

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[EPA-HQ-OAR-2021-0741; FRL-8426-02-OAR]

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

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA or Agency) is finalizing actions pursuant to section 181(b)(2) of the Clean Air Act (CAA or Act) for most remaining areas in the country classified as “Serious” for the 2008 8-hour ozone National Ambient Air Quality Standards (NAAQS) of 0.075 parts per million (ppm). Applying a uniform methodology, the Agency is determining that one Serious area attained the standards by the July 20, 2021, applicable attainment date and that five Serious areas failed to attain the standards by the applicable attainment date. The effect of failing to attain by the applicable attainment date is that these areas will be reclassified by operation of law to “Severe” nonattainment for the 2008 ozone NAAQS on November 7, 2022, the effective date of this final rule. Pursuant to its authority under the CAA, the Agency is establishing new, consistent deadlines by which the responsible state air agencies for the reclassified areas must submit State Implementation Plan (SIP) revisions and implement controls to satisfy the statutory and regulatory requirements for Severe areas for the 2008 ozone NAAQS. Additionally, in areas reclassified as Severe, where not already prohibited, the CAA will prohibit the sale of conventional gasoline and require that federal reformulated gasoline instead be sold beginning 1 year after the effective date of this final rule, November 7, 2023.

**DATES:** The effective date of this rule is November 7, 2022.

**ADDRESSES:** The EPA has established a public docket for these ozone designations at <https://www.regulations.gov> under Docket ID No. EPA-HQ-OAR-2021-0741. Although listed in the docket index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute.

Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form.

**FOR FURTHER INFORMATION CONTACT:** For general questions concerning this action, contact Robert Lingard, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Policy Division, C539-01 Research Triangle Park, NC 27709; by telephone number: 919-541-5272; email address: [lingard.robert@epa.gov](mailto:lingard.robert@epa.gov); or Emily Millar, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Policy Division, C539-01 Research Triangle Park, NC 27709; telephone number: 919-541-2619; email address: [millar.emily@epa.gov](mailto:millar.emily@epa.gov).

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#### I. Review of Proposed Actions

##### A. Background and Proposed Determinations

On March 12, 2008, the EPA revised both the primary and secondary NAAQS

for ozone to a level of 0.075 ppm to provide increased protection of public health and the environment.<sup>1</sup> When the EPA promulgates a new or revised NAAQS, the EPA is required to designate areas as nonattainment, attainment, or unclassifiable, pursuant to section 107(d)(1) of the CAA. The CAA requires the EPA to complete the initial area designation process within 2 years of promulgating the NAAQS, with authority to extend the deadline for designations decisions by 1 additional year if the Administrator has insufficient information to make the designations within the initial 2-year timeframe. The final designations for the 2008 ozone NAAQS were based primarily on certified air quality monitoring data from calendar years 2008–2010, *i.e.*, area design values as of the time of designations.<sup>2</sup>

In accordance with CAA section 181(a)(1), each area designated as nonattainment for the 2008 ozone NAAQS was also classified by operation of law at the same time as the area was designated by the EPA.<sup>3</sup> In a separate Classifications Rule, the ozone nonattainment areas were classified as Marginal, Moderate, Serious, Severe, or Extreme, based on the severity of their ozone levels, which is also determined by available area design values at the time of designation.<sup>4</sup> Subpart 2 of the CAA requires ozone nonattainment areas to achieve the NAAQS as expeditiously as practicable, but not later than the maximum attainment date. Higher classifications, or more polluted areas, receive more time to attain compliance. When the EPA determines that an area has failed to attain by the maximum attainment date, that area is automatically reclassified to the next highest classification, allowing more time for compliance with the NAAQS but imposing additional mandatory controls under the Act.

Consequently, as each attainment date for each 2008 ozone NAAQS classification established under the

<sup>1</sup> See 73 FR 16436 (March 27, 2008).

<sup>2</sup> The air quality design value for the 8-hour ozone NAAQS is the 3-year average of the annual 4th highest daily maximum 8-hour average ozone concentration. See 40 CFR part 50, appendix I.

<sup>3</sup> See CAA section 181(a)(1), tbl. 1.

<sup>4</sup> 77 FR 30160 (May 21, 2012). *NRDC v. EPA*, 777 F.3d 456 (D.C. Cir. 2014) overturned parts of the EPA's Classifications Rule but did not impact the EPA's methodology for classifying areas and the levels at which the EPA classified the 2008 ozone NAAQS nonattainment areas.

statute and regulations has passed, the EPA has made the required determinations as to whether areas across the country attained the NAAQS by those dates based on the areas' design values as of the attainment dates.<sup>5</sup> As areas across the country have implemented more stringent controls and as federal measures have required emission reductions of precursors of ozone pollution from mobile sources and stationary point sources, air quality in the nonattainment areas under the 2008 ozone NAAQS has improved, and areas have come into attainment of the NAAQS. For this reason, the EPA has had to address fewer areas in each successive notice determining whether areas attained by the attainment date, and the number of areas that have failed to attain by the attainment date and been reclassified has decreased over time.<sup>6</sup>

Accordingly, on April 13, 2022, the EPA proposed actions to fulfill its statutory obligation under Clean Air Act (CAA or the Act) section 181 to determine whether the remaining Serious ozone nonattainment areas across the country attained the 2008 ozone NAAQS by July 20, 2021, the applicable attainment date for such areas.<sup>7</sup> As noted there, the EPA's proposal addressed seven of the nine remaining Serious nonattainment areas for the 2008 ozone NAAQS—specifically, (1) Chicago-Naperville, IL-IN-WI; (2) Dallas-Fort Worth, TX; (3) Denver-Boulder-Greeley-Ft. Collins-Loveland, CO; (4) Greater Connecticut, CT; (5) Houston-Galveston-Brazoria, TX; (6) Morongo Band of Mission Indians;

and (7) New York-N. New Jersey-Long Island, CT-NJ-NY. The two other Serious nonattainment areas located in California were addressed in a separate proposal, which considered exceptional events demonstrations submitted by the California Air Resources Board.<sup>8</sup>

First, the EPA proposed to find that the Greater Connecticut, CT, nonattainment area attained the 2008 ozone NAAQS by the applicable attainment date based on complete, quality-assured and certified ozone air quality monitoring data for the 2018–2020 calendar years.

Second, the EPA proposed to deny the state of Texas's request for a 1-year extension of the attainment date from July 20, 2021, to July 20, 2022, for the Houston-Galveston-Brazoria, TX, nonattainment area (Houston area). The proposed denial of Texas Commission of Environmental Quality's (TCEQ's) request was based, in part, on our consideration of air quality trends in the Houston area that indicated the area would not timely attain by the extended attainment date, nor even qualify for a second 1-year extension of the attainment date. Our proposed denial was also based, in part, on our consideration of existing pollution burdens for some communities within the area. Taken together, these considerations weighed in favor of not delaying the imposition of more stringent requirements associated with reclassification, and the EPA, therefore, proposed to deny the state's request for an extension.<sup>9</sup>

Third, the EPA proposed to find that six areas failed to attain the 2008 ozone

NAAQS by the applicable attainment date. The six areas were: (1) Chicago-Naperville, Illinois-Indiana-Wisconsin (IL-IN-WI) (Chicago area); (2) Dallas-Fort Worth, TX; (3) Denver-Boulder-Greeley-Ft. Collins-Loveland, Colorado (CO) (Denver Area); (4) Houston-Galveston-Brazoria, TX (Houston area); (5) Morongo Band of Mission Indians; and (6) New York-North New Jersey-Long Island, Connecticut-New Jersey-New York (CT-NJ-NY) (New York Metropolitan area). The proposed determination for each of these areas was based upon complete, quality-assured and certified ozone air quality monitoring data that showed that the 8-hour ozone design value (DV) for the area exceeded 0.075 ppm for the period 2018–2020, *i.e.*, the area's DV as of the attainment date. The EPA proposed that these six areas would be reclassified as Severe nonattainment areas by operation of law on the effective date of a final action finding that these areas failed to attain the 2008 ozone NAAQS by the applicable attainment date for Serious areas.<sup>10</sup> Since EPA issued its proposal in April, the Agency redesignated the Chicago area to attainment for the 2008 ozone NAAQS based on attaining air quality for the period 2019–2021 and a determination that the other statutory criteria for redesignation were met, and, therefore, we are not finalizing our proposed determination of failure to attain and reclassification for this area.<sup>11</sup>

A summary of the actions proposed for the six areas covered by this final action is provided in Table 1 in this action.

