

107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T08–0518 to read as follows:

**§ 165.T08–0518 Safety Zone; Water Main Crossing; Choctawhatchee Bay; Santa Rosa Beach, FL.**

(a) *Location.* The following area is a temporary safety zone: A portion of the Gulf Intracoastal Waterway in Choctawhatchee Bay from the Highway 331 fixed bridge west to the Red Nun Buoy “26” (LLNR 31510), to include the entire width of the channel.

(b) *Effective dates.* This rule is effective from September 14, 2012 to October 14, 2012.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port Mobile or a designated representative.

(2) Persons or vessels not restricted to navigation in the Gulf Intracoastal Waterway by draft and that can safely do so, may pass around the zone while maintaining a safe distance and transiting at slowest safe navigational speed.

(d) *Informational Broadcasts.* The Captain of the Port or a designated representative will inform the public through broadcast notices to mariners of the enforcement period for the safety zone as well as any changes in the planned schedule.

Dated: August 22, 2012.

**D.J. Rose,**

*Captain, U.S. Coast Guard, Captain of the Port Mobile.*

[FR Doc. 2012–22634 Filed 9–13–12; 8:45 am]

**BILLING CODE 9110–04–P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA–R09–OAR–2011–0492; FRL–9726–6]**

**Approval and Promulgation of Implementation Plans; California; Determinations of Attainment for the 1997 8-Hour Ozone Standard**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is making several determinations relating to 1997 8-hour ozone nonattainment areas in California. First, EPA is determining that six 8-hour ozone nonattainment areas in California (Amador and Calaveras Counties, Chico, Kern County, Mariposa and Tuolumne

Counties, Nevada County, and Sutter County) (“six CA areas”) attained the 1997 8-hour ozone national ambient air quality standard (NAAQS) by their applicable attainment dates. Second, in making these determinations for Mariposa and Tuolumne Counties and Nevada County, EPA is also granting them one-year attainment date extensions. Lastly, EPA is determining that the six CA areas and the Ventura County 8-hour ozone nonattainment area in CA have attained and continue to attain the 1997 8-hour ozone NAAQS based on the most recent three years of data. Under the provisions of EPA’s ozone implementation rule, these determinations suspend the requirements for these areas to submit revisions to the state implementation plan related to attainment of the 1997 8-hour ozone standard for as long as these areas continue to meet the 1997 8-hour ozone NAAQS.

**DATES:** These actions are effective on November 13, 2012 without further notice, unless EPA receives adverse comment by October 15, 2012. We are publishing these rules without prior proposal because the Agency views them as noncontroversial actions and anticipates no adverse comments. In the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal should adverse comments be filed. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R09–OAR–2011–0492 by one of the following methods:

1. Federal eRulemaking Portal, at [www.regulations.gov](http://www.regulations.gov), please follow the on-line instructions;

2. Email to [ungvarsky.john@epa.gov](mailto:ungvarsky.john@epa.gov); or

3. Mail or delivery to John Ungvarsky, Air Planning Office, AIR–2, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901.

*Instructions:* All comments will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information you consider to be CBI or otherwise protected should be clearly identified as such and should not be submitted through [www.regulations.gov](http://www.regulations.gov) or email.

[www.regulations.gov](http://www.regulations.gov) is an “anonymous access” system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to EPA, your email address will be automatically captured and included as part of the public comment. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* The index to the docket for this action is available electronically at [www.regulations.gov](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 at either location (e.g., CBI). 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:** John Ungvarsky, Air Planning Office, AIR–2, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, telephone number (415) 972–3963, or email [ungvarsky.john@epa.gov](mailto:ungvarsky.john@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, wherever “we”, “us” or “our” are used, we mean EPA. We are providing the following outline to aid in locating information in this rule.

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**I. What determinations is EPA making?**

EPA is making several separate and independent types of determinations with respect to a number of 1997 8-hour ozone nonattainment areas in California. First, pursuant to section 181(b)(2) of the Clean Air Act (CAA), EPA is determining that the Amador and Calaveras Counties (Central Mountain Counties), Chico (Butte County), Kern County (Eastern Kern), Mariposa and Tuolumne Counties (Southern Mountain Counties), Nevada County (Western Nevada County), and Sutter County (Sutter Buttes) 8-hour ozone nonattainment areas in California (herein referred to as the "six CA areas") attained the 1997 8-hour ozone NAAQS by their respective applicable attainment dates. Second, in connection with this determination, EPA is also granting, pursuant to section 181(a)(5) and 40 CFR 51.907, applications submitted by the California Air Resources Board (CARB) for extensions to the applicable attainment dates for the Southern Mountain Counties and Western Nevada County nonattainment areas.

