Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[CA–019–FOI, FRL–6982–5]

Clean Air Act Reclassification, San Joaquin Valley Nonattainment Area; Designation of East Kern Nonattainment Area and Extension of Attainment Date; California; Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to change the boundary for the San Joaquin Valley (SJV) serious ozone nonattainment area by separating out the eastern portion of Kern County into its own nonattainment area. We are also proposing to extend the attainment deadline for the new East Kern serious ozone nonattainment area from November 15, 1999 to November 15, 2001.

As a result of this boundary change proposal, EPA is reproposing its June 19, 2000 proposed finding (65 FR 37926) that the SJV area did not attain the 1-hour ozone national ambient air quality standard (NAAQS) by the November 15, 1999 Clean Air Act (CAA) deadline. If we finalize this proposal, the SJV nonattainment area with its revised boundaries will be reclassified by operation of law as severe, and the East Kern nonattainment area will remain classified as serious.

DATES: Comments on these proposed actions must be received by June 18, 2001.

ADDRESSES: Comments may be mailed to: John Ungvarsky, Planning Office (AIR–2), Air Division, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105; ungvarsky.john@epa.gov.

Copies of the proposed rule and technical support document (TSD) are contained in the docket for this rulemaking. The docket is available for inspection during normal business hours at the address listed above. A copy of this proposed rule and the TSD are also available in the air programs section of EPA Region 9's website, *http://www.epa.gov/region09/air.*

FOR FURTHER INFORMATION CONTACT: John Ungvarsky, Planning Office (AIR–2), Air Division, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1286.

SUPPLEMENTARY INFORMATION:

I. Introduction

On June 19, 2000 EPA proposed to find that the SJV serious ozone nonattainment area did not attain the 1-hour ozone NAAQS by November 15, 1999, the CAA attainment deadline for serious ozone nonattainment areas.[1] 65 FR 37926. The current SJV nonattainment area includes the counties of San Joaquin, Kern, Fresno, Kings, Madera, Merced, Stanislaus and Tulare. 40 CFR 81.301. During the public comment period for the proposal, EPA received a substantial number of comments requesting that EPA remove the eastern portion of Kern County from the SJV nonattainment area and designate it a separate ozone nonattainment area. On August 28, 2000, The California Air Resources Board (CARB) formally requested that EPA create a separate ozone nonattainment area for eastern Kern County.

Based on the public's comments, the State's request and our own analysis, we are today proposing to revise the SJV ozone nonattainment area by changing its boundaries to remove eastern Kern County. In order to reflect this proposed boundary change, we are reproposing our finding that the SJV did not attain the ozone NAAQS by the statutory deadline. If we finalize this proposal, the SJV nonattainment area with its revised boundaries will be reclassified by operation of law to severe.

We are today also proposing to designate eastern Kern County as a new, separate ozone nonattainment area, which would keep its serious classification. That is because we are proposing to extend the attainment deadline for the proposed East Kern County serious ozone nonattainment area from November 15, 1999 to November 15, 2001. This proposed extension is based in part on monitoring data that indicate there were no exceedances of the 1-hour ozone NAAQS during 1999 and 2000 in eastern Kern County.

[1] EPA also proposed to find that the approved serious area ozone California state implementation plan (SIP) for the SJV nonattainment area has not been fully implemented. The Agency intends to take final action on that proposal in a separate rulemaking.

II. Proposed Boundaries for the Revised San Joaquin Valley Nonattainment Area and the New East Kern Nonattainment Area

During the public comment period for our proposed finding that the SJV had failed to attain the ozone NAAQS, CARB, the Kern County Air Pollution Control District (KCAPCD), and the U.S. Department of Defense submitted information supporting the removal of eastern Kern County from the SJV nonattainment area.

