Court of Appeals for the District of Columbia Circuit within 60 days of publication of this action. Under Section 307(b)(2) of the Act, the requirements that are the subject of this final rule may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

III. Administrative Requirements

A. Docket

The docket for this regulatory action is A–93–32, the same docket as the original final rule, and a copy of today's amendment to the final rule will be included in the docket. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of the original rulemaking. The principal purposes of the docket are:

(1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the rulemaking process, and

(2) To serve as the record in case of judicial review. The docket is available for public inspection at EPA's Air and Radiation Docket and Information Center, which is listed under the ADDRESSES section of this document.

B. Regulatory Impact Analysis

This rule was classified ''non-significant'' under Executive Order 12866 and therefore was not reviewed by the Office of Management and Budget.

C. Impact on Reporting Requirements

The information collection requirements of the previously promulgated rule for Regulations Governing Equivalent Emission Limitations by Permit were submitted to and approved by the Office of Management and Budget. A copy of this Information Collection Request (ICR) document (OMB control number 2060–0266) may be obtained from Sandy Farmer, OPPE Regulatory Information Division (2136), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, or by calling (202) 260–2740. Today's change to the final rule to delay the deadline for submittal of section 112(j) permit applications does not affect the information collection burden estimates made previously. Therefore, the ICR has not been revised.

D. Impact on Small Entities

The Regulatory Flexibility Act of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act specifically requires the completion of a Regulatory Flexibility Analysis in those instances where small business impacts are possible. Because this rulemaking imposes no economic impacts, adverse or otherwise, a Regulatory Flexibility Analysis has not been prepared.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small business entities.

E. Reduction of Governmental Burden

Executive Order 12875 (''Enhancing the Intergovernmental Partnership'') is designed to reduce the burden to State, local, and Tribal governments of the cumulative effect of unfunded Federal mandates. The Order recognizes the need for these entities to be free from unnecessary Federal regulation to enhance their ability to address problems they face and provides for Federal agencies to grant waivers to these entities from discretionary Federal requirements. The Order applies to any regulation that is not required by statute and that creates a mandate upon a State, local, or Tribal government. The EPA anticipates that there will be no additional cost burden imposed on State, local, and Tribal governments as a result of today's action. Indeed, the purpose of the action is to reduce unnecessary burden on permitting agencies.

F. Environmental Justice

Executive Order 12898 requires that each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority and low-income populations. Today's action will help ensure timely compliance and the application of consistent regulatory requirements by allowing the section 112(d) MACT standards to become effective without triggering an unnecessary section 112(j) process. Therefore, no adverse human health or environmental effects are anticipated as a result of today's action.

G. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practices and procedures, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: May 3, 1996.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, 40 CFR Part 63 is amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

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

2. In § 63.51, the definition of ''*Section 112(j) deadline*'' is revised to read as follows:

§ 63.51 Definitions.

* * * * *

Section 112(j) deadline means the date 18 months, after the date by which a relevant standard is scheduled to be promulgated under this part, except for all major sources listed in the source category schedule for which a relevant standard is scheduled to be promulgated by November 15, 1994, the section 112(j) deadline is November 15, 1996.

* * * * *

[FR Doc. 96–11737 Filed 5–9–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 81

[AZR91–0003; FRL–5503–7]

Clean Air Act Reclassification; Arizona-Phoenix Nonattainment Area; PM_{10}

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this document EPA is making a final finding that the Phoenix Planning Area (PPA) has not attained the PM_{10} (particulate matter 10 microns or less in aerodynamic diameter) national ambient air quality standards (NAAQS) by the applicable attainment date in the Clean Air Act (CAA) for moderate PM_{10} nonattainment areas, December 31, 1994. This finding is based on EPA's review of PM_{10} ambient air quality data. As a result of this finding, the PPA is reclassified as a serious PM_{10} nonattainment area by operation of law. The intended effect of the reclassification is to allow the State 18 months from the effective date of this action to submit a new State Implementation Plan (SIP) demonstrating attainment of the PM_{10} NAAQS by December 31, 2001, the CAA attainment date for serious areas.

EFFECTIVE DATE: This action is effective on June 10, 1996.