The applicable attainment dates vary among the six CA areas. For Butte County and Sutter Buttes, EPA is determining that these areas attained the 1997 8-hour ozone standard by their applicable attainment deadline of June 15, 2007, based on complete, quality-assured, and certified ambient air quality monitoring data for 2004–2006. For the Central Mountain Counties and Eastern Kern ozone nonattainment areas, EPA is determining that they attained the 1997 8-hour ozone standard by their applicable attainment deadline of June 15, 2010, based on complete, quality-assured and certified air quality data for 2007–2009. For the Southern Mountain Counties and Western Nevada County, whose original attainment date was June 15, 2010, EPA is granting a one-year attainment date extension until June 15, 2011 and determining that these areas attained the 1997 8-hour ozone NAAQS by that extended attainment date, based on complete, quality-assured data for 2008–2010.

In addition, for all the areas listed above and for Ventura County,<sup>1</sup> EPA is determining, based on complete, quality-assured and certified air quality monitoring data for 2009–2011, that these areas have attained and continue to attain the 1997 8-hour ozone NAAQS. Preliminary data for 2012 indicate that these areas continue to attain the NAAQS. Under the provisions of 40 CFR 51.918, these latter determinations suspend the obligation of the State to submit certain planning requirements related to attainment for as long as the areas continue to attain the standard.

**II. What is the background for these actions?**

*A. Ozone NAAQS*

In 1997, EPA revised the health-based NAAQS for ozone, setting it at 0.08 parts per million (ppm) averaged over an 8-hour time frame. EPA set the 8-hour ozone standard based on scientific evidence demonstrating that ozone causes adverse health effects at lower ozone concentrations and over longer periods of time than was understood when the pre-existing 1-hour ozone standard was set. EPA determined that the 8-hour standard would be more protective of human health, especially for children and adults who are active outdoors, and individuals with a pre-existing respiratory disease, such as asthma.

On March 27, 2008 (73 FR 16436), EPA promulgated a revised 8-hour ozone NAAQS of 0.075 ppm. On April 30, 2012 (77 FR 30088 and 77 FR 30160), EPA issued final rules addressing air quality designations and implementation of the 2008 8-hour ozone NAAQS. The rulemakings that are the subject of this notice concern only the 1997 8-hour ozone NAAQS and are not affected by the 2008 8-hour ozone NAAQS.

*B. EPA Designations and Classifications of Ozone Nonattainment Areas*

On April 30, 2004 (69 FR 23858), EPA finalized its attainment/nonattainment designations for areas across the country with respect to the 8-hour ozone standard. In that action EPA designated Butte County, the Central Mountain Counties, Eastern Kern, the Southern Mountain Counties, Sutter Buttes, and Western Nevada County as nonattainment under title I, part D, subpart 1 of the CAA (subpart 1) and provided that these designations would become effective on June 15, 2004. Also

<sup>1</sup> Ventura County is classified as a "serious" nonattainment area for the 1997 8-hour ozone standard. As such, the applicable attainment date for Ventura County is June 15, 2013.

in EPA's April 30, 2004 action, Ventura County was designated nonattainment under title I, part D, subpart 2 of the CAA (subpart 2) and classified as "moderate".<sup>2</sup>

In June 2007, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit Court) vacated the portion of the 1997 ozone implementation rule that allowed areas to be designated under subpart 1.<sup>3</sup> On January 16, 2009 (74 FR 2936), EPA published a proposed rule to address, among other issues, the D.C. Circuit Court vacatur of the classification system that EPA used to designate a subset of initial 1997 8-hour ozone nonattainment areas under subpart 1. In that rulemaking, EPA proposed that all areas designated nonattainment for the 1997 8-hour ozone NAAQS under subpart 1 would be classified as subpart 2 areas (hereafter referred to as the "Subpart 1/Subpart 2 1997 8-Hour Ozone Rulemaking"). The Butte County, Central Mountain Counties, Eastern Kern, Southern Mountain Counties, Sutter Buttes, and Western Nevada County ozone nonattainment areas were among those areas that would be classified under subpart 2. On May 14, 2012 (77 FR 28424), EPA finalized the Subpart 1/Subpart 2 1997 8-Hour Ozone Rulemaking. The boundaries, resulting classifications and attainment dates for the six new subpart 2 California nonattainment areas and Ventura County are provided in Table 1.

*C. One-Year Attainment Date Extensions*

The 8-hour ozone implementation rule gives EPA discretion to grant up to two one-year extensions of the attainment date upon application by the state. The criteria for such a request are found in CAA section 181(a)(5) and 40 CFR 51.907. The state must show that (1) the state has complied with all requirements and commitments pertaining to the area in the applicable State Implementation Plan (SIP); and (2) no more than one exceedance of the NAAQS has occurred in the area in the year preceding the extension year.

*D. Determinations of Attainment by Areas' Attainment Deadline and Determinations of Continued Attainment*

Under the provisions of EPA's ozone implementation rule for the 1997 ozone

<sup>2</sup> On May 20, 2008 (73 FR 29073), EPA granted California's request to reclassify Ventura County from "moderate" to "serious" for the 8-hour ozone standard. As such, the applicable attainment date for Ventura County is June 15, 2013.

<sup>3</sup> *S. Coast Air Quality Mgmt. Dist. v. EPA*, 489 F.3d 1245 (D.C. Cir. 2007).

