



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY
40 CFR Parts 52 and 81
[EPA-R9-OAR-2018-0821 FRL-9995-11-Region 9]

Determination of Attainment by the Attainment Date for the 2008 Ozone National Ambient Air Quality Standards; Phoenix-Mesa, Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to determine that the Phoenix-Mesa ozone nonattainment area (“Phoenix NAA”), which is classified as “Moderate” for the 2008 ozone National Ambient Air Quality Standards (NAAQS or “standards”), attained the NAAQS by its Moderate area attainment date of July 20, 2018. This determination is based on complete, quality-assured, and certified data for 2015-2017. This proposed action is necessary to fulfill the EPA’s statutory obligation to determine whether ozone nonattainment areas attained the NAAQS by the attainment date.

DATES: Any comments must arrive by **[INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-OAR-2018-0821 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: Nancy Levin, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105. By phone: (415) 972-3848 or by email at levin.nancy@epa.gov.

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

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I. What is the Background for this Action?

A. Ozone NAAQS, Area Designations, and Classifications

The Clean Air Act (CAA or “Act”) requires the EPA to establish national primary and secondary standards for certain widespread pollutants, such as ozone, which cause or contribute to air pollution that is reasonably anticipated to endanger public health or welfare.¹ In the 1970s,

¹ CAA sections 108 and 109. Primary standards represent ambient air quality standards the attainment and maintenance of which the EPA has determined, including a margin of safety, are requisite to protect the public health. Secondary standards represent ambient air quality standards the attainment and maintenance of which the

the EPA promulgated primary and secondary ozone standards based on a 1-hour average. In 1997, we replaced the 1-hour ozone standards with primary and secondary 8-hour ozone standards. In 2008, we revised the 8-hour ozone standards to the level of 0.075 parts per million (ppm), daily maximum 8-hour average.² Since the primary and secondary ozone standards are the same, we refer to them hereafter in this document using the singular “2008 ozone standard” (or simply “standard”) or NAAQS. The 2008 ozone standard is met at an ambient air quality monitoring site when the design value is less than or equal to 0.075 ppm, as determined in accordance with 40 CFR part 50, appendix P.³ The design value is a statistic that describes the air quality status of a given location relative to the level of the NAAQS. For the purpose of comparison with the 2008 ozone standard, the design value for a site is the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations.

The EPA designated NAAs for the 2008 ozone standard on May 21, 2012, effective July 20, 2012.⁴ In that action, the EPA classified (by operation of law) the Phoenix NAA as “Marginal” nonattainment. The original attainment date for the 2008 ozone standard for this Marginal ozone NAA was as expeditious as practicable but not later than July 20, 2015.⁵

Section 181(b)(2)(A) of the CAA requires that within 6 months following the applicable attainment date, the EPA must determine whether an ozone NAA attained the ozone standard based on the area’s design value as of that date. In May 2016, the EPA determined that the Phoenix NAA failed to attain the 2008 ozone standard by the applicable attainment date of July

EPA has determined are requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of such air pollutant in the ambient air. CAA section 109(b).

² 73 FR 16436 (March 27, 2008); 40 CFR 50.15. In 2015, we tightened the ozone National Ambient Air Quality Standards (NAAQS or “standards”) even further and established 0.070 parts per million (ppm), 8-hour average, as the new ozone NAAQS. 80 FR 65292 (October 26, 2015). While the 1979 1-hour ozone NAAQS and 1997 8-hour ozone NAAQS have been revoked, the 2008 ozone NAAQS remains in effect.

³ 40 CFR 50.15.

⁴ 77 FR 30088.

⁵ 40 CFR 51.1103(a).

20, 2015, and reclassified the area to the next higher classification, i.e., “Moderate.” Our determination was based on complete, quality-assured, and certified data for 2012-2014.⁶ States with Moderate ozone areas are required to submit revisions to the applicable state implementation plan (SIP) that comply with the requirements set forth in subpart 2 of part D of title I of the CAA and in the EPA’s ozone implementation rule for the 2008 ozone NAAQS in 40 CFR part 51, subpart AA. The relevant SIP requirements include, among other requirements, attainment demonstrations and associated reasonably available control measures, reasonable further progress (RFP) plans, and contingency measures for failure to attain or make RFP. The applicable attainment date for areas classified as Moderate nonattainment for the 2008 ozone NAAQS is as expeditious as practicable but not later than July 20, 2018.⁷ Because the design value is based on the three most recent, complete calendar years of data, attainment must occur no later than December 31 of the year prior to the attainment date (i.e., December 31, 2017, in the case of Moderate NAAs for the 2008 ozone NAAQS).