FOR FURTHER INFORMATION CONTACT: Wallace Woo, Chief, Plans Development Section (A–2–2), Air Planning Branch, Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105, (415) 744–1207.

SUPPLEMENTARY INFORMATION:

I. Background

A. CAA Requirements and EPA Actions Concerning Designation and Classification

On November 15, 1990, the date of enactment of the 1990 Clean Air Act Amendments (CAA), PM_{10} areas meeting the qualifications of section 107(d)(4)(B) of the Act were designated nonattainment by operation of law. Once an area is designated nonattainment, section 188 of the Act outlines the process for classification of the area and establishes the area's attainment date. Pursuant to section 188(a), all PM_{10} nonattainment areas were initially classified as moderate by operation of law upon designation as nonattainment. These nonattainment designations and moderate area classifications were codified in 40 CFR part 81 in a Federal Register notice published on November 6, 1991 (56 FR 56694).

Under section 188(c)(1) of the CAA, the attainment deadline for all PM_{10} nonattainment areas originally classified as moderate was no later than December 31, 1994. Under section 188(d), EPA may, upon application by a state, extend the attainment deadline if the state has complied with all requirements and commitments pertaining to the area in the applicable implementation plan. In addition, in order to qualify for an extension there must have been no more than one exceedance of the 24 hour national ambient air quality standard (NAAQS) in the area in the year preceding the extension year, and the annual mean concentration of PM_{10} in the area for such year must be less than or equal to the standard. Under this provision, EPA may grant up to two one year extensions if these conditions have been met.

B. Reclassification as Serious Nonattainment

EPA has the responsibility, pursuant to sections 179(c) and 188(b)(2) of the CAA, of determining within six months of the applicable attainment date, whether PM_{10} nonattainment areas have attained the NAAQS. Section 179(c)(1) of the Act provides that these determinations are to be based upon an area's air quality as of the attainment date, and section 188(b)(2) is consistent with this requirement. EPA makes the determinations of whether an area's air quality is meeting the PM_{10} NAAQS based upon air quality data gathered at monitoring sites in the nonattainment area and entered into the Aerometric Information Retrieval System (AIRS). These data are reviewed to determine the area's air quality status in accordance with EPA guidance at 40 CFR part 50, Appendix K.

Pursuant to Appendix K, attainment of the annual PM_{10} standard is achieved when the annual arithmetic mean PM_{10} concentration is equal to or less than 50 $\mu g/m^3$. The annual average is determined by first calculating the average PM_{10} concentration for each calendar quarter. The annual average is then calculated by averaging the four calendar quarter averages. Attainment of the 24 hour standard is determined by calculating the expected number of exceedances of the 150 $\mu g/m^3$ limit per year. The 24 hour standard is attained when the expected number of exceedances is 1.0 or less. A total of three consecutive years of clean air quality data is generally necessary to show attainment of the 24 hour and annual standards for PM_{10}. A complete year of air quality data, as referred to in 40 CFR part 50, Appendix K, is comprised of all four calendar quarters with each quarter containing data from at least 75 percent of the scheduled sampling days.

Under section 188(b)(2)(A) of the CAA, a moderate PM_{10} nonattainment area must be reclassified as serious by operation of law after the statutory attainment date if the Administrator finds that the area has failed to attain the NAAQS. Pursuant to section 188(b)(2)(B), EPA must publish a notice in the Federal Register identifying those areas that failed to attain the standard and the resulting reclassification.

C. Effect of Reclassification

PM_{10} nonattainment areas reclassified as serious under section 188(b)(2) of the CAA are required to submit, within 18 months of the area's reclassification, SIP revisions providing for the implementation of best available control measures (BACM) no later than four years from the date of reclassification. The SIP also must contain a demonstration that the implementation of BACM will provide for attainment of the PM_{10} NAAQS no later than December 31, 2001. EPA has provided specific guidance on developing serious area PM_{10} SIP revisions in an addendum to the General Preamble to Title I of the Clean Air Act. See 59 FR 41998 (August 16, 1994).

