR 62998, 63007 (December 6, 2018) and 80 FR 12264, 12279 (March 6, 2015).

⁵¹ *See* 83 FR 62998 at 63002.

⁵² *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 and I/M must be met whether or not an area has attained the standard); *see also* 40 CFR 51.1318 (suspending attainment demonstrations, RACM, RFP, contingency measures, and other attainment planning SIPs with a finding of attainment).

⁵³ 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 require 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), 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).

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(c).

b. Nonattainment New Source Review

Upon reclassification, stationary air pollution sources in newly reclassified Serious nonattainment areas for the 2015 ozone NAAQS will be subject to Serious ozone nonattainment area NSR permit requirements. The source applicability thresholds for major sources and major source modification emissions will be 50 tpy for volatile organic compounds (VOC) and nitrogen oxides (NO_x). For new and modified major stationary sources subject to NSR, VOC and NO_x emission increases from the proposed construction of the new or modified major stationary sources must be offset by emission reductions by a minimum offset ratio of 1.20 to 1 (*see* CAA section 182©(10)). We note that some newly reclassified Serious nonattainment areas for the 2015 ozone NAAQS may be classified as Severe under the 2008 ozone NAAQS and, therefore, the more stringent Severe area requirements are currently being implemented in those areas.⁵⁴ As noted in section III.C.1.a. of this document, in order to fulfill their Serious area SIP submission requirements under the 2015 ozone NAAQS, states may, where appropriate, certify that existing SIP provisions for an area are adequate to address one or more Serious area requirements. Such certifications must be submitted as a SIP revision.

c. Vehicle Inspection and Maintenance (I/M)

Background on I/M. Motor vehicles are a major contributor of ozone precursor (VOC and NO_x) emissions. I/M programs reduce these emissions by ensuring on-road motor vehicles are maintained to meet vehicle emission standards as certified, identify excessive emissions, and assure vehicle repairs.⁵⁵

As mentioned in the preceding section, an Enhanced I/M program is a required Serious area SIP submission element for the 2015 ozone NAAQS. The applicable Enhanced I/M requirements for Serious ozone nonattainment areas are described in CAA section 182I(3) and further defined

⁵⁴ For Severe ozone nonattainment areas, the nonattainment NSR source applicability thresholds for major sources and major source modification emissions are 25 tpy for VOC and NO_x, and the minimum emissions offset ratio is 1.30 to 1 (*see* CAA sections 182(d) and 182(d)(2)).

⁵⁵ *See* EPA’s I/M website for a fact sheet and link to the I/M regulations at <https://www.epa.gov/state-and-local-transportation/vehicle-emissions-inspection-and-maintenance-im-regulations>.

in the EPA's I/M regulations (40 CFR part 51, subpart S). The EPA is not proposing changes to its I/M regulations in this document; however, additional clarification in this preamble is provided to assist states with nonattainment areas subject to Enhanced I/M in understanding specific I/M program requirements due to being reclassified as Serious. After a Moderate ozone area is reclassified to Serious or higher, an Enhanced I/M program is required to be implemented in the 1990 Census-defined urbanized area, if the 1980 Census-defined population is 200,000 or more (see 40 CFR 51.350(a)(9)).

Areas subject to Enhanced I/M program requirements for the 2015 ozone NAAQS. An Enhanced I/M program is required for all Serious areas under the 2015 ozone NAAQS which meet the urbanized area population criterion.⁵⁶ Consistent with the I/M regulations, states with these existing I/M programs would need to conduct and submit a performance standard⁵⁷ modeling (PSM) analysis⁵⁸ as well as make any necessary program revisions as part of their Serious area SIP submissions for these reclassified areas to ensure that their I/M programs are operating at or above the Enhanced I/M performance standard level for the 2015 ozone NAAQS. States may determine through the PSM analysis that an existing SIP-approved program would meet the Enhanced performance standard for purposes of the 2015 ozone NAAQS without modification. In this case, the state could submit a SIP revision with the associated performance standard modeling, a narrative describing how the regulations for the existing I/M program are consistent with EPA's I/M regulations, and a written statement certifying their determination for the 2015 ozone NAAQS in lieu of submitting new revised regulations.⁵⁹

⁵⁶ See CAA section 182(c)(3)(A).