B. Ambient Air Quality Monitoring Data

A determination of whether an area’s air quality meets the 2008 ozone NAAQS is generally based upon three consecutive calendar years of complete, quality-assured data measured at established State and Local Air Monitoring Stations (SLAMS) in the NAA and entered into the EPA Air Quality System (AQS) database. Data from ambient air monitoring sites operated by state or local agencies in compliance with EPA monitoring requirements must be submitted to AQS. Heads of 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

⁶ 81 FR 26697 (May 4, 2016). The 2012-2014 design value for the Phoenix NAA was 0.080 parts per million, which exceeded the 2008 ozone NAAQS of 0.075 ppm. We note that today’s action is based on the 2015-2017 design value.

⁷ 40 CFR 51.1103.

determining the attainment status of an area.⁸ All ozone data are reviewed to determine the area's air quality status in accordance with 40 CFR part 50, appendix P.

When the design value is less than or equal to 0.075 ppm (based on the rounding convention in 40 CFR part 50, appendix P) at each monitoring site within the area, then the area is meeting the 2008 ozone NAAQS. To make the determination that an area attains the NAAQS, each monitor must have a valid design value⁹ meeting the standard.

II. What is the EPA's Analysis of the Relevant Air Quality Data?

A. Monitoring Network and Data Considerations

The Arizona Department of Environmental Quality (ADEQ or "State"), Maricopa County Air Quality Department (MCAQD), Pinal County Air Quality Control District (PCAQCD), and Salt River Pima-Maricopa Indian Community (SRPMIC) operate a combined 24 ozone SLAMS in the Phoenix NAA (see Table 1 for AQS identification number, site name, design value, and completeness data for 2015-2017 (i.e., the design value period)). MCAQD operates 18 of these ozone sites in the Phoenix NAA, however one of these sites (AQS# 040139706, Rio Verde) was approved by the EPA for closure in 2017.^{10,11} ADEQ operates one ozone site in the Phoenix NAA (JLG Supersite). PCAQCD operates one ozone site in the Phoenix NAA (AJ Maintenance Yard). SRPMIC operates four ozone sites in the Phoenix NAA (Senior Center, Red Mountain, Lehi, and High School).

State and local air monitoring agencies are required to submit annual monitoring network

⁸ 40 CFR 50.15; 40 CFR part 50, appendix P; 40 CFR part 53; 40 CFR part 58, appendices A, C, D and E.

⁹ Design values attaining the 2008 ozone NAAQS also must meet minimum data completeness requirements specified in 40 CFR part 50, appendix P to be considered valid.

¹⁰ Blue Point-Sheriff Station-Tonto NF-Salt River Rec. Area, Buckeye, Cave Creek, Central Phoenix, Dysart, Falcon Field, Fountain Hills, Glendale, Humboldt Mountain, Mesa, North Phoenix, Pinnacle Peak, Rio Verde, South Phoenix, South Scottsdale, Tempe, West Chandler, West Phoenix.

¹¹ Letter from Elizabeth J. Adams, Acting Director, Air Division, EPA Region IX, to Ben Davis, Director, Air Monitoring Manager, Maricopa County Air Quality Department (MCAQD), dated September 15, 2017, approving MCAQD's closure of the Rio Verde ozone SLAMS site.

plans to the EPA.¹² Tribal monitoring agencies may also submit such plans. An annual monitoring network plan discusses the status of the air monitoring network, as required under 40 CFR 58.10. MCAQD, PCAQCD, ADEQ and SRPMIC submit annual monitoring network plans for ozone SLAMS in the Phoenix NAA. Since 2007, the EPA has regularly reviewed these annual monitoring network plans for compliance with the applicable requirements in 40 CFR part 58. With respect to ozone, the EPA has found that the area's annual monitoring network plans for 2015 through 2017 meet the applicable requirements under 40 CFR part 58.^{13, 14, 15, 16} Furthermore, the EPA concluded from its Technical Systems Audits (TSAs) of ADEQ,

¹² 40 CFR 58.10(a)(1).