D. Proposed Finding of Failure to Attain

On June 7, 1995 EPA proposed to find that the Phoenix Planning Area (PPA) had failed to attain the PM_{10} NAAQS by the applicable attainment date. 60 FR 30046. This proposed finding was based on PM_{10} monitoring data collected by Maricopa County during the years 1992 through 1994. The air quality monitoring data for the PPA showed three violations of the 24 hour PM_{10} NAAQS in 1992 and violations of the annual PM_{10} NAAQS in 1992 and 1993. The air quality monitoring data are discussed in detail in the Notice of Proposed Rulemaking (NPRM). 60 FR 30046, 30047. The following table summarizes the data on which EPA has based its finding of failure to attain:

Site	24 hour exceedances		Annual exceedances	
	Conc.	Date	1992	1993
4732 S. Central, Phoenix	171 $\mu g/m^3$	11/20/92		
	158 $\mu g/m^3$	12/2/92		
1475 E. Pecos, Chandler	156 $\mu g/m^3$	11/20/92	56 $\mu g/m^3$	58 $\mu g/m^3$

On October 20, 1995, the State requested, under section 188(d) of the CAA, that EPA extend the attainment deadline for the PPA from December 31, 1994 to December 31, 1995. This request was based on the lack of recorded exceedances of the PM_{10} NAAQS in 1994. In 1995, however, the PPA recorded two exceedances of the 24 hour NAAQS. On June 28, 1995 a concentration of 160 $\mu g/m^3$ was recorded at the Chandler monitoring site, and on July 30, 1995 a concentration of 252 $\mu g/m^3$ was recorded, also at the Chandler monitoring site. Additionally, the annual average concentration at the Chandler site in 1995 was 57.9 $\mu g/m^3$. Thus, while the State technically qualified for a one year attainment date extension, the 1995 violations effectively moot this request because the area cannot qualify for a second extension. Therefore, EPA does not intend to act on the State's extension request.

II. Response to Comments on Proposed Finding

During the public comment period on EPA's proposed finding, the Agency received comment letters from: one State legislator; the Arizona Department of Environmental Quality (ADEQ); the Arizona Department of Transportation (ADOT); the Arizona Motor Transport Association; the Maricopa Association of Governments (MAG); and the Maricopa County Board of Supervisors. The issues raised in these comment letters are summarized below and are followed by EPA's responses.

A. Economic Impacts of EPA's Finding

Comment: EPA's determination in the proposed rulemaking that a finding of failure to attain the PM_{10} standard is not subject to certain requirements in Executive Order (E.O.) 12866 or the Unfunded Mandates Reform Act is incorrect, as is EPA's certification that this action does not have a significant impact on small entities.

Response: Under E.O. 12866, 58 FR 51735 (October 4, 1993), EPA is required to determine whether regulatory actions are significant and therefore should be subject to Office of Management and Budget (OMB) review, economic analysis, and the requirements of the E.O. The E.O. defines a ''significant regulatory action'' as one that is likely to result in a rule that may meet at least one of the four criteria identified in section 3(f), including, under paragraph (1), that the rule may ''have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.''

Sections 202, 203 and 205 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), 2 U.S.C. §§ 1501–1571, requires EPA to assess whether various actions undertaken in association with proposed or final regulations include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local or tribal governments in the aggregate.

Under the Regulatory Flexibility Act, 5 U.S.C. § 601 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C §§ 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Under section 188(b)(2) of the CAA, EPA findings of failure to attain are based upon air quality considerations, and reclassification of nonattainment areas must occur by operation of law in light of certain air quality conditions. Such findings and reclassification do not, in-and-of-themselves, impose any new requirements on any sectors of the economy. In addition, because the statutory requirements for the differently classified areas are clearly defined, and because those requirements are automatically triggered by classifications that, in turn, are triggered by air quality values, findings of failure to attain and reclassification cannot be said to impose a materially adverse impact on State, local, or tribal governments or communities.

