



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R09-OAR-2019-0068; FRL-9992-70-Region 9]**

**Determination of Attainment by the Attainment Date; 2006 24-Hour Fine Particulate Matter National Ambient Air Quality Standard; Pinal County, Arizona**

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to determine that the West Central Pinal County nonattainment area attained the 2006 24-hour national ambient air quality standard (NAAQS) for particulate matter with a diameter of 2.5 micrometers or smaller (PM<sub>2.5</sub> or “fine particulate matter”) by December 31, 2017, the statutory attainment date for the area. The proposal is based on the three-year average of annual 98<sup>th</sup> percentile 24-hour concentrations for the 2015-2017 period, using complete, quality-assured, and certified PM<sub>2.5</sub> monitoring data.

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

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R09-OAR-2019-0068 at <https://www.regulations.gov>. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions

(audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Jerry Wamsley, EPA Region IX, (415) 947-4111, [wamsley.jerry@epa.gov](mailto:wamsley.jerry@epa.gov).

**SUPPLEMENTAL INFORMATION:** Throughout this document, “we,” “us” and “our” refer to the EPA.

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## **I. Background and Regulatory Context**

This proposed action is related to the ongoing efforts of states and the EPA to implement the PM<sub>2.5</sub> NAAQS. Since the EPA's initial promulgation of the NAAQS to address fine particulate matter, there have been significant rulemaking and litigation developments that affect these ongoing efforts. To clarify the proper application of the statutory and regulatory

requirements to this action, the EPA is providing a detailed explanation of PM<sub>2.5</sub> implementation efforts, nationally and in West Central Pinal County, Arizona.

On July 18, 1997, the EPA established the first NAAQS for PM<sub>2.5</sub> (“the 1997 PM<sub>2.5</sub> Standards”), including an annual standard of 15.0 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ) based on a three-year average of annual mean PM<sub>2.5</sub> concentrations, and a 24-hour (or daily) standard of 65  $\mu\text{g}/\text{m}^3$  based on a three-year average of the 98th percentile of 24-hour concentrations.<sup>1</sup> The EPA established the 1997 PM<sub>2.5</sub> Standards based on significant evidence and numerous health studies demonstrating the serious health effects associated with exposures to PM<sub>2.5</sub>. To provide guidance on the Clean Air Act (CAA) requirements for state and tribal implementation plans to implement the 1997 PM<sub>2.5</sub> Standards, the EPA promulgated the “Final Clean Air Fine Particle Implementation Rule” in October 2007 (hereinafter, the “2007 PM<sub>2.5</sub> Implementation Rule”).<sup>2</sup> The Natural Resources Defense Council (NRDC) subsequently filed a petition for review challenging certain aspects of this rule.

On October 17, 2006, the EPA strengthened the 24-hour PM<sub>2.5</sub> NAAQS by revising it to 35  $\mu\text{g}/\text{m}^3$  and retained the level of the annual PM<sub>2.5</sub> standard at 15.0  $\mu\text{g}/\text{m}^3$ .<sup>3</sup> Following promulgation of a new or revised NAAQS, the EPA is required by the CAA to promulgate designations for areas throughout the U.S. in accordance with section 107(d)(1) of the CAA. On November 13, 2009, the EPA designated 31 areas across the U.S. with respect to the revised 2006 24-hour PM<sub>2.5</sub> NAAQS, requiring states to prepare and submit attainment plans to meet those NAAQS.<sup>4</sup> At the time of the 2009 designations, the states and the EPA were operating under the interpretations of the CAA set forth in the 2007 PM<sub>2.5</sub> Implementation Rule, which

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<sup>1</sup> 62 FR 38652 (July 18, 1997).

<sup>2</sup> 72 FR 20586 (April 25, 2007).

<sup>3</sup> 71 FR 61144 (October 17, 2006).

