

#### IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
  - Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
  - Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
  - Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
  - Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
  - Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
  - Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
  - Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
  - Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).
- In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct

costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 6, 2010. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (*see* section 307(b)(2)).

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: March 18, 2010.

Jared Blumenfeld,

Regional Administrator, Region IX.

■ Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

#### PART 52—[AMENDED]

■ 1. The authority citation for Part 52 continues to read as follows:

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

#### Subpart F—California

■ 2. Section 52.220, is amended by adding paragraphs (c)(362)(i)(D)(1) to read as follows:

#### § 52.220 Identification of plan.

\* \* \* \* \*  
 (c) \* \* \*  
 (362) \* \* \*  
 (i) \* \* \*

(D) San Joaquin Valley Air Pollution Control District.

(1) Rule 4902, "Residential Water Heaters," amended on March 19, 2009.

\* \* \* \* \*

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#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 81

[EPA-R09-OAR-2008-0467; FRL-9141-8]

#### Designation of Areas for Air Quality Planning Purposes; California; San Joaquin Valley, South Coast Air Basin, Coachella Valley, and Sacramento Metro 8-Hour Ozone Nonattainment Areas; Reclassification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

**SUMMARY:** Under the Clean Air Act (CAA or "Act"), EPA is granting requests by the State of California to reclassify the following four areas designated as nonattainment for the 1997 8-hour ozone national ambient air quality standard (NAAQS): The San Joaquin Valley area from "serious" to "extreme," the South Coast Air Basin area from "severe-17" to "extreme," and the Coachella Valley and Sacramento Metro areas from "serious" to "severe-15." In connection with the reclassifications, EPA is setting a deadline of no later than 12 months from the effective date of reclassification for submittal of revisions to the Sacramento Metro area portion of the California State Implementation Plan (SIP) to meet the additional new source review (NSR) requirements for "severe-15" 8-hour ozone nonattainment areas. EPA is deferring the setting of a submittal deadline for certain fee rules under section 185 of the CAA. A number of Indian tribes have Indian country located within the boundaries of the affected areas. The State of California is not approved to administer any CAA programs in Indian country, and the relevant Indian tribes have not applied for eligibility to administer programs under the CAA for their areas. In these circumstances, EPA implements relevant reclassification provisions of the CAA in these Indian country areas and is reclassifying these areas, except Indian country pertaining to the Morongo Band of Mission Indians ("Morongo Tribe") and the Pechanga Band of Luiseño Mission Indians ("Pechanga Tribe"), in keeping with the classifications of nonattainment areas

within which they are located. EPA is deferring the reclassification of Indian country pertaining to the Morongo and Pechanga Tribes pending EPA's final decisions on their previously-submitted boundary change requests. In connection with this final action, EPA notified the affected tribal leaders and consulted with interested tribes.

**DATES:** *Effective Date:* This rule is effective on June 4, 2010.

**ADDRESSES:** EPA has established docket number EPA-R09-OAR-2008-0467 for this action. The index to the docket is available electronically at <http://www.regulations.gov> and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., confidential business information). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Rory Mays, Air Planning Office (AIR-2), U.S. Environmental Protection Agency, Region IX, (415) 972-3227, [mays.rory@epa.gov](mailto:mays.rory@epa.gov).

**SUPPLEMENTARY INFORMATION:**

Throughout this document, the terms "we," "us," and "our" refer to EPA.

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**I. Proposed Action**

On August 27, 2009 (74 FR 43654), we proposed to grant the following reclassification requests by the State of California: the San Joaquin Valley area from "serious" to "extreme," the South Coast Air Basin area from "severe-17" to "extreme," and the Coachella Valley and Sacramento Metro areas from "serious" to "severe-15."

We proposed approval of these requests under section 181(b)(3) of the CAA, which provides for "voluntary reclassification" and states: "The Administrator shall grant the request of any State to reclassify a nonattainment area in that State in accordance with Table 1 of subsection (a) of this section to a higher classification. The Administrator shall publish a notice in

the **Federal Register** of any such request and of action by the Administrator granting the request." The provision for voluntary reclassification has been brought forward as part of the transition from the 1-hour ozone standard to the 8-hour ozone standard. *See* 40 CFR 51.903(b) ("A State may request a higher classification for any reason in accordance with section 181(b)(3) of the CAA") and 40 CFR 51.903(a) Table 1.

For each of the four areas, we compared a list of the specific additional requirements that would be triggered for each area as a consequence of our approval of the reclassification requests with the revisions to the SIP that the State of California had already submitted. For any requirement in any area lacking a submittal from the State, we proposed a deadline for submission.

Based on this evaluation, we proposed to establish a deadline of no later than 12 months from the effective date of reclassification for submittal of revisions to the Coachella Valley portion of the SIP to meet the CAA section 185 fee requirements ("section 185 fee rules"). EPA also proposed the same deadline for submittal of revisions to the Sacramento Metro area portion of the SIP to meet the following additional SIP requirements for "severe-15" areas: NSR rules consistent with this classification (Sacramento Metropolitan Air Quality Management District (AQMD), Placer County Air Pollution Control District (APCD), and Feather River AQMD only) and section 185 fee rules (El Dorado County AQMD, Placer County APCD, Feather River AQMD, and Yolo-Solano AQMD only). As discussed in section II of this final rule, EPA has decided to defer setting a SIP submittal deadline for section 185 fee rules.

In our proposed rule, we considered the relevance of the State's reclassification requests to reclassification of Indian country<sup>1</sup> located within the four nonattainment areas. We proposed to directly administer CAA section 181(b)(3) and reclassify Indian country geographically located in the nonattainment areas that are the subject of the State's reclassification requests in order to

avoid inappropriate and infeasible results, consistent with EPA's discretionary authority in CAA sections 301(a) and 301(d)(4) to directly administer CAA programs and to protect air quality in Indian country through federal implementation.

In so doing, we explained why uniformity of classification throughout a nonattainment area is a guiding principle and premise when an area is being reclassified. We noted that ground-level ozone continues to be a pervasive pollution problem in areas throughout the United States and that ozone and precursor pollutants that cause ozone can be transported throughout a nonattainment area. Therefore, boundaries for nonattainment areas are drawn to encompass both the areas that violate the NAAQS as well as nearby contributing areas. For certain areas designated as nonattainment for the 8-hour ozone NAAQS, such as those to which this action applies, initial classifications occur by operation of law and exactly match the boundaries of the respective nonattainment areas. We believe that this approach best ensures public health protection from the adverse effects of ozone pollution and that, therefore, it is generally counterproductive from an air quality and planning perspective to have a disparate classification for a land area located within the boundaries of a nonattainment area, such as the Indian country contained in the ozone nonattainment areas at issue here. Moreover, we noted that violations of the 8-hour ozone standard, which are measured and modeled throughout each nonattainment area, as well as shared meteorological conditions, would dictate the same result. Furthermore, emissions changes in lower-classified ozone areas could hinder planning efforts to attain the NAAQS within the overall area through the application of less stringent requirements relative to those that apply in the areas with higher ozone classifications.