This conclusion does not in any way reflect a determination regarding estimated or actual impacts of a reclassification on Arizona's economy. It is important to understand that the sole regulatory action that EPA is taking under the CAA involves only a factual finding of whether the Phoenix area attained the PM_{10} standards by December 31, 1994, the statutory attainment date for moderate areas. If EPA finds that the area has failed to attain by the deadline, then the area is reclassified as serious, not by EPA, but by operation of law. A finding by EPA that an area has failed to timely attain the PM_{10} standards is based on air quality monitoring data collected by Maricopa County and ADEQ from 1992 through 1994. The statute does not require any action on EPA's part, since the CAA specifies automatic reclassification of an area as a result of a finding that the area has not attained the PM–10 standards. See section 188(b)(2). Because EPA's role in making such a finding is essentially ministerial, the Agency has concluded that it does not impose any new requirements or mandates on any sector of the State economy.

For the above reasons, EPA has determined that the finding of failure to attain being made today would result in none of the effects identified in section 3(f) of E.O. 12866 and is therefore not a significant regulatory action, as defined in the E.O. Similarly, EPA has concluded that the finding of failure to attain does not constitute a Federal mandate within the meaning of the Unfunded Mandates Act. Furthermore, the Agency has certified that the redesignation of the attainment status of an area under section 107(d) of the CAA does not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act. See 46 FR 8709 (January 27, 1981). Because the regulatory impact of reclassification under section 188(b) of the CAA is no different substantively from that associated with designations, such actions are also not expected to have significant impacts on small entities.

EPA wishes to emphasize, however, that the reclassification of the Phoenix area is only the first step in developing a strategy to bring ambient concentrations of PM_{10} in the area to healthful levels. As with the State's moderate area SIP, which EPA approved on April 10, 1995 (60 FR 18010), development of a control strategy for the State's serious area SIP will involve an assessment of the economic feasibility of implementing any particular control measure. If Arizona determines that a measure cannot be implemented because it is not economically feasible, the State need only provide EPA with a reasoned justification for that determination. EPA believes there will be sufficient opportunity for ADEQ and other State agencies, local planning agencies, the general public, and the regulated community to assess the economic impacts of control measure implementation while they develop the serious area SIP.

B. State Monitoring and Modeling Study

Comment: ADEQ claims that reclassification is not necessary because the State and local governments have undertaken a study to better characterize the sources contributing to the nonattainment problem in the PPA.

The study will enable the State to define the control measures necessary to attain and maintain the PM_{10} NAAQS. As a result the PPA will be able to demonstrate attainment by implementing reasonably available control measures (RACM) rather than BACM.

Response: EPA acknowledges the difficulties in assessing the contributions from various sources to total PM_{10} concentrations and fully supports the State's efforts to accurately identify those sources which have caused the PPA to be in nonattainment of the standards. Nonetheless, section 188(b)(2) of the CAA does not afford EPA any discretion in determining whether the area has in fact attained the PM_{10} NAAQS by the statutorily mandated attainment date. EPA regulations generally require three years of ambient monitoring data in order to assess an area's attainment status. See 40 CFR part 50, Appendix K. As discussed in section I.D. of this notice, based on air quality data collected during the years 1992 through 1994, EPA has determined that the PPA has not attained the PM_{10} NAAQS.

Moreover, the State recently reported two additional violations of the PM_{10} NAAQS at the Chandler monitoring site in 1995. While for the purposes of this rulemaking EPA is only considering air quality data from 1992 through 1994, these 1995 violations further support EPA's determination that PPA has failed to attain the PM_{10} standard.

C. EPA's Current Review of the PM_{10} NAAQS

Comment: Reclassification of the PPA is untimely in light of the pending revision of the PM NAAQS. State and local agencies will have to spend considerable resources to develop a plan for a standard that may no longer be in effect.

Response: Section 109(d)(1) of the Clean Air Act requires that ''not later than December 31, 1980, and at five-year intervals thereafter'' EPA review and revise, if warranted, air quality criteria and national ambient air quality standards. EPA is currently under court order to complete its review of the particulate matter NAAQS by June 28, 1997.

This review may or may not result in a replacement and/or revision of the PM_{10} NAAQS. The Agency is currently considering the addition of a new PM NAAQS that targets fine particulate matter, such as particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers. However, the Agency is also considering retaining a PM_{10} standard. Although the PM NAAQS review process is incomplete at this time, recent epidemiologic studies show consistent positive associations of ambient PM exposure with adverse health effects, including mortality and morbidity. Given the significant health effects associated with PM, vigorous enforcement of the current PM_{10} requirements is critical to ensure protection of the public health. Until a revision of the NAAQS occurs, the current NAAQS and the requirements relating to them remain in force. In the event that a new NAAQS is promulgated, a transition policy that addresses current requirements and ensures protection of the public health will be developed.