⁵⁷ An I/M performance standard is a collection of program design elements that defines a benchmark program to which a state's proposed program is compared in terms of its potential to reduce emissions of the ozone precursors, VOC, and NOx.

⁵⁸ See *Performance Standard Modeling for New and Existing Vehicle Inspection and Maintenance (I/M) Programs Using the MOVES Mobile Source Emissions Model* (October 2022, EPA-420-B-22-034) at <https://www.epa.gov/state-and-local-transportation/vehicle-emissions-inspection-and-maintenance-im-policy-and-technical-reporting>.

⁵⁹ See *Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area Classifications and State Implementation Plan Requirements*, 83 FR 63001-63002. Performance standard modeling is required for Enhanced I/M programs for the 2015 ozone NAAQS in Serious and above ozone nonattainment areas for that NAAQS.

In addition to complying with the Enhanced performance standard, there are three other requirements unique to Enhanced I/M programs. First, Enhanced I/M programs must conduct on-road testing of in-use vehicles for a small percentage of the area's fleet of motor vehicles.⁶⁰ Second, Enhanced I/M programs are required to conduct evaluations, and report the results of, the program effectiveness every 2 years.⁶¹ Third, Enhanced I/M programs have stricter provisions than Basic programs if the program chooses to issue repair waivers.⁶² The Enhanced I/M program requirements are to be fully implemented as expeditiously as practicable but no later than the implementation deadline determined by the final action of this proposal, as discussed in section III.A.2.c. of this document.

2. Submission and Implementation Deadlines

a. Submission Deadline for SIP Revisions

As discussed in section III.A. of this document, CAA section 182(i) provides that areas reclassified under CAA section 181(b)(2) shall generally meet the requirements associated with their new classifications "according to the schedules prescribed in connection with such requirements, except that the Administrator may adjust any applicable deadlines (other than attainment dates) to the extent such adjustment is necessary or appropriate to assure consistency among the required submissions." Here, the EPA interprets the "schedules prescribed in connection with such requirements" as the statutory deadlines provided to meet Serious area requirements. For areas initially classified as Serious for the 2015 ozone NAAQS, the deadlines to prepare and submit SIP revisions were established relative to the effective date of designation. For those areas, the submission deadlines ranged from 24 to 48 months after the effective date of designation, depending on the SIP element required (e.g., 2 years for the RACT SIP, 4 years for the attainment plan with RACM and attainment demonstration, and 4 years for an

⁶⁰ See *Guidance for On-Road Testing Requirements for Enhanced Vehicle Inspection and Maintenance (I/M) Programs*, EPA-420-B-20-020, March 2020, available at <https://nepis.epa.gov/Exe/ZyPDF.cgi/P100YQX8.PDF?Dockey=P100YQX8.pdf>.

⁶¹ See *Guidance on Biennial Performance Evaluation Requirements for Enhanced Vehicle Inspection and Maintenance (I/M) Programs*, EPA-420-B-22-042, December 2022, available at <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P10168PU.pdf>.

⁶² 40 CFR 51.360

Enhanced I/M program SIP if required) (see 40 CFR 51.1308 and 51.1312). Areas initially classified as Moderate or higher were also required to implement RACT as expeditiously as practicable but no later than January 1 of the 5th year after the effective date of designations, *i.e.*, January 1, 2023 (see 40 CFR 51.1312).

The SIP submission deadlines for nonattainment areas initially classified by the EPA in 2018 as Serious have passed as of August 3, 2020, for the RACT SIP element and August 3, 2022, for the RACM and Serious area SIP elements (including Enhanced I/M). The EPA is therefore proposing to adjust applicable deadlines, as discussed in section III.A.1. of this document, for areas reclassified as Serious under the 2015 ozone NAAQS, per its authority under CAA section 301(a) "to prescribe such regulations as are necessary to carry out [its] functions under [the CAA]" and its authority under CAA section 182(i). We recognize that the time between the anticipated effective date of reclassification and the Serious area attainment date in 2027 (and, critically, the attainment year of 2026)⁶³ is far less than the 9 years that areas initially classified as Serious have between designation and the attainment date. The EPA is proposing that it is necessary and appropriate to set, given the elapsed deadlines and this compressed timeline, a uniform SIP submission deadline for all the various requirements for the newly reclassified Serious areas. Consistent with the framework of establishing proposed default deadlines discussed in section III.A. of this document, because the initially applicable Serious area deadlines have already passed, those deadlines as proposed would be the earlier of 18 months from the effective date of reclassification or January 1, 2026 (January 1 of the attainment year).⁶⁴ This deadline, consistent with the timing and structure of subpart 2 requirements relative to area attainment dates, will allow Serious area control measures to influence attainment by the Serious area attainment date while also balancing the need for a consistent submission deadline among the various Serious area SIP requirements. While not all of the "schedules prescribed in connection with" the various subpart 2