TABLE 1—2008 OZONE NAAQS SERIOUS NONATTAINMENT AREA PROPOSED ACTION SUMMARY

2008 NAAQS nonattainment area	2018–2020 design value (DV) (ppm)	2008 NAAQS attained by the serious attainment date	2020 4th highest daily maximum 8-hr average (ppm)	Area failed to attain 2008 NAAQS but state requested 1-year attainment date extension based on 2020 4th highest daily maximum 8-hr average ≤0.075 ppm
Dallas-Fort Worth, TX* .....	0.076	Failed to Attain .....	0.077	No.
Denver-Boulder-Greeley-Ft. Collins-Loveland, CO.	0.081	Failed to Attain .....	0.087	No.
Greater Connecticut, CT .....	0.073	Attained .....	0.071	N/A.
Houston-Galveston-Brazoria, TX .....	0.079	Failed to Attain .....	0.075	Yes.
Morongo Band of Mission Indians .....	0.099	Failed to Attain .....	0.103	No.

<sup>5</sup> See, e.g., 86 FR 26697 (May 4, 2016); 84 FR 44238 (August 23, 2019).

<sup>6</sup> 86 FR 26697 (addressing 36 Marginal areas subject to the July 20, 2015, Marginal area attainment date, finding 11 failed to attain); 84 FR 44238 (addressing 11 Moderate areas subject to the July 20, 2018, Moderate area attainment date, finding 7 failed to attain).

<sup>7</sup> See 87 FR 21825 (April 13, 2022).

<sup>8</sup> On July 14, 2022, the EPA proposed to determine that Nevada County (Western part), CA, and Ventura County, CA, areas attained by the 2008 ozone Serious area attainment date (87 FR 42126).

<sup>9</sup> See 87 FR 21825, 21835 (April 13, 2022).

<sup>10</sup> See CAA section 181(b)(2)(A).

<sup>11</sup> Final redesignation actions for the three state portions of the Chicago area were effective upon publication in the **Federal Register**: Indiana portion (87 FR 30821, May 20, 2022); Illinois portion (87 FR 30828, May 20, 2022); and the Wisconsin portion (87 FR 21027, April 11, 2022).

TABLE 1—2008 OZONE NAAQS SERIOUS NONATTAINMENT AREA PROPOSED ACTION SUMMARY—Continued

2008 NAAQS nonattainment area	2018–2020 design value (DV) (ppm)	2008 NAAQS attained by the serious attainment date	2020 4th highest daily maximum 8-hr average (ppm)	Area failed to attain 2008 NAAQS but state requested 1-year attainment date extension based on 2020 4th highest daily maximum 8-hr average ≤0.075 ppm
New York-N. New Jersey-Long Island, CT-NJ-NY.	0.082	Failed to Attain .....	0.080	No.

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

*B. Proposed Severe Area SIP Submission and Controls Implementation Deadlines*

In the April 2022 proposal, the EPA also solicited comment on adjusting the due dates, in accordance with CAA section 182(i), for SIP submissions and implementation deadlines for all SIP requirements that would apply to newly reclassified Severe areas (see CAA sections 172(c)(1) and 182(a)(b)(c) and (d), and 40 CFR 51.1100 *et seq.*). Under CAA section 181(b)(2), Serious nonattainment areas that fail to attain the 2008 ozone NAAQS by the applicable attainment date for such areas will be reclassified as Severe by operation of law upon the effective date of the final reclassification action. Each responsible state air agency must subsequently submit a SIP revision that satisfies the air quality planning requirements for a Severe area under CAA section 182(d), and they must attain the standard by July 20, 2027 (within 15 years of initial designation). For areas reclassified as Severe, SIP submissions must apply the more stringent major source threshold of 25 tons per year (tpy) <sup>12</sup> for reasonably available control technology (RACT) and nonattainment new source review (NNSR), and the more stringent NNSR emissions offset ratio of 1.3:1.<sup>13</sup> 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

requirement(s). Such certifications must be submitted as SIP revisions.

On July 20, 2012, when final nonattainment designations became effective for the 2008 ozone NAAQS, states responsible for areas initially classified as Severe were required to prepare and submit SIP revisions by deadlines relative to that effective date. For those areas, the submission deadlines ranged from 2 to 10 years after July 20, 2012, depending on the SIP element (e.g., 2 years for the RACT SIP and vehicle miles traveled (VMT) offset demonstration, 4 years for the attainment demonstration, 10 years for the CAA section 185 fee program). Initial Severe areas were also required to implement RACT as expeditiously as practicable but no later than January 1 of the 5th year after July 20, 2012 (i.e., January 1, 2017). Those deadlines have all now passed, and the EPA proposed to use its discretion under CAA section 182(i) to adjust the SIP deadlines that would otherwise apply.<sup>14</sup>

1. Submission Deadlines for SIP Revisions

The EPA proposed a SIP submission deadline of 18 months after the effective date of reclassification to address the CAA section 185 fee program, VMT offset demonstration, and reasonably available control measures (RACT) and RACT requirements. This deadline is consistent with that for all other Severe area plan elements required under CAA sections 172(c)(1) and 182(a)(b)(c) and (d), and 40 CFR 51.1100 *et seq.*

2. Implementation Deadline for Required Controls

As required by 40 CFR 51.1108(d) the state must provide for implementation of all control measures needed for attainment no later than the beginning

of the attainment year ozone season.<sup>15</sup> Further, the EPA proposed that any controls that air agencies determine are needed for meeting CAA requirements must be implemented as expeditiously as practicable but no later than 18 months from the proposed SIP submission deadline. These controls include any identified RACT, and any needed transportation control strategies or transportation control measures (TCMs) indicated in the VMT offset demonstration. The EPA requested comment on (1) aligning the implementation deadlines for RACT and transportation-related controls; (2) on requiring that any controls needed for meeting reasonable further progress (RFP) or timely attainment of the 2008 ozone NAAQS be implemented as expeditiously as practicable but no later than 18 months after the proposed SIP submission deadline, and (3) on providing an overall 36-month schedule for SIP submission and controls implementation.

II. Responses To Comments and Final Actions

The public comment period for the EPA’s April 2022 proposal closed on June 13, 2022, and included a public hearing held on May 9, 2022. The comments received during this period and the public hearing transcript can be found in the docket for this action. A majority of commenters supported the EPA’s proposal to determine that one area attained the 2008 ozone NAAQS by the applicable attainment date, to deny a requested 1-year attainment date extension for the Houston area, and to reclassify to Severe the nonattainment areas that did not attain the 2008 ozone NAAQS by the applicable attainment date and do not qualify for an attainment date extension. Our final

<sup>12</sup> “For any Severe Area, the terms ‘major source’ and ‘major stationary source’ include (in addition to the sources described in section 7602 of this title) any stationary source or group of sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 25 tons per year of volatile organic compounds.” CAA section 182(d).