¹³ Letter from Gwen Yoshimura, Acting Manager, Air Quality Analysis Office, EPA Region IX, to Philip A. McNeely, Director, Maricopa County Air Quality Department (MCAQD), dated October 31, 2016, approving MCAQD's 2015 annual monitoring network plan; Letter from Gwen Yoshimura, Manager, Air Quality Analysis Office, EPA Region IX, to Philip A. McNeely, Director, Maricopa County Air Quality Department (MCAQD), dated October 30, 2017, approving MCAQD's 2016 annual monitoring network plan; Letter from Gwen Yoshimura, Manager, Air Quality Analysis Office, EPA Region IX, to Philip A. McNeely, Director, Maricopa County Air Quality Department (MCAQD), dated October 30, 2018, approving MCAQD's 2017 annual monitoring network plan.

¹⁴ Letter from Gwen Yoshimura, Acting Manager, Air Quality Analysis Office, EPA Region IX, to Michael Sundblom, Director, Pinal County Air Quality Control District (PCAQCD), dated October 31, 2016, approving PCAQCD's 2015 annual monitoring network plan; Letter from Gwen Yoshimura, Manager, Air Quality Analysis Office, EPA Region IX, to Michael Sundblom, Director, Pinal County Air Quality Control District (PCAQCD), dated October 30, 2016, approving PCAQCD's 2016 annual monitoring network plan; Letter from Gwen Yoshimura, Manager, Air Quality Analysis Office, EPA Region IX, to Michael Sundblom, Director, Pinal County Air Quality Control District (PCAQCD), dated October 30, 2018, approving PCAQCD's 2017 annual monitoring network plan.

¹⁵ Letter from Gwen Yoshimura, Acting Manager, Air Quality Analysis Office, EPA Region IX, to Timothy S. Franquist, Director, Air Quality Division, Arizona Department of Environmental Quality (ADEQ), dated November 3, 2016, approving ADEQ's 2015 annual monitoring network plan; Letter from Gwen Yoshimura, Manager, Air Quality Analysis Office, EPA Region IX, to Timothy S. Franquist, Director, Air Quality Division, Arizona Department of Environmental Quality (ADEQ), dated November 3, 2016, approving ADEQ's 2016 annual monitoring network plan; Letter from Gwen Yoshimura, Manager, Air Quality Analysis Office, EPA Region IX, to Timothy S. Franquist, Director, Air Quality Division, Arizona Department of Environmental Quality (ADEQ), dated October 30, 2017, approving ADEQ's 2017 annual monitoring network plan.

¹⁶ Letter from Gwen Yoshimura, Acting Manager, Air Quality Analysis Office, EPA Region IX, to Christopher Horan, Division Manager, Environmental Protection & Natural Resources Division, Salt River Pima-Maricopa Indian Community (SRPMIC), dated October 31, 2016, approving SRPMIC's 2015 annual monitoring network plan; Letter from Gwen Yoshimura, Manager, Air Quality Analysis Office, EPA Region IX, to Christopher Horan, Division Manager, Environmental Protection & Natural Resources Division, Salt River Pima-Maricopa Indian Community (SRPMIC), dated October 30, 2017, approving SRPMIC's 2016 annual monitoring network plan; Letter from Gwen Yoshimura, Manager, Air Quality Analysis Office, EPA Region IX, to Christopher Horan, Division Manager, Environmental Protection & Natural Resources Division, Salt River Pima-Maricopa Indian Community (SRPMIC), dated October 30, 2018, approving SRPMIC's 2017 annual monitoring network plan.

MCAQD, and PCAQCD, that the combined ambient air monitoring network currently meets or exceeds the requirements for the minimum number of SLAMS in the Phoenix NAA for the 2008 ozone standard.^{17, 18, 19} The EPA also conducted a TSA of SRPMIC, but, as a tribal agency, minimum monitoring requirements do not apply to SRPMIC.²⁰

MCAQD, PCAQCD, ADEQ and SRPMIC oversee the quality assurance of data collected from their sites and annually certify that their respective data submitted to AQS are complete and quality-assured, and have done so for each year relevant to our determination of attainment, 2015-2017.^{21, 22, 23, 24}

¹⁷ Letter from Elizabeth J. Adams, Director, Air Division, EPA Region IX, to Mr. Timothy Franquist, Director, Air Quality Division, ADEQ, dated April 25, 2019, transmitting findings from the EPA's 2018 TSA of the ADEQ's ambient air monitoring program.

¹⁸ Letter from Elizabeth J. Adams, Acting Director, Air Division, EPA Region IX, to Mr. Michael Sundblom, Director, PCAQCD, dated September, 28, 2016, transmitting findings from the EPA's 2016 TSA of the PCAQCD's ambient air monitoring program.