⁶³ "Attainment year" refers to the last calendar year of data prior to the attainment date. Attainment for newly reclassified areas will be determined based on air quality monitoring data from the DV period of 2024-2026, making the attainment year 2026.

⁶⁴ Given the timing of this proposal, for these reclassified Serious areas for the 2015 ozone NAAQS, the proposed deadline will be January 1, 2026.

requirements are the same for initially designated Serious areas (*e.g.*, the statute provides 4 years to submit SIPs for some requirements and 2 years for others), coordinating the submissions with the same deadline is necessary and appropriate in this situation given the compressed timeline before the attainment date and the need for consistent implementation of required control measures for expeditious attainment of the NAAQS.

The EPA recognizes that because CAA section 181(b)(2) requires the EPA to determine whether areas have attained by the attainment date “within six months of the attainment date” and because CAA section 181(b)(3) allows a state to request voluntary reclassification at any time, the effective date of reclassification will not necessarily be uniform across all 2015 areas being reclassified to Serious. Therefore, the time between the effective date of an area’s reclassification and the proposed SIP revision deadline of January 1, 2026, may not be uniform across areas. It is the Agency’s view that the uniform deadline of January 1, 2026, nevertheless best serves the statutory aim of ensuring consistency across the required submissions. All of these areas will be subject to an August 3, 2027, attainment deadline, thus the attainment year will be 2026 for all of these areas. As previously discussed, the purpose of the part D nonattainment area requirements (*i.e.*, the submissions required by subparts 1 and 2) is the expeditious attainment of the NAAQS by the attainment date, and SIP revisions and implementation of controls occurring after the attainment year (in this case, 2026), by definition cannot contribute to expeditious attainment of the NAAQS by the attainment date (which will be determined based on 2024–2026 air quality monitoring data). The January 1, 2026, SIP revision deadline for reclassified Serious areas is equally applicable across areas, and perhaps more importantly, ensures that the newly applicable subpart 2 requirements will be addressed consistent with part D’s purpose of achieving expeditious attainment by the attainment date.

We note that ozone seasons do not have a uniform start date across the country. In some states, the ozone season begins January 1 and in other states, it begins in March. (*See* 40 CFR part 58, appendix D, section 4.1, table D–3). While the EPA recognizes that nonattainment areas located in states with ozone seasons that begin in March could potentially benefit from an extra

2 months to develop and submit their SIP revisions (*e.g.*, attainment demonstration, RFP plan, and contingency measures), the EPA also recognizes the value in establishing a single due date for Serious area SIP submissions that does not extend beyond the deadline for implementing such controls. Requiring states to submit the required Serious area SIP revisions by no later than January 1, 2026, will ensure that SIPs requiring control measures needed for attainment will be submitted prior to when those controls are required to be implemented and will also treat states consistently per CAA section 182(i).

If the EPA does not finalize the proposed default deadlines discussed in section III.A. that would apply generally to reclassifications, the EPA proposes in the alternative to establish a SIP revision deadline of January 1, 2026, for all reclassified Serious area requirements for the 2015 ozone NAAQS nonattainment areas.

The SIP revisions triggered by a reclassification to Serious includes a revision to address RACT requirements. The EPA’s existing implementing regulations for the 2015 ozone NAAQS established a RACT SIP submission deadline for reclassified areas of either 24 months from the reclassification effective date or a deadline established by the Administrator in the reclassification action using the discretion under CAA section 182(i) (*see* 40 CFR 51.1312(a)(2)(ii)). We are proposing to remove this provision, specific to the 2015 ozone NAAQS, from those implementing regulations and to instead have the new regulations addressing reclassified areas (discussed in section III.A. of this document) apply in this situation, or in the alternative, to articulate a January 1, 2026, SIP submission deadline for RACT revisions for areas reclassified as Serious for the 2015 ozone NAAQS.