With regard to the Indian country at issue in our proposed action, EPA also took into account other factors. For example, we proposed that the likelihood of attainment by the applicable deadline under the current classification is an appropriate consideration for reclassifying Indian country within the larger nonattainment areas. If EPA believes it is likely that a given ozone nonattainment area will not attain the ozone NAAQS by the applicable attainment date, then it may be an additional reason why it is appropriate to maintain a uniform classification within the nonattainment area and thus to reclassify the Indian

<sup>1</sup>"Indian country" as defined at 18 U.S.C. 1151 refers to: "(a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same."

country consistent with the State's request to reclassify the non-Indian country portion of the area. On the other hand, if EPA believes that meeting the original attainment date for the whole nonattainment area appears still to be a reasonable possibility, then it conceivably might be appropriate for EPA to decline to reclassify Indian country, notwithstanding the State's request to reclassify the State portion of the area, and notwithstanding the generally weighty considerations that support the retention of a single uniformly-classified nonattainment area. Such considerations include the pervasive nature of the ozone problem, and the transport of ozone and ozone precursors over a wide geographic area. Depending on the circumstances, other factors might also provide justifications for refraining from reclassifying Indian country in conjunction with granting a State's request for voluntary reclassification of State areas in the same nonattainment area.

With respect to the four subject areas, we evaluated the likelihood of attainment by the area's existing attainment deadline, based on information that is currently available. That evaluation was aided by the fact that the State of California has already submitted attainment demonstrations for these four areas that are intended to support later attainment dates under their requested new, higher classifications. We also noted that EPA was not determining which new attainment date is as expeditious as practicable for each area, nor whether these attainment demonstrations are approvable.

In light of the considerations we outlined in our proposal and reiterated above that support retention of uniformly-classified ozone nonattainment areas, and the evidence (in the form of plan submittals for the four areas) that provides support for an attainment date beyond the date applicable under the current classifications, we proposed to reclassify the Indian country within each area<sup>2</sup> as follows: Areas within San

Joaquin Valley and South Coast Air Basin to "extreme", and areas within Coachella Valley and Sacramento Metro to "severe-15." As discussed in section III of this final rule, EPA has decided to defer reclassification of Indian country pertaining to the Morongo Tribe and the Pechanga Tribe pending EPA's final decisions on their boundary change requests.

Please see our August 27, 2009 proposed rule (74 FR 43654) for additional background and a more detailed explanation of our proposed action.

## II. Deferral of SIP Submittal Deadlines for CAA Section 185 Fee Rules

In our August 27, 2009 proposed rule, we proposed to set a deadline of no later than 12 months from the effective date of the final reclassifications for the State of California to submit revisions to the SIP to address CAA section 185 fee requirements for certain 8-hour ozone nonattainment areas: Coachella Valley and Sacramento Metro (El Dorado County AQMD, Placer County APCD, Feather River AQMD, and Yolo-Solano AQMD only).

Upon further consideration, we have decided to defer the setting of a deadline for submittal of a SIP revision addressing the section 185 fee requirements for any area affected by this action. Under CAA section 185, the obligation to collect fees could not be triggered until after an area fails to attain the NAAQS by its applicable attainment date. Assuming that the maximum period for attainment represents the date for which attainment is as "expeditious as practicable" in the areas subject to the new 8-hour classifications under today's rulemaking, the obligation to collect fees under any fee rule submitted to comply with section 185 could not possibly be due until after June 15, 2019 (for Sacramento Metro and Coachella Valley) or after June 15, 2024 (for San Joaquin Valley and the South Coast). EPA recently issued guidance regarding 1-hour ozone anti-backsliding fee programs<sup>3</sup> but has not yet completed its

inadvertently failed to identify these two Tribes as having Indian country in Coachella Valley in section III.B of the proposed rule, we contacted them to clarify that our proposal to reclassify Indian country areas within Coachella Valley to "severe-15" relates to all Indian country located therein notwithstanding the incomplete list of such areas in section III.B of the proposal. Neither Tribe has responded to EPA's invitation to consult nor expressed either their assent or objection to reclassification of their lands in Coachella Valley in response to our contacts on this matter.

<sup>3</sup>Memorandum from Stephen D. Page, Director, Office of Air Quality Planning and Standards, "Guidance on Developing Fee Programs Required by

consideration of the relationship between 1-hour and 8-hour fee programs for these areas. There is at present no immediate need to set a deadline for submission of the 8-hour fees SIP program as we believe that there will be sufficient time for EPA to establish a SIP revision deadline for this requirement and for the State of California to develop and submit the necessary fee rules.<sup>4</sup> Indeed, in a previous EPA action granting a request for voluntary reclassification of the Houston-Galveston-Brazoria (Texas) 8-hour ozone nonattainment area to "severe-15", EPA also deferred setting a deadline for the section 185 fee SIP submission. See 73 FR 56983 (October 1, 2008), especially footnote 1.

## III. Deferral of Reclassification for Morongo Band of Mission Indians and Pechanga Band of Luiseño Mission Indians

As described in section I ("Proposed Action") above, in our August 27, 2009 proposed rule, we proposed to directly administer CAA section 181(b)(3) and reclassify Indian country within the four subject areas in keeping with the State's reclassification requests for the surrounding non-Indian country lands and consistent with EPA's discretionary authority in CAA section 301(a) and 301(d)(4) to directly administer CAA programs and protect air quality in Indian country through federal implementation. For the South Coast Air Basin nonattainment area, we named seven tribes whose Indian country would be reclassified to "extreme" for 8-hour ozone.

Two of these tribes, the Morongo and Pechanga Tribes, submitted comments on our proposed action in which they objected to being reclassified to "extreme." (See section IV ("Public Comments and EPA Responses") below.) In their comment letters, the Tribes reiterated their requests from May 29, 2009 and June 23, 2009, respectively, for boundary changes to establish separate nonattainment areas or, in the alternative, to extend the boundaries of adjacent, lower-classified nonattainment areas to include the Tribes' Indian country. We refer to these requests herein as "boundary change" requests. The Tribes' comment letters also provided substantive analyses to

Clean Air Act Section 185 for the 1-hour Ozone NAAQS," January 5, 2010.

<sup>4</sup>Notwithstanding our decision to defer setting a SIP revision deadline for section 185 fee rules, we note that, upon reclassification, the requirement to submit SIP revisions meeting the requirements of CAA section 185 will apply to each of the four subject areas of this action by virtue of being classified as "severe-15" or "extreme" for the 8-hour ozone NAAQS.

<sup>2</sup>In section III.B of the preamble to the proposed rule, we identified the tribes with Indian country in each of the four subject nonattainment areas. In so doing, we inadvertently failed to identify two tribes that have Indian country in Coachella Valley: The Santa Rosa Band of Cabuilla Indians and the Twenty-Nine Palms Band of Mission Indians. EPA had invited both tribes to consult with EPA regarding prospective EPA action to reclassify Indian country within five nonattainment areas in California, including the four areas subject to today's action as well as Western Mojave Desert. (As noted in footnote #8 of the preamble to the proposed rule, EPA plans to take action related to California's reclassification request for Western Mojave Desert in a separate rulemaking.) Since we

support their objections to reclassification that largely mirror their boundary change requests. In both cases, the Tribes specifically request that no change be made to the classification of their respective Indian country located within the South Coast Air Basin pending EPA's final decisions regarding the Tribes' boundary change requests.

Upon consideration of these comments, we have decided to defer the reclassification of the Indian country pertaining to the Morongo and Pechanga Tribes within the South Coast Air Basin ("the Morongo and Pechanga Reservations") to "extreme" for the 8-hour ozone standard, pending our final decisions on the Tribes' boundary change requests to avoid any inconsistency that might result from reclassification of the Morongo and Pechanga Reservations and decisions addressing the Tribes' boundary change requests. We believe that this deferral will avoid confounding our further consideration of the Tribes' boundary change requests.