¹⁹ Letter from Elizabeth J. Adams, Acting Director, Air Division, EPA Region IX, to Philip A. McNeely, Director, MCAQD, dated June 12, 2017, transmitting findings from the EPA's 2016 TSA of the MCAQD's ambient air monitoring program.

²⁰ Letter from Elizabeth J. Adams, Acting Director, Air Division, EPA Region IX, to Mr. Christopher Horan, Environmental Director, SRPMIC, dated August 29, 2017, transmitting findings from the EPA's 2016 TSA of the SRPMIC's ambient air monitoring program.

²¹ Letter from Timothy Franquist Jr, Deputy Director, Air Quality Division, Arizona Department of Environmental Quality, to Deborah Jordan, EPA Region IX, dated April 27, 2015 [correct date was April 27, 2016], Certification of 2015 Ambient Air Data and Re-Certification of 2014 Ambient Air Data in AQS Database Reported by ADEQ; Letter from Timothy S. Franquist, Director, Air Quality Division, Arizona Department of Environmental Quality, to Elizabeth Adams, Acting Air Division Director, Air Division, EPA Region IX, dated April 5, 2017, Certification of 2016 Ambient Air Data and Re-Certification of 2015 Ambient Air Data in AQS Database Reported by ADEQ; Letter from Timothy S. Franquist, Director, Air Quality Division, to Elizabeth Adams, Air Division Director, EPA Region IX, dated April 27, 2018, Certification of 2017 Ambient Air Data and Re-Certification of 2016 Ambient Air Data in AQS Database Reported by ADEQ.

²² Letter from Philip A. McNeely, Director, Maricopa County Air Quality Department, to Deborah Jordan, Air Division, EPA Region IX, dated April 25, 2016, 2015 Data Certification Letter; Letter from Philip A. McNeely, Director, Maricopa County Air Quality Department, to Elizabeth Adams, Acting Director, Air Division, EPA Region IX, dated April 7, 2017, 2016 Data Certification Letter; Letter from Philip A. McNeely, Director, Maricopa County Air Quality Department, to Elizabeth Adams, Acting Director, Air Division, EPA Region IX, dated April 10, 2018, 2017 Data Certification.

²³ Letter from Josh DeZeeuw, Air Quality Manager, Pinal County Air Quality Control District, to Deborah Jordan, dated April 29, 2016, AQS Data Certification - 2015; Letter from Josh DeZeeuw, Air Quality Manager, Pinal County Air Quality Control District, to Elizabeth Adams, dated April 28, 2017, AQS Data Certification - 2016; Letter from Josh DeZeeuw, Air Quality Manager, Pinal County Air Quality Control District, to Elizabeth Adams, dated April 30, 2018, AQS Data Certification - 2017.

²⁴ Letter from Christopher Horan, Environmental Protection & Natural Resources Manager, Salt River Pima Maricopa Indian Community, to Deborah Jordan, Director, Air Division, EPA Region IX, dated April 27, 2016,

Lastly, consistent with the requirements contained in 40 CFR part 50, the EPA has reviewed the quality-assured and certified ozone ambient air monitoring data for completeness. The EPA reviewed the data as recorded in AQS for the applicable monitoring period, collected at the monitoring sites in the Phoenix NAA, and has determined that the data are complete, except for the Tempe monitoring station.²⁵ Monitoring at the Tempe station was temporarily suspended from April to October in 2015 as a result of significant modifications by the landowner to the site. MCAQD notified the EPA of this temporary closure in MCAQD's 2015 annual ambient air monitoring plan.²⁶ The Tempe monitoring site was not the design value monitor in the Phoenix NAA for the five previous valid design value years (2010-2014). In addition, Tempe did not have the highest fourth-highest daily maximum 8-hour ozone concentrations in the NAA in 2016 or 2017. For these reasons, the temporary closure and invalid 2017 design value at the Tempe monitoring site does not affect the EPA's ability to determine the design value for the area. For the remaining ozone monitoring sites in the Phoenix NAA, daily maximum 8-hour average concentrations are available for at least 90 percent of the days within the ozone monitoring season, on average for the 2015-2017 period, and daily maximum 8-hour average concentrations are available for at least 75 percent of the days within the ozone monitoring season for each individual year within that period. Therefore, the remaining sites meet the data completeness requirements of 40 CFR part 50, appendix P.²⁷

2015 AQS Data Certification of Ambient Air Monitoring Data; Letter from Christopher Horan, Environmental Protection & Natural Resources Manager, Salt River Pima Maricopa Indian Community, to Elizabeth Adams, Acting Director, Air Division, EPA Region IX, dated March 31, 2016 [correct date was March 31, 2017], 2016 AQS Data Certification of Ambient Air Monitoring Data; Letter from Christopher Horan, Environmental Protection & Natural Resources Manager, Salt River Pima Maricopa Indian Community, to Elizabeth Adams, Acting Director, Air Division, EPA Region IX, dated April 13, 2018, 2017 AQS Ambient Air Monitoring Data Certification.