<sup>13</sup> 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.

<sup>14</sup> For additional discussion on certain Severe area requirements, see 87 FR 21825 (April 13, 2022).

<sup>15</sup> “Attainment year ozone season” is defined as the ozone season immediately preceding a nonattainment area’s maximum attainment date (see 40 CFR 51.1100(h)), with the attainment year being the calendar year corresponding with that final ozone season for determining attainment.

actions are summarized in Table 2 of this action.

TABLE 2—2008 OZONE SERIOUS NONATTAINMENT AREA FINAL ACTION SUMMARY

2008 NAAQS nonattainment area	Attained by the attainment date	Failed to attain by the attainment date	Extension of the serious area attainment date to July 20, 2022
Dallas-Fort Worth, TX .....		X	
Denver-Boulder-Greeley-Ft. Collins-Loveland, CO .....		X	
Greater Connecticut, CT .....	X		
Houston-Galveston-Brazoria, TX .....		X	
Morongo Band of Mission Indians .....		X	
New York-N. New Jersey-Long Island, CT-NJ-NY .....		X	

The EPA is responding to certain comments in this section of the preamble. The remaining comments and the EPA's responses can be found in the Response to Comments document, which is found in the docket for this rulemaking. To access the Response to Comments document, please go to <http://www.regulations.gov>, and search for Docket No. EPA-HQ-OAR-2021-0741, or contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

#### A. Determinations of Attainment by the Attainment Date

Pursuant to section 181(b)(2)(A) of the CAA and 40 CFR 51.1103 and after considering comments received, the EPA is making a final determination that the Greater Connecticut Serious nonattainment area listed in Table 2 of this action attained the 2008 ozone NAAQS by the applicable attainment date of July 20, 2021. Once effective, this final action satisfies the EPA's obligation pursuant to CAA section 181(b)(2)(A) to determine, based on an area's air quality as of the attainment date, whether the area attained the standard by the applicable attainment date. The effect of a final determination of attainment by an area's attainment date is to discharge the EPA's obligation under CAA section 181(b)(2)(A), and to establish that, in accordance with CAA section 181(b)(2)(A), the area will not be reclassified for failure to attain by the applicable attainment date.

This determination of attainment does not constitute a redesignation to attainment as provided for under CAA section 107(d)(3). The EPA may redesignate an area if the state meets additional statutory criteria, including the EPA approval of a state plan demonstrating maintenance of the air quality standard for 10 years after redesignation, as required under CAA section 175A. As for all NAAQS, the EPA is committed to working with states that choose to submit

redesignation requests for areas that are attaining the 2008 ozone NAAQS.

The EPA did not receive adverse comments on its proposed determination of attainment for the Greater Connecticut area. For a discussion of additional comments received on the proposal and responses to those comments, please see the Response to Comments document in the docket for this action.

#### B. Determinations of Failure To Attain and Reclassification, and Denial of Requested 1-Year Attainment Date Extension

Pursuant to CAA section 181(b)(2) and after considering comments received, the EPA is finalizing its proposed determinations that the five Serious nonattainment areas listed in Table 2 of this action failed to attain the 2008 ozone NAAQS by the applicable attainment date of July 20, 2021. Therefore, upon the effective date of this final action, these five areas will be reclassified, by operation of law, as Severe for the 2008 ozone NAAQS. Once reclassified as Severe, these areas will be required to attain the standard "as expeditiously as practicable" but no later than 15 years after the initial designation as nonattainment, which in this case would be no later than July 20, 2027. If any of these areas attains the 2008 ozone NAAQS, the relevant state may request redesignation to attainment, provided the state can demonstrate that the criteria under CAA section 107(d)(3)(E) are met.<sup>16</sup>

Included in these five areas is the Houston area, for which the EPA is finalizing its proposed denial of the TCEQ request to extend the Houston Serious area attainment date by one year from July 20, 2021, to July 20, 2022.<sup>17</sup>

<sup>16</sup> More information about redesignation is available at <https://www.epa.gov/ozone-pollution/redesignation-and-clean-data-policy-cdp>.

<sup>17</sup> Baer, Tonya, Director, Office of Air, TCEQ. "Request for a One-Year Extension of the Houston-

A majority of commenters supported the EPA's proposal to deny the Houston area attainment date extension request, to determine that the area failed to attain by the applicable attainment date, and to reclassify the area as Severe. We also received an adverse comment from TCEQ on our proposed action, which is addressed in the Response to Comments document in the rulemaking docket for this action. As detailed in the Response to Comments document, TCEQ acknowledged that the CAA grants the EPA discretion in acting on attainment date extension requests, but urged the EPA to grant Texas's request on the basis that the area had met the two qualifying criteria. We think it is reasonable, given the statute's goal of expeditious attainment of the NAAQS in order to protect public health and the environment, to consider available information that demonstrates that Houston could not have attained by an extended attainment date or qualified for a second extension, and that indicates that the population impacted by the Agency's decision already bears a disproportionate burden of pollution. Specifically, as discussed in the proposal, the EPA's analysis of existing pollution burden found that there are communities residing and working near violating ozone monitors in the Houston area and the Houston Ship Channel that are exposed to a significant and disproportionate burden of ozone pollution and other sources of pollution (e.g., vehicle traffic and particulate matter emissions) compared to the greater Houston area and the U.S. as a whole.<sup>18</sup> The existing pollution burden on the population that would be impacted by the EPA's action on the state's request is a relevant consideration where the EPA is exercising its judgment about whether or not to issue a determination that

Galveston-Brazoria (HGB) 2008 Eight-Hour Ozone Standard Attainment Date." April 5, 2021.

<sup>18</sup> See 87 FR 21825, 21834 (April 13, 2022).

would have the effect of immediately requiring more stringent pollution controls or providing additional time to see whether air quality would resolve without those controls.

The EPA recognizes that delays in issuing this final rulemaking have had the practical effect of providing an extra year for the Houston area to attain the 2008 ozone NAAQS, because the contemplated extended attainment date would have been July 20, 2022. Regardless, the EPA continues to have an obligation to act on TCEQ's request, and the basis articulated in the proposal and in the RTC for denying TCEQ's request is reasonable and consistent with the Agency's analytic approach when evaluating requests from other states seeking extensions under the same statutory provision for other ozone NAAQS.<sup>19</sup> We also note that certified data now available for the period 2019–2021 confirm the preliminary assessment on air quality trends in the proposal, showing that the Houston area did not attain by the extended date, and does not qualify for a second extension. The import of the air quality information in the record alone would support a denial. The EPA is, therefore, finalizing its denial of TCEQ's requested 1-year attainment date extension for the Houston area based upon the Agency's analysis of air quality trends. Denying the *extension* request and determining that the Houston area failed to attain the 2008 ozone NAAQS by its July 20, 2021, attainment date will, by operation of law, include the Houston area among the other areas being reclassified to Severe for the 2008 ozone NAAQS and trigger the deadlines associated with the set of more protective attainment planning and control requirements for those areas.

With respect to the remaining areas included in this final action, a majority of commenters supported the EPA's proposal to determine that they failed to attain by the applicable attainment date and to reclassify those areas as Severe. We also received several adverse comments on our proposed determinations, some of which are addressed below. For a discussion of additional comments received on the proposal and responses to those comments, please see the Response to Comments document in the rulemaking docket for this action.

