

(i) An *old group* is a brother-sister controlled group of corporations, determined by applying paragraph (a)(3)(ii) of this section as in effect before the amendments made by TD 8179, that is not a brother-sister controlled group of corporations, determined by applying paragraph (a)(3)(ii) of this section as amended by such Treasury decision; and

(ii) An *old member* is any corporation that is a member of an old group.

(5) *Election to choose between membership in more than one controlled group*—(i) *In general.* A corporation may make an election under paragraph (c)(2) of this section by filing an amended return on or before September 2, 1988 if—

(A) An old member has filed an election under paragraph (c)(2) of this section to be treated as a component member of an old group for a December 31st before March 2, 1988; and

(B) That corporation would (without regard to such paragraph (c)(2)) be a component member of more than one brother-sister controlled group (not including an old group) on December 31st.

(ii) *Exception.* This paragraph (d)(5) does not apply to a corporation that is treated as a member of an old group under paragraph (d)(3) of this section.

(6) *Refunds.* See section 6511(a) for period of limitation on filing claims for credit or refund.

(e) *Effective/applicability date.* This section applies to taxable years beginning on or after May 26, 2009. However, taxpayers may apply this section to taxable years beginning before May 26, 2009. For taxable years beginning before May 26, 2009, see § 1.1563-1T as contained in 26 CFR part 1 in effect on April 1, 2009.

**§ 1.1563-1T [Removed]**

■ **Par. 3.** Section 1.1563-1T is removed.

**§ 1.1563-3 [Amended]**

■ **Par. 4.** Section 1.1563-3(d)(3), *Example 3*, is amended by removing the language “§ 1.1563-1T” and adding “§ 1.1563-1” in its place.

**PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT**

■ **Par. 5.** The authority citation for part 602 continues to read as follows:

*Authority:* 26 U.S.C. 7805.

■ **Par. 6.** In § 602.101, paragraph (b) is amended as follows:

■ **1.** The following entry to the tables is removed:

**§ 602.101 OMB Control Numbers.**

\* \* \* \* \*

CFR part or section where identified or described	Current OMB control No.
* * * * *	* * * * *
1.1563-1T .....	1545-2019
* * * * *	* * * * *

■ **2.** The following entry is added in numerical order to the table:

**§ 602.101 OMB Control Numbers.**

\* \* \* \* \*

CFR part or section where identified or described	Current OMB control No.
* * * * *	* * * * *
1.1563-1 .....	1545-2019
* * * * *	* * * * *

**Linda E. Stiff,**  
*Deputy Commissioner for Services and Enforcement.*

Approved: May 20, 2009.

**Michael F. Mundaca,**  
*Acting Assistant Secretary of the Treasury (Tax Policy).*

[FR Doc. E9-12296 Filed 5-26-09; 8:45 am]

**BILLING CODE 4830-01-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R09-OAR-2009-0133; FRL-8909-6]

**Approval and Promulgation of Air Quality Implementation Plans; California; Determination of Attainment of the 1-Hour Ozone Standard for the Ventura County Area**

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

**ACTION:** Direct final rule.

**SUMMARY:** On April 15, 2009, the California Air Resources Board (CARB) requested that EPA find that the Ventura County ozone nonattainment area has attained the revoked 1-hour ozone National Ambient Air Quality Standard (NAAQS). After a review of this submission and of the relevant monitoring data, EPA is making such a finding.

Because the area has attained the 1-hour standard by the applicable

attainment date, the area is not subject to the requirement to implement contingency measures for failure to attain the standard by its attainment date. In addition, EPA finds that the area is not subject to the Clean Air Act penalty fee requirements for severe and extreme ozone nonattainment areas that have not attained the 1-hour standard by the applicable attainment date.

**DATES:** This rule is effective on July 27, 2009 without further notice, unless EPA receives adverse comments by June 26, 2009. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule does not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R09-OAR-2009-0133, by one of the following methods:

1. <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
2. *E-mail:* [nudd.gregory@epa.gov](mailto:nudd.gregory@epa.gov).
3. *Fax:* (415) 947-3579.