If we grant a boundary change for either Tribe, we will specify the consequence of such action in a separate rulemaking on the designation and classification of that Tribe's Reservation. If we deny a boundary change request for either Tribe, we will take final action on our August 27, 2009 proposal to reclassify that Tribe's Reservation to "extreme", consistent with the rest of the nonattainment area, after due consideration of the Tribe's submitted comments. Until those separate actions are finalized, the Indian country of the Morongo and Pechanga Tribes in the South Coast Air Basin area will retain a classification of "severe-17" for the 1997 8-hour ozone NAAQS.

This deferral of our decisions on reclassification is limited in scope to the Morongo and Pechanga Reservations, and in time only until EPA finalizes our decisions on these Tribes' boundary change requests. We are finalizing the reclassification of all other Indian country in the four subject areas to higher classifications in keeping with the State's reclassification requests, including the five other Tribes we listed in our proposed rule as having Indian country within the South Coast Air Basin. (See section V ("Final Action") below.)

#### IV. Public Comments and EPA Responses

The publication of EPA's proposed rule on August 27, 2009 (74 FR 43654) started a public comment period that ended on September 28, 2009. During this period, we received a comment

letter from the Morongo Tribe, and an anonymous comment letter. We also accepted a comment letter received from the Pechanga Tribe on October 6, 2009, after the comment period had closed. In the paragraphs that follow, we summarize the comments from the Morongo and Pechanga Tribes and the anonymous commenter, and provide our responses.

*Comment #1:* The Morongo Tribe, in its comments, highlights its May 29, 2009 request to EPA (and accompanying rationale and documentation) for the establishment of a separate nonattainment area for the Morongo Reservation or, in the alternative, for a boundary change to extend the western boundary of the Coachella Valley nonattainment area to include the Morongo Reservation. With respect to the proposed reclassification of Indian country in the South Coast Air Basin, which includes the Morongo Reservation, to "extreme" for the 8-hour ozone NAAQS, the Morongo Tribe objects to our proposal to reclassify the Morongo Reservation in the same manner as the South Coast Air Basin. The Tribe argues that the Morongo Reservation should be treated as its own nonattainment area or, in the alternative, should be redesignated as part of the Coachella Valley nonattainment area, and thus retain its existing classification.

The Pechanga Tribe similarly objects to the reclassification of the Pechanga Reservation to "extreme," consistent with the reclassification of the South Coast Air Basin nonattainment area. Like the Morongo Tribe, the Pechanga Tribe points to its June 23, 2009 request to EPA (and accompanying rationale and documentation) for the establishment of a separate nonattainment area for the Pechanga Reservation or, in the alternative, for a boundary change to extend the northern boundary of the San Diego Air Basin nonattainment area to include the entirety of the Pechanga Reservation.

The Morongo and Pechanga Tribes believe that the factors used for initial area designations and for subsequent reclassifications of those areas should be the same. Specifically, the Tribes point to EPA's December 2008 guidance for area designations for the 2008 Revised Ozone NAAQS<sup>5</sup> as the appropriate guidance to apply in evaluating whether to include the Morongo and Pechanga Reservations in the reclassification of the South Coast Air Basin to "extreme." The Morongo Tribe asserts that EPA's failure to use the December 2008

guidance in evaluating whether to include the Morongo Reservation in the reclassification action appears to be an arbitrary and capricious exercise of EPA's authority. The Pechanga Tribe asserts that EPA's failure to use that guidance in evaluating whether to include the Pechanga Reservation in the reclassification action ignores tribal interests. The Tribes contend that the December 2008 guidance provides the factors<sup>6</sup> that EPA should have used for the proposed action with respect to the Morongo and Pechanga Reservations. They also include detailed evaluations of the application of the factors from the December 2008 guidance to their areas, as suggested by the 2008 guidance for determining nonattainment area boundaries in designations for the 2008 Ozone NAAQS.<sup>7</sup>

Based on these evaluations, the Tribes conclude that consideration of the factors from the December 2008 guidance supports a decision not to reclassify the Morongo and Pechanga Reservations along with the South Coast Air Basin, but rather to redesignate the Reservations as separate nonattainment areas and to retain each Reservation's current classification.

*Response #1:* We disagree that the EPA guidance on initial area designations for the 2008 ozone NAAQS provides the factors we must use in evaluating whether to reclassify Indian country located within a nonattainment area for which a State has voluntarily requested reclassification. That guidance is intended to provide a consistent set of principles to apply in identifying the initial boundaries of nonattainment areas during the designations process. In contrast, once an area's initial boundary is established, the retention of a single uniformly-classified area becomes a guiding principle and premise in determining whether to reclassify Indian country located within the area in light of a State's voluntary request for such a reclassification of non-Indian country lands.

<sup>6</sup> See Attachment 2 of the memorandum from Robert J. Myers, Principal Deputy Assistant Administrator, "Area Designations for the 2008 Revised Ozone National Ambient Air Quality Standards," December 4, 2008. Attachment 2 is entitled, "Factors EPA Plans to Consider in Determining Nonattainment Area Boundaries in Designations for the 2008 Ozone NAAQS."

<sup>7</sup> EPA is in the process of reconsidering the 2008 8-hour ozone NAAQS. As part of this process, EPA has proposed a revised ozone NAAQS (75 FR 2938, January 19, 2010) and extended the deadline for promulgating designations for the 2008 ozone NAAQS (75 FR 2936, January 19, 2010). Depending on the outcome of this reconsideration, we may issue new guidance for determining ozone nonattainment area boundaries.

<sup>5</sup> See 73 FR 16436 (March 27, 2008) for the 2008 Revised Ozone NAAQS.

We do believe, however, that the December 2008 guidance is appropriate for use in supporting requests for boundary changes, such as the requests submitted by the Morongo Tribe on May 29, 2009 and by the Pechanga Tribe on June 23, 2009.<sup>8</sup> As described in section III of this final rule, we have decided to defer reclassification of the Morongo and Pechanga Reservations pending our final decisions on their boundary change requests.

We acknowledge the Tribe's hypothesis that ozone nonattainment areas may be inherently defined by a single classification as well as a boundary and that retaining the existing classification of the Morongo and Pechanga Reservations would have the effect of creating new ozone nonattainment areas. Under this hypothesis, the application of EPA's December 2008 guidance would be appropriate in evaluating whether to reclassify Indian country consistent with the State's requests for reclassification of non-Indian country. However, use of the guidance in this way is indistinguishable from reconsidering the boundaries of the nonattainment areas themselves, and reconsideration of the boundaries is an action that we explicitly stated we would not be undertaking in the reclassification action. See footnote 13 on page 43660 of the preamble to the proposed rule (74 FR 43654). We will, however, consider the Tribes' nine-factor analyses in detail in our consideration of their boundary change requests.

With respect to the factors that we considered in evaluating the appropriateness of reclassification of Indian country in our proposed rule, we provided a number of reasons supporting our use of the guiding principle and premise of uniformity of classification when an area is being reclassified (see pages 43659 and 43660). In addition, we also identified certain circumstances when it might be appropriate to defer reclassification of Indian country, notwithstanding the State's request to reclassify the State portion of the area, such as where an area is likely to attain the standard by the attainment date under the existing classification. Thus, other considerations could outweigh the guiding principle and premise of uniformity of classification. Upon consideration of the circumstances in each area, however, we concluded that

no such considerations exist in this instance in any of the four subject areas. Therefore, with the exception of the Morongo and Pechanga Reservations for which are deferring final action, we are taking final action today to reclassify the Indian country in the four subject nonattainment areas to higher classifications consistent with the State's reclassification requests for these areas.