NAAQS (see 40 CFR 51.918), if EPA issues a determination that an area is attaining the standard (through a rulemaking that includes public notice and comment), it will suspend the area's obligations to submit an attainment demonstration and associated reasonable available control measures (RACM), a reasonable further progress (RFP) plan, contingency measures and other planning requirements related to attainment for as long as the area continues to attain. The determination of attainment is not equivalent to a redesignation. The state must still meet the statutory requirements for redesignation in order for an area to be redesignated to attainment.

#### E. Ambient Air Quality Monitoring Data

A determination of whether an area's air quality meets the ozone NAAQS is generally based upon the most recent

three years of complete, quality-assured data gathered at established State and Local Air Monitoring Stations (SLAMS) in the nonattainment area and entered into the EPA Air Quality System (AQS) database. Data from air monitors operated by state/local agencies in compliance with EPA monitoring requirements must be submitted to AQS. Heads of monitoring agencies annually certify that these data are accurate to the best of their knowledge. Accordingly, EPA relies primarily on data in AQS when determining the attainment status of areas. See 40 CFR 50.10; 40 CFR part 50, appendix I; 40 CFR part 53; 40 CFR part 58, appendices A, C, D and E. All data are reviewed to determine the area's air quality status in accordance with 40 CFR part 50, appendix I.

Under EPA regulations at 40 CFR part 50, the 1997 8-hour ozone standard is

attained at a site when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations at an ozone monitor is less than or equal to 0.08 ppm. See 40 CFR 50.10. This 3-year average is referred to as the design value. When the design value is less than or equal to 0.084 ppm (based on the rounding convention in 40 CFR part 50, appendix I) at each monitoring site within the area, then the area is meeting the NAAQS. The data completeness requirement is met when the three-year average percent of days with valid ambient monitoring data is at least 90%, and no single year has less than 75% data completeness as determined in Appendix I of 40 CFR part 50.

#### III. What are the effects of these actions?

TABLE 1—NONATTAINMENT AREA CLASSIFICATIONS AND ATTAINMENT DEADLINES

Nonattainment area	Boundaries	Classification	Attainment date
Butte County .....	All of Butte County .....	Marginal .....	June 15, 2007.
Central Mountain Counties .....	All of Amador and Calaveras Counties .....	Moderate .....	June 15, 2010.
Eastern Kern .....	The eastern portion of Kern County <sup>4</sup> .....	Moderate .....	June 15, 2010.
Southern Mountain Counties .....	All of Mariposa and Tuolumne Counties .....	Moderate .....	June 15, 2011. <sup>5</sup>
Sutter Buttes .....	A portion of Sutter County <sup>6</sup> .....	Marginal .....	June 15, 2007.
Ventura County .....	A portion of Ventura County <sup>7</sup> .....	Serious .....	June 15, 2013.
Western Nevada County .....	The western portion of Nevada County <sup>8</sup> .....	Moderate .....	June 15, 2011. <sup>9</sup>

#### A. Attainment Date Extensions

Pursuant to CAA section 181(a)(5) and 40 CFR 51.907, the State has requested,

<sup>4</sup> That portion of Kern County (with the exception of that portion in Hydrologic Unit Number 18090205 the Indian Wells Valley) east and south 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 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

and EPA is approving one-year attainment date extensions for the Southern Mountain Counties and Western Nevada County nonattainment areas. The effect of granting the

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.

<sup>5</sup> On March 23, 2010, James Goldstene, Executive Officer of the California Air Resources Board, submitted a request for EPA to grant a one-year extension of the proposed attainment date for the Southern Mountain Counties area. The June 15, 2011 date reflects EPA's final action today to grant CARB's application for a one-year extension in the applicable attainment date for this area.

<sup>6</sup> That portion of the Sutter Buttes mountain range at or above 2,000 feet in elevation.

<sup>7</sup> That part of Ventura County excluding the Channel Islands of Anacapa and San Nicolas Islands.

<sup>8</sup> That portion of Western Nevada County, which lies west of a line, described as follows: beginning at the Western Nevada Placer County boundary and running north along the western boundaries of Sections 24, 13, 12, 1, Township 17 North, Range 14 East, Mount Diablo Base and Meridian, and Sections 36, 25, 24, 13, 12, Township 18 North, Range 14 East to the Western Nevada Sierra County boundary.

<sup>9</sup> On May 24, 2010, James Goldstene, Executive Officer of the California Air Resources Board, submitted a request for EPA to grant a one-year extension of the proposed attainment date for the Western Nevada County area. The June 15, 2011 date reflects EPA's final action today to grant CARB's application for a one-year extension in the applicable attainment date for this area.

attainment date extensions is to allow the State an additional year to demonstrate that the Southern Mountain Counties and Western Nevada County nonattainment areas have attained the 1997 8-hour ozone NAAQS pursuant to section 181(b)(2) of the CAA. Without the one-year extension, the State cannot demonstrate that the two areas attained 1997 8-hour ozone NAAQS by the attainment dates in 77 FR 28424.