4. *Mail or Delivery:* Greg Nudd (AIR-2), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

*Instructions:* Direct your comments to Docket ID No. EPA-R09-OAR-2009-0133. EPA's policy is that all comments received 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 a comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

**FOR FURTHER INFORMATION CONTACT:** Greg Nudd, Environmental Engineer, EPA Region IX, (415) 947-4107, [nudd.gregory@epa.gov](mailto:nudd.gregory@epa.gov).

**SUPPLEMENTARY INFORMATION:**

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

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- V. Statutory and Executive Order Reviews

**I. What Is the Background for This Action?**

Under section 107(d)(1)(C) of the Clean Air Act (CAA), the Ventura County, California area was designated nonattainment for the 1-hour ozone NAAQS by operation of law upon enactment of the 1990 CAA Amendments. Under section 181(a) of the CAA, each ozone area designated nonattainment under section 107(d) was also classified by operation of law as “marginal,” “moderate,” “serious,” “severe-15,” “severe-17,” or “extreme,” depending on the severity of the area’s air quality problem and the number of years to reach attainment from the time of the CAA Amendments.

The ozone design value for an area, which characterizes the severity of the air quality problem, is represented by the highest ozone design value at any of the individual ozone monitoring sites in the area. Table 1 in section 181(a) of the CAA provides the design value ranges for each nonattainment classification. Ozone nonattainment areas with design values between 0.180 parts per million (ppm) and 0.190 ppm for the three-year period, 1987–1989, were classified as severe-15. Because the Ventura County,

California area’s 1988 ozone design value fell between 0.180 and 0.190 ppm, this area was classified as severe-15 nonattainment for the 1-hour ozone NAAQS. These nonattainment designations and classifications were codified in title 40 of the Code of Federal Regulations (CFR) part 81 (see 56 FR 56994, November 6, 1991).

Under section 182(c) of the CAA, states containing areas that were classified as severe-15 nonattainment were required to submit State Implementation Plans (SIPs) to provide for certain emission controls, to show progress toward attainment, and to provide for attainment of the ozone NAAQS as expeditiously as practicable, but no later than November 15, 2005. The State of California included plans for bringing Ventura County into attainment with the 1-hour ozone standard in their 1994 State Implementation Plan (SIP) revision that EPA approved on January 8, 1997 (62 FR 1150). Specifically, EPA approved the Ventura 1994 ozone SIP with respect to the Act’s requirements for emission inventories, control measures, modeling, demonstrations of 15% Rate of Progress (ROP), post-1996 ROP and attainment of the 1-hour ozone standard.

In 1997, EPA adopted a new 8-hour ozone NAAQS. One of the implementation rules for the standard, referred to as the Phase 1 Implementation Rule, was published on April 30, 2004 (69 FR 23951), and addressed how requirements that applied in an area for the 1-hour ozone NAAQS would apply in the transition from the 1-hour standard to the 8-hour standard. Challenges to this rule were decided in *South Coast Air Quality Management District v. EPA*, 472 F.3d 882 (DC Cir. 2006) (SCAQMD), rehearing denied 489 F.3d 1245, which we considered in this action.

**II. How Does the SCAQMD Decision Regarding EPA’s 8-Hour Phase 1 Ozone Implementation Rule Affect This Action?**

On December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit vacated EPA’s Phase 1 Implementation Rule for the 8-hour Ozone Standard. *SCAQMD v. EPA*, 472 F.3d 882. On June 8, 2007, in response to several petitions for clarification and rehearing, the DC Circuit clarified that the Phase 1 Rule was vacated only with regard to those parts of the rule that had been successfully challenged. 489 F.3d 1245. With respect to the challenges to the anti-backsliding provisions of the rule, the Court vacated three provisions that would have allowed States to

remove from the SIP or to not adopt three SIP obligations related to the 1-hour ozone standard once the 1-hour ozone standard was revoked: (1) Nonattainment area new source review (NSR) requirements based on an area’s 1-hour nonattainment classification; (2) section 185 penalty fees for severe or extreme 1-hour ozone nonattainment areas that fail to attain the 1-hour ozone standard by the 1-hour ozone attainment date; and (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the Act, on the contingency of an area not making reasonable further progress (RFP) toward attainment of the 1-hour NAAQS or for failure to attain that NAAQS. The Court clarified that 1-hour ozone conformity determinations are not required for anti-backsliding purposes.