*Comment #2:* The Morongo Tribe asserts that the State of California has no jurisdiction to redesignate or reclassify the Morongo Reservation; that, consequently, California's requests for reclassification have no legal import to the Reservation and cannot serve as the legal basis for the redesignation or reclassification of tribal lands.

*Response #2:* We agree that the State is not authorized to implement CAA programs in Indian country. The State's requests for reclassification of the four ozone nonattainment areas was the impetus for our proposed action, but did not form the legal basis for our proposed action with respect to Indian country contained therein. Under CAA section 181(b)(3), EPA must grant the requests of the State to reclassify the non-tribal lands in the nonattainment areas. The question then becomes what EPA's action should be with regard to the Indian country contained within these areas. In the preamble to our proposed rule, we described the legal authority we have relied upon to reclassify Indian country in the four subject areas as follows:

Typically, states are not approved to administer programs under the CAA in Indian country, and California has not been approved by EPA to administer any CAA programs in Indian country. CAA actions in Indian country would thus generally be taken either by EPA, or by an eligible Indian tribe itself under an EPA-approved program. In this instance, none of the affected tribes has applied under CAA section 301(d) for treatment-in-a-similar-manner-as-a-state for purposes of reclassification requests under section 181(b)(3), and none operates any relevant EPA-approved CAA regulatory program (e.g., a tribal implementation plan). In addition, the CAA does not require Indian tribes to develop and seek approval of air programs, and—pursuant to our authority in CAA section 301(d)—EPA has interpreted relevant CAA requirements for submission of air programs as not applying to tribes. See 40 CFR section 49.4. In these circumstances, EPA is the appropriate entity to administer relevant CAA programs in Indian country. EPA is proposing to directly administer CAA section 181(b)(3) and reclassify Indian country geographically located in the nonattainment areas that are the subject of the State's reclassification request, consistent with EPA's discretionary authority in CAA sections 301(a) and 301(d)(4) to directly

administer CAA programs and protect air quality in Indian country through federal implementation. Section 301(a) authorizes the Administrator 'to prescribe such regulations as are necessary to carry out his functions under the [the Act.]' Further, section 301(d) provides:

In any case in which the Administrator determines that the treatment of Indian tribes as identical to States is inappropriate or administratively infeasible, the Administrator may provide, by regulation, other means by which the Administrator will directly administer such provision so as to achieve the appropriate purpose.

While tribes may choose to apply for eligibility to adopt implementation plans and seek reclassification of their areas in a manner similar to states, tribes need not do so."

See 74 FR 43654, at 43659 (August 27, 2009).

In today's action, we reaffirm the jurisdictional basis for EPA's authority to decide whether or not to reclassify Indian country in ozone nonattainment areas in keeping with a State's voluntary reclassification request, as per CAA section 181(b)(3). As noted in section III of this final rule, we have decided to defer reclassification of the Morongo and Pechanga Reservations pending our final decisions on their boundary change requests to avoid confounding our further consideration of the Tribes' boundary change requests. For all other Indian country located within the four subject nonattainment areas, under the authorities cited above, we are taking final action today to reclassify such Indian country consistent with the State's reclassification requests.

*Comment #3:* The Morongo and Pechanga Tribes assert that including the Morongo and Pechanga Reservations in the reclassification of the South Coast Air Basin to "extreme" will negatively impact the Tribe's efforts to develop a tribal air permit program and to facilitate economic development on the Reservation. The Pechanga Tribe believes that including the Pechanga Reservation in the reclassification of the South Coast Air Basin to "extreme" for the 8-hour ozone standard would reduce the applicable "major source" threshold from 25 tons per year, to 10 tons per year, of VOC or NO<sub>x</sub>. The Morongo Tribe states that the reclassification of the South Coast Air Basin to "extreme" would further cement the 10 tons per year threshold that began to apply as of the 2003 boundary change that brought the Morongo Reservation inside the South Coast Air Basin. This 10 tons per year threshold would, in the Tribes' view, prevent the implementation of a meaningful minor source permitting program, increase the number of facilities potentially subject to "major

<sup>8</sup> EPA's December 2008 guidance states that the factors, while generally comprehensive, are not intended to be exhaustive. States and tribes may submit additional information they believe is relevant for EPA to consider.

source” new source review with a concomitant increase in the use and cost of tribal staff and facility resources, and increase the number of future facilities subject to title V Federal operating permit requirements.

*Response #3:* This comment refers specifically to major source thresholds in the South Coast Air Basin, but calls into question the effect of reclassification on major source thresholds for NSR and Title V purposes in Indian country within each of the four subject nonattainment areas. We disagree with the assertion that reclassification of Indian country in the South Coast Air Basin would change the applicable major source threshold for NSR or Title V. Indeed, these thresholds will not change in any of the four subject areas. As explained in detail on page 43661 of the preamble to the proposed rule, the applicable major source thresholds for NSR and Title V would not change due to reclassification because the thresholds for the purposes of NSR and title V that had applied by virtue of the areas’ classifications under the 1-hour ozone standard continue to apply as anti-backsliding measures under the 8-hour ozone standard, and the new 8-hour ozone classification for each of the four subject areas, as reclassified, would be the same as each area’s corresponding 1-hour ozone classification.

With respect to Indian country within the South Coast Air Basin, including the Morongo and Pechanga Reservations, and within San Joaquin Valley, this means that the applicable major source threshold for NSR and Title V purposes is already 10 tons per year for VOC or NO<sub>x</sub>, with or without reclassification to “extreme” for 8-hour ozone, because the South Coast Air Basin and the San Joaquin Valley are already “extreme” for the 1-hour ozone standard. For Indian country within Coachella Valley and Sacramento Metro, this means that the applicable major source threshold for NSR and Title V purposes is already 25 tons per year for VOC or NO<sub>x</sub>. Thus, to the extent that a change in NSR major source threshold might affect economic development prospects of any Tribe in one of the four subject nonattainment areas, today’s action would have no such effect since it does not change the NSR major source threshold for any Tribe.

As noted previously, we are deferring reclassification of the Morongo and Pechanga Reservations, but for the reasons provided above, neither reclassification to “extreme” nor deferral of reclassification would affect the applicable major source threshold for NSR and Title V purposes within the

Morongo and Pechanga Reservations. The applicable major source threshold is already 10 tons per year of VOC or NO<sub>x</sub> based on the classification of the South Coast Air Basin under the 1-hour ozone NAAQS.

*Comment #4:* The Pechanga Tribe states that, for existing and future facilities subject to nonattainment NSR, there is no system in place for facilities on tribal lands to obtain emission reduction credits. As such, these facilities, including those that are Native American-owned, would be at a disadvantage relative to facilities located outside of Indian country.

*Response #4:* In our Indian country NSR proposal (71 FR 48696, 8/21/2006) we noted that “[d]ue to the limited number of sources in Indian country, offsets are generally not available. We have proposed options for addressing the lack of availability of offsets in Indian country.” However, for reasons given above in our response to comment #3, reclassification of Indian country within the four subject nonattainment areas would not affect the offset requirement that emission reduction credits (ERCs) are commonly used to meet. That is, since applicable NSR requirements, including the major source threshold definition and offset requirements, in the four subject areas are based on the areas’ classifications for the 1-hour ozone NAAQS, and the new 8-hour ozone classification for each of the four subject areas, as reclassified, would be the same as the area’s corresponding 1-hour ozone classification, reclassification would not change the offset requirement. Thus, the problem of the relative lack of available ERCs within the Indian country areas within the four subject areas would not be affected by reclassification.