<sup>4</sup> 74 FR 58688 (November 13, 2009).

covered issues such as the timing of attainment plan submissions, the content of attainment plan submissions, and the relevant attainment dates. The EPA deferred making a PM<sub>2.5</sub> designation for Pinal County, Arizona in its November 13, 2009 designations action.

On February 3, 2011, the EPA designated a portion of state lands in Pinal County, Arizona (“West Central Pinal County”) as nonattainment for the 2006 PM<sub>2.5</sub> NAAQS based on 2006-2008 data.<sup>5</sup> For more information on our designation of West Central Pinal County, see the February 3, 2011 final rule.<sup>6</sup> On October 26, 2012, the EPA designated nearby areas of Indian country of the Ak-Chin Indian Community and the Gila River Indian Community, which lie within the 2009 deferred area, as “unclassifiable/attainment” for the 2006 PM<sub>2.5</sub> NAAQS based on improved air quality.<sup>7</sup> These areas of Indian country are not addressed in this proposal.

On March 2, 2012, the EPA issued its “Implementation Guidance for the 2006 24-Hour Fine Particle (PM<sub>2.5</sub>) National Ambient Air Quality Standards” to provide guidance to states on the development of attainment plans to demonstrate attainment with the 2006 24-hour PM<sub>2.5</sub> NAAQS (“March 2012 Implementation Guidance”).<sup>8</sup> This guidance largely instructed states to rely on the 2007 PM<sub>2.5</sub> Implementation Rule in developing plans to demonstrate attainment of the 2006 24-hour PM<sub>2.5</sub> NAAQS. The EPA based the 2007 PM<sub>2.5</sub> Implementation Rule on the requirements of subpart 1, part D of title I of the CAA (“subpart 1”).

On January 4, 2013, the U.S. Court of Appeals for the D.C. Circuit issued its decision regarding the NRDC’s legal challenge to the EPA’s 2007 PM<sub>2.5</sub> Implementation Rule.<sup>9</sup>

In *NRDC v. EPA*, the court held that the EPA erred in implementing the 1997 PM<sub>2.5</sub> NAAQS

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<sup>5</sup> 76 FR 6056 (February 3, 2011).

<sup>6</sup> The boundaries for the West Central Pinal County nonattainment area are described in 40 CFR 81.303.

<sup>7</sup> 77 FR 65310 (October 26, 2012).

<sup>8</sup> Memorandum dated March 2, 2012, from Stephen D. Page, Director, Office of Air Quality Planning and Standards, to EPA Regional Air Directors, Regions I-X, “Implementation Guidance for the 2006 24-Hour Fine Particle (PM<sub>2.5</sub>) National Ambient Air Quality Standards.” This guidance was withdrawn June 6, 2013.

<sup>9</sup> *NRDC v. EPA*, 706 F. 3d 428 (D.C. Cir. 2013).

pursuant only to the general implementation requirements of subpart 1, rather than also to the implementation requirements specific to coarse particulate matter (PM<sub>10</sub>) in subpart 4, part D of title I of the CAA (“subpart 4”). The court reasoned that the plain meaning of the CAA requires implementation of the 1997 PM<sub>2.5</sub> NAAQS under subpart 4 because PM<sub>2.5</sub> falls within the statutory definition of PM<sub>10</sub>; consequently, implementation of the PM<sub>2.5</sub> NAAQS is subject to the same statutory requirements as the PM<sub>10</sub> NAAQS. The court remanded the rule and instructed the EPA “to repromulgate these rules pursuant to Subpart 4 consistent with this opinion.”<sup>10</sup>

Given the result of the *NRDC v. EPA* decision, the EPA withdrew its March 2012 Implementation Guidance for implementation of the 2006 24-hour PM<sub>2.5</sub> NAAQS. When withdrawing this guidance, the EPA advised states that the statutory requirements of subpart 4 apply to attainment plans for these NAAQS and reminded states about pre-existing EPA guidance regarding subpart 4 requirements. One practical consequence of the application of subpart 4 to states with areas designated nonattainment for the 2006 24-hour PM<sub>2.5</sub> NAAQS is that the applicable statutory attainment date is governed by CAA section 188(c), which states that for areas classified as Moderate, the statutory attainment date is “as expeditiously as practicable, but no later than the end of the sixth calendar year after the area's designation as nonattainment.”