Thus, the provisions waiving these three requirements, which were specified in 40 CFR 51.905(e), were vacated by the Court. As a result of the vacatur, States must continue to meet the obligations for 1-hour ozone NSR; 1-hour ozone contingency measures; and, for severe and extreme areas, the obligations related to a section 185 fee program. EPA has issued a proposed rule that would remove the vacated provisions of 40 CFR 51.905(e) and that addresses treatment of contingency measures for failure to attain or make reasonable further progress toward attainment of the 1-hour standard. See 74 FR 2936, January 16, 2009 (proposed rule); 74 FR 7027, February 12, 2009 (notice of public hearing and extension of comment period). EPA is developing a proposed rule to address treatment of 1-hour NSR and section 185 fees for failure to attain the 1-hour standard.

We address below how the 1-hour ozone obligations that currently continue to apply as a result of the Court’s vacatur of the waiver provisions are treated where EPA makes a determination that the area attained the 1-hour ozone standard by its attainment date.

**III. Attainment Finding**

In 1991, the Ventura County, California area was classified as severe-15 for the 1-hour ozone NAAQS. An area is considered to have attained the 1-hour ozone NAAQS if there are no violations of the standard, as determined in accordance with the regulation codified at 40 CFR 50.9 and the related regulatory appendix, 40 CFR Part 50, Appendix H, based on three consecutive calendar years of complete, quality-assured monitoring data. A violation occurs when the ozone air quality monitoring data show greater than one (1.0) average expected

exceedance per year at any site in the area. An exceedance occurs when the maximum hourly ozone concentration during any day exceeds 0.124 ppm. In accordance with 40 CFR part 58, the

data should be collected and quality-assured and recorded in the Air Quality System so that they are available to the public for review.

The finding of attainment for the Ventura County, California area is based on an analysis of 1-hour ozone air quality data from 2003–2005. Table 1 summarizes these data.

TABLE 1—AVERAGE NUMBER OF OZONE EXPECTED EXCEEDANCE DAYS PER YEAR BY MONITORS IN VENTURA COUNTY, CALIFORNIA (2003–2005)

Monitor	Site ID	2003	2004	2005	Average number of expected exceedances (2003–2005)
Thousand Oaks .....	06–111–0007	0.0	0.0	0.0	0.0
Piru .....	06–111–0009	0.0	0.0	0.0	0.0
Ojai .....	06–111–1004	1.0	0.0	0.0	0.3
Simi Valley .....	06–111–2002	1.0	0.0	0.0	0.3
Ventura .....	06–111–2003	0.0	0.0	0.0	0.0
El Rio .....	06–111–3001	0.0	0.0	0.0	0.0

Based on the monitoring data summarized in Table 1, the EPA finds that the Ventura County, California area

attained the 1-hour ozone NAAQS by its attainment date of November 15, 2005.

TABLE 2—AVERAGE NUMBER OF OZONE EXPECTED EXCEEDANCE DAYS PER YEAR BY MONITORS IN VENTURA COUNTY, CALIFORNIA (2006–2008)

Monitor	Site ID	2006	2007	2008	Average number of expected exceedances (2003–2005)
Thousand Oaks .....	06–111–0007	0.0	0.0	0.0	0.0
Piru .....	06–111–0009	0.0	0.0	0.0	0.0
Ojai .....	06–111–1004	0.0	0.0	0.0	0.0
Simi Valley .....	06–111–2002	1.0	0.0	0.0	0.3
Ventura .....	06–111–2003	0.0	0.0	0.0	0.0
El Rio .....	06–111–3001	0.0	0.0	0.0	0.0

Based on the monitoring summarized in Table 2, the EPA finds that the Ventura County, California area continues to attain the 1-hour ozone NAAQS.