With respect to the Pechanga Tribe, we once again note that we are deferring reclassification of both the Morongo and Pechanga Reservations pending our decisions on their respective boundary change requests. However, such deferral has no bearing on the applicable NSR offset requirements within these two reservations, nor does it affect the relative lack of available ERCs. The current applicable offset ratio for VOC and NO<sub>x</sub> for the Morongo and Pechanga Reservations continues to be based on the classification of the South Coast Air Basin as “extreme” for the 1-hour ozone NAAQS. (See CAA sections 182(e)(1) and 182(f) for offset requirements of “extreme” areas.)

*Comment #5:* The Morongo and Pechanga Tribes assert that reducing the threshold for the applicability of General Conformity requirements from 25 to 10 tons per year VOC or NO<sub>x</sub>

would require many more projects to demonstrate that their emissions of criteria pollutants will not impede progress toward attainment of the NAAQS.

*Response #5:* We agree that reclassification of the South Coast Air Basin, as proposed, would lower the applicability threshold under our General Conformity rule from 25 tons per year to 10 tons per year. We also note that reclassification of the other three nonattainment areas would also lower the applicable de minimis thresholds under EPA’s General Conformity rule in those areas.

As explained in the preamble of our proposed rule (see pages 43658 and 43661), under EPA’s General Conformity rule, Federal agencies bear the responsibility of determining conformity of actions in nonattainment and maintenance areas that require Federal permits, approvals, or funding. Therefore, not all projects undertaken by the Tribes are subject to the General Conformity rule, but only those tribal projects that require Federal agency permits, approvals or funding. Moreover, the definition of “indirect emissions” in the General Conformity rule (see 40 CFR 93.152) further limits the reach of the rule by requiring that emissions caused by the action be reasonably foreseeable and of the type which the Federal agency can practicably control and can maintain control over due to a continuing program responsibility of the Federal agency.

Furthermore, the potential impacts associated with any lowering of a General Conformity de minimis threshold are not unique to Federal actions proposed in Indian country—they affect Federal actions throughout a given nonattainment area. Please note that the General Conformity rule excludes from the applicability determination that portion of a Federal action that includes major new or modified stationary sources that require a permit under the NSR program (CAA section 173) or the prevention of significant deterioration program (CAA Title I, Part C). See 40 CFR 93.153(d)(1).

Lastly, because we have decided to defer reclassification of the Morongo and Pechanga Reservations, the General Conformity threshold will remain at 25 tons per year of VOC or NO<sub>x</sub> for these Reservations pending our final decisions on the Tribes’ boundary change requests.<sup>9</sup>

<sup>9</sup> The General Conformity de minimis threshold for the South Coast Air Basin, including all Indian country therein except the Morongo and Pechanga Reservations, will be lowered from 25 tons per year to 10 tons per year by virtue of this final rule.

*Comment #6:* An anonymous commenter states that San Joaquin Valley has not applied the 1-hour ozone anti-backsliding measures and has not reviewed permits according to the NSR requirements of an “extreme” 1-hour ozone nonattainment area. The commenter also states that the lower permitting thresholds and higher offset ratio for San Joaquin Valley have been in effect since the May 2004 action that classified the area as “extreme” for 1-hour ozone. Accordingly, the commenter insists that EPA must require San Joaquin Valley to evaluate all of its permitting actions from that point forward against the requirements of an “extreme” 1-hour ozone classification.

*Response #6:* This comment is outside the scope of our proposed action. This comment does not challenge our proposed action to grant the State of California’s request under 40 CFR 51.903(b) and CAA section 181(b)(3) to reclassify the San Joaquin Valley nonattainment area to “extreme” for the 1997 8-hour ozone standard nor does it challenge our decision not to establish any new SIP revision deadlines for the San Joaquin Valley area. Instead, it pertains to the implementation and enforcement of 1-hour ozone “extreme” NSR permitting requirements in the San Joaquin Valley at the corresponding major source threshold and offset ratio for that classification. As noted in footnote #18 on page 43662 of the preamble to our proposed rule: “The deadlines proposed herein relate solely to specific additional requirements triggered by the reclassification for the 8-hour ozone NAAQS and should not be interpreted as relieving an area of any existing obligation that the area has based on its 1-hour ozone classification, or of existing obligations not related to attainment that are based on its current 8-hour ozone classification.”

Moreover, the NSR requirements to which EPA refers in the proposed rule relate to the State of California’s obligation to submit SIP revisions meeting the statutory requirements, not to the requirements on new stationary sources and modifications themselves.<sup>10</sup> In March 2009, the State of California submitted a SIP revision including NSR

<sup>10</sup> See, e.g., page 43658 of the preamble to the proposed rule (74 FR 43654) (“In regards to \* \* \* the requirements for SIPs regarding \* \* \* (“new source review”), the reclassifications would not lower the “major source” applicability thresholds required in a revised SIP \* \* \*”).

rules that apply in the San Joaquin Valley that are intended to address the “extreme” 8-hour ozone nonattainment area NSR requirements. On April 12, 2010, EPA’s Region 9 Regional Administrator signed a final rule to take a limited approval and limited disapproval action on this SIP revision. The pre-publication version of this final rule has been placed in the docket.

#### V. Final Action

We believe that the plain language of CAA section 181(b)(3) mandates that we approve voluntary reclassification requests,<sup>11</sup> and thus, EPA is taking final action to grant the State’s request for the following voluntary reclassifications: the San Joaquin Valley area from “serious” to “extreme”; the South Coast Air Basin area from “severe-17” to “extreme”; and the Coachella Valley and Sacramento Metro areas from “serious” to “severe-15.” Upon the effective date of this final action granting the reclassifications, these four areas are required to attain the 8-hour ozone NAAQS as expeditiously as practicable, but not later than the applicable maximum attainment period set forth in 40 CFR 51.903(a), Table 1: June 15, 2024 for San Joaquin Valley and the South Coast Air Basin; and June 15, 2019 for Coachella Valley and Sacramento Metro.<sup>12</sup>

In connection with reclassification of the four subject areas, and for the reasons discussed above and in the proposed rule, we are establishing the deadline of no later than 12 months from the effective date of reclassification for submittal of revisions to the Sacramento Metro portion (Sacramento Metropolitan AQMD, Placer County APCD, and Feather River AQMD only) of the California SIP to meet the NSR requirements of a “severe-15” area. As

<sup>11</sup> The reclassification requests submitted by the State of California do not explicitly address Indian country located within the various ozone nonattainment areas. We have assumed that the State of California’s request relates only to the portions of the nonattainment areas that lie outside of Indian country because the State is not approved to implement the CAA in Indian country located within the state.