*Comment:* Several commenters opposed reclassifying the Denver area to Severe nonattainment, claiming that the environmental benefits of the action do not outweigh the economic costs. One commenter claimed that the EPA is

“required to determine whether the benefits of a regulation justify the costs” and that the EPA should not adopt the regulation because “the programs required by a downgrade will not achieve any reduction in ozone.” The commenter claims that E.O. 12866 gives the EPA an option to decline to reclassify the area, and that the E.O. requires the EPA to assess the costs and benefits of the reclassification as a “significant regulatory action” because it will cost individuals and companies in Colorado more than \$1 billion annually. The commenter also stated that it is time for the EPA to consider alternative regulations that would “give Colorado an incentive to achieve the ozone standard, while imposing the least burden on society” and cited to E.O. 12866 for performance objectives rather than programs.

*Response:* The EPA disagrees with these comments. CAA section 181(b)(2)(A) states that “the Administrator shall determine, based on the area's design value (as of the attainment date), whether the area attained the standard by that date. Except for any Severe or Extreme area, any area that the Administrator finds has not attained the standard by that date shall be reclassified by operation of law . . . to the higher of—(i) the next higher classification for the area or (ii) the classification applicable to the area's design value . . . .” This provision unambiguously requires the EPA to determine whether an area timely attained “based on the area's design value (as of the attainment date).” The area's design value as of its attainment date is the sole criterion that the EPA is permitted to consider in determining whether an area has timely attained. With respect to reclassification, the statute is similarly restrictive: *any* area that the Administrator finds has not attained by its attainment date *shall* be reclassified *by operation of law*. The Act exempts from reclassification Severe or Extreme areas and limited other areas (e.g., an area that can demonstrate, under CAA section 179B(b), that the area would have attained by the applicable attainment date, but for emissions emanating from outside of the United States). Outside of limited explicit exceptions, Congress made the judgment that reclassification would apply to areas that fail to attain the NAAQS on time and left no determination or even action for the EPA to carry out. The reclassification happens “by operation of law” when the EPA makes the determination that an area has failed to attain by its attainment date, and there is no Agency

judgment or consideration of factors—cost, benefit, or otherwise. *Cf. Sierra Club v. EPA*, 294 F.3d 155 (D.C. Cir. 2002) (rejecting the EPA's decision not to reclassify a downwind nonattainment area that failed to timely attain due to transported pollution from upwind states). Accordingly, the EPA does not consider cost in the reclassification of areas that fail to attain the ozone standard. We also do not agree that E.O. 12866 provides the EPA with any option not to reclassify. Nothing in the E.O. purports to override the mandatory duty established in the Clean Air Act, nor could it. E.O. 12866 (*see* 58 FR 51735, October 4, 1993) gives the Office of Management and Budget (OMB) the authority to review regulatory actions that are categorized as “significant” under section 3(f) of E.O. 12866. In their corresponding E.O. 12866 guidance, OMB listed types of regulatory actions that are exempt from OMB review, including “area designations of air quality planning purposes.”<sup>20</sup> The EPA has historically interpreted its ozone determination of attainment actions to fall in this exempted category because these action involve determinations based on air quality, responding to the CAA requirement to determine whether areas designated nonattainment for an ozone NAAQS attained the standard by the applicable attainment date, and to take certain steps for areas that failed to attain.<sup>21</sup> Findings of failure to attain under CAA section 181(b)(2) are based on air quality considerations, and reclassifications must occur by operation of law in light of certain air quality conditions. The statutory requirements are clearly defined with respect to the differently classified areas, and those requirements are automatically triggered by classifications that, in turn, are triggered by air quality values. Congress has not authorized or directed the EPA to consider cost in this process, and E.O. 12866 does not provide any further authority or requirement to do so. With respect to the concern that the reclassification will cost individuals and companies in Colorado more than \$1 billion annually, the commenter bases that estimate on information he obtained related to the cost of providing federal RFG in the Denver area. We respond to this comment in detail in the Response to Comments document in the docket for this action. In that response

<sup>20</sup> See “Guidance for Implementing E.O. 12866” (October 12, 1993) at p. 8 and Appendix C; available at [https://www.whitehouse.gov/wp-content/uploads/legacy\\_drupal\\_files/omb/assets/inforeg/eo12866\\_implementation\\_guidance.pdf](https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/assets/inforeg/eo12866_implementation_guidance.pdf).

<sup>21</sup> See, e.g., 81 FR 26697, 26707 (May 4, 2016).

<sup>19</sup> See 87 FR 21842 (April 13, 2022).

we conclude that the cost of implementing the federal RFG program in the Denver area will be approximately \$13.3 million per year.

*Comment:* Several commenters opposed the reclassification of the Denver area because Colorado has undertaken many efforts to reduce ozone precursor emissions. One commenter asserted that the economic impacts from reclassifying the area will be “felt across communities and industries for years to come.” Two commenters pointed to VMT growth offset requirements for Severe nonattainment areas, with one contending that the “EPA should not mandate air quality measures that Colorado residents have so recently rejected.” Two commenters stated that the EPA should use incentives, not mandates, to improve air quality. Commenters pointed to federal actions that will reduce ozone as justification for not reclassifying the Denver area.

*Response:* The EPA agrees that the state has taken significant regulatory steps to reduce ozone precursor emissions but disagrees that these steps are a basis to refrain from reclassifying the area. Regardless of ozone trends or of the state’s actions to date, the EPA has a mandatory duty under CAA section 181(b)(2)(A) to determine whether the Denver area attained by its July 20, 2021, attainment date based on the area’s design value as of that date. As previously stated, the CAA does not allow the EPA to consider economic impacts in assessing whether an area has attained the NAAQS by the applicable date. Instead, CAA section 181(b)(2) requires the EPA to make the determination of attainment based solely on the area’s DV, which is derived entirely from monitored air quality data.

Regarding VMT growth offsets, CAA section 182(d)(1)(A) requires that Severe and Extreme ozone nonattainment areas identify and adopt specific and enforceable transportation control measures to offset any growth in emissions associated with an increase in VMT. The first steps for addressing the CAA’s VMT offset provision are for the state to determine if there has been any growth in emissions due to increased VMT and, if there has been an increase in emissions, to quantify the magnitude of that increase. If there is any increase in emissions, the state would select the control measures to offset the identified growth in emissions. The EPA has issued guidance on these calculations and provided a tool to be used with the

MOVES3 emission factor model.<sup>22 23</sup> In this final notice, the EPA is not prescribing that any specific measures be adopted by areas being reclassified as Severe, nor would it be appropriate to do so. The nonattainment area requirements in the CAA include a range of measures to reduce emissions that are to be implemented throughout the entire nonattainment area. The VMT offset guidance referenced above provides for including emission reductions from “clean car technology” in demonstrations for meeting CAA section 182(d)(1)(A) requirements. State air agencies continue to have flexibility in how they can tailor and implement emission reduction measures within each nonattainment area in order to attain the standard as expeditiously as practicable.

### *C. Severe Area SIP Submission and Controls Implementation Deadlines*

Pursuant to CAA section 182(i) and after considering comments received, the EPA is finalizing, with one exception for the CAA section 185 fee program, its proposed deadlines for Severe area SIP revisions, and implementation of RACT and any needed transportation control strategies or TCMs indicated in the VMT offset demonstration. Specifically, SIP revisions required for all newly reclassified Severe areas must be submitted no later than 18 months after the effective date of reclassification. Any controls that air agencies determine are needed for meeting CAA requirements must be implemented as expeditiously as practicable but no later than 18 months from the SIP submission deadline, which would provide an overall 36-month schedule for SIP submission and controls implementation for reclassified Severe areas. For the CAA section 185 fee program SIP, the EPA is finalizing a submittal deadline of 36 months after the effective date of reclassification.