The January 1, 2026, SIP submission deadline for reclassified Serious 2015 ozone NAAQS areas also applies to revisions to address Enhanced I/M. Aligning the submittal deadline for Enhanced I/M for reclassified areas with the SIP submission deadline for all other SIP elements is consistent with the I/M regulations, which provide that an I/M SIP shall be submitted no later than the deadline for submitting the area’s attainment SIP.⁶⁵

The EPA requests comment on a uniform SIP submission deadline of January 1, 2026, for RACT, and all other Serious area SIP elements (including Enhanced I/M) for nonattainment areas

reclassified as Serious under the 2015 ozone NAAQS.

b. RACT Implementation Deadline

With respect to implementation deadlines, the EPA’s implementing regulations for the 2015 ozone NAAQS require that, for areas initially classified as Moderate or higher, a state shall provide for implementation of RACT as expeditiously as practicable but no later than January 1 of the 5th year after the effective date of designation (*see* 40 CFR 51.1312(a)(3)(i)), which corresponds with the beginning of the attainment year for initially classified Moderate areas (January 1, 2023). The modeling and attainment demonstration requirements for 2015 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, notwithstanding any alternative deadline established per 40 CFR 51.1312 (*see* 40 CFR 51.1308(d)). For areas that are reclassified (*e.g.*, from Serious to Severe), the EPA’s existing implementing regulations for the 2015 ozone NAAQS require that the state shall provide for implementation of RACT as expeditiously as practicable, but no later than the beginning of the attainment year ozone season associated with the reclassified area’s new attainment deadline, or January 1 of the third year after the associated SIP submission deadline, whichever is earlier; or the deadline established by the Administrator in the final action issuing the area reclassification (*see* 40 CFR 51.1312(a)(3)(ii)).

In the case of the potential reclassified Serious areas addressed by this proposal, the beginning of the ozone season varies among states, as stated earlier in this document. For some nonattainment areas that will potentially be reclassified as Serious in separate actions, the last ozone season that can impact air quality before the areas’ attainment date begins in January of the attainment year and for other areas it begins in March of the attainment year (*see* 40 CFR part 58, appendix D, section 4.1, table D–3). Thus, in accordance with the default deadlines proposed in section III.A.1.b. of this document, the RACT implementation deadline for any nonattainment area reclassified as Serious under the 2015 ozone NAAQS would be as expeditiously as practicable, but no later than the earlier of 18 months from the RACT SIP submission deadline or the beginning of the 2026 ozone season associated with the area’s new August 3, 2027,

⁶⁵ 40 CFR 51.372(b)(2).

attainment date. If the EPA does not finalize the proposed default deadlines discussed in section III.A. that would apply generally to reclassifications, the EPA proposes in the alternative to establish a RACT implementation deadline for nonattainment areas reclassified as Serious under the 2015 ozone NAAQS to be as expeditiously as practicable, but no later than the beginning of the 2026 ozone season.

c. I/M Implementation Deadline

With respect to the implementation deadline for Enhanced I/M programs, states wishing to use emission reductions from their newly required Enhanced I/M program for the 2015 ozone NAAQS would need to have such programs fully implemented as expeditiously as practicable but no later than the beginning of the ozone season for the applicable Serious area attainment year (*i.e.*, January 1 or March 1, 2026), whichever is applicable for a given area as described earlier in this document. This I/M implementation deadline for those states wishing to take credit for their I/M programs in their attainment or RFP SIPs would align with that of the RACT implementation deadline determined by the existing ozone NAAQS implementation rule at 40 CFR 51.1312(a)(3)(ii), as discussed in section III.A.1.b. of this document, and with the implementation deadline at 40 CFR 51.1308(d) for any other control measures necessary to attain by the Serious area attainment date. However, as noted previously, there are many challenges, tasks, and milestones that must be met in establishing and implementing an I/M program. The EPA realizes that implementing a new or revised I/M program on an accelerated timeline may be difficult to achieve in practice. Therefore, for the states that do not intend to rely upon emission reductions from their Enhanced I/M program in attainment or RFP SIPs, we are proposing to allow Enhanced I/M programs to be fully implemented no later than 4 years after the effective date of reclassification. The EPA's underlying rationale for the proposed 4-year maximum implementation deadline for I/M programs required to conduct Enhanced I/M programs as the result of a mandatory reclassification to Serious for the 2015 ozone NAAQS is the same as that for the default I/M implementation deadline for reclassifications as proposed in section III.A.1. of this document.