As stated above, CARB subsequently requested, pursuant to CAA section 107(d)(3)(D), that EPA create a separate ozone nonattainment area for East Kern County. That section provides that the Governor of any State may submit a revised designation of any area or portion of an area within the State. Based on our analysis of the information provided and under the authority in section 107(d)(3)(D), we are proposing to remove eastern Kern County from the SJV nonattainment area and to designate East Kern County as a new, separate ozone planning area.

The only change to the existing SJV nonattainment area would be within Kern County, where the new boundary would divide the county into two parts, generally following the ridge line of the Sierra Nevada and Tehachapi Mountain Ranges. It would be the same as the current boundary line for the Kern County and San Joaquin Valley air districts. The portion of Kern County that is west of the proposed split, which includes the Bakersfield area, would remain in the SJV ozone nonattainment area. The area east of the proposed split, which includes Ridgecrest, Mojave, California City, and the remainder of Kern County, would be designated the East Kern ozone nonattainment area. The specific boundary proposal for the new East Kern nonattainment area is as follows:

Kern County (part)—that portion of Kern County east and south of a line described below:

Beginning at the Kern-Los Angeles County boundary and running north and east along the northwest boundary of the Rancho La Liebre Land Grant to the point of intersection

with the range line common to Range 16 West and Range 17 West, San Bernardino Base and Meridian; north along the range line to the point of intersection with the Rancho El Tejon Land Grant boundary; then southeast, northeast, and northwest along the boundary of the Rancho El Tejon Grant to the northwest corner of Section 3, Township 11 North, Range 17 West; then west 1.2 miles; then north to the Rancho El Tejon Land Grant boundary; then northwest along the Rancho El Tejon line to the southeast corner of Section 34, Township 32 South, Range 30 East, Mount Diablo Base and Meridian; then north to the northwest corner of Section 35, Township 31 South, Range 30 East; then northeast along the boundary of the Rancho El Tejon Land Grant to the southwest corner of Section 18, Township 31 South, Range 31 East; then east to the southeast corner of Section 13, Township 31 South, Range 31 East; then north along the range line common to Range 31 East and Range 32 East, Mount Diablo Base and Meridian, to the northwest corner of Section 6, Township 29 South, Range 32 East; then east to the southwest corner of Section 31, Township 28 South, Range 32 East; then north along the range line common to Range 31 East and Range 32 East to the northwest corner of Section 6, Township 28 South, Range 32 East, then west to the southeast corner of Section 36, Township 27 South, Range 31 East, then north along the range line common to Range 31 East and Range 32 East to the Kern-Tulare County boundary.[2]

III. Proposed Finding of Failure To Attain for the Revised San Joaquin Valley Nonattainment Area

A. June 19, 2000 Proposal

In order to reflect the proposed change to the boundaries for the SJV ozone nonattainment area, we must repropose our June 19, 2000 proposed finding (65 FR 37926) that the SJV ozone nonattainment area failed to attain the ozone NAAQS. In addition to the proposed boundary change, EPA is also revising the original proposal by proposing a new deadline for the State to submit a severe area attainment plan (discussed below).

EPA intends to respond to the comments submitted concerning the original proposed finding of failure to attain along with the comments on this reproposal in the final action for this rulemaking. A brief summary of the June 19, 2000 proposed failure to attain finding follows.

Based on air quality data for the 1997–1999 period, at least twelve ozone monitoring sites in the current SJV nonattainment area, excluding monitors in eastern Kern County, averaged more than one exceedance per year. Because the average number of exceedance days per year for 1997–99 exceeded one, we proposed to find that the San Joaquin Valley serious ozone nonattainment area failed to attain by its applicable CAA deadline of November 15, 1999. 65 FR at 37927.

When EPA finalizes a finding of failure to attain the 1-hour ozone standard, the area is reclassified by operation of law to a higher classification (CAA section 181(b)(2)(a)). The impact that a reclassification to severe would have on the San Joaquin Valley nonattainment area includes the establishment of a new attainment deadline, as expeditiously as practicable but no later than November 15, 2005, and the requirement to submit a new attainment plan that meets the CAA requirements for severe ozone nonattainment areas (CAA section 182(d)).