²⁵ See EPA, Air Quality System, Design Value Report, May 20, 2019.

²⁶ 2015 Air Monitoring Network Plan, Philip A. McNeely, Director, MCAQD, submitted June 30, 2016.

²⁷ The Rio Verde Ozone SLAMS was approved for closure in 2017, however, there were sufficient data for the monitor to still have a valid 2015-2017 design value.

B. Evaluation of the Ambient Air Quality Data

As noted previously, the applicable attainment date for the Phoenix NAA is July 20, 2018. We have reviewed the data collected at the monitoring sites within that area during the three-year period preceding the attainment date (2015-2017) to determine whether the area attained the 2008 ozone standard by the attainment date. Table 1 shows the fourth-highest daily maximum 8-hour ozone concentrations for 2015 through 2017, 2015-2017 design values, and data completeness for ozone monitors within the Phoenix NAA. The design value for a given area is based on the monitoring site in the area with the highest design value.

Table 1. Phoenix NAA: 2015-2017 Monitoring Site-Level Design Values for the 2008 8-Hour Ozone NAAQS.

AQS Site ID	Site Name	4 th Highest Daily Maximum 8-hour Average Value (ppm)			2015-2017 Design Value	Percent Complete			2015-2017 Average Percent Complete
		2015	2016	2017		2015	2016	2017	
040130019	West Phoenix	.074	.071	.077	.074	100	100	100	100
040131003	Mesa	.072	.075	.078	.075	100	100	100	100
040131004	North Phoenix	.074	.075	.077	.075	100	99	100	100
040131010	Falcon Field	.072	.073	.078	.074	100	98	99	99
040132001	Glendale	.067	.066	.068	.067	98	99	98	98
040132005	Pinnacle Peak	.074	.074	.077	.075	99	100	98	99
040133002	Central Phoenix	.071	.070	.071	.070	100	100	99	100
040133003	South Scottsdale	.068	.070	.070	.069	98	99	99	99
040134003	South Phoenix	.070	.067	.072	.069	100	100	99	100
040134004	West Chandler	.070	.069	.074	.071	100	100	100	100
040134005	Tempe	N/A	.068	.065	N/A	12	100	99	76
040134008	Cave Creek	.069	.071	.071	.070	100	100	99	99
040134010	Dysart	.067	.063	.076	.068	100	100	89	95

040134011	Buckeye	.060	.059	.070	.063	98	99	91	95
040139508	Humboldt Mtn	.073	.072	.074	.073	97	100	100	99
040139702	Blue Point	.071	.071	.074	.072	99	100	99	100
040139704	Fountain Hills	.069	.068	.073	.070	100	100	97	99
040139706	Rio Verde	.068	.070	.068	.068	100	100	83	92
040139997	JLG Supersite	.075	.075	.076	.075	98	94	98	97
040137020	Senior Center	.073	.070	.075	.072	100	100	99	100
040137021	Red Mountain	.074	.071	.079	.074	100	99	99	99
040137022	Lehi	.076	.072	.077	.075	100	99	97	99
040137024	High School	.072	.070	.075	.072	96	98	98	98
040213001	AJ Maintenance	.073	.072	.079	.074	97	97	96	97

In the EPA's review of monitoring data for the 2008 ozone standard for the Phoenix NAA, the EPA is excluding certain exceedances of the standard from the attainment determination presented herein because they were the result of exceptional events. ADEQ provided documentation supporting requests for concurrence on wildfire ozone exceptional events covering a total of 14 exceedances recorded on June 20, 2015, and July 7, 2017, at monitors within the Phoenix NAA. The EPA reviewed the documentation that ADEQ provided to demonstrate that these exceedances meet the criteria for exceptional events under the EPA's Exceptional Events Rule.²⁸ The EPA concurred with ADEQ's requests for determinations that, based on the weight of evidence, the exceedances were caused by wildfire ozone exceptional events.²⁹ Accordingly, the EPA has determined that the monitored exceedances associated with these exceptional events should be excluded from use in determinations of exceedances and

²⁸ 40 CFR 50.1(j), (k), (l), (m), (n), (o), (p), (q), (r); 50.14; 51.930. See also 40 CFR part 50, appendix P, section 1.a, (determinations of whether to exclude, retain, or make adjustments to the data affected by exceptional events is determined by the requirements under 40 CFR 50.1, 50.14 and 51.930).

