

*E. Executive Order 13132, Federalism*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely disapproves certain State requirements for inclusion into the SIP and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, Executive Order 13132 does not apply to this action.

*F. Executive Order 13175, Coordination With Indian Tribal Governments*

This action does not have tribal implications, as specified in Executive Order 13175 (59 FR 22951, November 9, 2000), because the SIP EPA is proposing to disapprove would not 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. Thus, Executive Order 13175 does not apply to this action.

*G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks*

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997). This proposed SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new regulations but simply disapproves

certain State requirements for inclusion into the SIP.

*H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use*

This proposed rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The EPA believes that this action is not subject to requirements of Section 12(d) of NTTAA because application of those requirements would be inconsistent with the Clean Air Act.

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

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this proposed action. In reviewing SIP submissions, EPA's role is to approve or disapprove state choices, based on the criteria of the Clean Air Act. Accordingly, this action merely proposes to disapprove certain State requirements for inclusion into the SIP under section 110 and subchapter I, part D of the Clean Air Act and will not in-and-of itself create any new

requirements. Accordingly, it 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.

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

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: September 8, 2009.

**Lawrence E. Starfield,**

*Acting Regional Administrator, Region 6.*

[FR Doc. E9-22808 Filed 9-22-09; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[EPA-R09-OAR-2009-0188; FRL-8960-6]

**Determination of Attainment of the 1997 8-Hour Ozone Standard for Imperial County, CA**

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

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing to determine that the Imperial County, California moderate 8-hour ozone nonattainment area has attained the 1997 8-hour National Ambient Air Quality Standard (NAAQS) for ozone. The State of California has requested this determination, which is based upon three years of certified ambient air monitoring data that show the area has monitored attainment of the 8-hour ozone NAAQS since the 2006-2008 monitoring period. If this proposed determination is made final, the requirements for the State to submit certain reasonable further progress requirements, an attainment demonstration, contingency measures and other planning requirements of the Clean Air Act related to attainment of the 1997 8-hour ozone NAAQS shall be suspended for so long as the area continues to attain the 8-hour ozone NAAQS.

**DATES:** Comments must be received on or before October 23, 2009. Public comments on this action are requested and will be considered before taking final action.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R09-OAR-2009-0188, by one of the following methods:

- <http://www.regulations.gov>: Follow the online instructions for submitting comments.

- *E-mail:* [tax.wienke@epa.gov](mailto:tax.wienke@epa.gov).

- *Fax:* 415-947-3579.

- *Mail:* Wienke Tax, Air Planning Office, Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105-3901.

- *Hand Delivery:* Marty Robin, Air Planning Office, Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105-3901. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8 to 4:55 excluding Federal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA-R09-OAR-2009-0188. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the 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 [www.regulations.gov](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 [www.regulations.gov](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. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

**FOR FURTHER INFORMATION CONTACT:** Wienke Tax, Air Planning Office,

Environmental Protection Agency, Region 9, (415) 947-4192, [tax.wienke@epa.gov](mailto:tax.wienke@epa.gov).

**SUPPLEMENTARY INFORMATION:**

Throughout this document, "we," "us" and "our" refer to EPA.

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**I. What Action Is EPA Proposing to Take?**

EPA is proposing to determine that the Imperial County moderate 8-hour ozone nonattainment area in California has attained the 1997 8-hour National Ambient Air Quality Standard (NAAQS) for ozone. This determination is based upon three years of certified ambient air monitoring data that show that the area has monitored attainment of the 8-hour ozone NAAQS of 0.08 parts per million (ppm) since the 2006-2008 monitoring period. Quality controlled and quality assured ozone data for 2009 that are available in the EPA Air Quality System (AQS) database, but not yet certified, also show that the area continues to attain the 8-hour ozone NAAQS.<sup>1</sup>

**II. What Is the Effect of This Action?**

If this determination is made final, under the provisions of EPA's ozone implementation rule (40 CFR section 51.918), the requirements for the State to submit certain reasonable further progress requirements, an attainment demonstration, and contingency measures under section 172(c)(9) of the Clean Air Act (CAA) and any other planning State Implementation Plans (SIPs) related to attainment of the 1997 8-hour ozone NAAQS in Imperial County will be suspended for so long as the area continues to attain the ozone NAAQS. This finding does not address the 2008 8-hour ozone standard of 0.075 ppm, which EPA promulgated on March 12, 2008 (*see* 73 FR 16435, March 27, 2008).