The EPA is not proposing any changes to the implementation of any new Basic I/M programs, which are still required by the prior rule that reclassified certain

nonattainment areas as Moderate for the 2015 ozone NAAQS.⁶⁶

The EPA requests comment on requiring that any Enhanced I/M programs, required as a result of reclassification, be fully implemented as expeditiously as practicable but no later than 4 years after the effective date of reclassification. If a state intends to rely upon emission reductions from its newly required Enhanced I/M programs for the 2015 ozone NAAQS, that state would need to have such Enhanced programs fully implemented as expeditiously as practicable but no later than the beginning of the ozone season of the applicable attainment year (*i.e.*, January 1 or March 1, 2026).

The proposed 4-year implementation deadline offers the states that will be required to implement Enhanced I/M due to reclassifications the flexibility to fully implement the I/M programs on a timeline that addresses the challenges, especially for states new to Enhanced I/M programs.

d. Transportation Control Demonstration

CAA section 182(c)(5) requires states with Serious ozone nonattainment areas to submit, 6 years after November 15, 1990, and every 3 years thereafter, a demonstration as to whether current aggregate vehicle mileage, aggregate vehicle emissions, congestion levels, and other relevant transportation parameters are consistent with those used for the area's demonstration of attainment. Six years after November 15, 1990, was 2 years after the statutory deadline established to submit attainment demonstrations for such areas. To be consistent with this CAA schedule, the EPA is proposing to require that the first transportation control demonstration be submitted 2 years after the attainment demonstrations for newly reclassified Serious areas are due, or January 1, 2028, and every 3 years thereafter. The EPA's rationale for the deadlines for submitting the initial and subsequent demonstration is discussed in section III.A.1.c. of this document.

IV. Environmental Justice Considerations

In this action, the EPA is proposing to establish default SIP deadlines for submission of SIP revisions and implementation of the related control requirements for nonattainment areas reclassified as Moderate, Serious, and Severe for current and future ozone NAAQS. In addition, the EPA is proposing to codify its existing

interpretation that following reclassification, a state is no longer required to submit SIP revisions addressing certain requirements related to the prior classification level for an ozone nonattainment area. The EPA is also articulating how the proposed default deadlines and codification of applicable requirements following reclassification would apply to nonattainment areas reclassified as Serious under the 2015 ozone NAAQS. This action is intended to comply with the CAA program to ensure that affected air agencies comply with CAA obligations for the applicable nonattainment areas.

It is difficult to assess the environmental justice (EJ) implications of this proposed action because the EPA cannot geographically identify or quantify resulting source-specific emission reductions. However, due to the nature of this proposed action, the EPA believes that it will likely have no adverse impact on any existing disproportionate and adverse effects on communities with EJ concerns. At a minimum, the EPA believes that this action will not worsen any existing air quality and is expected to ensure that the areas affected by the rulemaking will meet applicable requirements to attain and/or maintain national air quality standards.

The EPA notes, however, that states have flexibility and discretion under the CAA in implementing their attainment strategies to focus resources on controlling those sources of emissions that directly and adversely affect communities with EJ concerns. The EPA strongly urges states to consider the EJ aspects of any control measures in order to provide health protection for communities with EJ concerns. In addition, the EPA strongly encourages states to work with communities experiencing EJ concerns to develop ozone-related control strategies that most effectively reduce emissions contributing to elevated ozone levels. One way to do this would be for states to increase opportunities for meaningful involvement of community groups during their SIP development processes. For example, air agencies could provide advance notification for communities with EJ concerns of upcoming opportunities for public comment on ozone SIPs and other related actions, such as permit actions.