Consistent with the *NRDC v. EPA* decision, the EPA published a final rule on June 2, 2014, classifying all areas that were designated nonattainment for the 1997 and/or 2006 PM<sub>2.5</sub> standards at the time as Moderate under subpart 4.<sup>11</sup> The EPA also established a due date of December 31, 2014, for states to submit state implementation plan (SIP) revisions related to attainment and nonattainment new source review required for these areas pursuant to subpart 4.

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<sup>10</sup> *Id.* at 437.

<sup>11</sup> 79 FR 31566 (June 2, 2014).

This rulemaking did not affect the statutory attainment dates imposed in subpart 4 and merely provided states with the opportunity to update or revise any prior attainment plan submissions, if necessary, to meet subpart 4 requirements considering the 2013 court decision. This rulemaking did not affect any action that the EPA had previously taken under CAA section 110(k) on a SIP for a PM<sub>2.5</sub> nonattainment area.

On September 4, 2013, EPA issued a clean data determination for the West Central Pinal County 2006 24-hour PM<sub>2.5</sub> nonattainment area based on three years of complete, quality-assured, and certified data for the 2010-2012 time frame.<sup>12</sup> The EPA's clean data determination suspended certain CAA requirements for the West Central Pinal County nonattainment area for so long as the area continues to attain the 2006 PM<sub>2.5</sub> NAAQS, including requirements to submit an attainment demonstration pursuant to section 189(a)(1)(B), the reasonably available control measure (RACM) provisions of section 189(a)(1)(C), the reasonable further progress (RFP) provisions of section 189(c), and related attainment demonstration, RACM, RFP and contingency measure provisions requirements of subpart 1, section 172.<sup>13</sup>

For an area classified as Moderate under the CAA, section 188(c) states that the statutory attainment date is "as expeditiously as practicable, but no later than the end of the sixth calendar year after the area's designation as nonattainment." Therefore, the applicable attainment date for West Central Pinal County, designated nonattainment in 2011 and classified as Moderate in 2014, was December 31, 2017.<sup>14</sup> CAA section 188(b)(2) requires the EPA to determine whether any PM<sub>2.5</sub> nonattainment area classified as Moderate attained the relevant PM<sub>2.5</sub> NAAQS by the area's attainment date and requires the EPA to make such a determination within six months after

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<sup>12</sup> 78 FR 54394 (September 4, 2013).

<sup>13</sup> For a discussion of the Clean Data Determination for West Central Pinal County and our clean data policy as applied at that time, see our proposed rulemaking at 78 FR 41901 (July 12, 2013).

<sup>14</sup> 79 FR 31566, 31569, fn 5.

that date. If that Moderate area has not attained the NAAQS by the relevant attainment date, then the CAA requires this area be reclassified to Serious. The 2006 24-hour PM<sub>2.5</sub> NAAQS is met when the 24-hour PM<sub>2.5</sub> design value at each eligible monitoring site is less than or equal to 35 µg/m<sup>3</sup>, as explained further in Section II of this proposal.<sup>15</sup>