#### B. Determinations of Attainment by Areas' Applicable Attainment Dates

Pursuant to section 181(b)(2) of the CAA, EPA is determining that the Butte County, Central Mountain Counties, Eastern Kern, Southern Mountain Counties, Sutter Buttes, and Western Nevada County ozone nonattainment areas attained the 1997 8-hour ozone NAAQS by their applicable attainment dates.

These determinations discharge EPA's obligations under section 181(b)(2) with respect to determining whether these areas attained by their respective attainment deadlines, and establish that these areas are not subject to reclassification for failure to attain by these deadlines.

*C. Determinations of Current Attainment and 40 CFR 51.918*

In addition, EPA is separately determining that the six CA areas and Ventura County have attained the standard based upon the most recent three years of data (without reference to their attainment deadlines). Under the provisions of 40 CFR 51.918, these determinations of attainment suspend the obligation for the State to submit certain planning requirements described above; however, they do not constitute redesignations to attainment under section 107(d)(3) of the CAA. The designation status of the six CA areas and Ventura County remains nonattainment for the 1997 8-hour ozone NAAQS until such time as EPA determines that each area meets the CAA requirements for redesignation to attainment, including an approved maintenance plan.

In accordance with 40 CFR 51.918, based on these determinations, the obligation under the CAA for the State of California to submit an attainment demonstration and RACM, RFP plan, contingency measures, and any other planning requirements related to attainment of the 1997 8-hour ozone NAAQS for these seven ozone nonattainment areas is suspended so long as the areas continue to attain the 1997 8-hour ozone NAAQS. Although these requirements are suspended, EPA is not precluded from acting upon these elements, if California submits them for EPA review and approval.

The suspension continues until such time, if any, that EPA (i) redesignates the area to attainment at which time those requirements no longer apply, or (ii) subsequently determines that the area has violated the 1997 8-hour ozone NAAQS. It is separate from, and does not influence or otherwise affect, any future designation determination or requirements for the area based on any new or revised ozone NAAQS. It remains in effect regardless of whether EPA designates the area as a nonattainment area for purposes of any new or revised ozone NAAQS.

If EPA subsequently determines, after notice-and-comment rulemaking, that any one of these nonattainment areas has violated the 1997 8-hour ozone NAAQS, the basis for the suspension of the requirements for that area, provided by 40 CFR 51.918, would no longer exist, and the violating ozone nonattainment area would thereafter have to address those requirements.

**IV. What is EPA's analysis of the relevant air quality data?**

*A. Monitoring Network and Data Considerations*

CARB is the governmental agency delegated under State law with the authority and responsibility for collecting ambient air quality data as directed by the CAA of 1977 and CAA Amendments of 1990. CARB and local Air Pollution Control Districts and Air Quality Management Districts ("Districts") operate ambient monitoring stations throughout the State. CARB is the lead monitoring agency in the Primary Quality Assurance Organization<sup>10</sup> (PQAO) that includes all the monitoring agencies in the State with a few exceptions.<sup>11</sup> CARB, Butte County Air Pollution Control District (APCD), Northern Sierra Air Quality Management District (AQMD), and Ventura County APCD are the agencies responsible for monitoring ambient air quality within the seven nonattainment areas affected by today's final action. In addition, CARB oversees the quality assurance of all data collected within the CARB PQAO. CARB submits annual monitoring network plans to EPA that describe the monitoring sites CARB operates, in addition to monitoring sites operated by many smaller air districts, including Butte County APCD and Northern Sierra AQMD. Ventura County APCD submits the annual monitoring network plan for all sites in Ventura County. These plans discuss the status of the air monitoring network, as required under 40 CFR part 58.10.

Since 2007, EPA has regularly reviewed these annual plans for compliance with the applicable reporting requirements in 40 CFR part 58. With respect to ozone, EPA has found that the areas' network plans meet the applicable requirements under 40 CFR part 58. See EPA letters to CARB approving its annual network plans for years 2007, 2009, 2010, and 2011.<sup>12</sup>

<sup>10</sup> Primary quality assurance organization means a monitoring organization or other organization that is responsible for a set of stations that monitor the same pollutant and for which data quality assessments can be pooled (40 CFR 58.1).

<sup>11</sup> The Bay Area Air Quality Management District, the South Coast Air Quality Management District, and the San Diego Air Pollution Control District are each designated as the PQAO for their respective ambient air monitoring programs.

<sup>12</sup> Letter from Sean Hogan, Manager, Air Quality Analysis Office, U.S. EPA Region IX, to Karen Magliano, Chief, Air Quality Data Branch, Planning and Technical Support Division, California Air Resources Board (June 9, 2008) (approving CARB's "Annual Monitoring Network Plan for the Small Districts in California, Volume 1: June 2007"); Letter from Joe Lapka, Acting Manager, Air Quality Analysis Office, U.S. EPA Region IX, to Karen Magliano, Chief, Air Quality Data Branch, Planning