D. Air Quality Monitoring

Comment: There should be a more detailed review of the circumstances surrounding the location of the two monitoring sites which recorded exceedances to insure that the locations are not anomalies improperly reflecting local conditions. It would not be appropriate to impose a classification upon the entire region due to what may be anomalies for just two sites out of nine.

Response: In order to meet Federal monitoring regulations, agencies which operate air monitoring networks are required to design these networks in order to meet certain monitoring objectives. These objectives are to determine: 1) the highest concentrations expected to occur in the area covered by the network; 2) representative concentrations in areas of high population density; 3) the impact on ambient pollution levels of significant sources or source categories; and 4) general background concentration levels. See 40 CFR part 58, Appendix D.

Both the South Phoenix and Chandler sites are located in order to measure PM_{10} concentrations in areas of high population density. The Maricopa County Environmental Services Department (MCESD) and ADEQ, the agencies responsible for operating the pollutant monitoring network in the PPA, conduct an annual review of the monitoring network as required by Federal regulations. See 40 CFR part 58.26 and 40 CFR part 58, Appendix F. EPA believes the South Phoenix and Chandler monitoring stations are correctly sited and meet all applicable Federal requirements.

Comment: According to section 2.11 of the Quality Assurance Handbook for Air Pollution Control, PM_{10} monitors have a precision error of ±10% when addressing the PM_{10} 24 hour NAAQS. Therefore, two of the recorded violations, with readings below 165 μg/m3, could be within the NAAQS when this error variation is accounted for.

Response: EPA's quality assurance procedures establish minimum acceptable operating limits for PM_{10} sampling equipment. The ±10% to which the commenter refers is not directly related to the final PM_{10} ambient concentration, but rather to the air flow rate through the PM_{10} sampler. The ambient concentration is calculated from the particle mass collected on a filter medium, the volume of air pulled through the filter, and the amount of time the sampler is operated. The ±10% to which the commenter refers is the acceptable range of deviation for the air flow rate through the sampler. Nevertheless, EPA recognizes the validity of the commenter's concern regarding the ±10% threshold. However, this 10% threshold is not an allowance or a leeway to adjust data, rather it is a limit which if exceeded alerts the field or laboratory monitoring personnel to a possible sample validity problem. Readings beyond the 10% threshold can mean heavy filter loading or decreases in the sampler flow rate. Air flow rates beyond this 10% threshold may necessitate invalidating all samples collected since the last sampler calibration. See Quality Assurance Handbook for Air Pollution Control, section 2.11.3.4, Sample Validation and Documentation.

Comment: According to EPA's Exceptional Event Guideline, high winds are defined as an hourly speed of greater than or equal to 30 mph or gusts equal to or greater than 40 mph with little or no precipitation. The western regional climate center in Reno, Nevada reported that November 20, 1992 was the windiest day of the quarter in the PPA with wind speeds up to 40 mph and no precipitation. Therefore the exceedance recorded on that date (156 μg/m3) should be classified as an exceptional event. Furthermore, all of the PM_{10} NAAQS violations in the PPA were impacted by short term construction activities. The Exceptional Event Guideline states that construction and demolition activities are exceptional events.

Response: EPA has established criteria and procedures to identify or ''flag'' data which may be affected by ''exceptional events'' in its ''Guideline on the Identification and Use of Air Quality Data Affected by Exceptional Events,'' July 1986 (Guideline). Under the flagging system, state and local air pollution control agencies are responsible for initially identifying and documenting data influenced by exceptional events. These agencies are expected to develop the appropriate

background information necessary to support a decision to flag an individual piece of data. The agencies must then submit the information to EPA for concurrence. Flagging a piece of data or data set does not exclude that data from being used for nonattainment designations or classifications. The actual exclusion would only be allowed if, as a result of a public review process, the responsible government agency, in this case EPA, determines that the data are inappropriate for use in a specific regulatory activity. Neither the MCESD nor ADEQ requested that these data be flagged as exceptional events, nor were these data proposed to be excluded from any specific regulatory action.