#### IV. What Action Is EPA Taking?

EPA is determining that the Ventura County, California area attained the 1-hour ozone standard by its attainment date, November 15, 2005.

The data summary presented in Table 1 demonstrates that there was less than one expected exceedance of the 1-hour ozone standard in Ventura County averaged over the 3 years 2003 to 2005. Because the area attained the 1-hour standard by the applicable attainment date, the area is not subject to the requirement to implement contingency measures for failure to attain the standard by its attainment date. As such, even if the area subsequently lapses into nonattainment, it would not be required to implement the contingency measures for failure to

attain the standard by its attainment date.

Section 185(a) of the CAA states that a severe or extreme ozone nonattainment area must implement a program to impose fees on certain stationary sources of air pollution if the area “has failed to attain the national primary ambient air quality standard for ozone by the applicable attainment date.” Consequently, if such an area has attained the standard as of its applicable attainment date, even if it subsequently lapses into nonattainment, the area would not be required to implement a section 185 fee program. Because EPA is determining that the Ventura County, California area attained the 1-hour standard by its applicable attainment date, we conclude that the area is not subject to the requirements of section 185 for the 1-hour standard. Accordingly, we also determine that the State is not required to submit a SIP under Section 182(d)(3) of the CAA to implement a section 185 program for the 1-hour standard in this area.

#### V. Statutory and Executive Order Reviews

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

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a

substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

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

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (59 FR 22951, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

Environmental protection, Air pollution control, Incorporation by Reference, Intergovernmental relations, Ozone.

Dated: May 14, 2009.

**Jane Diamond,**

*Acting Regional Administrator, Region IX.*

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

#### PART 52—[AMENDED]

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

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

#### Subpart F—California

■ 2. A new § 52.282 is added to read as follows:

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

(a) *Attainment determination.* EPA has determined that the Ventura County

severe 1-hour ozone nonattainment area attained the 1-hour ozone NAAQS by the applicable attainment date of November 15, 2005. EPA also has determined that the Ventura County severe 1-hour ozone nonattainment area is not subject to the requirements of section 185 of the Clean Air Act (CAA) for the 1-hour standard and that the State is not required to submit a SIP under Section 182(d)(3) of the CAA to implement a section 185 program for the 1-hour standard in this area. In addition, the requirements of section 172(c)(9) (contingency measures) for the 1-hour standard do not apply to the area.

(b) [Reserved]

[FR Doc. E9-12135 Filed 5-26-09; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[EPA-HQ-OPP-2008-0554; FRL-8413-5]

#### Etoxazole; Pesticide Tolerances

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for residues of etoxazole in or on stone fruit; plum; prune; spearmint tops and oil; peppermint tops and oil; tomato; and cucumber. This regulation also deletes the existing cherry tolerance, as it will be superseded by inclusion in the stone fruit crop group. The Interregional Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

**DATES:** This regulation is effective May 27, 2009. Objections and requests for hearings must be received on or before July 27, 2009, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2008-0554. All documents in the docket are listed in the docket index available at <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

Publicly available docket materials are available in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

#### FOR FURTHER INFORMATION CONTACT:

Laura Nollen, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-7390; e-mail address: [nollen.laura@epa.gov](mailto:nollen.laura@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

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

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

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

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

##### B. How Can I Access Electronic Copies of this Document?

In addition to accessing electronically available documents at <http://www.regulations.gov>, you may access this **Federal Register** document electronically through the EPA Internet under the “**Federal Register**” listings at <http://www.epa.gov/fedrgstr>. You may also access a frequently updated electronic version of EPA’s tolerance regulations at 40 CFR part 180 through the Government Printing Office’s e-CFR cite at <http://www.gpoaccess.gov/ecfr>.