## **II. Criteria for Determining That an Area Has Attained the 2006 24-Hour PM<sub>2.5</sub> NAAQS**

Under 40 CFR part 50, section 50.13 and in accordance with Appendix N, a nonattainment area meets the 2006 24-hour PM<sub>2.5</sub> NAAQS when the area's design value is less than or equal to 35 µg/m<sup>3</sup>, based on the rounding convention in 40 CFR part 50, Appendix N, at each eligible monitoring site within the area. Our determination of whether an area's air quality meets the 2006 24-hour PM<sub>2.5</sub> NAAQS is generally based upon three years of complete, quality-assured data gathered at established state and local air monitoring stations (SLAMS) in a nonattainment area and entered into the EPA's Air Quality System (AQS) database.<sup>16</sup> Ambient air quality data must meet data completeness or substitution requirements for each year under consideration. The completeness requirements are met when at least 75 percent of the scheduled sampling days for each quarter have valid data.<sup>17</sup> Data from ambient air monitors operated by state or local agencies in compliance with the EPA monitoring requirements must be submitted to AQS. Monitoring agencies certify annually 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.

## **III. The EPA's Proposed Action and Associated Rationale**

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<sup>15</sup> An area's highest design value for the 24-hour PM<sub>2.5</sub> NAAQS is the highest of the three-year average of annual 98th percentile 24-hour average PM<sub>2.5</sub> mass concentration values recorded at each eligible monitoring site. See definition of "Design values" in 40 CFR part 50, Appendix N, 1.0(c).

<sup>16</sup> Because we are determining attainment of the PM<sub>2.5</sub> NAAQS as of December 31, 2017, in this proposal, the applicable 3-year data review period is 2015-2017. AQS is the EPA's national repository of ambient air quality data.

<sup>17</sup> 40 CFR Part 50, Appendix N, section 4.2(b).

The EPA's proposal is pursuant to the Agency's statutory obligation, under CAA section 188(b)(2), to determine whether the West Central Pinal County nonattainment area has attained the 2006 24-hour PM<sub>2.5</sub> NAAQS by December 31, 2017. As discussed above in Section II, a nonattainment area must meet several criteria concerning its ambient data if the nonattainment area is to be determined as meeting the 2006 24-hour PM<sub>2.5</sub> NAAQS. These criteria include complete, quality-assured and certified data collected from a valid ambient air quality monitoring network and a design value calculated from the ambient data to be less than the applicable NAAQS. Our proposed action and rationale for our proposal are described below.

*A. Data Completeness, Network Review, and Certification of Data*

In accordance with 40 CFR part 50, Appendix N, a finding of attainment of the 2006 24-hour PM<sub>2.5</sub> NAAQS must generally be based upon complete, quality-assured data gathered at eligible monitoring sites in the nonattainment area and entered in the AQS. For the 24-hour PM<sub>2.5</sub> standards, Appendix N defines eligible monitoring sites as those that meet the technical requirements in 40 CFR 58.11 and 58.30. All data are reviewed to determine the area's air quality status in accordance with 40 CFR 50, Appendix N.<sup>18</sup>

The PM<sub>2.5</sub> ambient air quality monitoring data collected within the West Central Pinal County nonattainment area for the 2015-2017 three-year period must meet data completeness or substitution criteria according to 40 CFR part 50, Appendix N. The ambient air quality monitoring data completeness requirements are met when quarterly data capture rates for all four quarters in a calendar year are at least 75 percent. For the purposes of this proposal, we reviewed the data for the 2015-2017 period for completeness and determined that the PM<sub>2.5</sub> data collected

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<sup>18</sup> For detailed descriptions of the EPA's data and monitoring requirements refer to 40 CFR 50.13; 40 CFR part 50, Appendix L; 40 CFR part 53; 40 CFR part 58, and 40 CFR part 58, appendices A, C, D, and E.

by Pinal County met the completeness criterion for all 12 quarters at PM<sub>2.5</sub> monitoring sites in the West Central Pinal County nonattainment area.

