

# **SANDAG**

## ***San Diego Region Conformity Working Group***

### ***Agenda***

**Wednesday, July 7, 2021**

**10:30 a.m.**

**\*\*Teleconference Meeting\*\***

MEETING ANNOUNCEMENT AMIDST COVID-19 PANDEMIC:

The San Diego Region Conformity Working Group meeting scheduled for Wednesday, July 7, 2021, will be conducted virtually in accordance with Governor Newsom's State of Emergency declaration regarding the COVID-19 outbreak, Executive Order N-29-20, and the Guidance for Gatherings issued by the California Department of Public Health. Board Members will primarily participate in the meeting virtually, while practicing social distancing, from individual remote locations.

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**Public Comments:** Persons who wish to address the members on an item to be considered at this meeting, or on non-agendized issues, may email comments to the Clerk at [clerkoftheboard@sandag.org](mailto:clerkoftheboard@sandag.org) (please reference "Wednesday, July 7, 2021, Conformity Working Group Meeting," in your subject line and identify the item number(s) to which your comments pertain). Comments received by 4 p.m. on Tuesday, July 6, will be provided to members prior to the meeting.

If you desire to provide live verbal comment during the meeting, please join the Zoom meeting by computer or phone and use the "Raise Hand" function to request to provide public comment. On a computer, the "Raise Hand" feature is on the Zoom toolbar. By phone, enter \*9 to "Raise Hand" and \*6 to unmute. Requests to provide live public comment must be made at the beginning of the relevant item, and no later than the end of any staff presentation on the item. The Clerk will call on members of the public who have timely requested to provide comment by name for those joining via a computer and by the last three digits of for those joining via telephone. All comments received prior to the close of the meeting will be made part of the meeting record. Please note that any available chat feature on the Zoom meeting platform should be used by panelists and attendees solely for procedural or other "housekeeping" matters as comments provided via the chat feature will not be retained as part of the meeting record. All comments to be provided for the record must be made via email or orally per the instructions above.

# SANDAG

Welcome to SANDAG. Members of the public may speak to the Conformity Working Group on any item at the time the group is considering the item. Public speakers are limited to three minutes or less per person. The group may only take action on any item appearing on the agenda.

In order to keep the public informed in an efficient manner and facilitate public participation, SANDAG also provides access to all agenda and meeting materials online at [sandag.org/meetings](http://sandag.org/meetings). Additionally, interested persons can sign up for email notifications at [sandag.org/subscribe](http://sandag.org/subscribe).

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*Pursuing a brighter future for all.*

## **Mission Statement**

*We are the regional agency that connects people, places, and innovative ideas by implementing solutions with our unique and diverse communities.*

## **Our Commitment to Equity**

*We hold ourselves accountable to the communities we serve. We acknowledge we have much to learn and much to change; and we firmly uphold equity and inclusion for every person in the San Diego region. This includes historically underserved, systemically marginalized groups impacted by actions and inactions at all levels of our government and society.*

*We have an obligation to eliminate disparities and ensure that safe, healthy, accessible, and inclusive opportunities are available to everyone. In 2021, SANDAG will develop an equity action plan that will inform how we plan, prioritize, fund, and build projects and programs; frame how we work with our communities; define how we recruit and develop our employees; guide our efforts to conduct unbiased research and interpret data; and set expectations for companies and stakeholders that work with us.*

*We are committed to creating a San Diego region where every person who visits, works, and lives can thrive.*

San Diego Association of Governments

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# San Diego Region Conformity Working Group