The EPA received several significant adverse comments on our proposed deadlines, which are addressed as follows. For a discussion of additional comments received on the proposal and responses to those comments, please see

<sup>22</sup> *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, Aug. 2012; available at <https://www.epa.gov/state-and-local-transportation/vehicle-miles-travelled-vmt-offset-demonstration-guidance>.

<sup>23</sup> The MOVES3 VMT offset tool can be found under “Tools to develop special case MOVES3 inputs” at <https://www.epa.gov/moves/tools-develop-or-convert-moves-inputs>.

the Response to Comments document in the docket for this action.

*Comment:* The EPA received several comments requesting that we modify the SIP submission and/or controls implementation deadlines for reclassified Severe areas. One commenter considered the overall 36-month schedule as adequate for regulatory development and SIP preparation and submission, but insufficient for new major sources to plan, budget and install new emissions controls, and requested 48–60 months to allow the owners of affected sources to comply. Another commenter stated that any control measures that can be implemented prior to the 2026 ozone season will contribute to compliance of the standard by the July 20, 2027, attainment date, and requested that the EPA extend the controls implementation deadline to the beginning of their area’s attainment year ozone season (March 1, 2026) in order to maximize the time to get additional reductions implemented before the final ozone season used for compliance with the ozone NAAQS.

*Response:* The EPA disagrees with the commenters’ requested extensions to the proposed deadlines for SIP submissions and controls implementation, which we contend would unduly delay emissions reductions and improvements to air quality in reclassified Severe areas. The request of 48–60 months to allow for source compliance did not specify whether this time allowance was inclusive of, or in addition to, their suggested 36 months for SIP preparation and submission. Assuming an effective date for this final action in November 2022, and the commenter’s request for 48–60 months for SIP submission and implementation, the requested schedule would extend the controls implementation deadline to almost the end of the Severe area attainment year in the case of 48 months (*i.e.*, November 2026); and past the July 20, 2027, Severe area attainment date in the case of 60 months (*i.e.*, November 2027). The EPA’s overall 36-month schedule would result in a controls implementation deadline of approximately November 2025, shortly before the beginning of Severe area attainment year and just a few months before the other commenter’s requested implementation deadline of March 1, 2026.

The EPA maintains that the adopted SIP submission and implementation schedule balances the goals of robust SIP revisions, expeditious and meaningful emissions reductions, and consistency across submissions (per CAA section 182(i)) for areas reclassified as Severe. SIP revisions to

address RACM/RACT requirements and other required Severe area plan elements will be due 18 months after the effective date of reclassification, which provides more planning time than the submission deadlines in previous 2008 ozone reclassification actions (approximately 12 months after the effective date of reclassification) and could contribute to states determining that additional controls are reasonable (compared to a shorter planning timeframe). We do not find it appropriate to provide a SIP submission deadline of 36 months from the effective date of this final action and an overall schedule of 48–60 months for controls implementation because this would unduly delay implementation late into the Severe area DV period (2024–2026) or beyond the Severe area attainment date of July 20, 2027. Further, the EPA considers it reasonable to require that any controls determined as needed for meeting CAA requirements must be implemented as expeditiously as practicable but no later than 18 months from the proposed SIP submission deadline. This implementation deadline in November 2025 will correspond approximately with the beginning of the Severe area attainment year (January 1, 2026) and will treat areas with varying ozone season start dates consistently per CAA section 182(i).

*Comment:* The EPA received a comment from an air agency asserting that the proposed 18-month deadline for submittal of CAA section 185 penalty fee programs, at the same time as the attainment demonstration, RFP, and RACT SIP revisions, is unnecessary and imposes undue burden on states. They further argue that it is unnecessary, noting that for initial Severe areas, the Act specifically sets a later deadline for the CAA section 185 fee program than for the other elements. The commenter suggests the EPA provide at least an additional 18 months, because implementation of a CAA section 185 fee program is a penalty for failing to attain the NAAQS by the attainment date. The program therefore could not become effective until the calendar year following the July 20, 2027, attainment date, at the earliest. Therefore, extending the submittal deadline would not create significant implementation issues and would not significantly limit the EPA's review time to act on the submittal prior to the attainment date.

*Response:* As noted previously, the EPA is finalizing a later submittal date for the CAA section 185 fee program than what was proposed, setting the due date 3 years from the effective date of reclassification (18 months longer than the proposed deadline). The EPA agrees

with the commenter that under this new deadline it will still be possible to establish approved CAA section 185 fee programs for reclassified areas ahead of when they are needed, which in this case is the Severe attainment date of July 20, 2027. The new due date would be in approximately mid-2025, nearly 2 years ahead of the attainment date. Although this is not as much lead time as the CAA provides for initial Severe areas, the CAA allows the EPA to adjust deadlines as appropriate for reclassified areas per CAA section 182(i), and we agree that this deadline will not create implementation issues or unreasonably limit EPA's review time ahead of the attainment date. Although we do not believe the development of the CAA 185 program will pose an undue burden on states, we do believe, in light of related comments about the challenges with completing other Severe area requirements within the 18 months provided, that allowing more time for the CAA section 185 program could allow more focused attention to those other elements in the first 18 months following reclassification. To the degree that states want to take advantage of the administrative efficiency of adopting the CAA section 185 program element along with other required Severe area SIP elements, which was a benefit the EPA noted at proposal, they would still have the option to submit their CAA section 185 programs with the other elements.

#### D. Reformulated Gasoline

As discussed in the April 2022 proposal, the CAA prohibits the sale of conventional gasoline in any ozone nonattainment area that is reclassified as Severe and requires that federal reformulated gasoline (RFG) must be sold instead.<sup>24</sup> The prohibition on the sale of conventional gasoline takes effect one year after the effective date of the reclassification (*see* CAA section 211(k)(10)(D); 211(k)(5)), November 7, 2023. The primary difference between conventional gasoline and federal RFG is that federal RFG must comply with a maximum Reid Vapor Pressure (RVP) per-gallon standard of 7.4 pounds per square inch during the summer season.<sup>25 26</sup> Higher maximum RVP per-gallon standards apply to conventional gasoline during the summer season.<sup>27</sup> Also, as discussed in the proposal, the

<sup>24</sup> *See* 87 FR 21825 (April 13, 2022).

<sup>25</sup> *See* 40 CFR 1090.215(a)(3).

<sup>26</sup> The summer season means the period from June 1 through September 15 for retailers and wholesale purchaser-consumers, and May 1 through September 15 for all other persons, or an RVP control period specified in a SIP if it is longer (*see* 40 CFR 1090.80).

<sup>27</sup> *See* 40 CFR 1090.215(a)(1) and (2).

reclassification of certain areas to Severe will not result in any changes to where federal RFG is sold because the sale of federal RFG is already required in the following nonattainment areas: New York Metropolitan area, the Houston area, and the Morongo Band of Mission Indians area. A SIP revision is not required in order for the prohibition on the sale of conventional gasoline to take effect.

The EPA proposed to reclassify the Chicago area as Severe for the 2008 ozone NAAQS in the April 2022 proposal. However, the area attained the 2008 ozone NAAQS based on 2019–2021 air quality data, and as discussed in Section I of this action, the EPA has redesignated the Chicago area to attainment since its April proposal. Therefore, federal RFG is not required for this area for the 2008 ozone NAAQS, although federal RFG continues to be required in the area for other reasons.