CARB did not propose modifications to their network in 2008 and therefore was not required to submit a network plan to EPA for approval.<sup>13</sup> EPA also concluded<sup>14</sup> from its Technical System Audit of the CARB PQAO (conducted during Summer 2007), that the combined ambient air monitoring network operated by CARB and the local air districts in their PQAO (which includes Butte County APCD, Northern Sierra AQMD, and Ventura County APCD) currently meets or exceeds the requirements for the minimum number of SLAMS for all criteria pollutants for the areas addressed in this action, and that all of the monitoring sites are reviewed with respect to monitoring objectives, spatial scales and other site criteria as required by 40 CFR part 58, appendix D. Also, CARB annually certifies that the data it submits to AQS are complete and quality-assured. This includes data from all CARB sites, along with some data for local district sites.<sup>15</sup> Northern Sierra AQMD annually certifies that the data it submits for its Grass Valley site to AQS are complete and quality-assured.<sup>16</sup> Ventura County APCD annually certifies that the data it submits for Ventura County to AQS are complete and quality-assured.<sup>17</sup> Data for

and Technical Support Division, California Air Resources Board (Nov. 24, 2009) (approving CARB's "2009 Annual Monitoring Network Report for Small Districts in California"); Letter from Matthew Lakin, Manager, Air Quality Analysis Office, U.S. EPA Region IX, to Karen Magliano, Chief, Air Quality Data Branch, Planning and Technical Support Division, California Air Resources Board (Oct. 29, 2010) (approving CARB's "2010 Annual Monitoring Network Plan for the Small Districts in California"); Letter from Matthew Lakin, Manager, Air Quality Analysis Office, U.S. EPA Region IX, to Karen Magliano, Chief, Air Quality Data Branch, Planning and Technical Support Division, California Air Resources Board (Nov. 1, 2011) (approving CARB's "2011 Annual Monitoring Network Plan for the Small Districts in California").

<sup>13</sup> See also EPA letters to Ventura County APCD approving its annual network plans for years 2009, 2010, and 2011.

<sup>14</sup> Letter from Deborah Jordan, Director, Air Division, U.S. EPA Region IX, to James Goldstene, Executive Officer, California Air Resources Board (Aug. 18, 2008) (transmitting findings of EPA's Summer 2007 Technical System Audit of CARB's ambient air monitoring program).

<sup>15</sup> See, e.g., letter from Karen Magliano, Chief, Air Quality Data Branch, Planning and Technical Support Division, CARB, to Jared Blumenfeld, Regional Administrator, U.S. EPA Region IX, certifying calendar year 2011 ambient air quality data and quality assurance data, May 1, 2012.

<sup>16</sup> See, e.g., letter from Joseph Fish, Deputy Air Pollution Control Officer, Northern Sierra AQMD, to Fletcher Clover, Regional AQS Administrator, U.S. EPA Region IX, certifying calendar year 2011 ambient air quality data and quality assurance data, February 9, 2012.

<sup>17</sup> See, e.g., letter from Michael Villegas, Air Pollution Control Officer, Ventura County APCD, to Jared Blumenfeld, Regional Administrator, U.S. EPA Region IX, certifying calendar year 2011 ambient air quality data and quality assurance data, April 24, 2012.

National Park Service sites, which includes the Yosemite—Turtleback Dome site, are certified by the National Park Service.<sup>18</sup>

There were 16 ozone SLAMS monitoring sites operating during the 2004–2011 period within the seven ozone nonattainment areas addressed in today's action. These 16 sites monitored ozone concentrations on a continuous basis<sup>19</sup> using ultraviolet absorption monitors. For most sites, the spatial scale and monitoring objectives are “regional” and “high concentrations.”<sup>20</sup> Consistent with the requirements contained in 40 CFR part 50, EPA has reviewed the complete, quality-assured, and certified 8-hour ozone ambient air monitoring data as recorded in AQS for the applicable monitoring period collected at the monitoring sites in the seven nonattainment areas.

### B. Evaluation of Attainment by Applicable Attainment Date and/or Current Attainment

Based on our review of the monitoring data, and taking into account the reliability of the ozone monitoring network in the relevant CA nonattainment areas and the reliability of the data collected by the network, EPA makes the determinations presented in the following paragraphs.

#### 1. Butte County and Sutter Buttes

Table 2 shows the ozone design values for the Butte County and Sutter Buttes ozone nonattainment area monitors, based on ambient air quality monitoring data for the three-year period (2004–2006) prior to the applicable attainment date (June 15, 2007) and for the most recent three-year period (2009–2011). The data show that the design value for the 2004–2006 period was equal to or less than 0.084 ppm at all of the monitors. Therefore, pursuant to CAA section 181(b)(2), we are determining that the Butte County and Sutter Buttes marginal nonattainment areas attained the 1997

8-hour ozone NAAQS by their applicable attainment date of June 15, 2007, based on complete, quality-assured data for the 2004–2006 ozone seasons. In addition, the data show that the design value for the 2009–2011 period was also equal to or less than 0.084 ppm at all of the monitors. Therefore, we are determining, based on the complete, quality-assured data for 2009–2011, that the Butte County and Sutter Buttes areas have attained the standard. Preliminary data available for 2012 indicate that the areas continue to attain the standard.