Wednesday, July 7, 2021

Item No.		Action
1.	Welcome and Introductions	
+2.	<b>Approval of Meeting Minutes</b> The San Diego Region Conformity Working Group (CWG) is asked to review the minutes from its May 5, 2021, meeting.	Approve
3.	<b>Public Comments/Communications/Member Comments</b> Members of the public shall have the opportunity to address the Conformity Working Group on any issue within the jurisdiction of SANDAG that is not on this agenda.	Discussion
<b>Reports</b>		
4.	<b>San Diego Forward: The 2021 Regional Plan Update</b> <i>Sam Sanford, SANDAG</i> The Draft 2021 Regional Plan, including the Draft Air Quality Conformity analysis and the Sustainable Communities Strategy, was released for public comment on May 28, 2021. The closing date for public comments on the Draft 2021 Regional Plan is August 6, 2021. A revised air quality conformity analysis is anticipated to be provided to the CWG for review and comment in fall 2021 after addressing public comments.	Information
+5.	<b>2020 Ozone State Implementation Plan Update</b> <i>Nick Cormier, San Diego County Air Pollution Control District</i> San Diego County is designated as a non-attainment area for the federal 2008 and 2015 ozone standards, requiring the development of a revised State Implementation Plan. The San Diego County Air Pollution Control District prepared the 2020 Plan for Attaining the National Ambient Air Quality Standards for Ozone in San Diego County demonstrating attainment of both standards by mandated Clean Air Act deadlines. This item provides updates on the approval process and implementation of this plan.  A. On June 2, 2021, the U.S. Environmental Protection Agency published the final rule in the federal register for the voluntary non-attainment designation reclassification to severe for both the 2008 and 2015 ozone standards.  B. On-road transportation budgets for air quality conformity.	Information
6.	<b>EMFAC2021 Update</b> <i>Nesamani Kalandiyur, California Air Resources Board</i> The California Air Resources Board will provide an update on the status of EMFAC2021.	Information

**+7. Reconsideration of Safe Vehicles Rule Part One**

**Information**

*Sam Sanford, SANDAG*

On April 28, 2021, the U.S. Environmental Protection Agency (EPA) published in the Federal Register a Notice of Opportunity for Public Hearing and Comment related to the U.S. EPA reconsidering the withdraw of a waiver of preemption for California's Advanced Clean Car program. The program includes a zero-emission vehicle mandate and greenhouse gas emission standards. A public hearing was held on June 2, 2021, with public comments accepted through July 6, 2021.

**8. Upcoming Meetings**

The next San Diego Region Conformity Working Group meeting is scheduled for Wednesday, August 4, 2021, at 10:30 a.m.

**9. Adjournment**

+ next to an item indicates an attachment

# **SANDAG**

## **San Diego Region Conformity Working Group**

Item: **2**

July 7, 2021

Action: **Information**

### **May 5, 2021, Meeting Minutes**

Sam Sanford (SANDAG), called the meeting of the San Diego Conformity Working Group (CWG) to order at 10:33 a.m.

#### **1. Welcome and Introductions**

#### **2. Meeting Minutes (Information)**

Sam Sanford asked the CWG to review the minutes from its April 7, 2021, meeting. No comments or corrections were made.

#### **3. Public Comments/Communications (Discussion)**

Richard Radcliff (SANDAG) announced that the 2021 Regional Transportation Improvement Program (RTIP) and its conformity determination were federally approved on April 16, 2021. Amendment No. 1 to the 2021 RTIP with transit capital improvement programs was approved by Caltrans on May 3, 2021.

Amendment No. 3, the first formal amendment to the 2021 RTIP, is open and the deadline is June 6, 2021.

Lucas Sanchez (Caltrans Headquarters, Division of Planning) provided a staffing update: the Air Quality branch hired a new planner, Erika Espinosa Araiza.

Nick Cormier (San Diego Air Pollution Control District) is taking comments on the Community Emissions Reduction Plan for the Portside community.

Sam Sanford thanked Federal Highway Administration for a smooth 2021 RTIP approval process. Also, on April 28, 2021, the U.S. Environmental Protection Agency (EPA) published in the Federal Register a Notice of Opportunity for Public Hearing and Comment related to the U.S. EPA reconsidering SAFE Vehicles Rule part one. A public hearing is scheduled for June 2, 2021, and comments are being accepted through July 6, 2021.

### **Reports**

#### **4. San Diego Forward: The 2021 Regional Plan (Discussion)**

Sam Sanford provided an overview of the Air Quality Planning and Transportation Conformity appendix to the draft San Diego Forward: The 2021 Regional Plan. Following interagency consultation procedures, a preliminary draft of this documentation was provided to the CWG prior to the release of the draft document. Comments on the preliminary draft are requested by Friday, May 7, 2021. Changes made to the preliminary draft include a locator map for regional corridors, updates to interagency consultation dates, clarification on attainment deadlines, and demonstration dates.