The reclassification of the Dallas-Fort Worth area as Severe results in the current federal RFG area being expanded to include all 10 counties in the 2008 ozone NAAQS nonattainment area effective one year after the effective date of this final rule.<sup>28</sup> *See* Section I of this action for more information on this area.

The reclassification of the Denver area as Severe for the 2008 ozone NAAQS results in the prohibition of the sale of conventional gasoline throughout the entire nonattainment area under CAA section 211(k)(10)(D) and section 211(k)(5) effective 1 year after the effective date of this final rule, November 7, 2023. This is a new requirement for the area as federal RFG is not currently required to be sold in any part of the Denver 2008 ozone NAAQS nonattainment area.

The EPA received comments on the CAA requirement to sell federal RFG in the Denver area, which are addressed as follows. For a discussion of additional comments received on the proposal and responses to those comments, please see the Response to Comments document in the docket for this action.

*Comment:* One commenter raised concerns about making the transition from conventional gasoline to federal RFG if the transition was required to occur during the summer of 2023. The commenter noted that such a transition presented two challenges: first, because it would occur during the summer, which is peak season for gasoline

<sup>28</sup> The sale of conventional gasoline is already prohibited in Collin, Dallas, Denton, and Tarrant Counties because Texas chose to opt the 4-county Dallas-Fort Worth 1-hour ozone nonattainment area into federal RFG (57 FR 46316, October 8, 1992, and 40 CFR 1090.285(c)).



demand and a time during which the current pipeline system supplying the market operates at a very high utilization rate, and second, because requiring RFG to be implemented during the summer of 2023 would not provide fuel suppliers with sufficient time to complete necessary projects to implement the transition to RFG. The commenter pointed to several actions that fuel suppliers need to complete in order to supply RFG to the Denver area including analyzing their ability to produce fuel choices, their unique market structure, and the existing fuel distribution network and obtaining permits for construction projects and rail loading. The commenter opined that the 1-year clock for the implementation of RFG should start after the end of the 2022 summer fuel season ends on September 15, 2022.

*Response:* The EPA understands the concerns that the commenter raised concerning the challenges that would be presented if the transition to RFG were to occur during the summer season that runs from June 1 to September 15 for wholesale purchaser-consumers and from May 1 to September 15 for all other persons.<sup>29</sup> The EPA also understands the type of analyses and work that will need to be completed in order to supply RFG to the Denver area. With respect to areas that are reclassified as Severe for the ozone NAAQS, CAA section 211(k)(10)(D) states that, “Effective one year after the reclassification of any ozone nonattainment area as a Severe ozone nonattainment area under section 7511(b) of this title, such Severe area shall also be a “covered area” for purposes of this subsection.”<sup>30</sup> The reclassification of the Denver area to Severe for the 2008 ozone NAAQS will not be effective until after the 2022 summer season for fuel sales ends on September 15, 2022. While the CAA requires that Denver be an RFG covered area one year after the effective date of the reclassification, the RFG maximum Reid Vapor Pressure (RVP) per-gallon standard of 7.4 pounds per square inch (psi) will not apply for the first time until June 1, 2024, for wholesale purchaser-consumers and May 1, 2024, for all other persons.<sup>31</sup> This will provide fuel suppliers with approximately 18 months after the effective date of the reclassification to complete preparations for the sale of RFG in the Denver area. It will also be approximately two years

after EPA proposed to reclassify the Denver area as Severe for the 2008 ozone NAAQS.<sup>32</sup>

### III. Environmental Justice (EJ) Impacts

As discussed in Section II.B of this action, the EPA is finalizing its proposal to deny a request for a 1-year attainment date extension for the Houston area and to determine that the area failed to attain the 2008 ozone NAAQS by the attainment date. Denying the extension request is based on our assessment of air quality trends in the Houston area. Given our findings that the area is not likely to attain by an extended attainment date or qualify for a second extension, we also considered the impact of our action on existing air pollution burdens in the area. Screening-level EJ analyses indicate an already disproportionate air pollution burden for communities near the Houston Ship Channel and communities around violating ozone regulatory monitor sites in the Houston area. The area’s reclassification to Severe will result in more timely application in this area of the Act’s more stringent controls associated with that higher classification. Expedient attainment of the NAAQS will protect all those residing, working, attending school, or otherwise present in those areas, including communities of color and low-income communities.

### IV. Statutory and Executive Order Reviews

*A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

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

*B. Paperwork Reduction Act (PRA)*

This rule does not impose any new information collection burden under the PRA not already approved by the OMB. This action does not contain any information collection activities and serves only to make final: (1) a determination that a certain Serious nonattainment area listed in Table 2 in this action attained the 2008 ozone standards by the July 20, 2021, attainment date; (2) determinations that certain Serious nonattainment areas listed in Table 2 in this action failed to

attain the 2008 ozone standards by the July 20, 2021, attainment date where such areas will be reclassified as Severe nonattainment for the 2008 ozone standards by operation of law upon the effective date of the final reclassification action; and (3) adjust any applicable implementation deadlines.

*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 determinations of attainment and failure to attain the 2008 ozone standards (and resulting reclassifications) do not in and of themselves create any new requirements beyond what is mandated by the CAA. Instead, this rulemaking only makes factual determinations, and does not directly regulate any entities.

*D. Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538 and does not significantly or uniquely affect small governments. 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 has tribal implications. However, it will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law.

The EPA has identified tribal areas within the nonattainment areas covered by this rulemaking that would be potentially affected by this final action. Specifically, two of the nonattainment areas addressed in this action have tribes located within their boundaries: the Greater Connecticut, CT, area (Mashantucket Pequot Tribal Nation and Mohegan Indian Tribe), and the New York-Northern New Jersey-Long Island, CT-NJ-NY area (Shinnecock Indian

<sup>29</sup> See 40 CFR 1090.80 for the definition of “summer season.”

<sup>30</sup> See CAA section 211(k)(10)(D).

<sup>31</sup> Other requirements that apply to RFG such as benzene and sulfur content are identical to requirements that apply to conventional gasoline.

<sup>32</sup> See 87 FR 21825 (April 13, 2022).



Nation). One of the nonattainment areas addressed in this document is a separate tribal nonattainment area (Morongo Band of Mission Indians area).

The EPA has concluded that the final rule may have tribal implications for these tribes for the purposes of Executive Order 13175 but would not impose substantial direct costs upon the tribes, nor would it preempt tribal law. As noted in our proposed rule, a tribe that is part of an area that is reclassified from Serious to Severe nonattainment is not required to submit a tribal implementation plan revision to address new Severe area requirements.<sup>33</sup> However, the NNSR major source threshold and offset requirements will change for stationary sources seeking preconstruction permits in any nonattainment areas newly reclassified as Severe (Section II.D.1 of this notice), including on tribal lands within these nonattainment areas. Areas that are already classified Severe for a previous ozone NAAQS are already subject to these higher offset ratios and lower thresholds, so a reclassification to Severe for the 2008 ozone NAAQS would have no effect on NNSR permitting requirements for tribal lands in those areas.

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

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

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

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

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

#### I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

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

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The documentation for this determination is contained in Section III of this preamble, “Environmental Justice (EJ) Impacts,” and the relevant documents have been placed in the public docket for this action.

