

State of California
AIR RESOURCES BOARD

**Final Statement of Reasons for Rulemaking,
Including Summary of Comments and Agency Responses**

**2013 AMENDMENTS TO THE AREA DESIGNATIONS
FOR STATE AMBIENT AIR QUALITY STANDARDS**

I. GENERAL

On October 23, 2013, the Air Resources Board (ARB or Board) released a notice of request for public comment period to consider amendments to the area designations for State ambient air quality standards (State standards), contained in title 17, California Code of Regulations (CCR), sections 60200 through 60210. The Staff Report: Initial Statement of Reasons for Rulemaking, entitled *Proposed 2013 Amendments to Area Designations for State Ambient Air Quality Standards* (staff report or ISOR), was also made available to the public on October 23, 2013. The ISOR, which is incorporated by reference herein, contained a description of the rationale for the proposed amendments. The Final Statement of Reasons for Rulemaking updates the ISOR by summarizing written and oral comments received during the 45-day public comment period and any changes to the ISOR since its initial release.

Following the end of the public comment period, and in the absence of any request to hold a public hearing, the Executive Officer, acting on behalf of the Board, adopted amendments to the area designation regulations by Executive Order R-14-001. These regulations set forth designations of attainment, nonattainment, nonattainment-transitional, and unclassified for each area of the State with respect to the State standards. Health and Safety Code (H&SC) section 39608(c) requires the Board to conduct an annual review of the area designations and update them as warranted. Title 17, CCR, sections 70300 through 70306, gives the Executive Officer, or his or her delegate, the authority to conduct the annual review, redesignate areas, as appropriate, for the State standards, and hold a public hearing, if requested.

Based on data collected during 2010 through 2012, the Executive Officer redesignated areas for five of the criteria pollutants. For fine particulate matter (PM_{2.5}), Glenn and Sacramento Counties in the Sacramento Valley Air Basin, and that portion of the Salton Sea Air Basin located outside the city of Calexico, were redesignated as attainment. For suspended particulate matter (PM₁₀), Del Norte and Trinity Counties in the North Coast Air Basin were redesignated as attainment. For nitrogen dioxide, the South Coast Air Basin was redesignated as attainment. For lead (particulate), Los Angeles County in the South Coast Air Basin was redesignated as attainment. The Executive Officer also amended the area designation regulations to reflect the change in designation for ozone from nonattainment-transitional to nonattainment for Yolo County and the Sacramento Valley Air Basin portion of Solano County, as well as the change in designation from nonattainment-

transitional to attainment for Colusa and Glenn Counties in the Sacramento Valley Air Basin. The designations the Executive Officer adopted are summarized in Table 1.

TABLE 1
PROPOSED AMENDMENTS TO AREA DESIGNATIONS FOR STATE STANDARDS
(Based on 2010-2012 data)

Pollutant	Designation Area	Current Designation	Proposed Designation
Ozone	Sacramento Valley Air Basin		
	Colusa County	NA-T	A
	Glenn County	NA-T	A
	Solano County	NA-T	N
	Yolo County	NA-T	N
NO₂	South Coast Air Basin		
	Entire Air Basin	N	A
Lead	South Coast Air Basin		
	Los Angeles County	N	A
PM₁₀	North Coast Air Basin		
	Del Norte County	N	A
	Trinity County	N	A
PM_{2.5}	Sacramento Valley Air Basin		
	Glenn County	U	A
	Sacramento County	N	A
	Salton Sea Air Basin		
	Remainder of Air Basin (outside of the City of Calexico)	U	A

Designation Categories:

A = Attainment; N = Nonattainment; NA-T = Nonattainment-Transitional; U = Unclassified.

Update of Information Contained in the Initial Statement of Reasons (ISOR)

The ISOR was made available to the public on October 23, 2013. One nonsubstantive change was made after its release; this change is detailed below.

H&SC section 40718 requires ARB to publish maps showing the areas with one or more violations of both the State standards and the National Ambient Air Quality Standards (NAAQS). Appendix C of the ISOR fulfills this requirement. In this appendix, Page C-28 (Figure 11, Area Designations for National Ambient Air Quality Standards – 8-Hour Ozone) is hereby replaced with the attached Figure 11. This figure, not part of the regulatory order, is being replaced because of two inadvertent errors on the map. In preparing this map, the default shading for all areas is blank. Areas designated by the U.S. Environmental Protection Agency (U.S. EPA) as unclassified/attainment remain blank. A cross-hatch pattern is used to identify those areas designated by U.S. EPA as nonattainment. The two

errors are associated with Eastern San Luis Obispo County in the South Central Coast Air Basin and a small area known as the Tuscan Buttes in Tehama County in the Sacramento Valley Air Basin. These two areas were inadvertently shown in Figure 11 as unclassified/attainment. However, as discussed below, it is clear that both areas should be reflected on the map as nonattainment. Correction of these errors do not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision.

A. The maps are not “regulations,” and therefore, not part of the Regulation Order.

The maps are provided as a visual display of the status of each area. The actual state designations are found in the regulations at title 17, CCR, sections 60200 through 60210. While the state designations are enforced or administered by ARB, the federal designations are enforced or administered by U.S. EPA. Therefore, changes to the federal maps to correct inadvertent errors are not subject to the Administrative Procedures Act, because they are not “regulations.” (*Savient Pharmaceuticals, Inc. v. Department of Health Services* (2007) 146 Cal.App.4th 1457, 1470 [regulations implement, interpret, or make specific the law enforced or administered by the agency, or govern the agency's procedure.])

B. ARB did not intend to change the federal designations of these two areas.

Before demonstrating that the errors were inadvertent and that the replacement of Figure 11 is non-substantive, it is important to understand the federal designation process. In order for an area to be designated as attainment, nonattainment, or unclassified for any of the NAAQS, the States submit their recommendations to U.S. EPA (42 United States Code (U.S.C.) § 7407(d)(1)(A)) and U.S. EPA promulgates the designations (42 U.S.C. §7407(d)(1)(B)) including publication in the Federal Register (42 U.S.C. §7407(d)(2).)

The general process for designating areas pursuant to the NAAQS begins with ARB obtaining, validating, and reviewing data; ARB proposing federal designations to U.S. EPA; U.S. EPA reviewing the data and ARB's recommendations; U.S. EPA providing public notice of its proposed designations; and U.S. EPA publishing final designations in the Federal Register. Changing the federal designation on a figure in this rulemaking document does not, nor is it meant to, satisfy the federal designation process.

1. ARB recommended areas as nonattainment for the federal 8-hour ozone standard. On March 11, 2009, ARB recommended to U.S. EPA that Eastern San Luis Obispo and Tuscan Buttes be designated as nonattainment. ARB's recommendations can be found here: http://www.epa.gov/air/ozonepollution/designations/2008standards/rec/letters/09_CA_rec.pdf. Clearly, as ARB intended that these areas be designated as nonattainment, the errors found in the map are inadvertent.
2. ARB sent updated recommendations to U.S. EPA, again recommending nonattainment for these areas. On October 12, 2011, ARB sent an updated request to U.S. EPA, again recommending that these areas be designated as nonattainment.

The updated recommendation can be found here:

http://www.epa.gov/air/ozonepollution/designations/2008standards/rec/letters/09_CA_rec2.pdf.

3. U.S. EPA agreed with ARB's recommendations to designate these areas as nonattainment. On December 9, 2011, U.S. EPA wrote to ARB, agreeing that these areas should be designated as nonattainment. U.S. EPA's letter can be found here: http://www.epa.gov/air/ozonepollution/designations/2008standards/rec/eparesp/R9_CA_resp.pdf.
4. U.S. EPA formally designated these areas as nonattainment. On May 21, 2012, U.S. EPA published their final recommendation in the Federal Register: <http://www.gpo.gov/fdsys/pkg/FR-2012-05-21/pdf/2012-11618.pdf>. Consistent with this publication, U.S. EPA listed both areas as nonattainment on its website, which can be found here: <http://www.epa.gov/air/oaqps/greenbk/hnccs.html#CALIFORNIA>.

A designation for an area remains in effect until the area is redesignated by U.S. EPA in accordance with the procedures in section 7401(d)(3) or (4) of title 42 of the U.S.C. (42 U.S.C. §7407(d)(1)(B)(iv).) However, an area designated as nonattainment for ozone may not be redesignated pursuant to section 7407(d)(4) of title 42 of the U.S.C., i.e., an area may only be redesignated from nonattainment to attainment for ozone pursuant to section 7404(d)(3) of title 42 of the U.S.C. (42 U.S.C. §7407(d)(4)(A)(iii).) In order for an area to be redesignated from nonattainment to attainment for ozone, U.S. EPA must make specific determinations and approvals (42 U.S.C. §7407(d)(3)(E).) As U.S. EPA has not made these determinations and approvals, promulgated attainment designations for these areas, or published in the Federal Register an intent to designate these areas as attainment, ARB's publication of a map containing errors suggesting Eastern San Luis Obispo and Tuscan Buttes changed from nonattainment to attainment does not satisfy the Clean Air Act procedural requirements for redesignation of nonattainment ozone areas. Clearly, the errors in the map were unintended and have no legal significance.

1. The correct nonattainment designations are reflected in Table 11, National Ambient Air Quality Standards, Area Designations for 8-Hour Ozone, which is found in Appendix C, page C-29 of the ISOR. In the previous year, these designations were correctly reflected as nonattainment in both the map (Figure 11) and the accompanying table (Table 11) in Appendix C of *Proposed 2012 Amendments to Area Designations for State Ambient Air Quality Standards*, released July 20, 2012, and approved by OAL on January 22, 2013.
2. Although Eastern San Luis Obispo and Tuscan Buttes were designated in 2012 as nonattainment for ozone, they were classified as Marginal Nonattainment Areas. Marginal nonattainment areas have no formal SIP requirements beyond attaining the NAAQS within the specified time frame. Correcting the inadvertent miscoding on the federal ozone map from unclassified/attainment to nonattainment does alter any requirement, right, or responsibility.

Fiscal Impacts

The Executive Officer has determined that this regulatory action will not result in a mandate to any local agency or school district, the costs of which are reimbursable by the State pursuant to Part 7 (commencing with section 17500), Division 4, title 2 of the Government Code.

The Executive Officer has determined that this regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons.

In accordance with Government Code section 11346.3, the Executive Officer has determined that this regulatory action will not affect the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California.

In addition, the Executive Officer has determined that there will be no, or an insignificant, potential cost impact, as defined in Government Code section 11346.53(e), on private persons or businesses directly affected resulting from this regulatory action.

Finally, the Executive Officer has determined, pursuant to title 1, CCR, section 4, that this regulatory action will not affect small businesses because the proposed regulatory action does not contain any requirements for action.

Consideration of Alternatives

H&SC section 39608 requires an annual review of the area designations for State standards. The proposed area designations reflect the most current and complete ambient air quality data, collected during 2010 through 2012. The Executive Officer considered the potential alternatives to the proposed amendments, namely the no action alternative. However, based on the available data, the Executive Officer found that the proposed amendments are more appropriate than the no action alternative, which would not be consistent with State law. Furthermore, the no action alternative would not serve to inform the public about the healthfulness of air quality.

In summary, the Executive Officer determined that no alternative considered by the agency would be more effective in carrying out the purpose for which the regulatory action was proposed or would be as effective and less burdensome to affected private persons than the action taken by the Executive Officer, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

In rejecting the no action alternative, the Executive Officer determined the proposed amendments give the public, businesses, and government an indication of whether the health-based standards are being met. This information allows the public to make more

educated decisions regarding personal health and residency, as well as participation in outdoor activities. In addition, businesses and government are given the opportunity to make informed decisions regarding worker health and safety.

Benefits:

Environmental Justice. Some communities experience higher exposures to air pollutants, and it is a priority of ARB to ensure that full protection is afforded to all Californians. Although they do not contain any requirements for action, the proposed amendments to the area designations classify the air quality in communities as to whether it meets the State's health-based standards.

Safeguarding the quality of the physical environment. An area's designation status provides a classification that assists local districts to more accurately assess local air quality. Although changes to areas' designations require no direct action, indirect benefits to the quality of the physical environment may result.

Encouraging a regional approach to the State ambient air quality, whenever possible. The proposed designations by discrete areas allow each local district to assess the air quality of individual areas and address their unique situations and needs. This approach enables each local district to identify the most cost-effective, efficient, and acceptable approach to achieve the ambient air quality standards.

Consistency with the State goal of providing a decent home and suitable living environment. The annual review and update of the area designations gives local districts an indication of whether the health-based standards are being met. This information enables local districts to make informed decisions regarding appropriate actions to meet the air quality standards.

Modifications to the Original Proposal

There were no modifications to the original proposal. The amended regulations, which the Executive Officer adopted, are identical to those initially proposed by the staff and made available in the staff report released on October 23, 2013.

II. SUMMARY OF COMMENTS AND AGENCY RESPONSES

No comments were received during the 45-day comment period, which began on October 28, 2013 and ended on December 11, 2013. In addition, there were no requests for a public hearing as outlined in the notice for public comment released on October 23, 2013.