If this rulemaking is finalized and EPA subsequently determines, after notice-and-comment rulemaking in the **Federal Register**, that the area has violated the 1997 8-hour ozone standard, the basis for the suspension of these requirements for that area would no longer exist, and the area would thereafter have to address the pertinent requirements within a reasonable period

of time. EPA would establish that period taking into account the individual circumstances surrounding the particular submissions at issue.

This proposed action is not equivalent to the redesignation of the Imperial County area to attainment under CAA section 107(d)(3), because we would not yet have an approved maintenance plan for the area as required under section 175A of the CAA, nor a determination that the area has met the other requirements for redesignation. The classification and designation status of the area would remain moderate nonattainment for the 1997 8-hour ozone NAAQS until such time as EPA determines that it meets the CAA requirements for redesignation to attainment.

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

On April 30, 2004 (69 FR 23857), EPA designated as nonattainment any area that was violating the 1997 8-hour ozone NAAQS based on the three most recent years (2001-2003) of air quality data. At that time, a number of areas in California, including Imperial County, were designated as nonattainment. *See* 40 CFR 81.305. Imperial County was initially classified as a marginal nonattainment area with a maximum attainment date of June 15, 2007. 69 FR 23858. On February 13, 2008, EPA determined that Imperial County had failed to attain the 1997 8-hour ozone NAAQS by the applicable attainment deadline and reclassified the area by operation of law as a moderate 8-hour ozone nonattainment area, with a maximum attainment date of June 15, 2010. 73 FR 8209 (final rule effective March 14, 2008). This determination was based on ambient air quality data from the 2004-2006 monitoring period. More recent air quality data, however, indicate that the Imperial County area is now attaining the 1997 8-hour ozone standard.

On February 19, 2009, the California Air Resources Board requested that EPA determine that the Imperial County area is attaining the 1997 8-hour ozone standard of 0.08 ppm, based on certified ambient air monitoring data from the 2006-2008 monitoring period.

**IV. What Is EPA's Analysis of the Relevant Air Quality Data?**

In California's request and a subsequent certification letter, the State certified that the air quality monitoring data it submitted for the years 2006, 2007, and 2008 was accurate and quality-assured, consistent with state

<sup>1</sup> *See* AQS Quicklook Report dated August 24, 2009 in the docket for today's action.

and EPA monitoring requirements.<sup>2,3</sup> California submitted these data to EPA's AQS, where it is available to the public

via <http://www.epa.gov/ttn/airs/airsaqs/>. Table 1 summarizes the ozone

air quality data for Imperial County, from 2006 to 2008.

TABLE 1—FOURTH HIGHEST 8-HOUR AVERAGE OZONE CONCENTRATIONS AND DESIGN VALUES (IN PARTS PER MILLION, PPM) IN IMPERIAL COUNTY, CALIFORNIA 2006–2008

Monitor site	2006	2007	2008	2006–2008 Design value
Calexico East .....	.078	.083	.078	.079
Calexico Ethel .....	.068	.087	.087	.080
El Centro .....	.091	.083	.074	.082
Niland .....	.072	.078	.075	.075
Westmorland .....	.086	.085	.077	.082

Under EPA regulations at 40 CFR part 50, the 8-hour ozone standard is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations at an ozone monitor is less than or equal to 0.08 ppm (*i.e.*, 0.084 ppm, based on the rounding convention in 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 (84 parts per billion (ppb)) at each monitor within the area, then the area is meeting the NAAQS. *See* 69 FR 23857 (April 30, 2004) for further information. Also, the data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90%, and no single year has less than 75% data completeness as determined in Appendix I of 40 CFR part 50.

Table 1 shows the fourth highest daily maximum 8-hour average ozone concentrations for the Imperial County monitors for the years 2006–2008. EPA's review of these data indicate that the Imperial County nonattainment area has met and continues to meet the 8-hour ozone NAAQS.

EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. EPA will consider these comments before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA office listed in the **ADDRESSES** section of this **Federal Register**.