Under CAA section 182(d), the new severe area plan must meet all the requirements for serious area plans plus the requirements for severe areas, including, but not limited to: (1) A 25 ton per year major stationary source threshold; (2) additional reasonably available control technology (RACT) rules for sources subject to the new lower major source applicability cutoff; (3) a new source review (NSR) offset ratio of at least 1.3 to 1; (4) a rate of progress demonstration showing emissions reductions of at least 3 percent per year from 2000 until the attainment year; and (5) a fee requirement [3] for major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_X) [4] should the area fail to attain by the attainment deadline. Failure to submit the severe area requirements can result in the start of a sanctions clock (CAA section 179(a)).

Also, the severe area plan must include new transportation conformity emissions budgets for the SJV nonattainment area. The current SIP-approved attainment year budgets for VOC and NO_X will remain in place until new severe area budgets are submitted and have been determined adequate. For a detailed discussion of the requirements that the severe area plan must meet, see 65 FR at 37928–37930; June 19, 2000.

B. Modifications to June 19, 2000 Proposal

Having been put on notice by the June 19, 2000 proposal, the State has been working with the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) to prepare for the severe area plan requirements. In recent discussions with EPA, the State suggested that despite past progress and future reductions, attainment by 2005 may not be possible given the air quality problem in the area. The current design value in the SJV is .161.[5] This design value is higher than all other areas in the country with a 2005 attainment deadline. We are therefore soliciting comment on the viability of the 2005 attainment deadline. We are also soliciting comment on any legal, policy, and technical rationale for allowing a 2007 attainment deadline that would justify EPA establishing a 2007 attainment deadline when the Agency takes final action on the proposed finding. The 2007 date is the attainment deadline for areas originally classified as ''severe 17'' on November 15, 1990 pursuant to CAA section 181(a)(2).

In the June 19, 2000 proposal we stated that the State would be required to submit the severe area SIP revisions no later than 18 months from the effective date of the area's reclassification. 65 FR at 37928. Pursuant to section 182(i), EPA can adjust any applicable deadline (other than the attainment date) as appropriate. EPA is today proposing a new submittal deadline of May 31, 2002 to ensure that control measures are put in place as quickly as possible and there is ample time for the control measures to take effect before the attainment deadline. EPA believes the May 31, 2002 SIP submittal deadline is both reasonable and feasible given the advance notice provided by our June 19, 2000 proposal and the planning efforts already under way at the SJVUAPCD and the State.

IV. Rationale for Establishing a New, Separate East Kern Nonattainment Area

A. Background

EPA is proposing the designation of the new East Kern ozone nonattainment area pursuant to CAA section

[2] The revised SJV ozone nonattainment area would include the following counties: Fresno, Kings, Madera, Merced, San Joaquin, Stanislaus, Tulare, and that portion of Kern County which lies west and north of the line described above.

[3] Section 182(d)(3) sets a deadline of December 31, 2000 to submit the plan revision requiring fees for major sources should the area fail to attain. This date can be adjusted pursuant to CAA section 182(i). We propose to adjust this date to coincide with the submittal deadline for the rest of the severe area plan requirements.

[4] Ozone is not emitted directly into the air, but is formed through the photochemical reaction of NO_X and VOCs.

[5] A design value is an ambient ozone concentration that indicates the severity of the ozone problem in an area and is used to determine the level of emission reductions needed to attain the standard, that is, it is the ozone level around which a State designs its control strategy for attaining the ozone standard. A monitor's design value is the fourth highest ambient concentration recorded at that monitor over the previous three-year period. An area's design value is the highest of the design values from the area's monitors.