#### 2. Eastern Kern and Central Mountain Counties

Table 3 shows the ozone design values for the Eastern Kern and Central Mountain Counties ozone nonattainment area monitors based on ambient air quality monitoring data for the three-year period (2007–2009) prior to the applicable attainment date (June 15, 2010) and the most recent three-year period (2009–2011). The data show that the design value for the 2007–2009 period was equal to or less than 0.084 ppm at all of the monitors. Therefore, pursuant to section 181(b)(2), we are determining that the Eastern Kern and Central Mountain Counties moderate nonattainment areas attained the 1997 8-hour ozone NAAQS by their applicable attainment deadline of June 15, 2010, based on the complete, quality-assured data for the 2007–2009 ozone seasons. In addition, the data show that the design value for the 2009–2011 period was also equal to or less than 0.084 ppm at all of the monitors. Therefore, we are determining, based on the complete, quality-assured data for 2009–2011, that the Eastern Kern and Central Mountain Counties areas have attained the 1997 8-hour ozone standard. Preliminary data available for 2012 indicate that the areas continue to attain the standard.

#### 3. Southern Mountain Counties and Western Nevada County

Table 4 shows the fourth-highest daily maximum recorded for 2009, the ozone design values for the Southern Mountain Counties and Western Nevada County nonattainment area monitors based on 2008–2010 ambient air quality monitoring data, and the ozone design values for the most recent three-year period (2009–2011). Because the Southern Mountain Counties and Western Nevada County are classified as “moderate” nonattainment areas, the applicable attainment date for both areas was set as June 15, 2010. However, the air quality and other factors in these areas showed the areas were eligible,

pursuant to CAA section 181(a)(5) and 40 CFR 51.907, for extensions of the applicable attainment date for these two areas from June 15, 2010 to June 15, 2011. CARB applied to EPA for these extensions by letters dated March 23, 2010 and May 24, 2010 for Southern Mountain Counties and Western Nevada County, respectively (see also footnotes 5 and 9 in table 1 of this direct final rule).

As noted previously, under CAA section 181(a)(5) and 40 CFR 51.907, upon application of a State, EPA may extend for one additional year (“extension year”) the applicable attainment date if (1) the State has complied with all requirements and commitments pertaining to the area in the applicable State Implementation Plan (SIP); and (2) no more than one exceedance of the NAAQS has occurred in the area in the year preceding the extension year. No more than two one-year extensions are allowed. We have reviewed the requests using the criteria set forth at CAA section 181(a)(5) and are approving the extensions in today's action. The basis for our approval is set forth below.

First, the fourth-highest value recorded at the monitors in each of these areas did not exceed the NAAQS during 2009, the year preceding the extension year, thereby meeting one of the two criteria. Second, EPA interprets the requirement that the State is complying with the commitments and requirements in the applicable implementation plan, as referenced in section 181(a)(5) of the CAA, to mean the State is implementing the EPA-approved SIP.<sup>21</sup> EPA has determined that the State is implementing the requirements in the EPA-approved SIP as applicable to these two nonattainment areas, thereby meeting the other criterion under section 181(a)(5). Therefore, because both criteria under CAA section 181(a)(5) are met in both areas, we are granting the one-year extensions for these two areas, and with the granting of one-year extensions under section 181(a)(5) for these areas, the applicable attainment date for the Southern Mountain Counties and Western Nevada County becomes June 15, 2011. With respect to this extended applicable attainment date, the data in table 4 show that the design value for the 2008–2010 period was equal to or less than 0.084 ppm at

<sup>18</sup> See, e.g., letter from John Ray, Air Resources Division Program Manager, National Park Service, to David Lutz, Data Certification Coordinator, U.S. EPA Office of Air Quality Policy and Standards, certifying calendar year 2011 ambient air quality data and quality assurance dated, April 29, 2012.

<sup>19</sup> The Jerseydale, Sutter Buttes, and White Cloud Mountain ozone monitors operate only in the warmer six months of the year. These sites are at high elevations where access during the winter can be problematic. Ozone concentrations at these sites during the winter are well below the levels of the ambient air quality standards and are not the high sites in the nonattainment areas. See California Air Resources Board, Annual Network Plan Report 27 (2010).

<sup>20</sup> See CARB's *Annual Network Plan Report* (July, 2011) and Ventura County APCD's *Annual Network Plan Report* (July, 2011).

<sup>21</sup> Memorandum from D. Kent Berry, Acting Director, EPA Air Quality Management Division to EPA Air Directors (Feb. 3, 1994) (Procedures for Processing Bump Ups and Extension Requests for Marginal Ozone Nonattainment Areas), available at [http://www.epa.gov/ttn/oarpg/t1/memoranda/o\\_bump.pdf](http://www.epa.gov/ttn/oarpg/t1/memoranda/o_bump.pdf).

all of the monitors. Therefore, pursuant to section 181(b)(2), we are determining that the Southern Mountain Counties and Western Nevada County moderate nonattainment areas attained the 1997 8-hour ozone NAAQS by their applicable attainment deadlines of June 15, 2011, based on the complete,

quality-assured data for the 2008–2010 ozone seasons. In addition, the data show that the design value for the 2009–2011 period was also equal to or less than 0.084 ppm at all of the monitors. Therefore, we are also determining, based on the most recent three years of complete, quality-assured data for 2009–

2011, that the Southern Mountain Counties and Western Nevada County areas have attained the standard. Preliminary data available for 2012 indicate that the areas continue to attain the standard.