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

#### K. Congressional Review Act (CRA)

This rule is exempt from the CRA because it is a rule of particular applicability. The rule makes factual determinations for specific entities and does not directly regulate any entities. The determinations of attainment and failure to attain the 2008 ozone NAAQS (and resulting reclassifications) and the denial of a 1-year attainment date extension request do not in and of themselves create any new requirements beyond what is mandated by the CAA.

#### L. 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, but “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).

This final action is “nationally applicable” within the meaning of CAA section 307(b)(1). In this final action, the EPA is applying a uniform process and standard to areas across the country to make determinations regarding attainment of the 2008 ozone NAAQS for the majority of areas that remain designated and classified as Serious nonattainment for these NAAQS. All listed areas that have failed to attain by the Serious area attainment date<sup>34</sup> are reclassified to Severe upon the effective date of this final action and are subject to the same deadlines established pursuant to CAA section 182(i) for revising state implementation plans and implementing control requirements associated with the Severe area classification. While many areas that were initially designated nonattainment for the 2008 ozone NAAQS in 2012 have, in the intervening decade, come into attainment of the NAAQS, the remaining nonattainment areas subject to this final rulemaking are located in six states across a wide geographic area and fall within four of the ten EPA regions and six judicial circuits. The areas affected by this notice comprise major metropolitan areas in the American South, West, and Northeast, as well as a tribal area in the West. Given that on its face this action addresses areas in states located across a wide geographic area, and uses common, nationwide analytical methods the EPA consistently applies when making determinations regarding attainment, acting on attainment date extension requests, and adjusting deadlines for all newly reclassified areas, this is a “nationally applicable” action within the meaning of CAA section 307(b)(1).

In the alternative, to the extent a court finds this final action to be locally or regionally applicable, the Administrator is exercising the complete discretion afforded to him under the CAA to make and publish a finding that this action is based on a determination of “nationwide scope or effect” within the meaning of CAA section 307(b)(1).<sup>35</sup> In

<sup>34</sup> These areas include the Houston area because the EPA is denying Texas’s request to extend the attainment date by one year.

<sup>35</sup> 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

<sup>33</sup> See 87 FR 21825, 21828 (April 13, 2022).

deciding to invoke this exception, the Administrator has taken into account a number of policy considerations, including his judgment regarding the benefit of obtaining the D.C. Circuit's authoritative centralized review, rather than allowing development of the issue in other contexts, in order to ensure consistency in the Agency's approach to implementation of the 2008 ozone NAAQS in the majority of the nonattainment areas nationwide that remain classified Serious for the 2008 ozone NAAQS. This final action treats all of the identified Serious nonattainment areas consistently by reclassifying them to Severe and establishing consistent deadlines for all of these areas to submit and implement control measures and other plan elements required for Severe areas. The Administrator finds that this is a matter on which national uniformity is desirable to take advantage of the D.C. Circuit's administrative law expertise and facilitate the orderly development of the basic law under the Act. The Administrator also finds that consolidated review of this action in the D.C. Circuit will avoid piecemeal litigation in the regional circuits, further judicial economy, and eliminate the risk of inconsistent results for different states. The Administrator also finds that a nationally consistent approach to the CAA's mandate concerning reclassification of areas that fail to attain the 2008 ozone NAAQS constitutes the best use of agency resources. The Administrator is publishing his finding that this action is based on a determination of nationwide scope or effect in the **Federal Register** as part of this final rule.

For these reasons, this final action is nationally applicable or, alternatively, the Administrator is exercising the

complete discretion afforded to him by the CAA and finds that this final action is based on a determination of nationwide scope or effect for purposes of CAA section 307(b)(1) and is publishing that finding in the **Federal Register**. Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit by December 6, 2022.

**List of Subjects**

*40 CFR Part 52*

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

*40 CFR Part 81*

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

**Michael S. Regan,**  
*Administrator.*

For the reasons stated in the preamble, parts 52 and 81, title 40, chapter 1 of the Code of Federal Regulations are amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

- 1. The authority citation for part 52 continues to read as follows:

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

**Subpart H—Connecticut**

- 2. Section 52.377 is amended by revising paragraph (u) to read as follows:

**§ 52.377 Control strategy: Ozone.**

\* \* \* \* \*

(u) *Determination of attainment for the 2008 ozone standard.* Effective November 7, 2022 EPA is determining that complete, quality-assured and certified ozone monitoring data for 2018–2020 show the Greater Connecticut, CT ozone nonattainment area attained the 2008 ozone NAAQS by its July 20, 2021, attainment deadline. Therefore, EPA has met the requirement pursuant to CAA section 181(b)(2)(A) to determine, based on the area's air quality data as of the attainment date, whether the area attained the standard.

\* \* \* \* \*

**PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES**

- 3. The authority citation for part 81 continues to read as follows:

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

**Subpart C—Section 107 Attainment Status Designations**

- 4. In § 81.305, in the table entitled “California-2008 8-Hour Ozone NAAQS [Primary and Secondary]” revise the entry “Morongo Band of Mission Indians<sup>3</sup>” to read as follows:

**§ 81.305 California.**

\* \* \* \* \*

**CALIFORNIA—2008 8-HOUR OZONE NAAQS**  
[Primary and secondary]

Designated area	Designation		Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
Morongo Band of Mission Indians <sup>3</sup> .....	.....	Nonattainment ..	November 7, 2022 .....	Severe.
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *

<sup>1</sup> This date is July 20, 2012, unless otherwise noted.

<sup>3</sup> Includes Indian country of the tribe listed in this table located in the identified area. Information pertaining to areas of Indian country in this table is intended for CAA planning purposes only and is not an EPA determination of Indian country status or any Indian country boundary. The EPA lacks the authority to establish Indian country land status, and is making no determination of Indian country boundaries, in this table.

\* \* \* \* \*

■ 5. In § 81.306, in the table entitled “Colorado-2008 8-Hour Ozone NAAQS

[Primary and Secondary]” revise the entry “Denver-Boulder-Greeley-Ft. Collins-Loveland, CO: 2” to read as follows:

§ 81.306 Colorado.  
\* \* \* \* \*

**COLORADO—2008 8-HOUR OZONE NAAQS**  
[Primary and secondary]

Designated area	Designation		Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
Denver-Boulder-Greeley-Ft. Collins-Loveland, CO: <sup>2</sup> .....	.....	Nonattainment ..	November 7, 2022 .....	Severe.
Adams County				
Arapahoe County				
Boulder County				
Broomfield County				
Denver County				
Douglas County				
Jefferson County				
Larimer County (part)				
That portion of the county that lies south of a line described as follows: Beginning at a point on Larimer County’s eastern boundary and Weld County’s western boundary intersected by 40 degrees, 42 minutes, and 47.1 seconds north latitude, proceed west to a point defined by the intersection of 40 degrees, 42 minutes, 47.1 seconds north latitude and 105 degrees, 29 minutes, and 40.0 seconds west longitude, thence proceed south on 105 degrees, 29 minutes, 40.0 seconds west longitude to the intersection with 40 degrees, 33 minutes and 17.4 seconds north latitude, thence proceed west on 40 degrees, 33 minutes, 17.4 seconds north latitude until this line intersects Larimer County’s western boundary and Grand County’s eastern boundary.				
Weld County (part)				
That portion of the county that lies south of a line described as follows: Beginning at a point on Weld County’s eastern boundary and Logan County’s western boundary intersected by 40 degrees, 42 minutes, 47.1 seconds north latitude, proceed west on 40 degrees, 42 minutes, 47.1 seconds north latitude until this line intersects Weld County’s western boundary and Larimer County’s eastern boundary.				
* .....	* .....	* .....	* .....	* .....