The EPA has resources available to help air agencies consider aspects of EJ in their SIP development processes. The EPA released *EPA Legal Tools to Advance Environmental Justice (EJ Legal Tools)* in 2022 to highlight the various environmental and civil rights

⁶⁶ See 87 FR 60897, October 7, 2022, at 60900.

law authorities available to the EPA that authorize or address consideration of EJ in its decision-making process as it pertains to environmental laws, including the CAA.⁶⁷ *EJ Legal Tools* is also intended to promote meaningful engagement among the EPA and communities.⁶⁸ In addition, on September 5, 2024, the EPA announced the release of the final policy, “*Achieving Health and Environmental Protection Through EPA’s Meaningful Engagement Policy*.”⁶⁹ This final policy updates the EPA’s 2003 Public Involvement Policy that guides the EPA’s staff to provide meaningful public involvement in all its programs and regions.⁷⁰

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 14094: Modernizing Regulatory Review

This action is not a significant regulatory action as defined by Executive Order 12866, as amended by Executive Order 14094, and was therefore not subject to a requirement for Executive Order 12866 review.

B. Paperwork Reduction Act (PRA)

This proposed rule does not impose any new information collection burden under the PRA not already approved by the Office of Management and Budget. This action proposes to establish deadlines for submission of required SIP revisions and implementation of the related control requirements for newly reclassified Moderate, Serious, and Severe ozone nonattainment areas. This action also proposes to codify the EPA’s existing interpretation that following reclassification, a state is no longer required to submit SIP revisions addressing certain requirements related to the prior classification level for an ozone nonattainment area. Thus, the proposed action does not impose any new information collection burden under the PRA. OMB has previously approved the EPA’s information collection activities contained in the existing regulations and has assigned OMB control number 2060–0695.⁷¹

⁶⁷ “EPA Legal Tools to Advance Environmental Justice,” (May 2022).

⁶⁸ *Id.*

⁶⁹ “*Achieving Health and Environmental Protection Through EPA’s Meaningful Engagement Policy*” (August 2024).

⁷⁰ See, “Public Involvement Policy of the U.S. Environmental Protection Agency,” (May 2003).

⁷¹ On April 30, 2018, the OMB approved the EPA’s request for renewal of the previously approved information collection request (ICR). The renewed request expired on April 30, 2021, 3 years

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 SIP submittal and implementation deadlines, and the policy discussion outlining the EPA’s interpretation of the status of certain requirements for prior nonattainment classifications following reclassification, do not in and of themselves create any new requirements beyond what is mandated by the CAA. Instead, this rulemaking is administrative in nature, and does not directly regulate any entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The 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 does not have tribal implications, as specified in Executive Order 13175. This action will not impose substantial direct costs upon the tribes, nor will it preempt tribal law. The CAA requires SIP revisions for all nonattainment areas that are reclassified from a lower classification to a higher classification. For nonattainment areas that include portions of Indian reservation lands, the implementation plan deadlines that apply to states do

after the approval date (see OMB Control Number 2060–0695 and ICR Reference Number 201801–2060–003 for EPA ICR No. 2347.03). On April 30, 2021, the OMB published the final 30-day document (86 FR 22959) for the ICR renewal titled “Implementation of the 8-Hour National Ambient Air Quality Standards for Ozone (Renewal)” (see OMB Control Number 2060–0695 and ICR Reference No. 202104–2060–004 for EPA ICR Number 2347.04). The ICR renewal was approved on February 1, 2022, and the renewed request expires on January 31, 2025.

not directly apply to tribes. Thus, Executive Order 13175 does not apply to this action.

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. Therefore, this action is not subject to Executive Order 13045 because it does not directly concern an environmental health risk or safety risk. Since this action does not directly concern human health, the EPA’s policy on Children’s Health also does not apply.

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 and Executive Order 14096: Revitalizing Our Nation’s Commitment to Environmental Justice for All

The EPA believes that the human health or environmental conditions that exist prior to this action have the potential to result in disproportionate and adverse human health or environmental effects on communities with EJ concerns. The EPA believes that this action is not likely to change existing disproportionate and adverse effects on communities with EJ concerns. The areas impacted by this action are designated as nonattainment for one or more ozone NAAQS and this action is intended to comply with the CAA program to ensure attainment and maintenance of the NAAQS. From a programmatic perspective, this action is intended to ensure that affected air agencies comply with CAA obligations for the applicable nonattainment areas.