107(d)(3)(D). CAA section 107(d)(3)(D) states that the Governor may, on the Governor's own motion, submit a revised designation request to EPA. On August 28, 2000, in a letter from Michael Kenny, Executive Director, CARB, to Felicia Marcus, EPA Region 9 Administrator, the State formally requested that EPA split the SJV nonattainment area into two separate nonattainment areas. While section 107(d)(3)(D) does not contain criteria upon which to evaluate the request, EPA believes it can rely on the criteria listed in an analogous CAA provision, section 107(d)(3)(A), which authorizes EPA to notify the Governor that the designation of an area should be revised on the basis of air quality data, planning and control considerations, or any other air quality-related considerations that EPA deems appropriate.

The SJV 1-hour ozone nonattainment area currently includes all of Kern County, a region that straddles the Sierra Nevada and Tehachapi mountains. It is located in two separate air basins: the SJV and the Southeast Desert (SED) air basins. The dividing line between these two air basins coincides with the jurisdictional boundary between the KCAPCD and the SJVUAPCD;[6] it is also consistent with the boundary that we are today proposing to draw between eastern Kern and the rest of the SJV nonattainment area.

Prior to 1991, the eastern portion of Kern County was designated unclassified. 43 FR 8964, 8972 (March 3, 1978). On November 6, 1991, all of Kern County became part of the SJV ozone nonattainment area as recommended by the Governor of California and promulgated by EPA. 56 FR 56693. In 1991, we generally relied on the Metropolitan Statistical Area (MSA) boundaries for the purpose of designating nonattainment areas consistent with CAA section 107(d)(4)(A)(iv), and all of Kern County is in the same MSA as the other counties in the SJV nonattainment area. While the State acknowledged that eastern Kern County did not have any monitoring sites established in 1991, the State supported eastern Kern's inclusion in the nonattainment area because ''ozone is clearly a regional pollutant, and violations of both the state and federal ozone standards have been measured within 10 miles of Kern County's desert border.'' [7]

The 1991 designation also pre-dated the consolidation of the SJV counties into a single air district, the SJVUAPD. With this change, the western portion of Kern County was annexed into the newly-formed SJVUAPCD. At the same time, the eastern portion of Kern County, which was within the SED air basin, became an independent air district, the KCAPCD.

Commenters on EPA's June 19, 2000 proposal, including the State, KCAPCD, and the Department of Defense, provided a compelling technical justification as to why eastern Kern County should be designated a separate ozone planning area.[8] A summary of their reasoning follows, and a more in-depth technical discussion is found in the companion TSD for this notice.

B. Justification for New Boundaries

1. *Geography.* Eastern Kern is in a different air basin than the SJV; it is separated from the SJV by the Sierra Nevada and Tehachapi Mountain Ranges at elevations up to 7,500 feet. Eastern Kern is a vast arid desert, 3,700 square miles in size.

2. *Population and Employment.* There are no major or fast growing population centers in eastern Kern County. Eastern Kern's population of approximately 92,000 has stayed constant over the past 10 years. The area has a low population density of approximately 25 persons per square mile. People tend to live and work in eastern Kern, and because of its geographic isolation there is no convenient commute to cities outside the region. The major employers in eastern Kern are Edwards Air Force Base (AFB) and China Lake Naval Weapons Station (NAWS), which employ over half of the eastern Kern workforce. Two of the three major towns within eastern Kern are Ridgecrest, which is located just outside the China Lake NAWS, and California City, located 9 miles from Edwards AFB. This close correlation between population and workforce suggests that a large percentage of the traffic in eastern Kern is independent of western Kern and urban areas in the SED nonattainment area. Ridgecrest, the largest town in eastern Kern, has a population of approximately 28,000. It is located in the portion of eastern Kern with air quality well below the 1-hour standard and farthest from any major urban areas in western Kern or SED. The SED urban areas nearest to eastern Kern, Palmdale and Lancaster, are bedroom communities for the Los Angeles area. There are no significant commute patterns from eastern Kern into the SED, SJV or the South Coast Air Basin (SCAB) or vice versa.