The EPA's determination as to whether an area has attained the PM<sub>2.5</sub> NAAQS pursuant to CAA section 188(b)(2) is based on monitored ambient air quality data. The validity of this determination of attainment depends in part on whether the monitoring network adequately measures ambient PM<sub>2.5</sub> levels in the nonattainment area. Pinal County, Arizona, is the governmental agency with the authority and responsibilities under the State's laws for collecting ambient air quality data for the West Central Pinal County nonattainment area. Pinal County submits annual monitoring network plans to the EPA. These plans 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 PM<sub>2.5</sub>, we have found that the annual network plans submitted by Pinal County meet the applicable requirements under 40 CFR part 58.<sup>19</sup> Furthermore, we concluded in our "Technical Systems Audit Report" of Pinal County's ambient air quality monitoring program that the ambient air monitoring network currently meets or exceeds the requirements for the minimum number of monitoring sites designated as SLAMS for PM<sub>2.5</sub> in the West Central Pinal County nonattainment area.<sup>20</sup> Pinal County certifies annually that the data it submits to AQS are quality-assured and has done so for each year relevant to our determination of attainment, 2015-2017.<sup>21</sup>

#### *B. State and Local Air Monitoring Stations Site Replacement*

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<sup>19</sup> We have included in our docket the correspondence transmitting our annual network reviews, e.g., correspondence dated October 30, 2017, from Gwen Yoshimura, Manager, Air Quality Analysis Office, EPA Region IX, to Michael Sundblom, Director, Pinal County Air Quality Control District.

<sup>20</sup> We have included in our docket the correspondence concerning our audits, e.g., correspondence dated September 28, 2016, from Elizabeth Adams, Division Director, Air Division, EPA Region IX, to Michael Sundblom, Director, Pinal County Air Quality Control District.

<sup>21</sup> We have included in our docket Pinal County's annual data certifications for 2015, 2016 and 2017, e.g., correspondence dated April 30, 2018, from Josh DeZeeuw, Air Quality Manager, Pinal County Air Quality Control District, to Elizabeth Adams, Division Director, Air Division, EPA Region IX. Annual data certification requirements can be found at 40 CFR 58.15.

In January 2016, Pinal County relocated the PM<sub>2.5</sub> SLAMS monitoring site operating at the Cowtown location and began operating a new PM<sub>2.5</sub> SLAMS monitoring site at the Hidden Valley location.<sup>22</sup> Beginning in late 2013, Pinal County and the EPA engaged in a cooperative multi-year process to review alternative locations and relocate the Cowtown PM<sub>2.5</sub> SLAMS monitoring site. Over the course of 2014 and 2015, Pinal County operated temporary monitors at two other potential monitoring site locations (i.e., Hidden Valley; and White and Parker). This allowed Pinal County and the EPA to assess the data from each location and to determine if either of the proposed monitoring site locations met the applicable system modification requirements in 40 CFR part 58.14 for monitoring site relocation. Based on an assessment of PM<sub>2.5</sub> concentrations, land use, and nearby sources, the EPA approved the relocation of the Cowtown PM<sub>2.5</sub> SLAMS monitoring site to the new Hidden Valley location. Specifically, the EPA found that the Hidden Valley location provided the most similar concentrations from similar sources to the Cowtown monitoring site, thus meeting the requirement that a new location is, in fact, a nearby location with the same scale of representation. As noted in the EPA's approval, the data from the old and new monitoring site locations will be combined to form one continuous data record for design value calculations.<sup>23</sup> Consequently, the 2015-2017 design value is a composite data record consisting of 2015 data from the Cowtown monitoring site and 2016 and 2017 data from the Hidden Valley monitoring site.

### *C. Determination of Attainment*

The EPA's evaluation of whether the West Central Pinal County nonattainment area has met the 2006 PM<sub>2.5</sub> 24-hour NAAQS is based on our review of the monitoring data, the adequacy

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<sup>22</sup> The site identification numbers are as follows: Cowtown (AQS ID: 04-021-3013); and, Hidden Valley (AQS ID: 04-021-3015).