²⁹ See letters from Elizabeth J. Adams, Director, Air Division, EPA Region IX, to Timothy S. Franquist, Director, Air Quality Division, ADEQ, dated February 5, 2019, and May 7, 2019.

violations, including the evaluation of whether the Phoenix NAA has attained by the attainment date in accordance with CAA section 181(b)(2)(A).

Our proposed determination that the area has attained the 2008 ozone NAAQS is based in part on our concurrence with ADEQ that the exceedances monitored in the Phoenix NAA on June 20, 2015, and July 7, 2017, were caused by wildfire ozone exceptional events, and our related exclusion of these exceedances from the attainment determination.

III. Proposed Action

The EPA is proposing to determine that the Phoenix NAA has attained the 2008 ozone standard by its Moderate area attainment date of July 20, 2018, based on complete, quality-assured, and certified ambient air quality monitoring data for the 2015-2017 monitoring period. Based on our proposed finding of attainment by the applicable attainment date, we are also proposing to determine that the CAA requirement for the SIP to provide for contingency measures to be implemented in the event the area fails to attain (“attainment contingency measures”) will no longer apply to the Phoenix NAA. Under CAA section 172(c)(9), attainment contingency measures must be implemented only if the area fails to attain by the attainment date. Therefore, if we finalize the determination that the Phoenix NAA has attained the 2008 ozone standard, attainment contingency measures for this NAAQS would never be required to be implemented, regardless of whether the area continues to attain the NAAQS. The State submitted contingency measures as part of the Phoenix area 2008 Moderate ozone plan adopted in December 2016. We will defer taking any action on these measures in light of this proposed finding of attainment by the applicable attainment date and resulting determination that the attainment contingency measure requirement no longer applies to the area. The State may elect

to withdraw the attainment contingency measures to lift the obligation on the EPA under section 110(k) to act on these measures.

We are not proposing to suspend the attainment-related requirements for the Phoenix NAA under 40 CFR 51.1118 at this time because ozone monitoring data for 2018 are not consistent with continued attainment of the standard in the Phoenix NAA.

We also note that, if finalized, this proposed determination that the Phoenix ozone NAA has attained the 2008 ozone NAAQS would not constitute a redesignation of the area to attainment for the 2008 ozone standard. Under CAA section 107(d)(3)(E), redesignations to attainment require states to meet a number of additional statutory criteria, including the EPA's approval of a SIP revision demonstrating maintenance of the standard for 10 years after redesignation. The designation status of the Phoenix area will remain Moderate nonattainment for the 2008 ozone NAAQS until such time as the EPA determines that the area meets the CAA requirements for redesignation to attainment.

IV. Environmental Justice Considerations

The EPA believes that this proposed action will not have disproportionately high or adverse human health or environmental effects on minority, low-income, or indigenous populations.

The purpose of this rule is to determine whether the Phoenix NAA attained the 2008 ozone standard by its Moderate area attainment date, which is required under the CAA for purposes of implementing the 2008 ozone standard. As such, this action does not directly affect the level of protection provided for human health or the environment.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not expected to be an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

This rule does not impose any new information collection burden under the PRA not already approved by the OMB.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531-1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any state, local or tribal governments, or the private sector.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, tribes, or the relationship between the national government and the states and tribes, or on the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action has tribal implications. However, it will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. Four tribes have areas of Indian country within or directly adjacent to the Phoenix NAA: Fort McDowell Yavapai Nation, Gila River Indian Community, Salt River Pima-Maricopa Indian Community of the Salt River Reservation, and the Tohono O'odham Nation of Arizona. The EPA intends to communicate with potentially affected tribes located within or directly adjacent to the boundaries of the Phoenix NAA as the agency moves forward in developing a final rule.

H. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

I. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on

minority, low-income, or indigenous populations. The results of this evaluation are contained in the section of the preamble titled “Environmental Justice Considerations.”

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Oxides of Nitrogen, Ozone, Volatile organic compounds.

Dated: May 31, 2019.

Deborah Jordan,
Acting Regional Administrator,
Region IX.

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