<sup>12</sup> Because we are reclassifying Indian country in these areas consistent with the classifications requested by the State (with the exception of the two reservations for which we are deferring reclassification), the new attainment dates apply area-wide to both State lands and Indian country located therein. Unlike the State of California, however, the Indian tribes located within the four subject areas are not subject to specific plan submittal and implementation deadlines under the new ozone classifications. See 40 CFR 49.4.

discussed above, EPA is deferring the setting of a submittal deadline for revision to the California SIP for the four subject areas to meet the requirements of CAA section 185. With the exceptions of submittal requirements for SIP revisions for the NSR requirements for the Sacramento Metro area, and the section 185 fee requirements for the four subject areas, we have determined that the State has submitted SIP revisions for all other additional requirements for the four subject areas. As such, there is no need to establish a deadline for any other SIP revision requirement.<sup>13</sup>

In addition, consistent with our discretionary authority under CAA sections 301(a) and 301(d)(4), and for the reasons discussed above and in the proposed rule, we are similarly finalizing our reclassification of all Indian country within the four areas, except Indian country pertaining to the Morongo and Pechanga Tribes, consistent with the reclassification requests for the surrounding non-Indian country lands. As discussed above, EPA is deferring the reclassification of the Morongo and Pechanga Reservations pending our final decisions on their boundary change requests. In Table 1 below, we list tribes that have Indian country located within the four subject areas of this final action. Aside from the Morongo and Pechanga Reservations, we also note that the reclassifications apply to all Indian country within any of the four subject areas that exists at present or at any future time while the given area continues to be designated as nonattainment. Reclassification lowers the de minimis thresholds for the affected tribes, as per EPA’s General Conformity rule (40 CFR part 53, subpart B), but does not lower the applicable “major source” thresholds because the 25 tons per year “major source” thresholds for VOC and NO<sub>x</sub> in the Coachella Valley and Sacramento Metro areas, and the 10 tons per year thresholds for VOC and NO<sub>x</sub> in the San Joaquin Valley and South Coast areas, already apply under the areas’ 1-hour ozone classifications.

<sup>13</sup> The deadline established through this final action relates solely to specific additional requirements triggered by the reclassification for the 8-hour ozone NAAQS and should not be interpreted as relieving any of the four areas of any existing obligation that an area has based on its 1-hour ozone classification, or of existing obligations unrelated to attainment that are based on an area’s original 8-hour ozone classification.

TABLE 1—TRIBES WITH INDIAN COUNTRY LOCATED WITHIN THE FOUR AREAS SUBJECT TO RECLASSIFICATION

San Joaquin Valley	South coast air basin	Coachella Valley	Sacramento metro
Big Sandy Rancheria of Mono Indians (including the Big Sandy Rancheria).	Cahuilla Band of Indians (including the Cahuilla Reservation).	Agua Caliente Band of Cahuilla Indians (including the Agua Caliente Indian Reservation).	Rumsey Indian Rancheria of Wintun Indians (including the Rumsey Indian Rancheria).
Cold Springs Rancheria of Mono Indians (including the Cold Springs Rancheria).	Ramona Band of Cahuilla Mission Indians (including the Ramona Band).	Augustine Band of Cahuilla Indians (including the Augustine Reservation).	Shingle Springs Band of Miwok Indians (including the Shingle Springs Rancheria (Verona Tract)).
North Fork Rancheria of Mono Indians (including the North Fork Rancheria).	San Manuel Band of Mission Indians (including the San Manuel Reservation).	Cabazon Band of Mission Indians (including the Cabazon Reservation).	United Auburn Indian Community (including the Auburn Rancheria).
Picayune Rancheria of Chukchansi Indians (including the Picayune Rancheria).	Santa Rosa Band of Cahuilla Indians (including the South Coast Air Basin portion of the Santa Rosa Reservation).	Santa Rosa Band of Cahuilla Indians (including the Coachella Valley portion of the Santa Rosa Reservation).	
Santa Rosa Indian Community (including the Santa Rosa Rancheria).	Soboba Band of Luiseño Indians (including the Soboba Reservation).	Torres Martinez Desert Cahuilla Indians (including the Torres-Martinez Reservation)	
Table Mountain Rancheria (including the Table Mountain Rancheria).	Reclassification Deferred for: Morongo Band of Mission Indians (including the Morongo Reservation).	Twenty-Nine Palms Band of Mission Indians (including the Twenty-Nine Palms Reservation-Riverside County Section).	
Tule River Indian Tribe (including the Tule River Reservation).	Reclassification Deferred for: Pechanga Band of Luiseño Mission Indians (including the Pechanga Reservation).		

To codify our final action reclassifying the four subject areas, we are revising the table for 8-hour ozone in 40 CFR 81.305 accordingly.

#### VI. Statutory and Executive Order Reviews

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

In addition, I certify that this final rule will not have a significant economic impact on a substantial

number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and that this final rule does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), because EPA is required to grant requests by states for voluntary reclassifications and such reclassifications in and of themselves do not impose any federal intergovernmental mandate, and because tribes are not subject to implementation plan submittal deadlines that apply to States as a result of reclassifications.

Executive Order 13175 (65 FR 67249, November 9, 2000) requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” “Policies that have tribal implications” is defined in section 1(a) of the Executive Order to include regulations that have “substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.”

Several Indian tribes have Indian country located within the boundaries of the four subject ozone nonattainment areas. EPA implements federal Clean Air Act programs, including reclassifications, in these areas of Indian country consistent with our

discretionary authority under sections 301(a) and 301(d)(4) of the Clean Air Act. EPA has concluded that this final rule might have tribal implications for the purposes of E.O. 13175, but would not impose substantial direct costs upon the tribes, nor would it preempt Tribal law. This final rule does not affect implementation of new source review for new or modified stationary sources proposed to be located in the Indian country areas proposed for reclassification, but might affect projects proposed in these areas that require Federal permits, approvals, or funding. Such projects are subject to the requirements of EPA’s General Conformity rule, and Federal permits, approvals, or funding for the projects may be more difficult to obtain because of the lower de minimis thresholds triggered by reclassification.<sup>14</sup>

Given the potential implications, EPA contacted tribal officials early in the process of developing this final rule to provide an opportunity to have meaningful and timely input into its development. On July 31, 2008, we sent letters to leaders of the 22 tribes with Indian country areas in the four subject nonattainment areas seeking their input

<sup>14</sup> As noted in section IV (“Public Comments and EPA Responses”), EPA is deferring the reclassification of the Morongo and Pechanga Reservations pending our final decisions on their boundary change requests. Thus, for the time being, the current General Conformity de minimis thresholds (25 tons per year for VOC or NO<sub>x</sub>) continue to apply for projects proposed in the Morongo and Pechanga Reservations that require Federal permits, approvals, or funding.



on how we could best communicate with the tribes on the rulemaking effort.<sup>15</sup> We received responses from nine tribes, of whom four indicated face-to-face meetings as one of several preferred means of communication. Prior to our proposal we had met with two tribes that sought specific meetings on the reclassifications: Morongo Band of Mission Indians (“Morongo Tribe”) and Pechanga Band of Luiseño Mission Indians (“Pechanga Tribe”). Following the end of the comment period on our proposal, we met again with the Morongo and Pechanga Tribes to discuss the Tribes’ broader requests for separate nonattainment areas. We also contacted the Twenty-Nine Palms Band of Luiseño Mission Indians, and the Santa Rosa Band of Cahuilla Indians to clarify how the reclassification would affect each Tribe’s Indian country in Coachella Valley. EPA has carefully considered the views expressed by the Tribes, including (as described in detail above) the views expressed in written comments on EPA’s proposed reclassification rule.

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

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

has the potential to influence the regulation.

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

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

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 6, 2010. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* CAA section 307(b)(2).)

**List of Subjects in 40 CFR Part 81**

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

Dated: April 15, 2010.