The EPA did not perform an EJ analysis and did not consider EJ as a basis for this action. While it is difficult to assess the EJ implications of this proposed action because the EPA cannot

geographically identify or quantify resulting source-specific emission reductions that are ultimately determined by air agencies, the EPA believes that this proposed action is likely to have no impact on any existing disproportionate and adverse effects on communities with EJ concerns. Further, there is no information in the record inconsistent with the stated goals of E.O.s 12898 or 14096.

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).⁷²

The EPA is proposing to establish SIP submission and implementation deadlines for all newly reclassified areas nationwide using a common, nationwide method. The EPA is also proposing to codify its existing interpretation that, following reclassification, a state is no longer required to submit SIP revisions addressing certain requirements related to the prior classification level for an ozone nonattainment area. This action, if finalized, would impact jurisdictions with ozone nonattainment areas across the country, covering potentially every judicial circuit.

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

⁷² 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.

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).⁷³

List of Subjects in 40 CFR Part 51

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.

Michael S. Regan,
Administrator.

For the reasons stated in the preamble, the EPA proposes to amend Title 40, Chapter I of the Code of Federal Regulations as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 51 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

Subpart CC—Provisions for Implementation of the 2015 Ozone National Ambient Air Quality Standards

§ 51.1312 [Amended]

■ 2. Amend § 51.1312 by removing and reserving paragraphs (a)(2)(ii) and (a)(3)(ii).

■ 3. Add subpart DD consisting of §§ 51.1400 through 51.1403 to part 51 to read as follows:

Subpart DD—Requirements for Reclassified Ozone Nonattainment Areas

Sec.

51.1400 Definitions.

51.1401 Applicability of part 51.

51.1402 SIP submission and control measure implementation deadlines for reclassified ozone nonattainment areas.

51.1403 Applicability of ozone SIP requirements for former classification after reclassification.

§ 51.1400 Definitions.

The following definitions apply for purposes of this subpart. Any term not

⁷³ 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.A.N. 1402–03.

defined herein shall have the meaning as defined in § 51.100.

Attainment year means the calendar year in which the attainment year ozone season occurs.

Attainment year ozone season means the full ozone season immediately preceding a nonattainment area’s maximum attainment date.

CAA means the Clean Air Act as codified at 42 U.S.C. 7401–7671q (2010).

Former attainment date means the attainment date associated with the classification under subpart 2 of part D of title I of the CAA immediately preceding reclassification from a lower classification to a higher classification.

Former classification means the classification under subpart 2 of part D of title I of the CAA immediately preceding reclassification from a lower classification to a higher classification.

Higher classification/lower classification means for purposes of determining which classifications are higher or lower, the classifications are ranked from lowest to highest as follows: Marginal; Moderate; Serious; Severe-15; Severe-17; and Extreme.

I/M refers to the inspection and maintenance programs for in-use vehicles required under the 1990 CAA Amendments and defined by subpart S of 40 CFR part 51.

Initially classified means the first nonattainment classification that becomes effective for an area for a specific ozone NAAQS and does not include reclassification to another classification for that specific NAAQS.

Initially designated means the first designation to nonattainment that becomes effective for an area for a specific ozone NAAQS.

Ozone season means for each state (or portion of a state), the ozone monitoring season as defined in 40 CFR part 58, appendix D, section 4.1(i) for that state (or portion of a state).

§ 51.1401 Applicability of part 51.

The provisions in subparts A through Y, AA, and CC of this part apply to reclassified nonattainment areas for purposes of the ozone NAAQS to the extent they are not inconsistent with the provisions of this subpart.

§ 51.1402 SIP submission and control measure implementation deadlines for reclassified ozone nonattainment areas.

(a) Deadlines for applicable requirements pursuant to a reclassification as Moderate, Serious, or Severe that are 18 months or more after the effective date of reclassification will apply to such reclassified area as though the area were initially designated at that classification.