#### **5. 2020 Ozone State Implementation Plan Update (Information)**

Nick Cormier (San Diego Air Pollution Control District) and John Kelly (U.S. EPA) provided updates on the approval process for the 2020 State Implementation Plan (SIP). The 2020 SIP was submitted to the U.S. EPA on January 8, 2021. On April 8, 2021, the U.S. EPA published the notice in the Federal Register on the voluntary reclassification request for the San Diego Region for the 2008 and 2015 ozone standards. The notice also included a summary of coordination efforts with tribal nations in the San Diego region. The effective date of the reclassification is expected to be prior to July 20, 2021. Comments on this action are due by May 10, 2021.

The U.S. EPA is working on a budget adequacy review of the on-road transportation emission values in the 2020 SIP. With an adequacy finding, the 2020 SIP budgets would be used for transportation conformity purposes.

A SIP completeness designation is expected in summer 2021 for the SIP plan itself. Following the designation, there are several actions the U.S. EPA can take on the plan over the following year. A proposal on the action by the U.S. EPA is expected by the end of the calendar year.

## **6. EMFAC 2021 Update**

Nesamani Kalandiyur (California Air Resources Board [CARB]) provided an update on the development and approval process for EMFAC 2021. The technical documentation and user guide were released and include data sources and emissions testing results. A new version of EMFAC 2021 (version 1.0.1) was also released with minor bug fixes. CARB is working on packaging this information for submittal to the U.S. EPA.

## **7. Upcoming Meetings**

The next CWG meeting is scheduled for June 2, 2021, at 10:30 a.m.

## **8. Adjournment**

Sam Sanford adjourned the meeting at 11:09 a.m.

## Confirmed Attendance at SANDAG San Diego Region Conformity Working Group Meeting

May 5, 2021

Jurisdiction	Name	Attended	Comments
California Air Resources Board	Nesamani Kalandiyur	Yes	
	Stephanie Parent	Yes	
Caltrans	Abhijit Bagde	Yes	
	Lexie Arellano	Yes	
	Lucas Sanchez	Yes	
	Muhaned Aljabiry	Yes	
Caltrans District 11	Maurice Eaton	Yes	
Federal Highway Administration	Joseph Vaughn	Yes	
Federal Transit Administration			
U.S. EPA	John Kelly	Yes	
San Diego County Air Pollution Control District	Nick Cormier	Yes	
<b>Other Attendees</b>			
<b>SANDAG Staff</b>			
	Arthur Tovar	Yes	
	Elisa Arias	Yes	
	Kendal Reynolds	Yes	
	Phil Trom	Yes	
	Richard Radcliff	Yes	
	Sam Sanford	Yes	
	Sue Alpert	Yes	

tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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 August 2, 2021. 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 24, 2021.

**Deborah Szaro,**

*Acting Regional Administrator, EPA Region 1.*

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

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

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

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

**Subpart U—Maine**

■ 2. In § 52.1020(c), amend the table by revising the entry “Chapter 119”; and by adding new State citation for “38 M.R.S. § 585–N as amended by Public Law 2019, c. 55, § 1” at the end of the table to read as follows:

**§ 52.1020 Identification of plan.**

\* \* \* \* \*  
(c) \* \* \*

**EPA-APPROVED MAINE REGULATIONS**

State citation	Title/subject	State effective date	EPA approval date and citation <sup>1</sup>	Explanations
* * * * * Chapter 119 .....	* * * * * Motor Vehicle Fuel Volatility Limit.	* * * * * July 15, 2015 .....	* * * * * June 2, 2021 [Insert <b>Federal Register</b> citation].	* * * * * Removes references from the SIP for the requirement to sell reformulated gasoline in York, Cumberland, Sagadahoc, Androscoggin, Kennebec, Knox and Lincoln counties.
* * * * * 38 M.R.S. § 585–N as amended by Public Law 2019, c. 55, § 1.	* * * * * Reformulated gasoline	* * * * * November 1, 2020 .....	* * * * * June 2, 2021 [Insert <b>Federal Register</b> citation].	* * * * * Repeals the section of the statute which requires retailers in York, Cumberland, Sagadahoc, Androscoggin, Kennebec, Knox and Lincoln counties in Maine to only sell reformulated gasoline.

[FR Doc. 2021–11320 Filed 6–1–21; 8:45 a.m.]