<sup>23</sup> For a complete discussion of the EPA's review and approval of the Cowtown monitoring site relocation, refer to correspondence dated October 22, 2015, from Meredith Kurpius, EPA Region IX, to Michael Sundblom, Pinal County Air Quality Control District, in the docket for this proposed rulemaking.

of the PM<sub>2.5</sub> monitoring network in the nonattainment area, and the reliability of the data collected by the network, as discussed previously. Table 1 shows the annual 98th percentile concentrations for the years 2015-2017.<sup>24</sup> The design value for the 2015-2017 period is calculated as the average of the annual 98th percentiles for each of the three years according to 40 CFR 50, Appendix N, section 4.5. Table 1 shows the calculated 24-hour PM<sub>2.5</sub> design value for the Cowtown and Hidden Valley monitoring sites within the West Central Pinal County nonattainment area for the 2015-2017 period. The data show that the 24-hour design value for the 2015-2017 period, 32 µg/m<sup>3</sup>, was equal to or less than 35 µg/m<sup>3</sup>, the 2006 PM<sub>2.5</sub> 24-hour NAAQS. Thus, the EPA proposes to determine, based upon three years of complete, quality-assured and certified data from 2015-2017, that the West Central Pinal County nonattainment area has attained the 2006 24-hour PM<sub>2.5</sub> NAAQS by the applicable attainment date.

Table 1: West Central Pinal County Nonattainment Area Design Value for the 2006 PM <sub>2.5</sub> 24-Hour NAAQS With Annual 98 <sup>th</sup> Percentile Concentrations (µg/m <sup>3</sup> ).					
Monitor	AQS Site ID #	98 <sup>th</sup> percentile			2015-2017 design value
		2015	2016	2017	
Cowtown	04-021-3013	22.6	---	---	32
Hidden Valley	04-021-3015	---	34.0	38.2	

Source: AQS, Combined Site Sample Values Report, dated March 28, 2019.

#### IV. Summary of Our Proposed Action

Today, in accordance with section 188(b)(2) of the CAA, the EPA is proposing to determine that the West Central Pinal County Moderate nonattainment area attained the 2006 24-hour PM<sub>2.5</sub> NAAQS by its applicable attainment date, December 31, 2017. Our determination of attainment is based on complete, quality-assured and certified PM<sub>2.5</sub> monitoring data for the appropriate three-year period, 2015-2017. We are soliciting comments on this proposed determination of attainment by the attainment date.

<sup>24</sup> AQS, Combined Site Sample Values Report, dated March 28, 2019, in the docket for this proposed rulemaking.

If our proposal is finalized as proposed, West Central Pinal County will remain a Moderate nonattainment area and will not be reclassified to a Serious nonattainment area. A final rule determining that West Central Pinal County attained the 2006 24-hour PM<sub>2.5</sub> NAAQS by its applicable attainment date would not, however, constitute a redesignation of the area to attainment. States are required to meet several additional statutory requirements before the EPA can redesignate a nonattainment area to attainment of a NAAQS, including the EPA's approval of a state implementation plan demonstrating maintenance of the NAAQS for ten years after redesignation. The EPA is committed to working with states that submit redesignation requests for the 2006 24-hour PM<sub>2.5</sub> NAAQS. Our proposal today only addresses our statutory obligation to determine if the West Central Pinal County nonattainment area has attained the 2006 24-hour PM<sub>2.5</sub> NAAQS by its applicable attainment date, December 31, 2017.

## **V. Statutory and Executive Order Reviews**

This action proposes to determine that the West Central Pinal County has met the 2006 24-hour PM<sub>2.5</sub> NAAQS as a statement of fact according to regulations and requirements discussed in the proposal. For that reason, this proposed action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because this action is not significant under Executive Order 12866;
- 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 (Public Law 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 Clean Air Act; and
- Does 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, this proposed determination is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed determination does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

Environmental protection, Air pollution control, Nitrogen dioxides, Fine particulate matter, Ammonia, Sulfur dioxides, Volatile organic compounds, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

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

Dated: April 15, 2019

Deborah Jordan,  
Acting Regional Administrator,  
Region IX.

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