**Jared Blumenfeld**,  
Regional Administrator, Region IX.

■ Part 81, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

**PART 81—[AMENDED]**

■ 1. The authority citation for part 81 continues to read as follows:

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

**Subpart C—[Amended]**

■ 2. Section 81.305 is amended in the table for “California—Ozone (8–Hour Standard)” by revising the entries for “Los Angeles–South Coast Air Basin, CA,” “Riverside Co. (Coachella Valley), CA,” “Sacramento Metro, CA,” and “San Joaquin Valley, CA,”; by republishing footnotes “a,” “b,” and “1”; by adding footnotes “c” and “2”; and by designating the footnotes in the correct order to read as follows:

**§ 81.305 California.**

**CALIFORNIA—OZONE (8-HOUR STANDARD)**

Designated area	Designation <sup>a</sup>		Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
Los Angeles—South Coast Air Basin, CA		Nonattainment	(2)	Subpart 2/Extreme.
Los Angeles County (part)		Nonattainment	(2)	Subpart 2/Extreme.

<sup>15</sup> In our proposed rule, we indicated that we sent letters to the leaders of 21 tribes with Indian country areas in the four subject nonattainment areas. On July 31, 2008 we had also sent a letter to the leader of the Twenty-Nine Palms Band of

Luiseño Mission Indians in relation to the Tribe’s Indian country located within the Western Mojave Desert nonattainment area, for which the State of California has also submitted a reclassification request but for which we have deferred action. This

Tribe is affected by this final action in relation to its Indian country in the Coachella Valley nonattainment area.

CALIFORNIA—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation <sup>a</sup>		Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
<p>That portion of Los Angeles County which lies south and west of a line described as follows: Beginning at the Los Angeles-San Bernardino County boundary and running west along the Township line common to Township 3 North and Township 2 North, San Bernardino Base and Meridian; then north along the range line common to Range 8 West and Range 9 West; then west along the Township line common to Township 4 North and Township 3 North; then north along the range line common to Range 12 West and Range 13 West to the southeast corner of Section 12, Township 5 North and Range 13 West; then west along the south boundaries of Sections 12, 11, 10, 9, 8, and 7, Township 5 North and Range 13 West to the boundary of the Angeles National Forest which is collinear with the range line common to Range 13 West and Range 14 West; then north and west along the Angeles National Forest boundary to the point of intersection with the Township line common to Township 7 North and Township 6 North (point is at the northwest corner of Section 4 in Township 6 North and Range 14 West); then west along the Township line common to Township 7 North and Township 6 North; then north along the range line common to Range 15 West and Range 16 West to the southeast corner of Section 13, Township 7 North and Range 16 West; then along the south boundaries of Sections 13, 14, 15, 16, 17, and 18, Township 7 North and Range 16 West; then north along the range line common to Range 16 West and Range 17 West to the north boundary of the Angeles National Forest (collinear with the Township line common to Township 8 North and Township 7 North); then west and north along the Angeles National Forest boundary to the point of intersection with the south boundary of the Rancho La Liebre Land Grant; then west and north along this land grant boundary to the Los Angeles-Kern County boundary.</p>				
Orange County .....	.....	Nonattainment .....	(2)	Subpart 2/Extreme.
Riverside County (part) .....	.....	Nonattainment .....	(2)	Subpart 2/Extreme.
<p>That portion of Riverside County, except that portion of the area defined below that lies within the Morongo Reservation or the Pechanga Reservation<sup>c</sup>, which lies to the west of a line described as follows: Beginning at the Riverside-San Diego County boundary and running north along the range line common to Range 4 East and Range 3 East, San Bernardino Base and Meridian; then east along the Township line common to Township 8 South and Township 7 South; then north along the range line common to Range 5 East and Range 4 East; then west along the Township line common to Township 6 South and Township 7 South to the southwest corner of Section 34, Township 6 South, Range 4 East; then north along the west boundaries of Sections 34, 27, 22, 15, 10, and 3, Township 6 South, Range 4 East; then west along the Township line common to Township 5 South and Township 6 South; then north along the range line common to Range 4 East and Range 3 East; then west along the south boundaries of Sections 13, 14, 15, 16, 17, and 18, Township 5 South, Range 3 East; then north along the range line common to Range 2 East and Range 3 East; to the Riverside-San Bernardino County line.</p>				
Morongo Reservation <sup>c</sup> .....	.....	Nonattainment .....	(2)	Subpart 2/Severe-17.
Pechanga Reservation <sup>c</sup> .....	.....	Nonattainment .....	(2)	Subpart 2/Severe-17.
San Bernardino County (part) .....	.....	Nonattainment .....	(2)	Subpart 2/Extreme.
<p>That portion of San Bernardino County which lies south and west of a line described as follows: Beginning at the San Bernardino-Riverside County boundary and running north along the range line common to Range 3 East and Range 2 East, San Bernardino Base and Meridian; then west along the Township line common to Township 3 North and Township 2 North to the San Bernardino-Los Angeles County boundary.</p>				
<p style="text-align: center;">* * * * *</p>				
Riverside Co. (Coachella Valley), CA .....	.....	Nonattainment .....	(2)	Subpart 2/Severe-15.
Riverside County (part) .....	.....	Nonattainment .....	(2)	Subpart 2/Severe-15.

CALIFORNIA—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation <sup>a</sup>		Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
<p>That portion of Riverside County which lies to the east of a line described as follows: Beginning at the Riverside-San Diego County boundary and running north along the range line common to Range 4 East and Range 3 East, San Bernardino Base and Meridian; then east along the Township line common to Township 8 South and Township 7 South; then north along the range line common to Range 5 East and Range 4 East; then west along the Township line common to Township 6 South and Township 7 South to the southwest corner of Section 34, Township 6 South, Range 4 East; then north along the west boundaries of Sections 34, 27, 22, 15, 10, and 3, Township 6 South, Range 4 East; then west along the Township line common to Township 5 South and Township 6 South; then north along the range line common to Range 4 East and Range 3 East; then west along the south boundaries of Sections 13, 14, 15, 16, 17, and 18, Township 5 South, Range 3 East; then north along the range line common to Range 2 East and Range 3 East; to the Riverside-San Bernardino County line. And that portion of Riverside County which lies to the west of a line described as follows:</p> <p>That segment of the southwestern boundary line of Hydrologic Unit Number 18100100 within Riverside County, further described as follows: Beginning at the Riverside-Imperial County boundary and running north along the range line common to Range 17 East and Range 16 East, San Bernardino Base and Meridian; then northwest along the ridge line of the Chuckwalla Mountains, through Township 8 South, Range 16 East and Township 7 South, Range 16 East, until the Black Butte Mountain, elevation 4504'; then west and northwest along the ridge line to the southwest corner of Township 5 South, Range 14 East; then north along the range line common to Range 14 East and Range 13 East; then west and northwest along the ridge line to Monument Mountain, elevation 4834'; then southwest and then northwest along the ridge line of the Little San Bernardino Mountains to Quail Mountain, elev. 5814'; then northwest along the ridge line to the Riverside-San Bernardino County line.</p>				
<p style="text-align: center;">* * * * *</p>				
Sacramento Metro, CA .....	.....	Nonattainment .....	(2)	Subpart 2/Severe-15.
El Dorado County (part) .....	.....	Nonattainment .....	(2)	Subpart 2/Severe-15.
<p>All portions of the county, except that portion of El Dorado County within the drainage area naturally tributary to Lake Tahoe including said Lake.</p>				
Placer County (part) .....	.....	Nonattainment .....	(2)	Subpart 2/Severe-15.
<p>All portions of the county except that portion of Placer County within the drainage area naturally tributary to Lake Tahoe including said Lake, plus that area in the vicinity of the head of the Truckee River described as follows: Commencing at the point common to the aforementioned drainage area crestline and the line common to Townships 15 North and 16 North, Mount Diablo Base and Meridian, and following that line in a westerly direction to the northwest corner of Section 3, Township 15 North, Range 16 East, Mount Diablo Base and Meridian, thence south along the west line of Sections 3 and 10, Township 15 North, Range 16 East, Mount Diablo Base and Meridian, to the intersection with the said drainage area crestline, thence following the said drainage area boundary in a southeasterly, then northeasterly direction to and along the Lake Tahoe Dam, thence following the said drainage area crestline in a northeasterly, then northwesterly direction to the point of beginning.</p>				
Sacramento County .....	.....	Nonattainment .....	(2)	Subpart 2/Severe-15.
Solano County (part) .....	.....	Nonattainment .....	(2)	Subpart 2/Severe-15.