**BILLING CODE 6560–50–P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 81**

[EPA–R09–OAR–2021–0148; FRL–10024–30–Region 9]

**Designation of Areas for Air Quality Planning Purposes; California; San Diego County Ozone Nonattainment Area; Reclassification to Severe**

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

**ACTION:** Final rule.

**SUMMARY:** Under the Clean Air Act (CAA or “Act”), the Environmental Protection Agency (EPA) is taking final action to approve a request from the State of California to reclassify the San Diego County ozone nonattainment area from “Serious” to “Severe” for the 2008 ozone National Ambient Air Quality Standards (NAAQS) and from “Moderate” to “Severe” for the 2015 ozone NAAQS. The EPA is also finalizing our action to reclassify in the same manner as state land, reservation areas of Indian country and any other area of Indian country within it where the EPA or a tribe has demonstrated that the tribe has jurisdiction located within the boundaries of the San Diego County ozone nonattainment area. The new applicable attainment dates for the San

Diego County ozone nonattainment area are as expeditious as practicable but no later than July 20, 2027, for the 2008 ozone NAAQS, and August 3, 2033, for the 2015 ozone NAAQS. With respect to Severe state implementation plan (SIP) element submittal dates that have passed, the EPA is approving a deadline of no later than 12 months from the effective date of this rule for submittal of revisions to the San Diego County portion of the California SIP to meet additional requirements for Severe ozone nonattainment areas to the extent that such revisions have not already been submitted.

**DATES:** This rule is effective on July 2, 2021.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID



No. EPA-R09-OAR-2021-0148. All documents in the docket are listed on the <https://www.regulations.gov> website. 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 through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. **FOR FURTHER INFORMATION CONTACT:** T. Khoi Nguyen, Air Planning Office (AIR-2), EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 947-4120, or by email at [nguyen.thien@epa.gov](mailto:nguyen.thien@epa.gov).

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- II. Public Comments and EPA Responses
- III. Final Action
- IV. Statutory and Executive Order Reviews

### I. Summary of the Proposed Action

On April 8, 2021, the EPA proposed to grant a request by the California Air Resources Board (CARB) to voluntarily reclassify the San Diego County nonattainment area from Serious to Severe<sup>1</sup> for the 2008 ozone NAAQS and from Moderate to Severe for the 2015 ozone NAAQS.<sup>2</sup>

With respect to Severe SIP element submittal dates that have passed, the EPA also proposed to establish a deadline of no later than 12 months from the effective date of reclassification for submittal of revisions to the San Diego County portion of the California SIP to meet additional requirements for Severe ozone nonattainment areas to the extent that such revisions have not already been submitted. With respect to the section 185 fee program, upon reclassification to Severe, we indicated that the deadline for submittal would be July 20, 2022, for the 2008 ozone

<sup>1</sup> Throughout this document and in our proposed rule, we use the term “Severe” to refer to Severe areas that have up to 15 years to attain the ozone standards. The ozone area designation tables in 40 CFR part 81 specify “Severe-15” to distinguish such areas from “Severe-17” areas, which are Severe areas that have up to 17 years to attain the ozone standards.

<sup>2</sup> 86 FR 18227 (April 8, 2021).

NAAQS and August 3, 2028, for the 2015 ozone NAAQS pursuant to the EPA’s SIP Requirements Rules (SRR) for the 2008 and 2015 ozone NAAQS.<sup>3</sup> Upon reclassification, we noted that the new attainment dates for the San Diego County ozone nonattainment area would be as expeditiously as practicable, but no later than July 20, 2027, for the 2008 ozone NAAQS and August 3, 2033, for the 2015 ozone NAAQS. Further, as indicated in our proposed notice, the reformulated gasoline requirement will continue to apply within San Diego County upon reclassification to Severe.<sup>4</sup>

In addition, the EPA also proposed to reclassify reservation areas of Indian country and any other area of Indian country where the EPA or a tribe has demonstrated that the tribe has jurisdiction within the San Diego County nonattainment area as Severe nonattainment for the 2008 and 2015 ozone NAAQS.<sup>5</sup> Although eligible tribes may seek the EPA’s approval of relevant tribal programs under the CAA, we noted that none of the affected tribes would be required to submit an implementation plan as a result of this reclassification.

Please see our April 8, 2021 proposed rule for additional background and a more detailed explanation of our proposed action.

### II. Public Comments and EPA Responses

The public comment period on the proposed rule opened on April 8, 2021, the date of its publication in the **Federal Register**, and closed on May 10, 2021. During this period, the EPA did not receive any comments on our proposed action.