TABLE 2—2004–2006 AND 2009–2011 8-HOUR OZONE NONATTAINMENT AREA DESIGN VALUES (ppm) FOR THE SUTTER BUTTES AND BUTTE COUNTY NONATTAINMENT AREAS

Nonattainment area	CARB monitoring site (AQS ID #)	2004–2006		2009–2011	
		APDC (%)	DV	APDC (%)	DV
Butte County .....	Chico, Manzanita Avenue (060070002) .....	98	0.073	99	0.066
	Paradise, 4405 Airport Road (060070007) .....	99	0.084	99	0.077
Sutter Buttes .....	Sutter Buttes (061010004) .....	100	0.082	90	0.071

APDC: Average Percent Data Completeness; DV: Design Value.

TABLE 3—2007–2009 AND 2009–2011 8-HOUR OZONE NONATTAINMENT AREA DESIGN VALUES (PPM) FOR THE CENTRAL MOUNTAIN COUNTIES AND EASTERN KERN NONATTAINMENT AREA

Nonattainment area	CARB monitoring site (agency, AQS ID #)	2007–2009		2009–2011	
		APDC (%)	DV	APDC (%)	DV
Central Mountain Counties.	Jackson, Clinton Road (060050002) .....	96	0.080	98	0.071
	San Andreas, Gold Strike Road (060090001) ....	98	0.082	98	0.077
Eastern Kern .....	Mojave, 923 Poole Street (060290011) .....	94	0.084	92	0.080

TABLE 4—2008–2010 AND 2009–2011 8-HOUR OZONE NONATTAINMENT AREA DESIGN VALUES (PPM) AND 2009 FOURTH-HIGHEST DAILY MAXIMUM (PPM) FOR SOUTHERN MOUNTAIN COUNTIES AND WESTERN NEVADA COUNTY

Nonattainment area	Monitoring site (agency, AQS ID #)	2009		2008–2010		2009–2011	
		APDC (%)	Fourth-highest daily maximum	APDC (%)	DV	APDC (%)	DV
Western Nevada County.	Grass Valley, Litton Building (Northern Sierra AQMD, 060570005).	99	0.083	94	0.084	99	0.079
	White Cloud Mountain (CARB, 060570007).	99	0.077	98	0.081	98	0.076
Southern Mountain Counties.	Jerseydale, 644 Jerseydale (CARB, 060430006).	94	0.077	94	0.080	91	0.076
	Sonora, Barretta Street (CARB, 061090005).	98	0.077	99	0.082	98	0.074
	Yosemite, Turtleback Dome (NPS, 060430003).	97	0.078	96	0.083	97	0.077

NPS: National Park Service.

4. Ventura County

Table 5 shows the ozone design values for the Ventura County ozone nonattainment area monitors, based on ambient air quality monitoring data for the most recent three-year period (2009–

2011).<sup>22</sup> The data show that the design value for the 2009–2011 period was equal to or less than 0.084 ppm at all of the monitors. Therefore, we are determining, based on the complete, quality-assured data for 2009–2011, that

the Ventura County serious ozone nonattainment area has attained the 1997 8-hour ozone standard. Preliminary data available for 2012 indicate that the area continues to attain the standard.

<sup>22</sup> As noted in footnote 1 in this document, Ventura County is classified as a “serious”

nonattainment area for the 1997 8-hour ozone

standard. As such, the applicable attainment date for Ventura County is June 15, 2013.

TABLE 5—2009–2011 8-HOUR OZONE NONATTAINMENT AREA DESIGN VALUES (ppm) FOR VENTURA COUNTY

Nonattainment area	Ventura county APCD monitoring sites (AQS ID #)	2009–2011	
		APDC (%)	DV
Ventura .....	El Rio, Rio Mesa School #2 (061113001) .....	98	0.063
	Ojai, Ojai Avenue (061111004) .....	99	0.077
	Piru, 3301 Pacific Avenue (061110009) .....	99	0.077
	Simi Valley, Cochran Street (061112002) .....	99	0.083
	Thousand Oaks, Moorpark Road (061110007) .....	99	0.076