CALIFORNIA—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation <sup>a</sup>		Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
<p>That portion of Solano County which lies north and east of a line described as follows: Beginning at the intersection of the westerly boundary of Solano County and the 1/4 section line running east and west through the center of Section 34; Township 6 North, Range 2 West, Mount Diablo Base and Meridian, thence east along said 1/4 section line to the east boundary of Section 36, Township 6 North, Range 2 West, thence south 1/2 mile and east 2.0 miles, more or less, along the west and south boundary of Los Putos Rancho to the northwest corner of Section 4, Township 5 North, Range 1 West, thence east along a line common to Township 5 North and Township 6 North to the northeast corner of Section 3, Township 5 North, Range 1 East, thence south along section lines to the southeast corner of Section 10, Township 3 North, Range 1 East, thence east along section lines to the south 1/4 corner of Section 8, Township 3 North, Range 2 East, thence east to the boundary between Solano and Sacramento Counties.</p>				
Sutter County (part) .....	.....	Nonattainment .....	(2)	Subpart 2/Severe-15.
<p>Portion south of a line connecting the northern border of Yolo County to the SW tip of Yuba County and continuing along the southern Yuba County border to Placer County.</p>				
Yolo County .....	.....	Nonattainment .....	(2)	Subpart 2/Severe-15.
* * * *				
San Joaquin Valley, CA .....	.....	Nonattainment .....	(2)	Subpart 2/Extreme.
Fresno County .....	.....	Nonattainment .....	(2)	Subpart 2/Extreme.
Kern County (part) .....	.....	Nonattainment .....	(2)	Subpart 2/Extreme.
<p>That portion of Kern County which lies west and north of a line described as follows: Beginning at the Kern-Los Angeles County boundary and running north and east along the northwest boundary of the Rancho La Libre Land Grant to the point of intersection with the range line common to R. 16 W. and R. 17 W., 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 Land Grant to the northwest corner of S. 3, T. 11 N., R. 17 W.; 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 S. 34, T. 32 S., R. 30 E., Mount Diablo Base and Meridian; then north to the northwest corner of S. 35, T. 31 S., R. 30 E.; then northeast along the boundary of the Rancho El Tejon Land Grant to the southwest corner of S. 18, T. 31 S., R. 31 E.; then east to the southeast corner of S. 13, T. 31 S., R. 31 E.; then north along the range line common to R. 31 E. and R. 32 E., Mount Diablo Base and Meridian, to the northwest corner of S. 6, T. 29 S., R. 32 E.; then east to the southwest corner of S. 31, T. 28 S., R. 32 E.; then north along the range line common to R. 31 E. and R. 32 E. to the northwest corner of S. 6, T. 28 S., R. 32 E., then west to the southeast corner of S. 36, T. 27 S., R. 31 E., then north along the range line common to R. 31 E. and R. 32 E. to the Kern-Tulare County boundary.</p>				
Kings County .....	.....	Nonattainment .....	(2)	Subpart 2/Extreme.
Madera County .....	.....	Nonattainment .....	(2)	Subpart 2/Extreme.
Merced County .....	.....	Nonattainment .....	(2)	Subpart 2/Extreme.
San Joaquin County .....	.....	Nonattainment .....	(2)	Subpart 2/Extreme.
Stanislaus County .....	.....	Nonattainment .....	(2)	Subpart 2/Extreme.
Tulare County .....	.....	Nonattainment .....	(2)	Subpart 2/Extreme.
* * * *				

<sup>a</sup> Includes Indian Country located in each county or area, except as otherwise specified.

<sup>b</sup> The boundaries for these designated areas are based on coordinates of latitude and longitude derived from EPA Region 9's GIS database and are illustrated in a map entitled "Eastern San Diego County Attainment Areas for the 8-Hour Ozone NAAQS," dated March 9, 2004, including an attached set of coordinates. The map and attached set of coordinates are available at EPA's Region 9 Air Division office. The designated areas roughly approximate the boundaries of the reservations for these tribes, but their inclusion in this table is intended for CAA planning purposes only and is not intended to be a federal determination of the exact boundaries of the reservations. Also, the specific listing of these tribes in this table does not confer, deny, or withdraw Federal recognition of any of the tribes so listed nor any of the tribes not listed.

<sup>c</sup> The use of reservation boundaries for this designation is for purposes of CAA planning only and is not intended to be a federal determination of the exact boundaries of the reservations. Nor does the specific listing of the Tribes in this table confer, deny, or withdraw Federal recognition of any of the Tribes listed or not listed.

<sup>1</sup> This date is June 15, 2004, unless otherwise noted.

<sup>2</sup> This date is June 4, 2010.

\* \* \* \* \*

[FR Doc. 2010-9599 Filed 5-4-10; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[EPA-HQ-OPP-2009-0611; FRL-8821-4]

#### Tebuconazole; Pesticide Tolerances

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for residues of tebuconazole in or on vegetable, fruiting, group 8. Bayer CropScience requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

**DATES:** This regulation is effective May 5, 2010. Objections and requests for hearings must be received on or before July 6, 2010, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2009-0611. All documents in the docket are listed in the docket index available at <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) 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. Publicly available docket materials are available in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:** Tracy Keigwin, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number:

(703) 305-6605; e-mail address: [keigwin.tracy@epa.gov](mailto:keigwin.tracy@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

###### B. How Can I Get Electronic Access to Other Related Information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR cite at <http://www.gpoaccess.gov/ecfr>. To access the harmonized test guidelines referenced in this document electronically, please go to <http://www.epa.gov/oppts> and select "Test Methods and Guidelines."

###### C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2009-0611 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk

as required by 40 CFR part 178 on or before July 6, 2010.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA-HQ-OPP-2009-0611, by one of the following methods:

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

- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305-5805.

##### II. Petition for Tolerance

In the **Federal Register** of September 4, 2009 (74 FR 45848) (FRL-8434-4), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 9F7515) by Bayer CropScience, 2 T.W. Alexander Dr., P.O. Box 12014, Research Triangle Park, NC 27709. The petition requested that 40 CFR part 180 be amended by establishing tolerances for residues of the fungicide tebuconazole in or on the raw agricultural commodity vegetables, fruiting, group at 1.4 parts per million (ppm). That notice referenced a summary of the petition prepared by Bayer CropScience, the registrant, which is available to the public in the docket, <http://www.regulations.gov>. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has modified the proposed tolerance to 1.3 ppm. The reason for this change is explained in Unit IV.C.