<sup>3</sup> The EPA promulgated the SRR for the 2008 and 2015 ozone NAAQS at 40 CFR part 52, subpart AA and subpart CC, respectively.

<sup>4</sup> 86 FR 18227, 18229.

<sup>5</sup> The tribes are identified in 40 CFR 81.305 and 86 FR 18227, 18229: Barona Group of Capitan Grande of Mission Indians of the Barona Reservation, Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, Capitan Grande Band of Diegueno Mission Indians of California, Ewiiapaayp Band of Kumeyaay Indians, Lipay Nation of Santa Ysabel, Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, Jamul Indian Village of California, La Jolla Band of Luiseno Indians, La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, Los Coyotes Band of Cahuilla and Cupeno Indians, Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, Pala Band of Mission Indians, Pauma Band of Luiseno Mission Indians of the Pauma and Yuima Reservation, Rincon Band of Luiseno Mission Indians of the Rincon Reservation, San Pasqual Band of Diegueno Mission Indians of California, Sycuan Band of the Kumeyaay Nation, and Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation.

### III. Final Action

For the reasons discussed in detail in the proposed rule and summarized herein, the EPA is approving the request by CARB to reclassify the San Diego County ozone nonattainment area to Severe for the 2008 and 2015 ozone NAAQS. The EPA is also reclassifying reservation areas of Indian country, and any other area of Indian country within it where the EPA or a tribe has demonstrated that the tribe has jurisdiction, located within the boundaries of the San Diego County ozone nonattainment area consistent with the reclassification of state lands (i.e., to Severe). Lastly, the EPA is setting a deadline for submittal of SIP revisions to address the Severe area requirements for San Diego County, to the extent that such revisions have not already been submitted, of no later than one year from the effective date of this rule.

### IV. 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 the 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 the 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 the 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” are 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 areas of Indian country located within the boundary of the San Diego County ozone nonattainment areas.

The EPA implements federal CAA programs, including reclassifications, in these areas of Indian country consistent with our discretionary authority under sections 301(a) and 301(d)(4) of the CAA. The 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 affect implementation of new source review for new or modified major stationary sources proposed to be located in the areas of Indian country that are being reclassified, and might affect projects proposed in these areas that require federal permits, approvals, or funding. Such projects are subject to the requirements of the 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.

Given the potential implications, the EPA contacted tribal officials early in the process of developing our proposed rule to provide an opportunity to have meaningful and timely input into its development. On December 11, 2020, we sent letters to leaders of the 17 tribal governments representing 18 areas of Indian country in the nonattainment area offering government-to-government consultation and seeking input on how we could best communicate with the tribes on this rulemaking effort. On January 12, 2021, we received a response from one tribe requesting a

webinar on this matter on behalf of a few tribes. We held this informational webinar on January 22, 2021. Additionally, we received responses from three tribes requesting formal government-to-government consultation. The consultation letters and the information and notes from the webinar and the three government-to-government consultations are included in the docket for this action. The EPA has carefully considered the views expressed by the tribes.

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 final 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.

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 the EPA interprets Executive Order 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 Executive Order 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) do not apply. 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.*).

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. The 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 August 2, 2021. 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 81

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

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

Dated: May 24, 2021.

**Deborah Jordan,**

*Acting Regional Administrator, Region IX.*

For the reasons stated in the preamble, the EPA amends 40 CFR part 81 as follows:

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

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

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

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

- 2. Section 81.305 is amended by revising the entry for “San Diego County, CA” in the table titled “California—2008 8-Hour Ozone NAAQS [Primary and Secondary],” and by revising the entry for “San Diego

County, CA” in the table titled  
 “California—2015 8-Hour Ozone

NAAQS [Primary and Secondary]” to  
 read as follows:

**§ 81.305 California.**  
 \* \* \* \* \*

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

Designated area	Designation		Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
* * * San Diego County, CA San Diego County: Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation. <sup>3</sup> Campo Band of Diegueno Mission Indians of the Campo Indian Reservation. <sup>3</sup> Capitan Grande Band of Diegueno Mission Indians of California. <sup>3</sup> Ewiiapaayp Band of Kumeyaay Indians. <sup>3</sup> Iipay Nation of Santa Ysabel. <sup>3</sup> Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation. <sup>3</sup> Jamul Indian Village of California. <sup>3</sup> La Jolla Band of Luiseno Indians. <sup>3</sup> La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation. <sup>3</sup> Los Coyotes Band of Cahuilla and Cupeno Indians. <sup>3</sup> Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation. <sup>3</sup> Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation. <sup>3</sup> Pala Band of Luiseno Mission Indians of the Pala Res- ervation. <sup>3</sup> Pauma Band of Luiseno Mission Indians of the Pauma and Yuima Reservation. <sup>3</sup> Rincon Band of Luiseno Mission Indians of the Rincon Reservation. <sup>3</sup> San Pasqual Band of Diegueno Mission Indians of Cali- fornia. <sup>3</sup> Sycuan Band of the Kumeyaay Nation. <sup>3</sup> Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians. <sup>3</sup>	.....	Nonattainment ..	July 2, 2021 .....	Severe-15.
* * *	*	*	*	*

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

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

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

\* \* \* \* \*

**CALIFORNIA—2015 8-HOUR OZONE NAAQS**  
 [Primary and Secondary]

Designated area <sup>1</sup>	Designation		Classification	
	Date <sup>2</sup>	Type	Date <sup>2</sup>	Type
* * * San Diego County, CA <sup>2</sup> San Diego County: <sup>2</sup> Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation. Campo Band of Diegueno Mission Indians of the Campo Indian Reservation. Capitan Grande Band of Diegueno Mission Indians of California. Ewiiapaayp Band of Kumeyaay Indians. Iipay Nation of Santa Ysabel.	.....	Nonattainment ..	July 2, 2021 .....	Severe-15.

CALIFORNIA—2015 8-HOUR OZONE NAAQS—Continued  
[Primary and Secondary]

Designated area <sup>1</sup>	Designation		Classification	
	Date <sup>2</sup>	Type	Date <sup>2</sup>	Type
Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation. Jamul Indian Village of California. La Jolla Band of Luiseno Indians. La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation. Los Coyotes Band of Cahuilla and Cupeno Indians. Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation. Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation. Pala Band of Luiseno Mission Indians of the Pala Reservation. Pauma Band of Luiseno Mission Indians of the Pauma and Yuima Reservation. Rincon Band of Luiseno Mission Indians of the Rincon Reservation. San Pasqual Band of Diegueno Mission Indians of California. Sycuan Band of the Kumeyaay Nation. Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians.				
* * * * *				

<sup>1</sup> Includes any Indian country in each county or area, unless otherwise specified. EPA is not determining the boundaries of any area of Indian country in this table, including any area of Indian country located in the larger designation area. The inclusion of any Indian country in the designation area is not a determination that the state has regulatory authority under the Clean Air Act for such Indian country.

<sup>2</sup> This date is August 3, 2018, unless otherwise noted.

\* \* \* \* \*  
[FR Doc. 2021-11524 Filed 6-1-21; 8:45 am]  
BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 141**

[EPA-HQ-OW-2021-0079; FRL 10022-49-OW]

**Expedited Approval of Alternative Test Procedures for the Analysis of Contaminants Under the Safe Drinking Water Act; Analysis and Sampling Procedures**

**Correction**

In rule document 2021-10974 appearing on pages 28277 through 28290 in the issue of Wednesday, May 26, 2021, make the following correction:

**PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS [CORRECTED]**

■ 1. On page 28285, in the table entitled “ALTERNATIVE TESTING METHODS FOR CONTAMINANTS LISTED AT 40 CFR 141.23 (k)(1)”, in the second row from the bottom of the page “pH”, in columns four, five and six, “4500-H + B” should read, “4500-H + B”

■ 2. On page 28286, in the table entitled “ALTERNATIVE TESTING METHODS FOR CONTAMINANTS LISTED AT 40 CFR 141.24 (e)(1)”, in the first column entitled “Contaminant”, the twenty-fourth line, “. . . . .” should read, “Alachlor.”

■ 3. On page 28286, in the table entitled “ALTERNATIVE TESTING METHODS FOR CONTAMINANTS LISTED AT 40 CFR 141.24 (e)(1)”, in the first column entitled “Contaminant”, the twenty-fourth line, the third row “. . . . .” should read, “525.3<sup>24</sup>”

■ 4. On page 28286, in the table entitled “ALTERNATIVE TESTING METHODS FOR CONTAMINANTS LISTED AT 40 CFR 141.24 (e)(1)”, in the first column entitled “Contaminant”, the twenty-eighth row, beneath “Carbofuran” currently reads, “. . . . .” and should read, “Chlordane”.