3. *Commercial Development.* Eastern Kern County is not strongly integrated economically with western Kern County or the SED urban areas. The economy of western Kern is largely based on the oil and agricultural industries. Eastern Kern's economy is based largely on the aerospace, defense, and mineral extraction industries. Also, eastern Kern residents are not dependent on western Kern for economic activities such as employment, shopping, or other services.

4. *Sources of Emissions.* There are only a handful of major emission sources in eastern Kern, and projected industrial growth is minimal. The 1996 annual emissions inventory for eastern Kern indicates 11 tons per day (tpd) of VOC and 33 tpd of NO_X.[9] Total emissions in the area are not sufficient to cause violations of the federal 1-hour ozone standard.

5. *Air Quality.* During the late 1990s, eastern Kern County averaged only a few days over the 1-hour ozone NAAQS each year; the SJV averaged approximately 30 days over the NAAQS each year. Ozone levels in eastern Kern are markedly lower than the SJV and marginally lower than the SED. For the 1997–1999 period, the 1-hour design value for eastern Kern was 0.139 parts per million (ppm) compared to 0.154 ppm for western Kern, 0.161 ppm for the highest site in the SJV, and 0.147 for Victorville in the SED.

[6] Prior to the formation of the SJVUAPCD in 1992, the SJV ozone nonattainment area consisted of eight county air pollution control districts (i.e., San Joaquin, Stanislaus, Merced, Madera, Fresno, Kings, Tulare, and Kern).

[7] See March 15, 1991 letter from CARB Executive Officer, James D. Boyd, to Daniel McGovern, Regional Administrator, EPA, Region IX.

[8] The SJVUAPCD indicated in its comments that it supports the split.

[9] Ozone is not emitted directly into the air, but is formed through the photochemical reaction of NO_X and VOCs.

TABLE 1.—OZONE AIR QUALITY IN EASTERN KERN COUNTY (1997–1999)

Monitoring site	Number of days over the standard 1997–1999 [10]	Average number of exceedance days per year	Site design value (ppm)
China Lake NAWS [11]	0	0.0	0.083
Mohave	2	0.6	0.119
Edwards AFB [12]	6	2.0	0.139

[10] No exceedances of the 1-hour ozone standard were recorded in 1999 or 2000 in eastern Kern County.

[11] The China Lake monitor is a special purpose monitor (SPM) operated by the Navy at China Lake NAWS in eastern Kern County. It began operation in April, 1998. EPA's policy on the use of ozone special purpose monitoring data is described in a memorandum entitled ''Agency Policy on the Use of Ozone Special Purpose Monitoring Data'' from John Seitz, Director, Office of Air Quality Planning and Standards, to the Regional Air Directors, August 22, 1997. Until three years of data can be collected, the design value for the China Lake monitoring site is based on its highest recorded value.

[12] The Edwards AFB monitor is a SPM operated by the Air Force on Edwards AFB in eastern Kern County. We have evaluated the Edwards site and its quality assurance information and have determined that its data are valid.

6. *Pollution Transport.* The State has completed three reviews of the impacts of pollution transport on ozone concentrations in California. The State has determined that the few exceedances that have occurred in eastern Kern County were the result of pollutant transport from the SJV Air Basin and SCAB.[13] Wind patterns are such that eastern Kern does not contribute to exceedances in the SJV, SED, or SCAB.

Based on the above factors, EPA believes that the criteria listed in CAA section 107(d)(3)(A) have been met. Eastern Kern is in a separate air basin than the SJV and has a small population that primarily lives and works in the immediate area. Furthermore, eastern Kern has minimal VOC and NO_X emission sources with markedly better air quality than the SJV. In addition, the few exceedances of the ozone NAAQS that have occurred in eastern Kern are a result of overwhelming transport from outside the eastern Kern air basin. EPA is therefore proposing to approve the State's section 107(d)(3)(D) request to change the boundaries of the current SJV ozone nonattainment area to remove eastern Kern County and make it its own nonattainment area.