#### V. Proposed Action

EPA is proposing to determine that the Imperial County, California ozone nonattainment area has attained the 1997 8-hour ozone standard based on three years of certified ambient air monitoring data at all ozone monitoring

sites in the area. Quality-assured data through the present demonstrate that the area continues to attain the standard through June 2009. As provided in 40 CFR 51.918, if EPA finalizes this determination, it would suspend the requirements for California to submit an attainment demonstration, a reasonable further progress plan, and contingency measures under section 172(c)(9), and any other planning SIP related to attainment of the 1997 8-hour ozone NAAQS for the Imperial County area. This suspension of requirements would be effective as long as the area continues to attain the 1997 8-hour ozone standard. Please note that this action addresses only the 1997 8-hour ozone standard of 0.08 ppm, and does not address the 2008 8-hour ozone standard of 0.075 ppm.

#### VI. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a “significant regulatory action” and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001). This action proposes to make a determination based on air quality data, and would, if finalized, result in the suspension of certain Federal requirements. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). Because this rule proposes to make a determination based on air quality data, and would, if finalized, result in the suspension of certain Federal requirements, it 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).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (59 FR 22951, November 9, 2000). This proposed action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to make a determination based on air quality data and would, if finalized, result in the suspension of certain Federal requirements, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because it proposes to determine that air quality in the affected area is meeting Federal standards.

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply because it would be inconsistent with applicable law for EPA, when determining the attainment status of an area, to use voluntary consensus standards in place of

<sup>2</sup> Letter from James Goldstene, Executive Officer, California Air Resources Board, to Laura Yoshii, Acting Regional Administrator, U.S. EPA Region 9, dated February 19, 2009.

<sup>3</sup> Letter from Karen Magliano, Chief, Air Quality Data Branch, California Air Resources Board, to Laura Yoshii, Acting Regional Administrator, EPA Region 9, dated March 4, 2009.

promulgated air quality standards and monitoring procedures that otherwise satisfy the provisions of the Clean Air Act.

This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*)

Under Executive Order 12898, EPA finds that this rule involves a proposed determination of attainment based on air quality data and will not have disproportionately high and adverse human health or environmental effects on any communities in the area, including minority and low-income communities.

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

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: September 11, 2009.

**Laura Yoshii,**

*Acting Regional Administrator, Region 9.*

[FR Doc. E9-22933 Filed 9-22-09; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R02-OAR-2009-0638; FRL-8960-9]

#### Determinations of Attainment of the One-Hour and Eight-Hour Ozone Standards for Various Ozone Nonattainment Areas in New Jersey and Upstate New York

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

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing to determine that various ozone nonattainment areas in New York and New Jersey have attained the one-hour and eight-hour National Ambient Air Quality Standards for ozone. For the one-hour standard, the areas are: the Atlantic City and Warren County areas in New Jersey and the Albany-Schenectady-Troy, Buffalo-Niagara Falls, Essex County, Jefferson County, and Poughkeepsie areas in New York. For the eight-hour standard, the areas are: Buffalo-Niagara Falls, Jamestown, Poughkeepsie and Essex County (Whiteface Mountain). The States requested these determinations, based upon three years of complete, quality-

assured ambient air monitoring data and these areas have continued to attain these ozone standards based on examination of the most recent air quality data from 2006–2008. These data demonstrate that the one-hour and eight-hour ozone standards have been attained in these areas. If EPA makes these proposed determinations final for the one-hour standard, the areas subject to the one-hour standard will have completed their progress toward achieving the one-hour health standard. In the cases where EPA determines that areas have attained the eight-hour standard, the requirements for the state to submit certain reasonable further progress plans, attainment demonstrations, contingency measures and any other planning requirements of the Clean Air Act related to attainment of the ozone standards shall be suspended for as long as the areas continue to attain the eight-hour ozone standard. These proposed determinations of attainment are not redesignations of these areas to attainment. Redesignations must meet additional requirements, including an approved plan to maintain compliance with the air quality standard for ten years after redesignation.

**DATES:** Comments must be received on or before October 23, 2009. Public comments on this action are requested and will be considered before taking final action.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R02-OAR-2008-0638, by one of the following methods:

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

- *E-mail:* [Werner.Raymond@epa.gov](mailto:Werner.Raymond@epa.gov).

- *Fax:* 212-637-3901.

- *Mail:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866.

- *Hand Delivery:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA-R02-OAR-2009-0638. 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 the 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. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

*www.regulations.gov*, including any personal information provided, unless the 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. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

**FOR FURTHER INFORMATION CONTACT:** Robert F. Kelly, Air Programs Branch, Environmental Protection Agency, Region 2, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-4249.

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