[FR Doc. C1-2021-10974 Filed 6-1-21; 8:45 am]

BILLING CODE 0099-10-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Medicare & Medicaid Services**

**42 CFR Parts 405, 417, 422, 423, 455 and 460**

[CMS-4190-F3]

RIN 0938-AT97

**Medicare and Medicaid Programs; Contract Year 2022 Policy and Technical Changes to the Medicare Advantage Program, Medicare Prescription Drug Benefit Program, Medicaid Program, Medicare Cost Plan Program, and Programs of All Inclusive Care for the Elderly; Corrections**

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

**ACTION:** Final rule; correction and correcting amendment.

**SUMMARY:** This document corrects technical and typographical errors in the final rule that appeared in the January 19, 2021 **Federal Register** titled “Medicare and Medicaid Programs; Contract Year 2022 Policy and Technical Changes to the Medicare

## California State Motor Vehicle Pollution Control Standards; Advanced Clean Car Program; Reconsideration of a Previous Withdrawal of a Waiver of Preemption; Opportunity for Public Hearing and Public Comment

The U.S. Environmental Protection Agency (EPA) is soliciting public input on the reconsideration of EPA's actions under the joint EPA/National Highway Traffic Safety Administration (NHTSA) action titled: *The Safer Affordable Fuel-Efficient Vehicles Rule Part One: One National Program* (SAFE-1). EPA is taking this action as directed in President Biden's Executive Order 13990 on *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis*, and in response to requests by states and other stakeholders.

In SAFE-1, EPA withdrew the 2013 Clean Air Act (CAA) waiver that had allowed California to enforce its greenhouse gas (GHG) standards for cars and light trucks and zero-emission vehicle (ZEV) sales mandate adopted as a part of the state's Advanced Clean Car (ACC) program. SAFE-1 also interpreted the CAA as not allowing other States to adopt California's GHG standards. EPA is now reconsidering SAFE-1 for the purpose of determining whether the waiver withdrawal was a valid and appropriate exercise of the Agency's authority consistent with judicial precedent, and whether SAFE-1 should now be rescinded.

### Clean Air Act Legal Framework Regarding State Emissions Standards for New Motor Vehicles

- CAA section 209(a) generally preempts states from regulating emissions from new motor vehicles and new motor vehicle engines.

- CAA section 209(b) allows California to enforce emission standards for motor vehicles and engines if EPA grants a waiver from the general preemption contained in CAA section 209(a).
- CAA Section 209(b) states that EPA shall grant a waiver unless it finds that California:
  - was arbitrary and capricious in its finding that its standards are, in the aggregate, at least as protective of public health and welfare as applicable federal standards;
  - does not need such standards to meet compelling and extraordinary conditions; or
  - has standards that are not consistent with Section 202(a) of the Clean Air Act.
- Once California files a waiver request, EPA publishes a notice for public hearing and written comment in the Federal Register.
- Section 177 allows other States to adopt California’s motor vehicle emission standards for which EPA has granted a waiver if other specified criteria are met.

## Summary of SAFE-1

- SAFE-1 included EPA’s determination that the Agency had the authority to reconsider the 2013 waiver issued to California for the GHG emission standards and ZEV mandate portions of California’s ACC program.
- NHTSA took a separate action within SAFE-1 that interpreted fuel economy preemption under the Energy Policy and Conservation Act (EPCA) to include state GHG emission standards and ZEV mandates.
- EPA withdrew California’s waiver based on NHTSA’S EPCA preemption action as well as a new interpretation of a waiver criterion within the CAA.
- EPA asserted that California’s waiver should be withdrawn under a waiver criterion that EPA believed required a demonstration that California must “need” its GHG emission standards “to meet compelling and extraordinary conditions,” as required by the CAA. Historically, EPA has interpreted this waiver provision as only requiring a demonstration that California needs its own motor vehicle emission program to meet serious air quality conditions in California. However, in SAFE-1 EPA also asserted that, even if California does have compelling and extraordinary conditions, California does not “need” the GHG standards under section 209(b)(1)(B) because they will not meaningfully address global air pollution problems of the sort associated with GHG emissions.
- Finally, SAFE-1 included EPA’s non-regulatory interpretation of CAA section 177. This section allows states to opt-into California motor vehicle emission standards if certain criteria are met. SAFE-1 interpreted section 177 as precluding states from adopting California’s GHG emissions standards.