V. Proposed Attainment Date Extension for Proposed East Kern Nonattainment Area

Because a new East Kern nonattainment area would retain the serious classification that it had as part of the originally designated SJV nonattainment area, the attainment deadline for the area would be November 15, 1999. CAA section 181(a)(1). On December 15, 2000, the State requested two one-year attainment date extensions for the proposed East Kern ozone nonattainment area.[14]

CAA section 181(a)(5) provides that, upon application by any State, the Administrator may extend the attainment deadline for one year if the State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan, and no more than one exceedance of the NAAQS has occurred in the area in the year preceding the extension year. This section further provides that up to two one-year extensions may be granted.

We interpret this provision to authorize the granting of a one-year extension under the following minimum conditions: (1) The State requests a one-year extension; (2) all requirements and commitments in the EPA-approved SIP for the area have been complied with; and (3) at any one monitor, the area has no more than one measured exceedance of the NAAQS during the year that includes the attainment date (or the subsequent year, if a second one-year extension is requested). See generally 57 FR 13506 (April 16, 1992) and Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, EPA, to Regional Air Office Directors; ''Procedures for Processing Bump Ups and Extensions for Marginal Ozone Nonattainment Areas,'' February 3, 1994.[15] Granting extensions is discretionary; EPA guidance states that, in exercising this discretion, the Agency will examine the air quality progress made in the nonattainment area. Specifically, EPA will expect the state to have adopted and substantially implemented control measures necessary to reduce emissions in the area.[16]

We have determined that both the mandatory and discretionary requirements for one-year extensions of the attainment date for both 1999 and 2000 have been fulfilled as follows:

(1) CARB has formally submitted the attainment date extension request, in a letter dated December 15, 2000, from Michael P. Kenny, Executive Officer, CARB, to Felicia Marcus, EPA Regional Administrator, Region 9.

(2) California is currently implementing the EPA-approved SIP. The State's letter, cited above, discusses implementation of State measures in the SIP, and shows that these measures plus new State measures have achieved an overall surplus of emission reductions beyond those assumed in the SIP. In addition, a letter dated December 1, 2000 from Thomas Paxson, Air Pollution Control Officer, KCAPCD, provides evidence that all District SIP

[13] Transport Assessment, November 1996 and November 1999, California Air Resources Board (http://www.arb.ca.gov/aqd/transport/transport.htm).

[14] A review of the ambient air quality ozone data from the EPA Aerometric Information Retrieval System (AIRS) and special purpose monitors shows that two of the three air quality monitors located in the proposed East Kern ozone nonattainment area recorded exceedances of the NAAQS for ozone during the three-year period from 1997 to 1999. There were 6 exceedances at the Edwards AFB monitor, an average of more than 1.0 over the three-year period, which constitutes a violation of the ozone NAAQS for the proposed East Kern area during this three-year period. Thus, because we determine attainment status on the basis of the expected number of exceedances of the NAAQS over the three-year period up to, and including, the attainment date (57 FR 13498, 13506, April 16, 1992), the area needs the two 1-year extensions to avoid a reclassification to severe.

[15] While explicitly applicable only to marginal areas, the general procedures for processing reclassifications and extension requests described in this memorandum apply regardless of the initial classification of an area.

[16] See Memorandum from Sally Shaver, Director, Air Quality Strategies and Standards Division, EPA, to EPA Regional Offices, titled ''Criteria for Granting Attainment Date Extensions, Making Attainment Determinations, and Determinations of Failure to Attain the NAAQS for Moderate [carbon monoxide] CO Nonattainment Areas,'' October 23, 1995. While this memorandum specifically addresses the CAA extension provisions for CO nonattainment areas, it applies equally to ozone areas. Compare the substantially identical language of sections 181(a)(5) (ozone) and 186(a)(4) (CO).

rules and serious area requirements have been fully implemented.[17]

(3) Data recorded at the three eastern Kern monitors (TSD, Appendix A) and confirmed by CARB in its December 15, 2000 letter, indicate no monitored exceedances during 1999 and 2000.