<sup>1</sup> This date is July 20, 2012, unless otherwise noted.  
<sup>2</sup> Excludes Indian country located in each area, unless otherwise noted.

\* \* \* \* \*

■ 6. In § 81.307, in the table entitled “Connecticut—2008 8-Hour Ozone

NAAQS [Primary and Secondary]” revise the entry “New York-N. New Jersey-Long Island, NY-NJ-CT: 2” to read as follows:

§ 81.307 Connecticut.  
\* \* \* \* \*

**CONNECTICUT—2008 8-HOUR OZONE NAAQS**  
[Primary and secondary]

Designated area	Designation		Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
New York-N. New Jersey-Long Island, NY-NJ-CT: <sup>2</sup> .....	.....	Nonattainment ..	November 7, 2022 .....	Severe.
Fairfield County				
Middlesex County				
New Haven County				

<sup>1</sup> This date is July 20, 2012, unless otherwise noted.

<sup>2</sup>Excludes Indian country located in each area, unless otherwise noted.

\* \* \* \* \*

■ 7. In § 81.331, in the table entitled “New Jersey—2008 8-Hour Ozone

NAAQS [Primary and Secondary]” revise the entry “New York-N. New Jersey-Long Island, NY-NJ-CT:<sup>2</sup>” to read as follows:

§ 81.331 New Jersey.  
\* \* \* \* \*

NEW JERSEY—2008 8-HOUR OZONE NAAQS  
[Primary and secondary]

Designated area	Designation		Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
New York-N. New Jersey-Long Island, NY-NJ-CT: <sup>2</sup> .....	.....	Nonattainment ..	November 7, 2022 .....	Severe.
Bergen County				
Essex County				
Hudson County				
Hunterdon County				
Middlesex County				
Monmouth County				
Morris County				
Passaic County				
Somerset County				
Sussex County				
Union County				
Warren County				
* * * * *				

<sup>1</sup> This date is July 20, 2012, unless otherwise noted.

<sup>2</sup>Excludes Indian country located in each area, unless otherwise noted.

\* \* \* \* \*

■ 8. In § 81.333, in the table entitled “New York—2008 8-Hour Ozone NAAQS [Primary and Secondary]” revise the entry “New York-N. New

Jersey-Long Island, NY-NJ-CT:<sup>2</sup>” to read as follows:

New York—2008 8-Hour Ozone NAAQS  
[Primary and Secondary]

§ 81.333 New York.  
\* \* \* \* \*

Designated area	Designation		Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
New York-N. New Jersey-Long Island, NY-NJ-CT: <sup>2</sup> .....	.....	Nonattainment ..	November 7, 2022 .....	Severe.
Bronx County				
Kings County				
Nassau County				
New York County				
Queens County				
Richmond County				
Rockland County				
Suffolk County				
Westchester County				
Shinnecock Indian Nation <sup>3</sup>				
* * * * *				

<sup>1</sup> This date is July 20, 2012, unless otherwise noted.

<sup>2</sup>Excludes Indian country located in each area, unless otherwise noted.

<sup>3</sup>Includes Indian country of the tribe listed in this table located in the identified area. Information pertaining to areas of Indian country in this table is intended for CAA planning purposes only and is not an EPA determination of Indian country status or any Indian country boundary. The EPA lacks the authority to establish Indian country land status, and is making no determination of Indian country boundaries, in this table.

\* \* \* \* \*

■ 9. In § 81.344, in the table entitled “Texas—2008 8-Hour Ozone NAAQS

[Primary and Secondary]” revise the entries “Dallas-Fort Worth, TX:<sup>2</sup>” and “Houston-Galveston-Brazoria, TX:<sup>2</sup>” to read as follows:

§ 81.344 Texas.  
\* \* \* \* \*

TEXAS—2008 8-HOUR OZONE NAAQS  
[Primary and secondary]

Designated area	Designation		Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
Dallas-Fort Worth, TX: <sup>2</sup> .....	.....	Nonattainment ..	November 7, 2022 .....	Severe.
Collin County				
Dallas County				
Denton County				
Ellis County				
Johnson County				
Kaufman County				
Parker County				
Rockwall County				
Tarrant County				
Wise County				
Houston-Galveston-Brazoria, TX: <sup>2</sup> .....	.....	Nonattainment ..	November 7, 2022 .....	Severe.
Brazoria County				
Chambers County				
Fort Bend County				
Galveston County				
Harris County				
Liberty County				
Montgomery County				
Waller County				
*	*	*	*	*

<sup>1</sup> This date is July 20, 2012, unless otherwise noted.  
<sup>2</sup> Excludes Indian country located in each area, unless otherwise noted.

\* \* \* \* \*  
[FR Doc. 2022–20458 Filed 10–6–22; 8:45 am]  
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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 635**

[Docket No. 220523–0119; RTID 0648–XC420]

**Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries; General Category October Through November Quota Transfer**

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

**ACTION:** Temporary rule; quota transfer.

**SUMMARY:** NMFS is transferring 125 metric tons (mt) of Atlantic bluefin tuna (BFT) quota from the Reserve category to the General category. With this transfer, the adjusted General category October through November 2022 subquota is 177.9 mt. This action is intended to account for an accrued overharvest of 23.5 mt from previous time period subquotas and to provide further opportunities for General category fishermen to participate in the October through November General

category fishery, based on consideration of the regulatory determination criteria regarding inseason adjustments. This action applies to Atlantic Tunas General category (commercial) permitted vessels and Highly Migratory Species (HMS) Charter/Headboat permitted vessels with a commercial sale endorsement when fishing commercially for BFT.

**DATES:** Effective October 5, 2022, through November 30, 2022.

**FOR FURTHER INFORMATION CONTACT:** Larry Redd, Jr., [larry.redd@noaa.gov](mailto:larry.redd@noaa.gov), 301–472–8503, Ann Williamson, [ann.williamson@noaa.gov](mailto:ann.williamson@noaa.gov), 301–427–8503, or Nicholas Velseboer, [nicholas.velseboer@noaa.gov](mailto:nicholas.velseboer@noaa.gov), 978–281–9260.

**SUPPLEMENTARY INFORMATION:** Atlantic HMS fisheries, including BFT fisheries, are managed under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*). The 2006 Consolidated Atlantic HMS Fishery Management Plan (FMP) and its amendments are implemented by regulations at 50 CFR part 635. Section 635.27 divides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) and as implemented by the United States among the various domestic fishing categories, per the allocations

established in the 2006 Consolidated Atlantic HMS FMP and its amendments. NMFS is required under the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest quotas under relevant international fishery agreements such as the ICCAT Convention, which is implemented domestically pursuant to ATCA.

The baseline General and Reserve category quotas are 587.9 mt and 31.2 mt, respectively. The General category baseline subquota is further suballocated to different time periods. Relevant to this action, the subquota for the October through November time period is 76.4 mt. To date for 2022, NMFS has published several actions that have resulted in adjustments to the General and Reserve category quotas, including the allowable carryover of underharvest from 2021 to 2022 (87 FR 5737, February 2, 2022; 87 FR 33049, June 1, 2022; 87 FR 43447, July 21, 2022; 87 FR 54910, September 8, 2022). The current adjusted Reserve category quota is 186.2 mt.

**Transfer of 125 mt From the Reserve Category to the General Category**

Under § 635.27(a)(9), NMFS has the authority to transfer quota among fishing categories or subcategories after considering the determination criteria provided under § 635.27(a)(8). NMFS has considered all of the relevant determination criteria and their