## Summary of the Notice to Reconsider SAFE-1

- EPA's Notice of Reconsideration of SAFE-1 seeks public comment on whether the decision to withdraw portions of California's 2013 ACC program waiver was a valid and appropriate exercise of the Agency's authority. This Notice of Reconsideration seeks comment on several issues in SAFE-1 including:
- Whether it was proper for EPA to reconsider a previously issued CAA waiver;
- Whether EPA's action to withdraw California's waiver in consideration of EPCA preemption was appropriate;
- Whether the interpretation of CAA section 209(b)(1)(B) presented in SAFE-1 as another reason for withdrawing California's waiver was appropriate; and
- Whether EPA's interpretation in SAFE-1 of section 177 of the CAA that allows States to adopt California motor vehicle emission standards, but not California's GHG standards, was appropriate.
- If EPA determines that SAFE-1 was inappropriate and rescinds that action in a final determination, then the ZEV mandate and GHG emission standards within the ACC program would become effective.

## Key Milestones

- In **2012**, the California Air Resources Board (CARB) finalized the ACC program. The program combined control of smog and soot-causing pollutants and greenhouse gas emissions into a single coordinated package of requirements for passenger cars, light-duty trucks, and medium-duty passenger vehicles, and set requirements for sales of ZEVs in the state.
- In **2013**, EPA granted a waiver of CAA section 209 preemption for California's ACC regulations.
- In **2018**, EPA and NHTSA issued a joint proposal titled *The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks*. In this action, EPA proposed to relax Federal greenhouse gas emissions standards for light duty vehicles for model years 2021-2026 and withdraw the waiver for the ACC program GHG emission standards and ZEV mandate.
- In **September 2019**, NHTSA and EPA issued the SAFE-1 final action. In SAFE-1, EPA withdrew the ACC waiver issued in 2013 as it relates to GHG emission standards and the ZEV mandate.
- In **October 2019** California submitted a petition for clarification/reconsideration asking EPA to clarify the scope of SAFE-1.

- In **November 2019**, California, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Minnesota, Nevada, New Jersey, New Mexico, New York, North Carolina, Oregon, Rhode Island, Vermont, Washington, and Wisconsin, the People of the State of Michigan, the Commonwealths of Massachusetts, Pennsylvania, and Virginia, the District of Columbia, and the Cities of Los Angeles, New York, San Francisco, and San Jose filed a petition for EPA to reconsider SAFE-1.
- In **November 2019**, a petition for reconsideration was filed with EPA by several environmental groups, including the Center for Biological Diversity, Chesapeake Bay Foundation, Environment America, Environmental Defense Fund, Environmental Law & Policy Center, Natural Resources Defense Council, Public Citizen, Inc., Sierra Club, and the Union of Concerned Scientists.
- On **January 20, 2021**, President Biden issued Executive Order 13990 on *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis*. The President directed the Federal Agencies to “immediately review” SAFE-1, among other actions, and to consider “suspending, revising, or rescinding” the action by April 2021.

## Public Participation Opportunities

EPA welcomes your comments on this Notice. The written comment period closes July 6, 2021. All comments should be identified by Docket ID No. EPA-HQ-OAR-2021-0257 and submitted at [www.regulations.gov](http://www.regulations.gov). For additional submission methods, please visit [www.epa.gov/dockets/commenting-epa-dockets](http://www.epa.gov/dockets/commenting-epa-dockets). A virtual, public hearing will be held on June 2, 2021. You may register for the public hearing by emailing; [SAFE1Hearing@epa.gov](mailto:SAFE1Hearing@epa.gov). Additional information about the hearing can be found at [www.epa.gov/regulations-emissions-vehicles-and-engines/public-hearing-information-epas-notice-reconsideration](http://www.epa.gov/regulations-emissions-vehicles-and-engines/public-hearing-information-epas-notice-reconsideration) and in the *Federal Register* notice announcing EPA’s reconsideration of SAFE-1.

## For More Information

You can access the Notice and related documents on EPA’s Office of Transportation and Air Quality (OTAQ) website at:

[www.epa.gov/regulations-emissions-vehicles-and-engines/notice-reconsideration-previous-withdrawal-waiver](http://www.epa.gov/regulations-emissions-vehicles-and-engines/notice-reconsideration-previous-withdrawal-waiver).