(b) Deadlines for applicable requirements pursuant to a reclassification as Moderate, Serious, or Severe, where the deadline that would have applied had the area been initially classified at the new classification level at the time of initial nonattainment area designations is less than 18 months after the effective date of reclassification;

(1) *SIP submission deadlines.*

(i) For all SIP revisions required pursuant to reclassification (except SIPs addressing CAA section 185 fee programs), the SIP revision deadline is 18 months after the effective date of the relevant reclassification or January 1 of the attainment year, whichever is earlier, unless the Administrator establishes a different deadline in a separate action.

(ii) For SIP revisions addressing CAA section 185 fee programs required pursuant to reclassification, the SIP revision deadline is 36 months after the effective date of the relevant reclassification or January 1 of the attainment year, whichever is earlier, unless the Administrator establishes a different deadline in a separate action.

(2) *Control measure implementation deadlines.*

(i) For RACT required pursuant to reclassification, the state shall provide for implementation of such RACT as expeditiously as practicable, but no later than 18 months after the RACT SIP submittal deadline or the beginning of the attainment year ozone season associated with the area's new attainment deadline, whichever is earlier, unless the Administrator establishes a different deadline in a separate action.

(ii) For the required I/M program pursuant to reclassification, the state shall provide for full implementation of such I/M program as expeditiously as practicable, but no later than 4 years after the effective date of the relevant reclassification, unless the I/M program is needed for attainment by the attainment date or RFP, in which case the state shall provide for full implementation of such I/M program no later than the beginning of the attainment year ozone season.

§ 51.1403 Applicability of ozone SIP requirements for former classification after reclassification.

(a) Upon the effective date of reclassification, the requirements of any subpart of this part with respect to ozone nonattainment planning applicable to the area for the former classification shall apply as follows:

(1) Unless specified in (2) or (3), the requirement is unaffected by

reclassification and continues to be required for the former classification.

(2) The following requirements are no longer applicable with respect to the former attainment date:

(i) A SIP revision to demonstrate attainment by such date.

(ii) A SIP revision demonstrating adoption of all RACM necessary to demonstrate attainment with respect to such date.

(2) If the reclassification occurred prior to the former attainment date pursuant to CAA section 181(b)(3), the plan requirement for contingency measures for failure to attain by such date is no longer applicable with respect to the former attainment date.

(b) Nothing in this section shall affect the requirements applicable to the nonattainment area under its currently applicable classification and attainment date.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 282

[EPA-R07-UST-2023-0534; FRL-11633-01-Region 7]

Iowa: Final Approval of State Underground Storage Tank Program Revisions, Codification, and Incorporation by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Resource Conservation and Recovery Act (RCRA or Act), the Environmental Protection Agency (EPA) is proposing to approve revisions to the State of Iowa's Underground Storage Tank (UST) program submitted by the Iowa Department of Natural Resources (DNR). This action is based on the EPA's determination that these revisions satisfy all requirements needed for program approval. This action also proposes to codify EPA's approval of Iowa's State program and incorporate by reference those provisions of the State regulations that we have determined meet the requirements for approval. The provisions will be subject to EPA's inspection and enforcement authorities under sections 9005 and 9006 of RCRA Subtitle I and other applicable statutory and regulatory provisions.

DATES: Comments on this proposed rule must be received on or before November 4, 2024.

ADDRESSES: Submit comments, identified by EPA-R07-UST-2023-0534, by one of the following methods:

1. *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the on-line instructions for submitting comments.

2. *Email:* pomes.michael@epa.gov.

Instructions: Direct your comments to Docket ID No. EPA-R07-UST-2023-0534. EPA's policy is that all comments received will be included in the public docket without change and may be available online at <https://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <https://www.regulations.gov>, or email. The Federal <https://www.regulations.gov> website is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through <https://www.regulations.gov>, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and also with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties, and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. EPA encourages electronic submittals, but if you are unable to submit electronically, please reach out to the EPA contact person listed in the document for assistance. You can view and copy the documents that form the basis for this codification and associated publicly available materials either through www.regulations.gov or by contacting Angela Sena at (913) 551-7989 or sena.angela@epa.gov. Please call or email the contact listed above if you need access to material indexed but not provided in the docket.

FOR FURTHER INFORMATION CONTACT: Michael L Pomes, Remediation Branch, Land, Chemical, and Redevelopment Division, U.S. Environmental Protection Agency, Region 5, 77 W Jackson