## V. EPA's Final Actions

EPA is making three separate and independent types of determinations. First, pursuant to section 181(b)(2), EPA is determining that six 8-hour ozone nonattainment areas in California (Amador and Calaveras Counties, Chico, Kern County, Mariposa and Tuolumne Counties, Nevada County, and Sutter County) attained the 1997 8-hour ozone NAAQS by their respective applicable attainment dates based on complete, quality-assured, and certified ambient air quality monitoring data. Second, in making these determinations for two of these areas, Mariposa and Tuolumne Counties and Nevada County, EPA is also determining that these areas qualified for one-year attainment date extensions and granting these extensions under CAA section 181(a)(5) and 40 CFR 51.907. These extensions result in an applicable attainment deadline for these areas of June 15, 2011. As a result, EPA determines that that these two areas attained by their extended attainment dates. Third, EPA is separately determining that Amador and Calaveras Counties, Chico, Kern County, Mariposa and Tuolumne Counties, Nevada County, Sutter County, and Ventura County have each attained the 1997 8-hour ozone standard based on the most recent three years of complete, quality-assured, and certified data for 2009–2011. Preliminary data available for 2012 show that these areas continue to attain the standard. As provided in 40 CFR 51.918, these determinations of attainment suspend the requirements for the State of California to submit, for each of these seven ozone nonattainment areas, an attainment demonstration and associated RACM, RFP plan, contingency measures, and any other planning requirements related to attainment of the 1997 8-hour ozone NAAQS, for as long as the area continues to attain the 1997 8-hour ozone NAAQS.

We are publishing these rules without prior proposal because the Agency views them as noncontroversial actions and anticipates no adverse comments. However, in the proposed rules section

of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal should adverse comments be filed. These actions will be effective November 13, 2012, without further notice unless the EPA receives relevant adverse comments by October 15, 2012.

If we receive such comments, then we will publish a document withdrawing the final rule affected by the comments and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. We will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on November 13, 2012 and no further action will be taken on the proposed rule.

## VI. Statutory and Executive Order Reviews

These actions make determinations of attainment based on air quality, result in the suspension of certain federal requirements, grant attainment date extensions, and/or would not impose additional requirements beyond those imposed by state law. For that reason, these actions:

- Are not “significant regulatory actions” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are 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.*);
- Do 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);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are 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 CAA; and
- Do not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, these actions do not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP obligations discussed herein do not apply to Indian Tribes and thus 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 13, 2012. 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. 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, Volatile organic compounds.

Dated: August 30, 2012.

**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 52.282 is amended by adding paragraph (e) to read as follows:

#### § 52.282 Control strategy and regulations: Ozone.

\* \* \* \* \*

(e) *Determinations of Attainment.* Effective November 13, 2012.

(1) *Approval of applications for extensions of applicable attainment dates.* Under section 181(a)(5) of the Clean Air Act, EPA is approving the applications submitted by the California Air Resources Board dated March 23, 2010 and May 24, 2010 for extensions of the applicable attainment date for the Mariposa and Tuolumne Counties and Nevada County 8-hour ozone nonattainment areas, respectively, from June 15, 2010 to June 15, 2011.

(2) *Determinations of attainment by the applicable attainment date.* EPA has determined that the Amador and Calaveras Counties, Chico, Kern County, Mariposa and Tuolumne Counties, Nevada County, and Sutter County 8-hour ozone nonattainment areas in

California attained the 1997 8-hour ozone national ambient air quality standard (NAAQS) by their applicable attainment dates. The applicable attainment dates are as follows: Amador and Calaveras Counties (June 15, 2010), Chico (June 15, 2007), Kern County (June 15, 2010), Mariposa and Tuolumne Counties (June 15, 2011), Nevada County (June 15, 2011), and Sutter County (June 15, 2007).

(3) *Determination of attainment.* EPA is determining that the Amador and Calaveras Counties, Chico, Kern County, Mariposa and Tuolumne Counties, Nevada County, Sutter County and Ventura County 8-hour ozone nonattainment areas have attained the 1997 8-hour ozone standard, based upon complete quality-assured data for 2009–2011. Under the provisions of EPA's ozone implementation rule (see 40 CFR 51.918), these determinations suspend the attainment demonstrations and associated reasonably available control measures, reasonable further progress plans, contingency measures, and other planning SIPs related to attainment for as long as the areas continue to attain the 1997 8-hour ozone standard. If EPA determines, after notice-and-comment rulemaking, that any of these areas no longer meets the 1997 ozone NAAQS, the corresponding determination of attainment for that area shall be withdrawn.

[FR Doc. 2012–22469 Filed 9–13–12; 8:45 am]

**BILLING CODE 6560–50–P**

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 180

[EPA–HQ–OPP–2009–1008; FRL–9361–6]

#### Bifenthrin; Pesticide Tolerances

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes a tolerance for residues of bifenthrin in or on tea, dried; grass, forage; and grass, hay. Interregional Research Project Number 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA). This regulation additionally establishes time-limited tolerances in or on apple, nectarine, and peach under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The time-limited tolerances expire and are revoked on December 31, 2015. Finally, this regulation removes time-limited tolerances on orchardgrass, forage and

orchardgrass, hay, as they will be superseded by permanent tolerances.

**DATES:** This regulation is effective September 14, 2012. Objections and requests for hearings must be received on or before November 13, 2012, 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:** The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2009–1008, is available at <http://www.regulations.gov> or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at <http://www.epa.gov/dockets>.

**FOR FURTHER INFORMATION CONTACT:** Laura Nollen, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–7390; email address: [nollen.laura@epa.gov](mailto:nollen.laura@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. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. 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).

##### B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance