6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 49 and 81

[EPA-R09-OAR-2014-0869; FRL-9921-35-Region-9]

Approval of Tribal Implementation Plan and Designation of Air Quality Planning Area; Pechanga Band of Luiseño Mission Indians

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to revise the boundaries of the Southern California air quality planning areas to designate the reservation of the Pechanga Band of Luiseño Mission Indians of the Pechanga Reservation, California as a separate air quality planning area for the 1997 8-hour ozone National Ambient Air Quality Standard. The EPA is also proposing to approve the Tribe's tribal implementation plan for maintaining the 1997 ozone standard within the Pechanga Reservation through 2025 because it meets the Clean Air Act's and the EPA's requirements for maintenance plans. Lastly, based in part on the proposed approval of the maintenance plan, EPA is proposing to grant a request from the Tribe to redesignate the Pechanga Reservation ozone nonattainment area to attainment for the 1997 8-hour ozone standard because the area meets the statutory requirements for redesignation under the Clean Air Act.

DATES: Written comments must be received on or before [**INSERT DATE 30 DAYS AFTER DATE OF PUBLICATON IN THE FEDERAL REGISTER**].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-OAR-2014-0869, by one of the following methods:

1. http://www.regulations.gov: Follow the on-line instructions for submitting comments.

2. E-mail: israels.ken@epa.gov.

3. Fax: 415-947-3579.

4. Mail or deliver: Ken Israels (Mailcode AIR-8), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Instructions: All comments will be included in the public docket without change and may be made available online at 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 that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through the http://www.regulations.gov or e-mail. 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 e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. 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.

Docket: The index to the docket for this action is available electronically at http://www.regulations.gov and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed directly below.

FOR FURTHER INFORMATION CONTACT: Ken Israels, Grants and Program Integration Office (AIR-8), U.S. Environmental Protection Agency, Region IX, (415) 947-4102, israels.ken@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, the terms "we," "us," "our," and "Agency" refer to the EPA.

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I. Background

A. Pechanga Band of Luiseño Mission Indians of the Pechanga Reservation

The Pechanga Band of Luiseño Mission Indians of the Pechanga Reservation (Pechanga Tribe or "Tribe") is a federally recognized tribe whose reservation ("Pechanga Reservation" or "reservation") straddles the boundary between western Riverside County and northern San Diego County where Temecula Valley meets

the complex topography that forms the boundary between these two counties. See figure 1-1 of the Tribe's "Ozone Redesignation Request and Maintenance Plan for Pechanga Band of Luiseño Mission Indians of the Pechanga Reservation Nonattainment Area (May 2014)" for an illustration of the boundaries of the Pechanga Reservation.

The Pechanga Reservation consists of 6,700 acres located in the northwestern portion of the Cleveland National Forest, ranging between 1,100 and 2,600 feet in elevation and is home to approximately 800 full-time residents.[1] Most of the Pechanga Reservation is located north of the Riverside County-San Diego County boundary in Riverside County, just south of the City of Temecula, but a small portion of the reservation is located south of the boundary in San Diego County. The Pechanga Reservation has one major stationary source of emissions, the Pechanga Casino and Resort, within the reservation boundaries.[2] Other sources of emissions include local traffic to and from the casino and resort, parking structures, a golf course, a gas station, and a recreational vehicle (RV) park.

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[1] See EPA's 2008 8-hour ozone standard designations Technical Support Document (TSD) found at http://www.epa.gov/groundlevelozone/designations/2008standards/documents/R9_CA_TSD_FINAL.pdf

[2] In this context, given the designation and classification of the area for ozone, "major source" refers to a stationary source with a potential to emit greater than 10 tons per year of either ozone precursor (i.e., volatile organic compounds or oxides of nitrogen).

In 2013, the EPA determined that the Pechanga Tribe is eligible for treatment in the same manner as a state (also referred to as "TAS") for purposes of CAA sections 105, 107(d), 126, and 505(a)(2).[3] More recently, the EPA determined that the Tribe is eligible for TAS for purposes of CAA sections 110 and 175A and the submitted maintenance plan.[4] As such, the Pechanga Tribe is authorized to request EPA to redesignate an area under section 107(d) and is authorized to submit a section 175A maintenance plan for review and approval or disapproval under section 110(k). EPA reviews such a maintenance plan in accordance with the same provisions for review set forth in CAA section 110 for section 175A maintenance plans submitted by a state. See CAA section 110(o).

B. National Ambient Air Quality Standards

The Clean Air Act (CAA or "Act") requires the EPA to establish National Ambient Air Quality Standards (NAAQS or "standards") for pollutants that "may reasonably be anticipated to endanger public health and welfare" and to develop a primary and secondary standard for each NAAQS. The primary standard is designed to protect human health with an adequate margin of

[3] Letter from Jared Blumenfeld, Regional Administrator, EPA Region IX, to Mark Macarro, Tribal Chairman, Pechanga Tribe, dated July 23, 2013.
[4] Letter from Jared Blumenfeld, Regional Administrator, EPA Region IX, to Mark Macarro, Tribal Chairman, Pechanga Tribe, dated December 4, 2014.

safety and the secondary standard is designed to protect public welfare and the environment. The EPA has set NAAQS for six common air pollutants, referred to as "criteria" pollutants: ozone, carbon monoxide, nitrogen dioxide, sulfur dioxide, particulate matter, and lead.

In 1979, the EPA promulgated the first ozone[5] standard of 0.12 parts per million (ppm), averaged over a 1-hour period ("1-hour ozone standard"), to replace an earlier photochemical oxidant standard. In 1997, the EPA revised the ozone standard to 0.08 ppm, 8-hour average ("1997 ozone standard"), and then, in 2008, lowered the 8-hour ozone standard to 0.075 ppm ("2008 ozone standard"). This proposed action primarily relates to the designations and classifications of the Pechanga Reservation for the 1997 ozone standard, but, as explained below, would have implications for the 1-hour ozone standard as well.

C. Air Quality Implementation Plans, Area Designations and Classifications

Under section 110 of the CAA, states must adopt and submit state implementation plans (SIPs) to implement, maintain, and

[5] Ground-level ozone is a gas that is formed by the reaction of volatile organic compounds (VOC) and oxides of nitrogen (NO_x) in the atmosphere in the presence of sunlight. These precursor emissions are emitted by many types of pollution sources, including power plants and industrial emissions sources, on-road and off-road motor vehicles and engines, and smaller sources, collectively referred to as area sources.

enforce the NAAQS. SIPs do not as a general matter apply within Indian reservations, but eligible tribes may (but are not required to) choose to adopt and submit tribal implementation plans (TIPs) that serve the same types of functions in areas under tribal jurisdiction as SIPs serve within areas subject to state jurisdiction. Where necessary or appropriate to protect air quality, EPA must establish without unreasonable delay Federal implementation plans (FIPs) where a tribe does not do so. See 40 CFR 49.11.

Under the 1977 amendments to the CAA, EPA designated all areas of the country as attainment, nonattainment, or unclassifiable for each of the NAAQS. *See* 43 FR 8962 (March 3, 1978). These designations were generally based on monitored air quality values compared to the applicable standard. Under the 1990 amendments to the CAA, ozone nonattainment areas were further classified as "Marginal," "Moderate," "Serious," "Severe" or "Extreme" depending upon the severity of the ozone problem.[6]

States with nonattainment areas are subject to the requirements to adopt and submit SIP revisions that, among other things, impose stringent requirements on new or modified major

[6] Area designations and classifications are codified in 40 CFR part 81; area designations and classifications for California are codified at 40 CFR 81.305.

stationary sources (referred to as major source Nonattainment New Source Review ("NNSR")) and provide for attainment of the applicable ozone standard by the applicable attainment date. Areas with higher ozone classifications are given more time to attain the applicable ozone standard than areas with lower ozone classifications, but they are subject to a greater number, and more stringent, requirements, including those related to major source NNSR.

Historically, the Pechanga Reservation was included in the air quality planning area referred to as the Los Angeles-South Coast Air Basin Area ("South Coast").[7] Under the 1990 CAA amendments, the South Coast was classified as an "Extreme" ozone nonattainment area for the 1-hour ozone standard. See 56 FR 56694 (November 6, 1991).

In 2004, the EPA promulgated area designations and classifications for the 1997 ozone standard. The EPA designated the South Coast as a "Severe-17" nonattainment area.[8] See 69 FR 23858 (April 30, 2004). In 2005, EPA revoked the 1-hour ozone

[7] The South Coast includes Orange County, the southwestern two-thirds of Los Angeles County, southwestern San Bernardino County, and western Riverside County. See 40 CFR 81.305.

[8] With respect to the 1997 8-hour ozone standard, areas given the "Severe" ozone classification were split, based on the 8-hour ozone design value at the time of designation, between those for which the applicable attainment date is no later than 15 years from designation ("Severe-15") and those for which the applicable attainment date is no later than 17 years from designation ("Severe-17"). See 40 CFR 51.903, table 1.

standard, but under EPA's implementation rules governing the transition from the 1-hour ozone standard to the 1997 ozone standard (see 40 CFR 51.905), certain requirements based on an ozone nonattainment area's classification for the 1-hour ozone standard, continue to apply within areas that are designated as nonattainment for the 1997 ozone standard, such as the South Coast. The requirements that apply to an area designated as nonattainment for the 1997 ozone standard by virtue of the area's classification under the 1-hour ozone standard are referred to as "anti-backsliding" measures. The "anti-backsliding" measures are no longer applicable when the area is redesignated to attainment for the 1997 ozone NAAQS.

In 2009, we proposed to grant the State of California's request to reclassify the portion of the South Coast subject to state jurisdiction from "Severe-17" to "Extreme" for the 1997 ozone standard, and to reclassify Indian country[9] within the South Coast consistent with the state's request. See 74 FR 43654 (August 27, 2009). We finalized the reclassification action in

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

2010 as proposed, with the exception of the reservations of two specific tribes, for which we deferred final action. See 75 FR 24409 (May 5, 2010).[10] The Pechanga Reservation was one of the two areas within the South Coast for which we deferred taking final reclassification action. If we finalize this action as proposed, then we will withdraw our proposed reclassification of the Pechanga Reservation to "Extreme" for the 1997 ozone standard as moot.

In 2008, a federal land transfer pursuant to an Act of Congress modified the boundaries of the Pechanga Reservation to increase the previous reservation area by approximately 1,100 acres, including 119 acres in San Diego County. The San Diego County portion of the Pechanga Reservation is located within the "San Diego County (part)" ozone area for the 1997 ozone standard. In 2013, the EPA granted the State of California's request to redesignate the San Diego County 1997 8-hour ozone area, which, as noted above, includes the portion of the Pechanga Reservation in San Diego County, to attainment for that standard. See 78 FR 33230 (June 4, 2013). That portion of the

[10] We deferred final action to complete our review of boundary change requests we had received from the two tribes. With respect to the Pechanga Tribe, this proposed boundary change constitutes the EPA's response to its request.

Pechanga Reservation is thus already designated as attainment for the 1997 8-hour ozone standard.

Lastly, in 2012, the EPA designated the Pechanga Reservation (both the Riverside and San Diego County portions) as a separate nonattainment area for the 2008 ozone standard and classified the area as "Moderate" for that standard. See 77 FR 30088 (May 21, 2012).

D. Pechanga Tribe's 2009 Petition for Boundary Change and 2014 Submittal of Maintenance Plan and Redesignation Request

On June 23, 2009, the Pechanga Tribe submitted a petition to the EPA to create a separate ozone nonattainment area for the Pechanga Indian Reservation, or, alternatively, to move the northern boundary of the San Diego County air quality planning area for the 1997 ozone standard to include the entire extent of the reservation, thus removing it from the South Coast.[11] As noted above, we have already designated the Pechanga Reservation as a separate nonattainment area for the 2008 ozone NAAQS. In section II of this document, we evaluate the Tribe's 2009 request with respect to the 1997 ozone standard, and are proposing an action that, if finalized, will constitute our complete response to the Tribe's 2009 petition.

[11] See letter from Mark Macarro, Tribal Chairman, Pechanga Tribe, to Deborah Jordan, Director, Air Division, EPA Region IX, dated June 23, 2009.

On May 9, 2014, citing the Pechanga Tribe's June 23, 2009 petition to establish a separate Pechanga ozone nonattainment area, the Pechanga Tribe submitted a request to the EPA to redesignate the Pechanga ozone nonattainment area to attainment for the 1997 8-hour ozone NAAQS. With the redesignation request, the Pechanga Tribe included a document titled "*Ozone Redesignation Request and Maintenance Plan for Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation Nonattainment Area*" ("Pechanga Ozone Maintenance Plan"). Since then, the Pechanga Tribe has applied for, and been granted, TAS status for CAA sections 110 and 175A for the purpose of submitting and implementing a maintenance plan for the 1997 ozone standard, and on November 4, 2014, the Pechanga Tribe re-submitted the Pechanga Ozone Maintenance Plan for approval to EPA as a TIP. As described in detail in section IV of this document, we are proposing to grant the Pechanga Tribe's redesignation request and to approve the Pechanga Ozone Maintenance Plan.

II. Boundary Change Request

A. Legal Authority

Section 107(d)(3)(D) provides that a state may submit to the EPA a revised designation of any area or portion thereof

within the State. Such revised designations are referred to as "redesignations." A boundary change is one type of redesignation, and a change in status (e.g., from "nonattainment" to "attainment") is another type of redesignation. In this document, we refer to our proposed change in boundaries as a "boundary change" instead of a "redesignation" to reduce confusion with the other type of redesignation (i.e., change in status) that is also proposed herein.

The EPA has granted the Pechanga Tribe TAS status for CAA section 107(d) and thus we have reviewed the Tribe's June 23, 2009 boundary change request as a request under section 107(d)(3)(D).[12] We review such requests under CAA section 107(d)(3)(D) using the same criteria we would use if the EPA were initiating the boundary change under CAA section 107(d)(3)(A), i.e., "on the basis of air quality data, planning and control considerations, or any other air quality-related considerations the Administrator deems appropriate." In contrast, redesignations involving changes in status, specifically from "nonattainment" to "attainment" are governed

[12] We recognize that the Pechanga Tribe did not have TAS status at the time of the June 23, 2009 submittal, but we believe that our action on the June 23, 2009 submittal at this time should reflect the subsequent grant of the Tribe's application for TAS status for section 107(d) in 2013.

by the criteria in section 107(d)(3)(E), which are discussed in more detail in section III of this document.

For the reasons set forth below, we are proposing to revise the boundaries of the South Coast and San Diego air quality planning areas to establish a separate air quality planning area for the Pechanga Reservation for the 1997 8-hour ozone standard.

B. Proposed Boundary Change Making the Pechanga Reservation a Separate Nonattainment Area for the 1997 8-hour Ozone Standard

As noted above, EPA reviews requests, such as the Pechanga Tribe's June 23, 2009 request, for a boundary change "on the basis of air quality data, planning and control considerations, or any other air quality-related considerations the Administrator deems appropriate." In the context of requests from tribes for boundary changes, we have developed more specific guidance consistent with the general statutory considerations in CAA section 107(d)(3)(A). The specific guidance is titled, "Policy for Establishing Separate Air Quality Designations for Areas in Indian Country" ("Tribal Designation Policy").[13] The Tribal Designation Policy identifies the specific air quality data, planning and control

[13] See memorandum from Stephen D. Page, Director, EPA Office of Air Quality Planning and Standards, to EPA Regional Air Directors, Regions I-X, dated December 20, 2011, titled "Policy for Establishing Separate Air Quality Designations for Areas of Indian Country." A copy of the Tribal Designation Policy can be found at http://www.epa.gov/ozonedesignations/guidance.htm.

considerations, and other air quality-related considerations that the EPA deems appropriate in the context of reviewing requests from a tribe for a change in the boundaries of the air quality planning area in which the tribe is located.

Where the EPA receives a request for a boundary change from a tribe seeking to have its Indian country designated as a separate area, the policy indicates that the EPA will make decisions regarding these requests on a case-by-case basis after consultation with the tribe. As a matter of policy, the EPA believes that it is important for tribes to submit the following information when requesting a boundary change: a formal request from an authorized tribal official; documentation of Indian country boundaries to which the air quality designation request applies; concurrence with EPA's intent to include the identified tribal lands in the 40 CFR part 81 table should the EPA separately designate the area; and a multi-factor analysis to support the request. *See* Tribal Designation Policy, pages 3 and 4.

The Tribal Designation Policy states that the EPA intends to make decisions regarding a tribe's request for a separate air quality designation after all necessary consultation with the tribe and, as appropriate, with the involvement of other

affected entities, and after evaluating whether there is sufficient information to support such a designation. Boundary change requests for a separate air quality designation should include an analysis of a number of factors (referred to as a "multi-factor analysis,") including air quality data, emissions-related data (including source emissions data, traffic and commuting patterns, population density and degree of urbanization), meteorology, geography/topography, and jurisdictional boundaries.[14]

The Pechanga Tribe's boundary change request, submitted by the Tribe's Chairman on June 23, 2009, included a multi-factor analysis addressing air quality data, emissions data, meteorology, geography/topography, and jurisdictional boundaries. As such, although submitted prior to release of the Tribal Designation Policy, the Pechanga Tribe's request for a boundary change to create a separate ozone nonattainment area represents the type of formal, official request and supporting information called for in the policy. Moreover, the Tribe's June 23, 2009 submittal was supplemented by the Tribe with more recent information in the Pechanga Ozone Maintenance Plan.

[14] The Tribal Designation Policy also states that, in addition to information related to the identified factors, tribes may submit any other information that they believe is important for the EPA to consider.

Air Quality Data: For this factor, as discussed below, we considered 8-hour ozone design values for air quality monitors in and near the Pechanga Reservation, based on the 2011-2013 period (i.e., the 2013 design value). A monitor's design value is the metric or statistic that indicates whether that monitor attains a specific air quality standard. The 1997 ozone NAAQS is met at a monitor when the annual fourth-highest daily maximum 8-hour average concentration, averaged over 3 years, is 0.08 ppm or less. See 40 CFR 50.10. A design value is only valid if minimum data completeness criteria are met. See 40 CFR part 50, appendix I. Monitors that are eligible for providing design value data include monitors that are sited in accordance with 40 CFR part 58, appendix D (section 4.1), are federal reference method (FRM) or federal equivalent method (FEM) monitors, and meet the requirements of 40 CFR part 58, appendix A.

The Pechanga Tribe began operation of an FEM ozone monitor on the reservation in June 2008, but the data does not meet the completeness criteria for the 2011-2013 period. However, there is another FEM ozone monitoring site in the vicinity of the reservation. The monitoring site, referred to as the "Temecula" site, is operated by the South Coast Air Quality Management District (SCAQMD) at a location approximately 10 miles north of

the reservation, and as explained further in section IV.A of this document, the data from the Temecula site is considered representative of ozone conditions at the Pechanga Reservation and is complete for 2011-2013.

The 2013 design value based on data from the Temecula site is 0.077 ppm, which, given the representativeness of the Temecula data, means that current air quality at the Pechanga Reservation meets the 1997 ozone standard of 0.08 ppm.[15] In contrast, ozone concentrations are higher farther north in Riverside County and lower farther south in San Diego County. For instance, the next closest ozone monitoring site in Riverside County is the Lake Elsinore site, which is about 20 miles northwest of the reservation and which has a design value for 2011-2013 of 0.086 ppm, and which violates the 1997 ozone standard. The next closest ozone monitoring site in San Diego County is the Escondido site, which is about 20 miles south of the reservation and which has a design value for the same period of 0.069 ppm. Thus, in this portion of southern Riverside County and northern San Diego County, ozone concentrations generally

[15] In fact, the Pechanga data are consistently less than or equal to the Temecula and Lake Elsinore data for the 2011-2013 timeframe.

decrease from north to south, but vary less moving east and west from the reservation.[16]

Emissions-Related Data: For this factor, we reviewed documentation provided in Pechanga's June 23, 2009 boundary change request and more recent information submitted with the Pechanga Ozone Maintenance Plan, as well as the Tribe's application for a "part 71" (i.e., title V) permit for the Pechanga Resort and Casino, and related annual emissions reports.[17] Based on information contained in the cited references, we estimate that current actual emissions from sources operating on the Pechanga Reservation are approximately 5.8 tons per year (tpy) of VOC and 10.7 tpy of NO_x. Sources that contribute to this total include stationary sources operating at the casino, such as a gas turbine, boilers, emergency generators, and a fire water pump; and emergency generators operating at the government center, the fire station, the gasoline station/mini-mart, and at various wells. Also contributing to the total are area sources such as consumer product use and gasoline loading, storage, and dispensing at the

[16] See pages II-2-28 through II-2-37 in Appendix II ("Current Air Quality") of the South Coast Air Quality Management District's 2012 Air Quality Management Plan (February 2013) for figures illustrating the spatial distribution of elevated ozone concentrations in the South Coast.

[17] The Pechanga Resort and Casino is considered a "major" source for the purposes of title V of the Act based on the facility's potential to emit NO_x emissions at levels greater than the applicable major source NSR threshold.

gasoline station/mini-mart. Lastly, the inventory includes emissions from on-road and nonroad motor vehicle use on the reservation.

In contrast, current ozone precursor emissions within the South Coast nonattainment area are approximately 230,000 tpy of VOC and 190,000 tpy of NO_x.[18] To the south, current ozone precursor emissions within the San Diego maintenance area are approximately 46,000 tpy of VOC and 42,000 tpy of NO_x.[19] In terms of percentages, Pechanga-related emissions are approximately 0.003 percent and 0.006 percent of South Coast emissions of VOC and NO_x, respectively, and are approximately 0.01 percent and 0.03 percent of San Diego County emissions of VOC and NO_x, respectively.

With respect to traffic and commuting patterns, operations at the Pechanga Resort and Casino generate vehicle trips in the region from patrons and employees, but no transportation corridors pass through the reservation. Interstate 15 and State Route 79 pass a couple of miles west and north, respectively, of the developed portions of the reservation. As far as population density and degree of urbanization, we note that, with the

[18] Year 2012 emissions for the South Coast Air Basin are from CARB's Almanac Emissions Projection Data (Published in 2013).
[19] Year 2012 emissions for San Diego County are from CARB's Almanac Emissions Projection Data (Published in 2013).

exception of the immediate vicinity of the resort and casino, the Pechanga Reservation is largely undeveloped and sparsely populated in comparison with highly developed land to the north in Temecula Valley. In fact, the degree of urbanization at the Pechanga Reservation is similar to the sparsely-populated region to the south in northern San Diego County.

Meteorology: EPA evaluated available meteorological data to help determine how meteorological conditions, such as weather, transport patterns and stagnation conditions, would affect the fate and transport of precursor emissions contributing to ozone formation. Pechanga is located about 25 miles inland and experiences similar complex meteorology and transport patterns as inland parts of western Riverside County and western San Diego County. Transport of ozone and its precursors is prevalent from the South Coast to San Diego County under several different meteorological regimes one of which transports emissions from metropolitan Los Angeles to San Diego County along the Interstate 15 corridor.[20] Given the location of the Pechanga Reservation near the Interstate 15 corridor and

[20] Bigler-Engler, V, 1995: Analysis of an Ozone Episode during the San Diego Air Quality Study: The Significance of Transport Aloft. *Journal of Applied Meteorology*, 34, 1863-1875). Luria, M, 2005: Local and Transported pollution of San Diego, California. *Atmospheric Environment*, 39, 6765-6776. Boucouvala, D, 2003: Analysis of transport patterns during an SCOS97-NARSTO episode. *Atmospheric Environment*, 37 Supplement No. 2, S73-S94. Meteorological and Photochemical Modeling for the San Diego County 2007, 8 Hour Ozone State Implementation Plan.

along the boundary between the Riverside County portion of the South Coast and San Diego County, the transport of ozone and its precursors from metropolitan Los Angeles also influences air quality at the reservation and is the primary cause of historic ozone violations at the reservation.

Geography/Topography: The Pechanga Reservation consists of 6,700 acres located in northwestern portion of the Cleveland National Forest, ranging between 1,100 and 2,600 feet in elevation. The reservation lies primarily in Riverside County along the boundary separating Riverside and San Diego counties, but a small portion of the reservation extends across the county-line into San Diego County. The terrain along the Riverside-San Diego county boundary is complex, but there are no significant topographic barriers to air flow, suggesting that the Pechanga Reservation may experience similar air quality to the surrounding air quality planning areas.

Jurisdictional Boundaries: For ozone planning purposes, the Pechanga Reservation is currently split for the 1-hour ozone and 1997 ozone standards between the South Coast and the San Diego County air quality planning areas, but is a separate air quality planning area for the 2008 ozone NAAQS. With respect to air pollution control, the South Coast, with the exception of

the Pechanga Reservation and certain other areas of Indian country, lies within the jurisdiction of the SCAQMD, and San Diego County, also with the exception of the Pechanga Reservation and certain other areas of Indian country, lies within the jurisdiction of the San Diego County Air Pollution Control District (SDCAPCD). The EPA has jurisdiction under the CAA over air pollution sources at the Pechanga Reservation although the Tribe may develop and implement its own air program, and displace EPA's program, or portion thereof, if it chooses to, upon EPA approval.

Evaluation of Factors: Air quality data, meteorology and topography indicate that the Pechanga Reservation experiences similar complex meteorology and transport patterns as inland parts of western Riverside and San Diego counties. Transport of ozone and its precursors to the Pechanga Reservation is prevalent from the South Coast. Considering the three factors of air quality data, meteorology, and topography, EPA could reasonably include the Pechanga Reservation in either the South Coast air quality planning area to the north, or the San Diego County air quality planning area to the south. Alternatively, the EPA could establish a separate nonattainment area for the

Pechanga Reservation as it did for the 2008 ozone standard.[21]

However, taking into account the minimal emissions associated with activities on the Pechanga Reservation and corresponding minimal contribution from Pechanga-related emissions sources to regional ozone violations, we believe that in these circumstances it is appropriate and consistent with the principles for designations of Indian country set forth in the Tribal Designation Policy to assign particular weight to the jurisdictional boundaries factor. Moreover, the Tribe has invested in the development of its own air program, including operation of an ozone monitoring station, and has expressed interest in development of its own permitting program. Establishment of the Pechanga Reservation as a separate planning area for the 1997 ozone standard would facilitate the Tribe's development of its own air program by aligning the area designations for the two current ozone standards for which EPA has promulgated area designations.

Therefore, we propose to revise the boundaries of the South Coast and San Diego 1997 ozone air quality planning areas by removing the respective portions of the reservation included in those areas and designating the Pechanga Reservation as a

[21] See 77 FR 30088, dated May 21, 2012.

separate nonattainment area for the 1997 ozone standard. This newly-established air quality planning area would retain its ozone nonattainment classification as "Severe-17" for the 1997 ozone standard unless the EPA finalizes the action, proposed in section IV of this document, to redesignate this area to "attainment" for the 1997 ozone standard. Our technical support document (TSD) provides additional information concerning our rationale for this proposed revisions to Southern California ozone air quality planning area boundaries.

III. Requirements for Redesignation

In this section, we identify the procedural and substantive requirements for redesignation for the Pechanga-specific ozone nonattainment area we are proposing to establish in section II, and in section IV, we provide our evaluation of this proposed Pechanga-specific ozone nonattainment area for redesignation to attainment for the 1997 ozone standard.

A. Procedural Requirements

One of the prerequisites for redesignation is approval of a maintenance plan meeting the requirements under CAA section 175A. See CAA section 107(d)(3)(E)(iv). Such a maintenance plan constitutes a SIP when submitted by a state or a TIP when submitted by a tribe, and the CAA and EPA's regulations include

procedural requirements for such submittals. Specifically, section 110(a) of the Act requires tribes to provide reasonable notice and public hearing prior to adoption of TIPs or TIP revisions. EPA regulations at 40 CFR 51.102 contain additional specifications for public review of TIPs or TIP revisions including notice to the public by prominent advertisement in the affected area; an opportunity for a public hearing; and a minimum 30-day comment period and provisions for making the plan available for public inspection.

On September 10, 2014, the Pechanga Tribe published a notice of the beginning of a public review period for the public draft Pechanga Ozone Maintenance Plan in The Press-Enterprise, a newspaper of general circulation in Riverside County. The notice also indicated where the public draft maintenance plan would be available for review and that a public hearing would be held on October 15, 2014, if requested. No request for a public hearing was made, and no comments were submitted. On October 21, 2014, the Tribe adopted the Pechanga Ozone Maintenance Plan, and on November 4, 2014, the Pechanga tribal council officially submitted the Pechanga Ozone Maintenance Plan to EPA as the Tribe's TIP.

As such, we find that the submittal of the Pechanga Ozone Maintenance Plan as a TIP satisfies the procedural requirements of section 110(a) of the Act and 40 CFR 51.102.

B. Substantive Requirements

The CAA establishes the requirements for redesignation of a nonattainment area to attainment. Specifically, section 107(d)(3)(E) allows for redesignation provided that the following criteria are met: (1) the EPA determines that the area has attained the applicable NAAQS; (2) the EPA has fully approved the applicable implementation plan for the area under section 110(k); (3) the EPA determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan, applicable federal air pollution control regulations, and other permanent and enforceable reductions; (4) the EPA has fully approved a maintenance plan for the area as meeting the requirements of CAA section 175A; and (5) the state or eligible tribe containing such area has met all requirements applicable to the area under section 110 and part D of the CAA.

The EPA provided guidance on redesignations in a document titled, "State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of

1990," published in the Federal Register on April 16, 1992 (57 FR 13498), and supplemented on April 28, 1992 (57 FR 18070) (referred to herein as the "General Preamble"). Another relevant EPA guidance document includes "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, EPA Office of Air Quality Planning and Standards, September 4, 1992 (referred to herein as the "Calcagni memo").

For the reasons set forth below, we propose to approve the Pechanga Tribe's request for redesignation of the Pechanga Reservation, proposed herein as a separate air quality planning area, to attainment for the 1997 ozone standard based on our conclusion that all of the criteria under CAA section 107(d)(3)(E) have been satisfied.

IV. Evaluation of the Pechanga Tribe's Redesignation Request

A. Determination that the Area Has Attained the Applicable NAAQS

CAA section 107(d)(3)(E)(i) requires that we determine that the area has attained the NAAQS. The EPA generally makes the determination of whether an area's air quality meets the ozone standard based upon the most recent three years of complete, certified, and 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. Monitoring agencies annually certify that these data are accurate to the best of their knowledge. Accordingly, the 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 ozone standard is met at an ambient air quality monitoring site when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm. See 40 CFR 50.10; 40 CFR part 50, appendix I. 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 attaining 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 percent of the days during the designated ozone monitoring season, and no single year has less than 75 percent data completeness as determined in appendix I of 40 CFR part 50.

The Pechanga Tribe operates an ozone monitor at the reservation. In 2013, EPA conducted a technical systems audit and, as with any audit, EPA made a number of findings and recommendations to ensure compliance with EPA's monitoring regulations in 40 CFR part 58.[22] The Pechanga Tribe submits the ozone data that it collects to AQS; however, we are basing this proposed determination of attainment not on the data collected at the Pechanga monitor, but rather on the data from a monitoring site located adjacent to Skinner Reservoir, which is approximately 10 miles north of the Pechanga Reservation and which is operated by the SCAQMD (the "Temecula" monitoring site). We are doing so because the data from the Pechanga monitor over the past three calendar years does not meet our completeness criteria, and because the ozone data collected at SCAQMD's Temecula site is complete and is representative of ozone conditions at the reservation.[23]

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[22] See letter from Deborah Jordan, Director, EPA Region IX Air Division, to Mark Macarro, Chairman, Pechanga Band of Luiseño Mission Indians, January 22, 2014, and attachments.

[23] For 2011-2013, the Temecula monitor achieved only 89 percent completeness, which is less than the required three-year completeness requirement of 90 percent. However, the EPA Region IX staff conducted a missing data analysis

With respect to its monitoring network, the SCAQMD submits monitoring network plan reports to EPA on an annual basis. These reports discuss the status of the air monitoring network, as required under 40 CFR part 58. The EPA reviews these annual network plans for compliance with the applicable reporting requirements in 40 CFR 58.10. With respect to ozone, we have found that SCAQMD's annual network plans meet the applicable requirements under 40 CFR part 58.[24] Furthermore, we concluded in our Technical System Audit Report (*Technical System Audit Report South Coast Air Quality Management District, 2013*) that SCAQMD's ambient air monitoring network currently meets or exceeds the requirements for the minimum number of monitoring sites designated as SLAMS for all of the criteria pollutants. Also, the SCAQMD annually certifies that the data it submits to AQS are complete and quality-assured.[25]

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for the Temecula station in accordance with the requirements of 40 CFR 50 Appendix I, Section 2.3(b) and concluded that it is appropriate to count the missing days towards meeting the minimum data completeness requirements because of concentrations measured at nearby monitors. Once the missing days are included, the EPA finds the ozone data from the Temecula station to be complete and valid for NAAQS comparison purposes. See the EPA staff memorandum to file titled "Temecula Missing Data Analysis for 2011-2013," October 6, 2014.

[24] See, e.g., letter from Meredith Kurpius, Manager, Air Quality Analysis Office, EPA Region IX, to Dr. Matt Miyasato, Deputy Executive Officer, SCAQMD, dated September 30, 2014.

[25] *See*, e.g., letter from Matt Miyasato, Ph.D., Deputy Executive Officer, SCAQMD, to Jared Blumenfeld, Regional Administration, EPA Region IX, dated June 27, 2014.

Both the Pechanga site and SCAQMD's Temecula site monitor ozone concentrations on a continuous basis using Federal Equivalent Method (FEM) monitors. The spatial scale of the Pechanga site is "neighborhood", while the Temecula site is "urban" scale. The site types are "general/background" (Pechanga) and "population exposure" (Temecula).[26]

As noted above, we reviewed the data from the Pechanga monitoring site and found it to be incomplete for the 2011-2013 period; however, the data that is available for that period provides us with the basis for a comparison with Temecula site data to determine representativeness of the latter for establishing current ozone conditions at the reservation. Table 1 summarizes the site-specific annual fourth-highest daily maximum 8-hour ozone concentrations and 3-year ozone design values for the Pechanga site and SCAQMD's Temecula site for the period of 2011-2013.

Table 1 – Fourth Highest 8-hour Ozone Concentrations at Temecula and Pechanga Monitors, 2011-2013, ppm

Monitor	Site code	2011	2012	2013	2011-2013 Design value
Temecula	06-065-0016	0.082	0.077	0.074	0.077
Pechanga	06-065-0009	0.071[a]	0.075	0.074	NC

[26] See *AQS Monitor Description Report, May 16, 2014.*

Monitor	Site code	2011	2012	2013	2011-2013 Design value

[a] Annual value does not meet completeness criteria.
NC = Not calculated because of incomplete data.

Source: AQS Data Summary Report, dated May 16, 2014.

As shown in table 1, a comparison of the 2012 and 2013 data from the Temecula site and the Pechanga site demonstrates that the former site is representative of conditions at the latter.[27] The summary of data in table 1 also shows that the design value for the 2011-2013 period was less than 0.084 ppm at the Temecula site. Therefore, we are proposing to determine, based on complete, certified, and quality-assured data for 2011-2013 from the Temecula monitoring site, that the proposed Pechanga Reservation ozone nonattainment area has attained the 1997 ozone standard. Our review of preliminary 2014 data from both the Temecula and Pechanga sites indicates that the data remains consistent with continued attainment.[28]

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[27] In fact, the Pechanga data are consistently less than or equal to the Temecula and Lake Elsinore data for the 2011-2013 timeframe. See our technical support document for additional information related to the representativeness of the Temecula monitoring data as it relates to Pechanga air quality.

[28] See AQS Quicklook Report, dated November 6, 2014. At the Temecula station, available data for 2014 only includes the first quarter of the year (January through March). Based on that first quarter, the fourth-highest 8-hour ozone concentration so far in 2014 is 0.065 ppm. At the Pechanga station, two quarters of preliminary data for 2014 are available (i.e., January through June), and the fourth-highest 8-hour concentration at that station so far in 2014 is 0.079 ppm.

B. The Area Must Have a Fully Approved Implementation Plan Meeting Requirements Applicable for Purposes of Redesignation Under Section 110 and Part D

Section 107(d)(3)(E)(ii) and (v) require the EPA to determine that the area has a fully approved applicable implementation plan under section 110(k) that meets all applicable requirements under section 110 and part D for the purposes of redesignation. In this context, the term "applicable implementation plan" refers to a TIP or a regulation promulgated by EPA under the Tribal Authority Rule (TAR) in 40 CFR part 49.[29]

1. Basic Implementation Plan Requirements Under CAA Section 110

Section 110(a)(1) requires implementation plans to provide for the implementation, maintenance, and enforcement of the NAAQS. Section 110(a)(2) of title I of the CAA delineates the general requirements for such an implementation plan, including enforceable emissions limitations and other control measures, means, or techniques; provisions for the establishment and operation of appropriate devices necessary to collect data on ambient air quality; and programs to enforce the limitations.

Section 110(a)(2)(D) requires that implementation plans contain certain measures to prevent sources in a state from

[29] See CAA section 302(q).

significantly contributing to air quality problems in another state. To implement this provisions, the EPA has required certain states to establish programs to address the interstate transport of air pollutants. The section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification in that state. The EPA believes that the requirements linked with a particular nonattainment area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. The transport implementation plan submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state. Thus, the EPA does not believe that the CAA's interstate transport requirements should be construed to be applicable requirements for purposes of redesignation.

In addition, the EPA believes other section 110 elements that are neither connected with nonattainment plan submissions nor linked with an area's attainment status are not applicable requirements for purposes of redesignation. The area will still be subject to these requirements after the area is redesignated. The section 110 and part D requirements which are linked with a particular area's designation and classification are the

relevant measures to evaluate in reviewing a redesignation request. This approach is consistent with the existing policy on applicability (i.e., for redesignations) of conformity and oxygenated rules requirements, as well as with section 184 ozone transport requirements. See Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174-53176, October 10, 1996), (62 FR 24826, May 7, 1997); Cleveland-Akron-Loraine, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking at (60 FR 62748, December 7, 1995). See also the discussion of this issue in the Cincinnati, Ohio, redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh, Pennsylvania, redesignation (66 FR 50399, October 19, 2001).

Furthermore, while the Act requires states to prepare implementation plans that meet all of the requirements of section 110 of the Act, including those requirements that the EPA would consider applicable for the purposes of redesignation, under EPA's TAR, specific plan submittal and implementation deadlines for NAAQS-related requirements, including such deadlines in section 110(a)(1) do not apply. 40 CFR 49.4(a). Thus, an Indian tribe may choose not to adopt a TIP or may adopt TIP provisions that address only some elements of section 110, provided those elements are "reasonably severable," from other

elements not included in the TIP.[30] The EPA may regulate emission sources that the Indian tribe chooses not to include in a TIP if the EPA determines such regulation is necessary or appropriate to adequately protect air quality.[31]

In this instance, the Pechanga Tribe has not chosen to adopt a TIP that addresses any of the section 110 implementation plan elements and is not required to do so. The EPA has, however, previously determined that it is "necessary or appropriate" to establish regulations governing review and permitting of new or modified stationary sources in Indian country (i.e., "New Source Review" or NSR). These regulations apply in most Indian reservations, including the Pechanga Reservation, unless the EPA approves a tribal NSR implementation plan in which case the tribal NSR implementation plan replaces the EPA's NSR rules that would otherwise apply. The EPA's NSR rules apply within the Pechanga Reservation and satisfy the section 110 element found in CAA section 110(a)(2)(C) regarding regulation of new or modified stationary sources. The EPA has not determined that any other section 110 plan element is "necessary or appropriate" for the Pechanga Reservation, therefore, we find that the only requirement under CAA section

[30] 40 CFR 49.7(c).
[31] 40 CFR 49.11(a).

110 applicable to the Pechanga air quality planning area is CAA section 110(a)(2)(C). Given that the EPA's NSR rules addressing CAA section 110(a)(2)(C) are promulgated in final form, we propose to find that the proposed Pechanga Reservation air quality planning area meets the general implementation plan requirements under section 110 of the CAA, to the extent those requirements are applicable for the purposes of redesignation.

2. Part D Requirements

The CAA contains two sets of provisions, subparts 1 and 2, that address planning and emission control requirements for ozone nonattainment areas. Both of these subparts are found in title I, part D of the CAA; sections 171-179 and sections 181-185, respectively. Subpart 1 contains general, less specific requirements for all nonattainment areas of any pollutant, including ozone, governed by a NAAQS. Subpart 2 contains additional, specific requirements for ozone nonattainment areas classified under subpart 2.

The applicable subpart 1 requirements are contained in sections 172(c)(1)-(9) and 176 of the CAA. A thorough discussion of the requirements contained in section 172 can be found in the General Preamble for Implementation of Title I (57 FR 13498, April 16, 1992).

With respect to the requirements under subpart 2, we note that, as discussed in more detail above, the Pechanga Reservation is subject to the requirements under subpart 2 of part D of the CAA for areas classified as "Severe-17" for the 1997 ozone standard. *See* 75 FR 24409 (May 5, 2010). Additionally, under EPA's anti-backsliding rules governing the transition from the now-revoked 1-hour ozone standard to the 1997 8-hour ozone standard, the applicable requirements under the area's classification under the 1-hour ozone standard continue to apply. In the case of the Pechanga Reservation, the "applicable requirements" for the 1-hour ozone standard are those that apply within "Extreme" ozone nonattainment areas because the Pechanga Reservation (i.e., the Riverside County portion of the reservation) was included in the South Coast "Extreme" 1-hour ozone nonattainment area.

Under its longstanding interpretation of the CAA, the EPA has interpreted section 107(d)(3)(E) to mean, as a threshold matter, that the only part D provisions, which are "applicable" and which must be approved in order for EPA to redesignate an area, are those which came due prior to the submittal of a complete redesignation request. See the Calcagni memo; EPA memorandum titled "State Implementation Plan (SIP) Requirements

for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992," from Michael Shapiro, Acting Assistant Administrator for Air and Radiation, dated September 17, 1993; 60 FR 12459, 12465-66 (March 7, 1995) (redesignation of Detroit-Ann Arbor, Michigan); 68 FR 25418, 25424-25427 (May 12, 2003) (redesignation of St. Louis, Missouri); and *Sierra Club* v. *EPA,* 375 F.3d 537, 541 (7th Cir. 2004) (upholding EPA's redesignation rulemaking applying this interpretation).

Section 107(d)(3)(E)(v) states that, for an area to be redesignated, a state must meet all requirements "applicable" to the area under section 110 and part D. Section 107(d)(3)(E)(ii) similarly provides that the EPA must have fully approved the "applicable" SIP for the area seeking redesignation. These two sections read together support the EPA's interpretation of "applicable" as only those requirements that came due prior to submission of a complete redesignation request. First, holding states to an ongoing obligation to adopt new CAA requirements that arose after the state submitted its redesignation request, in order to be redesignated, would make it problematic or impossible for the EPA to act on redesignation request in

accordance with the 18-month deadline Congress set for EPA action in section 107(d)(3)(D). If "applicable requirements" were interpreted to be a continuing flow of requirements with no reasonable limitation, states, after submitting a redesignation request, would be forced continuously to make additional SIP submissions that in turn would require the EPA to undertake further notice-and-comment rulemaking actions to act on those submissions. This would create a regime of unceasing rulemaking that would delay action on the redesignation request beyond the 18-month timeframe provided by the Act for this purpose.

Second, a fundamental premise for redesignating a nonattainment area to attainment is that the area has attained the relevant NAAQS due to emission reductions from existing controls. Thus, an area for which a redesignation request has been submitted would have already attained the NAAQS as a result of satisfying statutory requirements that came due prior to the submission of the request. Absent a showing that unadopted and unimplemented requirements are necessary for future maintenance, it is reasonable to view the requirements applicable for purposes of evaluating the redesignation request as including only those SIP requirements that have already come due. These are the requirements that led to attainment of the NAAQS. To

require, for redesignation approval, that a state also satisfy additional SIP requirements unrelated to redesignation that come due after the state submits its complete redesignation request, and while the EPA is reviewing it, would compel the state to do more than is necessary to attain the NAAQS, without a showing that the additional requirements are necessary for maintenance.

With regard to Indian tribes, the EPA notes that under the CAA and the TAR, tribes may, but are not required to, submit implementation plans to EPA for approval. The EPA has expressly exempted tribes from all plan submittal and implementation deadlines for NAAQS-related requirements. 40 CFR 49.4(a) (specific plan submittal and implementation deadlines listed as CAA provisions for which it is not appropriate to treat tribes in the same manner as states). The EPA, however, has authority under the TAR to implement such plan provisions as are necessary or appropriate to protect air quality where tribes do not do so. 40 CFR 49.11. Thus, tribes are not required to submit plans addressing part D requirements, and under the EPA's longstanding interpretation of section 107(d)(3)(E), there are no part D requirements that are applicable for the purposes of redesignation unless the EPA has deemed any such part D element to be "necessary or appropriate" under the TAR. In this case,

the only part D element that EPA has deemed to be "necessary or appropriate" is the NSR program for major sources and major modifications in nonattainment areas generally, including the Pechanga Reservation, and EPA has promulgated the corresponding "major source" nonattainment NSR regulations at 40 CFR 49.166 through 49.173. No other part D requirements are applicable for the purposes of evaluating the Pechanga Tribe's redesignation request because no such requirement was due prior to submission of the Tribe's redesignation request. Therefore, we find that the Pechanga area is subject to a major source nonattainment program promulgated by the EPA in 40 CFR part 49 to meet part D requirements on the Pechanga Reservation, and that no other part D requirements are applicable for the purposes of evaluating the Pechanga Tribe's redesignation request because no such requirement has become due for the reservation. As such, we believe that the area has satisfied the redesignation criteria of CAA section 107(d)(3)(E)(v).

C. The Area Must Show the Improvement in Air Quality Is Due to Permanent and Enforceable Emissions Reductions

Section 107(d)(3)(E)(iii) precludes redesignation of a nonattainment area to attainment unless the EPA determines that the improvement in air quality is due to permanent and

enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable federal air pollution control regulations and other permanent and enforceable regulations. Attainment resulting from temporary reductions in emissions rates (e.g., reduced production or shutdown due to temporary adverse economic conditions) or unusually favorable meteorology would not qualify as an air quality improvement due to permanent and enforceable emission reductions.

In 2004, the EPA included the Pechanga Reservation in the South Coast "Severe-17" nonattainment area for the 1997 8-hour ozone standard. See 69 FR 23858 (April 30, 2004), at 23882-23884, and footnote "a" to the California ozone table at page 23890. Our 2004 designations for the 1997 8-hour ozone standard were generally based on data from years 2001-2003. At that time, neither SCAQMD's Temecula monitoring site nor the Pechanga monitoring site was operational, and the closest SCAQMD monitor to the Pechanga Reservation was located at SCAQMD's Lake Elsinore ozone monitoring site. The Lake Elsinore site is approximately 20 miles northwest of the Pechanga Reservation, and in 2002, the design value there was 0.104 ppm. Ozone concentrations at the Pechanga Reservation are less than those

monitored at Lake Elsinore, and thus, the design value at the Pechanga Reservation, if it had been monitored, would likely have been less than 0.104 ppm back in 2002. As discussed in section IV.A of this document, ambient ozone concentrations at the Pechanga Reservation have now achieved the 1997 ozone standard based on a design value for the 2011-2013 period of 0.077 ppm.

The improvement in ozone conditions at the Pechanga Reservation does not reflect emissions changes at Pechanga Reservation itself given the nature and magnitude of the few emitting sources at the reservation. Instead, the improvement reflects reductions in emissions of ozone precursors from sources, including stationary, mobile and area sources, in the South Coast. Reductions in South Coast emissions sources result in less ozone and ozone precursors being transported to the Pechanga Reservation from the north.

The SCAQMD's *Final 2007 Air Quality Management Plan (June 2007)* ("2007 South Coast AQMP") includes emissions estimates for the South Coast for a base year (2002) and a number of future years, including 2011 and 2014. We have used the estimates in the 2007 South Coast AQMP to develop 2012 emissions estimates for the South Coast, and based on a comparison between our

estimates for 2012 and SCAQMD's estimates for 2002, we find that emissions of VOC and NO_x in the South Coast have decreased by approximately 34 percent over that time period.

The significant reductions in VOC and NO_x emissions that occurred from 2002 to 2012 in the South Coast largely reflect the impact of mobile source regulations and programs. More specifically, approximately 80 percent of the reduction in VOCs, and approximately 95 percent of the reduction in NO_x, is due to reductions from emissions from on-road and nonroad vehicles. In California, both the California Air Resources Board (CARB) and the EPA regulate on-road and nonroad vehicles. As a general matter, the CARB establishes emissions standards and other related requirements for new on-road motor vehicles sold in California, and the EPA establishes such requirements for cars sold outside California.

To enforce CARB motor vehicle standards, the CARB must first apply to the EPA for a waiver under CAA section 209(b). Once issued, the waiver provides the CARB with the authority to enforce the standards within California. The EPA has issued many such waivers [e.g., 68 FR 19811 (April 22, 2003)(EPA waiver for CARB's LEV II regulations)] over the years to the CARB for its on-road motor vehicle standards. During most of the 2002-2012

period, CARB's low-emission vehicle (LEV) II standards applied to new on-road vehicles sold in California, and the phased replacement of older more polluting vehicles with newer vehicles meeting LEV II standards explains much of the reduction in emissions in the South Coast from on-road vehicles during this period. We consider CARB's on-road motor vehicle regulations such as the LEV II standards for which the EPA has issued waivers under CAA section 209(b) as providing "other permanent and enforceable reductions" for the purposes of the redesignation criterion in CAA section 107(d)(3)(E)(iii). Also, vehicles sold outside of California also affect air quality within the state, and with respect to those vehicles, the EPA's increasingly stringent motor vehicle standards achieved emission reductions of ozone precursors over the 2002-2012 period.

CAA section 209(e) establishes a process, similar to the waiver process described above for new motor vehicles under section 209(b), under which the CARB must seek authorization from the EPA to enforce emissions standards and other related requirements for nonroad vehicles. Over the years, the EPA has issued many such authorizations providing the CARB with the authority to enforce its nonroad vehicle standards in California. See, e.g., 71 FR 29623 (May 23, 2006)(EPA

authorization of CARB's large off-road spark ignition engine standards); 71 FR 75536 (December 15, 2006)(EPA authorization of CARB's small off-road engine regulations). Over the 2002-2012 period, CARB's nonroad vehicle standards achieved significant emissions reductions from the nonroad vehicle source category throughout California. Like CARB's on-road motor vehicle standards, we also consider CARB's nonroad vehicle standards for which the EPA has issued authorizations as providing "other permanent and enforceable reductions" for the purposes of the redesignation criterion in CAA section 107(d)(3)(E)(iii). Also, the EPA established emission standards and related requirements for certain classes of equipment for which states, including California, are preempted, such as locomotives and certain types of agricultural and construction equipment. See CAA section 209(e)(1). Such EPA standards also achieved emissions reductions in the South Coast during the 2002-2012 period and incrementally contributed to the improvement of ozone conditions at the Pechanga Reservation.

In addition to vehicle standards, California has also established more stringent gasoline and diesel fuel requirements, more stringent vapor recovery requirements, and more stringent vehicle inspection and maintenance requirements

that have reduced emissions of ozone precursors in the South Coast. As a general matter, such requirements are not subject to the waiver or authorization process in CAA section 209. Instead, the CARB submits the regulations establishing such requirements to the EPA as a revision to the California SIP. Once approved by the EPA, such regulations become federally enforceable. The EPA most recently approved California clean fuels (gasoline and diesel) at 75 FR 26653 (May 12, 2010); enhanced vapor recovery at 78 FR 21542 (April 11, 2013)(SCAQMD Rule 461 requiring CARB-certified equipment) and 64 FR 39037 (July 21, 1999)(SCAQMD Rule 462 requiring CARB-certified equipment); and I/M at 75 FR 38023 (July 1, 2010). Though such state regulations do not apply on the Pechanga Reservation, these requirements have provided significant emissions reductions in areas upwind of the Pechanga Reservation during the 2002-2012 period and are considered as "other permanent and enforceable reductions" for the purposes of the redesignation criterion in CAA section 107(d)(3)(E)(iii).

Given the regulatory initiatives implemented during the 2002-2012 period and summarized above, we find that the improvement in air quality since 2002 may reasonably be attributed to the initiatives and is not a result of an economic downturn or unusual or extreme weather patterns. We do recognize

that a significant economic slowdown occurred nationally starting in 2008, but we note that the downward trend in VOC and NO_X emissions had already been established before that time.[32]

We also considered temperature data for the 1994-2013 period.[33] The data indicate that the 2011-2013 attainment period was slightly warmer than the long-term average. In addition, there were ten previous three-year periods since 1993 that were at least as cool or cooler than the 2011-2013 period, but that also had 8-hour ozone design values above the 1997 ozone standard. Thus, the temperature records support the conclusion that attainment did not result from unusually favorable meteorology during 2011-2013.

Based on the above analysis, we find that the improvement in air quality at the Pechanga Reservation is the result of permanent and enforceable emissions reductions from applicable federal air pollutant control regulations, particularly those associated with on-road and nonroad vehicles, and other permanent and enforceable reductions from upwind sources resulting from CARB and SCAQMD regulations, particularly CARB regulations establishing increasingly stringent standards for

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[32] Between 2002 and 2005, VOC and NO_x emissions in the South Coast decreased approximately 27 percent and 21 percent respectively, based on baseline emissions estimates in appendix II to the South Coast 2007 AQMP.

[33] See table 4-2 of the Pechanga Ozone Maintenance Plan.

new on-road and nonroad vehicles, tighter specifications for gasoline and diesel fuel, enhanced vapor recovery, and vehicle I/M programs. As such, we propose to find that the criterion for redesignation set forth at CAA section 107(d)(3)(E)(iii) is satisfied.

D. The Area Must Have a Fully Approved Maintenance Plan Under CAA Section 175A

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. We interpret this section of the Act to require, in general, the following core elements: attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and contingency plan. See Calcagni memo, pages 8 through 13. Under CAA section 175A, a maintenance plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the EPA approves a redesignation to attainment.

To address the possibility of future NAAQS violations, the maintenance plan must contain such contingency provisions, that the EPA deems necessary, to promptly correct any violation of the NAAQS that occurs after redesignation of the area to attainment. Based on our review and evaluation of the plan, as

detailed below, we are proposing to approve the Pechanga Ozone Maintenance Plan because we believe that it meets the requirements of CAA section 175A.

1. Attainment Inventory

A maintenance plan for the 1997 8-hour ozone standard must include an inventory of emissions of ozone precursors (VOC and NO_X) in the area to identify a level of emissions that are sufficient to attain the 1997 ozone standard. This inventory must be consistent with the EPA's most recent guidance on emissions inventories for nonattainment areas available at the time and should represent emissions during the time period associated with the monitoring data showing attainment. The inventory must also be comprehensive, including emissions from stationary, area, nonroad mobile, and on-road mobile sources, and must be based on actual "ozone season data" (i.e., summertime) emissions.

The Pechanga Tribe selected year 2012 as the year for the attainment inventory in the Pechanga Ozone Maintenance Plan. The attainment inventory will generally be the actual inventory during the time period the area attained the standard. Thus, the Pechanga Tribe's selection of 2012 for the attainment inventory is acceptable.

The Pechanga Ozone Maintenance Plan estimates current (2012) summer day emissions of 0.013 tons per day (tpd) of VOC and 0.029 tpd of NO_x. These estimates are consistent with the EPA's own estimates discussed in section II.B of this document of 5.8 tons per year of VOC (i.e. 0.016 tpd annual average) and 10.7 tpy of NO_x (i.e., 0.029 tpd annual average) given the differences between seasonal values and annual values. More important, however, from the standpoint of establishing an emissions level consistent with attainment of the 1997 8-hour ozone standard at the Pechanga Reservation, is the summer-day average emissions in 2012 within the South Coast given the importance of transport to ozone conditions at the reservation. The Pechanga Ozone Maintenance Plan includes estimates for 2012 South Coast summer-day average emissions of approximately 500 tpd of VOC and 490 tpd of NO_x. The Tribe's source for this information is the latest emissions data available from CARB's website.

The EPA also estimated 2012 South Coast emissions, but relied on a different data source: the 2012 South Coast Final Air Quality Management Plan (2012 South Coast AQMP). We relied on the 2012 South Coast AQMP because we recently approved the ozone portion of that plan, 79 FR 52526 (September 3, 2014),

and in so doing, found the emissions inventories to be comprehensive, to reflect appropriate emissions calculation methods and the latest planning assumptions. See 79 FR 29712, at 29717 (May 23, 2014)(proposed approval of ozone portion of 2012 South Coast AQMP). Based on interpolation of emissions estimates for 2008 and 2014 contained in the 2012 South Coast AQMP, we calculate 2012 South Coast summer-day average emissions to be approximately 540 tpd of VOC and 560 tpy of NO_x, which are reasonably consistent with the corresponding estimates included in the Pechanga Ozone Maintenance Plan.

2. Maintenance Demonstration

CAA section 175A(a) requires that the maintenance plan "provide for the maintenance of the national primary ambient air quality standard for such air pollutant in the area concerned for at least 10 years after the redesignation." Generally, a state may demonstrate maintenance of the 1997 ozone standard by either showing that future emissions will not exceed the level of the attainment year inventory or by modeling to show that the future mix of sources and emissions rates will not cause a violation of the NAAQS. For areas that are required under the Act to submit modeled attainment demonstrations, the maintenance demonstration should use the same type of modeling. See Calcagni

memo, page 9. The Pechanga Reservation 8-hour area was not required to submit a modeled attainment demonstration, and thus, the Pechanga Ozone Maintenance Plan may demonstrate maintenance based on a comparison of existing and future emissions of ozone precursors.[34]

In addition to the 2012 attainment inventory described above, the Pechanga Ozone Maintenance Plan also includes emissions inventories for 2015, 2020, and 2025. With respect to reservation-specific sources, the Pechanga Ozone Maintenance Plan projects that emissions will remain relatively constant from emissions sources at the reservation over the maintenance period (i.e., through 2025). Relying on CARB emissions data, the Pechanga Ozone Maintenance Plan predicts that South Coast emissions will decrease over the period 2012-2025. The EPA has also calculated South Coast emissions for future years 2015, 2020, and 2025 but relied upon the emissions inventories in the 2012 South Coast AQMP (and interpolation methods) to do so.[35] These various emissions estimates are summarized in table 2 below.

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[34] A maintenance demonstration need not be based on ozone modeling. See *Wall* v. *EPA,* 375 F.3d 537 (7th Cir. 2004). See also 66 FR 53094, at pages 53099-53100 (October 19, 2001), and 68 FR 25413, pages 25430-25432 (May 12, 2003).

[35] The South Coast 2012 AQMP future-year estimates were derived using the emissions from the 2008 base year; expected controls after implementation of SCAQMD rules adopted by June 2012, and CARB rules adopted as of August 2011; and activity growth in various source categories between the base and future years. See page 3-20 of the 2012 South Coast AQMP.

Table 2 — Ozone Precursor Emissions Estimates for Pechanga Reservation and South Coast, 2012, 2015, 2020 and 2025 (summer-day average, tons per day)

Ozone Precursor	2012	2015	2020	2025
Pechanga Reservation (Based on data as shown in Maintenance Plan):				
VOC	0.013	0.013	0.012	0.011
NO_x	0.029	0.029	0.028	0.028
South Coast (Based on CARB data as shown in Maintenance Plan rounded to the nearest 10 tons):				
VOC	500	460	420	410
NO_x	490	430	340	280
South Coast (Based on 2012 South Coast AQMP data rounded to the nearest 10 tons):				
VOC	540	480	450	440
NO_x	560	470	370	310

As shown in table 2, Pechanga Reservation and South Coast emissions of ozone precursors are expected to decrease from attainment year (2012) levels through the maintenance period (i.e., through 2025) and thereby adequately demonstrate maintenance of the 1997 8-hour ozone standard at the Pechanga Reservation through at least a 10-year period beyond redesignation.

3. Monitoring Network

Continued ambient monitoring of an area is generally required over the maintenance period. As discussed elsewhere in this document, ozone is currently monitored by the SCAQMD and the Pechanga Tribe at two sites within or near the Pechanga

Reservation. While this determination of attainment is based on data from SCAQMD's Temecula monitoring site, the ozone monitor operated by the Tribe is the one that we expect to be used to verify maintenance of the 1997 8-hour ozone standard through the maintenance period. In the Pechanga Ozone Maintenance Plan, the Tribe commits to continue operating the ambient ozone monitoring network, quality assuring the resulting monitoring data, and entering all data into the AQS in accordance with federal requirements and guidelines to verify continued attainment of the 1997 8-hour ozone NAAQS. See page 36 of the Pechanga Ozone Maintenance Plan. We find the Tribe's commitment for continued ambient ozone monitoring as set forth in its maintenance plan to be acceptable.

4. Verification of Continued Attainment

The EPA and the Pechanga Tribe have the legal authority to implement and enforce the requirements of the Pechanga Ozone Maintenance Plan.[36] This includes the authority to adopt, implement and enforce any emission control contingency measures determined to be necessary to correct violations of the 1997 8-hour ozone standard. To verify continued attainment, as noted

[36] As noted previously, the EPA recently determined that the Tribe is eligible for treatment in the same manner as a state ("TAS") for purposes of CAA sections 110 and 175A and the submitted maintenance plan. In so doing, the EPA determined that the Tribe can reasonably be expected to be capable of carrying out the functions of the maintenance plan. 40 CFR 49.6(d).

above, the Tribe commits to the continued operation of an ozone monitoring network in accordance with federal requirements and guidelines to verify continued attainment of the 1997 ozone standard. The Pechanga Tribe also commits to annually reviewing ozone monitoring data from the three most recent, consecutive years to verify continued attainment of the 1997 ozone standard through the maintenance period. See page 36 of the Pechanga Ozone Maintenance Plan.

Generally, we expect states or tribes with maintenance areas to verify continued attainment by other means as well, such as preparing updated emissions inventories for the area to allow for a comparison with the inventories prepared for the maintenance plan. However, in this instance, maintenance of the standard does not depend upon emissions generated by sources within the area proposed for redesignation, but rather upon the emissions generated upwind. Therefore, we find acceptable the Tribe's monitoring-only-based approach to verification of continued attainment.

5. Contingency Provisions

Section 175A(d) of the Act requires that maintenance plans include contingency provisions, as the EPA deems necessary, to promptly correct any violations of the NAAQS that occur after

redesignation of the area to attainment. Such provisions must include a requirement that the state will implement all measures with respect to the control of the air pollutant concerned which were contained in the SIP for the area before redesignation of the area as an attainment area.

Under section 175A(d), contingency measures identified in the contingency plan do not have to be fully adopted at the time of redesignation. However, the contingency plan is considered to be an enforceable part of the SIP or TIP and should ensure that the contingency measures are adopted expeditiously once they are triggered by a specified event. The maintenance plan should clearly identify the measures to be adopted, a schedule and procedure for adoption and implementation, and a specific timeline for action by the state or tribe. As a necessary part of the plan, the state or tribe should also identify specific indicators or triggers, which will be used to determine when the contingency measures need to be implemented.

As required by section 175A of the CAA, the Pechanga Tribe has adopted a contingency plan to address possible future ozone air quality problems. See section 5.7 of the Pechanga Ozone Maintenance Plan. The Tribe’s contingency plan includes both a specific contingency measure that has already been adopted and

is being implemented early[37] and a mechanism to trigger the adoption of additional measures as needed.

Given that emissions generated on the reservation have little or no effect on ozone conditions at the reservation itself, the Pechanga Ozone Maintenance Plan reasonably looks to emissions-reduction strategies to be implemented upwind of the reservation, and one such program, CARB's Advanced Clean Cars Program (ACCP), is the specific contingency measure cited in the maintenance plan. Because CARB regulations, including the ACCP, do not apply on the reservation, the ACCP does not qualify as a contingency measure for the Pechanga Ozone Maintenance Plan. However, as described below, we find that the ACCP will provide additional emissions reductions in the South Coast and thereby provide sufficient protection of ozone conditions at the reservation to justify the lack of specific contingency measures to be implemented by the Tribe in the wake of a monitored ozone violation at the reservation.

The ACCP, adopted by CARB in 2012, will progressively tighten emissions control requirements for new motor vehicles

[37] The Tribe followed the August 13, 1993 EPA guidance memorandum titled "Early Implementation of Contingency Measures for Ozone and Carbon Monoxide (CO) Nonattainment Areas."

sold in California from model years 2015 through 2025.[38] While the emission benefits from the ACCP are not expected to be fully realized until the 2035-2040 timeframe, the CARB estimates that statewide emissions of VOC and NO_x will be reduced by 3 percent and 12 percent, respectively, by 2025 due to the ACCP. As such, the ACCP will provide additional emissions reductions in the South Coast through the maintenance period and thereby decrease the chance that a monitored violation will occur at the Pechanga Reservation. Moreover, the additional emissions reductions from the ACCP are surplus to those included in the baseline emissions estimates upon which the maintenance demonstration relies.

The Pechanga Tribe also commits to annually review ozone monitoring data from the three most recent, consecutive years to verify continued attainment of the 1997 ozone standard through the maintenance period. In the event of a monitored violation of the 1997 8-hour ozone standard, the Tribe commits to work with the EPA to identify, adopt, and implement any additional necessary and appropriate measure(s) needed to promptly correct the violation.

[38] On January 9, 2013, EPA approved CARB's request for a waiver of preemption under section 209(b) for its ACCP regulations. See 78 FR 2112.

Based upon our review of the plan, as summarized above, we conclude that the contingency provisions of the Pechanga Ozone Maintenance Plan comply with section 175A(d) of the Act.

V. Summary of Proposed Action and Request for Public Comment

Under CAA sections 107(d)(3), the EPA is proposing to revise the boundaries of the South Coast and San Diego County air quality planning areas for the 1997 ozone standard to designate the Pechanga Reservation as a separate nonattainment area for the 1997 ozone standard. We are proposing to do so based on our conclusion that factors such as air quality data, meteorology, and topography do not definitively support inclusion of the reservation in either the South Coast or the San Diego County air quality planning areas, that emissions sources at the Pechanga Reservation contribute minimally to regional ozone concentrations, and that the jurisdictional boundaries factor should be given particular weight under these circumstances. If finalized as proposed, the Pechanga air quality planning area for the 1997 ozone standards would have the same boundaries as the Pechanga nonattainment area for the 2008 ozone standard. Unless the EPA finalizes its redesignation of the area to attainment for the 1997 ozone standard, also

proposed herein, the area would retain its current classification of "Severe-17" for the 1997 ozone standard.

Under CAA sections 110(k), 110(o), and 301(d), the EPA is also proposing to approve the Pechanga Ozone Maintenance Plan, submitted by the Tribe on November 4, 2014, as the Tribe's TIP for maintaining the 1997 ozone standard within the Pechanga Reservation for ten years beyond redesignation, because it meets the requirements for maintenance plans under CAA section 175A.

Lastly, under CAA section 107(d)(3), and based in part on the proposed approval of the Pechanga Ozone Maintenance Plan, the EPA is proposing to grant a request from the Tribe to redesignate the newly-established Pechanga Reservation ozone air quality planning area to attainment for the 1997 ozone standard because the request meets the statutory requirements for redesignation under the Clean Air Act.

If finalized as proposed, the requirements that had applied to the Pechanga Reservation by virtue of its inclusion in the South Coast "Extreme" ozone nonattainment area for the 1-hour ozone standard would no longer apply, nor would the requirements that had applied to the reservation by virtue of its designation as "Severe-17" for the 1997 ozone standard. The requirements that would no longer apply include, among others, the NNSR major

source threshold of 10 tpy for ozone precursor emissions in "Extreme" ozone nonattainment areas. New or modified stationary sources proposed at the Pechanga Reservation would remain subject to major source nonattainment NNSR, however, by virtue of the reservation's classification as a "Moderate" ozone nonattainment area for the 2008 ozone standard. The NNSR major source threshold in "Moderate" ozone nonattainment areas is 100 tpy.

In addition, if finalized as proposed, the EPA would withdraw our proposal to reclassify the Pechanga Reservation as "Extreme" for the 1997 8-hour ozone NAAQS at 74 FR 43654 (August 27, 2009). In so doing, we would resolve the action that we deferred in 2010 [75 FR 24409 (May 5, 2010)] when we reclassified the rest of the South Coast, as then defined and with the exception of two reservations, as "Extreme" for that standard.

In concluding that it is appropriate to propose approval of the tribe's requests for boundary changes and designation to attainment for the 1997 ozone NAAQS, the EPA relies heavily on the obvious fact that this is a request from a federally recognized tribal government. The tribe has been determined previously to qualify for TAS, and the lands under consideration

here are subject to EPA's Tribal Designations Policy. EPA finds that the tribe has met all applicable requirements of that policy.

EPA also relies on the facts that there are valid monitoring data showing that current air quality at the Pechanga Reservation meets the 1997 ozone standard and that the emissions from tribal lands here are extremely small and do not contribute in any meaningful way to any nearby ozone nonattainment area. Finally, the EPA notes that this action to establish a separate air quality planning area, if finalized, would simplify implementation of the ozone standards by eliminating the presence of two different planning areas for the same criteria pollutant, ozone. This separate treatment of the Pechanga Reservation is consistent with EPA's prior actions to reclassify the South Coast ozone nonattainment area in 2010, and to establish a separate ozone nonattainment area for the 2008 ozone standard in 2012. In summary, the proposed changes in the boundaries and the status of this area are supported by several unique factors described in this notice that are unlikely to be present in other nonattainment areas.

The EPA is soliciting public comments on the issues discussed in this document and will accept comments for the next

30 days. These comments will be considered before taking final action.

VI. Statutory and Executive Order Reviews

Under the CAA, redesignation of an Indian reservation air quality planning area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by the TIP. Redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, under circumstances where a tribe is determined as eligible for TAS for the purposes of section 110 with respect to a given TIP, the Administrator is required to approve a TIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing TIP submissions, the EPA's role is to approve tribal choices, provided that they meet the criteria of the Clean Air Act. Accordingly, these actions merely propose to approve a tribal plan and redesignation request as meeting Federal requirements and do not impose additional requirements beyond

those imposed by tribal law. For these reasons, these proposed actions:

- Are not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- 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 an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not a significant regulatory action 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 the 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, given the nature of these proposed actions, we presume that the proposed actions would have "tribal implications" as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), with respect to the Pechanga Tribe. However, the proposed actions would not impose substantial direct compliance costs or preempt tribal law. Moreover, these proposed actions respond directly to specific requests submitted by the affected tribe and follow from extensive coordination and consultation between representatives of the Pechanga Tribe and the EPA about these and other related matters.

List of Subjects

40 CFR Part 49

Environmental protection, Air pollution control,

Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

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

Dated: December 23, 2014. Alexis Strauss,

Acting Regional Administrator,

EPA Region 9.

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