Because the statutory provisions have been satisfied, we are proposing to grant two one-year attainment date extensions for the proposed East Kern ozone nonattainment area. If we finalize this action, the attainment deadline would be extended from November 15, 1999 to November 15, 2001.

VI. Summary of EPA Proposed Rulemaking

We are proposing to change the boundaries for the SJV ozone nonattainment area by removing the eastern portion of Kern County and proposing the designation of a new East Kern ozone nonattainment area with a serious classification. Concurrently, EPA is proposing to grant the State's request for two one-year attainment date extensions for the proposed East Kern ozone nonattainment area, which would make the attainment deadline November 15, 2001.

In order to reflect the proposed boundary change, we are reproposing our finding that the SJV ozone nonattainment area failed to attain the federal 1-hour ozone standard by its CAA deadline of November 15, 1999. If we finalize this nonattainment finding, the revised SJV nonattainment area will be reclassified by operation of law to severe and California must submit to EPA by May 31, 2002 a severe area nonattainment plan that meets the requirements of CAA section 182(d), including providing for the attainment of the federal 1-hour ozone standard as expeditiously as practicable, but no later than November 15, 2005. We are also asking for comment on the legal, technical, and policy justifications for an alternative November 15, 2007 attainment deadline.

VII. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget.

Under section 188(b)(2) of the CAA, findings of failure to attain are based solely upon air quality considerations and the subsequent nonattainment area reclassification must occur by operation of law in light of those air quality conditions. These actions do not, in and of themselves, impose any new requirements on any sectors of the economy. In addition, because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by classifications that, in turn, are triggered by air quality values, findings of failure to attain and reclassification cannot be said to impose a materially adverse impact on State, local, or tribal governments or communities. The proposed designation of eastern Kern County as a new, separate nonattainment area with a serious classification and the proposed attainment date extensions will not impose any new requirements on any sectors of the economy because the area is already classified as serious.

Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

These proposed actions do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) for the following reasons: (1) The proposed finding of failure to attain is a factual determination based on air quality considerations; (2) the resulting reclassification must occur by operation of law and will not impose any federal intergovernmental mandate; and (3) the proposed designation of eastern Kern County as a separate nonattainment area with a serious classification will not impose any new requirements on any sectors of the economy. For the same reason, this proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). For these same reasons, these proposed actions 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). These proposed actions are also not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because they are not economically significant. Finally, for these same reasons, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing these proposed actions, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. These proposed actions do not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Parts 52 and 81

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, National parks, Nitrogen oxides, Ozone, Volatile organic compounds, Wilderness areas.

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

Dated: May 10, 2001.

Jane Diamond,

Acting Regional Administrator, Region IX.

[FR Doc. 01–12576 Filed 5–17–01; 8:45 am]

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[17] As noted in footnote 1, EPA's June 19, 2000 proposal included a finding of failure to fully implement the SIP. The SIP measures at issue in that proposal are ones committed to by the SJVUAPCD, not the KCAPCD. All KCAPCD SIP measures have been implemented.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 36

Meetings of the Negotiated Rulemaking Committee on Joint Tribal and Federal Self-Governance

AGENCY: Indian Health Service, HHS.

ACTION: Notice of meetings.

SUMMARY: The Secretary of Health and Human Services has established a Negotiated Rulemaking Committee on Joint Tribal and Federal Self-Governance (Committee) to negotiate and develop a proposed rule implementing the Tribal Self-Governance Amendments of 2000 (the Act). We intend to publish the proposed rule for notice and comment no later than one year after the date of enactment of the Act (August 18, 2000 + one year), as required by section 517(a)(2) of the Act.