Notwithstanding the fact that the State did not initiate the flagging process, EPA would have evaluated whether the exceedances in question were affected by exceptional events had the commenter provided documentation demonstrating that they qualified as such. There are basically two issues which must be addressed in order to determine whether an exceedance of the NAAQS was due to an exceptional event. First, there must be a link between a specific PM_{10} generating activity (e.g., forest or structural fire, construction/demolition activity) and the suspect data. Second, there must be a determination that the activity is not likely to recur.

Regarding high winds, the commenter only referenced part of the definition in the Guideline of a high wind event. The definition in full is ''hourly windspeed of greater than or equal to 30 mph or gusts equal to or greater than 40 mph, with [little or] no precipitation. The high wind condition with [little or] no precipitation and dry soil must be associated with a significant contribution (estimated to be > 85% by weight) of crustal material on the PM sampling medium.'' The commenter did not provide any supporting information on the type of particulate matter which contributed to the PM_{10} exceedance on November 20, 1992. Furthermore, no information was provided to show that this wind event was itself exceptional, i.e. that it was not expected to recur.

As to construction activities, the commenter again only sites a portion of the definition of construction/demolition activities that would qualify as exceptional events. The Guideline states that construction/demolition activities that last for only a short period of time, are within a reasonable distance of the monitoring site and that are implementing all reasonable control measures may be flagged as exceptional events. Flagged data should be limited to sites that are classified as micro- or middle-scale and downwind with respect to the construction activity. The Chandler monitoring site is classified as a neighborhood scale site. See 40 CFR part 58, Appendix D for an explanation of the difference in spatial scales. As with the high wind claim, the commenter also did not address the likelihood of the construction activity's recurrence. In the State's approved moderate area PM_{10} SIP, construction activities are recognized as controllable sources of PM_{10} and are now regulated under Maricopa County Rule 310.

To summarize, the commenter did not provide any supporting information or data showing that the high winds or construction activities did, in fact, have a direct causal link to the PM_{10} NAAQS exceedances or, if so, the magnitude of the contribution from these sources. The commenter simply asserted that the high winds and construction activities occurred. Furthermore, the commenter did not address the likelihood of the recurrence of these conditions. In fact, the SIP development process is intended to prevent exceedances from anthropogenic activities such as construction by providing for planning by the State and local community to help ensure such activities adequately mitigate their contribution to PM_{10} air quality problems.

Comment: The two locations where violations were recorded are only two of nine SLAMS sites and data from the seven clean sites should also be considered in deciding whether the PPA should be reclassified. The recorded violations are only 14%, 5%, and 4% over the PM_{10} NAAQS and these values are not ''seriously'' in excess of the PM_{10} NAAQS.

Response: Maricopa County's nine station network is only a representative sample of the PPA's air quality. These nine stations cover 2,920 square miles. Monitoring is only conducted on a one in every six day schedule. Therefore, for every one sample taken, there are five days for which the air quality is unknown. If there were other sites set up to represent conditions similar to those of the violating sites, it is possible that more violations would have been recorded.

Pursuant to 40 CFR, part 50, Appendix K, an exceedance is defined as a value which is measured above the level of the 24 hour standard after rounding to the nearest 10 $\mu g/m^3$ (i.e. values ending in 5 or greater are rounded up). Therefore, had the highest recorded values in the 1992 to 1994 period been 154 $\mu g/m^3$ or less, the concentrations would not have been considered exceedances of the NAAQS. However, the PM_{10} concentrations recorded in the Phoenix area, 156 $\mu g/m^3$, 158 $\mu g/m^3$, and 171 $\mu g/m^3$, are above that level and are therefore considered exceedances.

Further, the claim that the exceedances were not ''seriously in excess'' of the NAAQS is without validity. The PM_{10} NAAQS are set at a level required to protect public health. The standards are designated levels, not ranges, of PM_{10} above which the air quality is considered unhealthy. The reclassification of the PPA is based on the fact that violations of the standards have occurred, and continue to occur, rather than on the severity of the violations.

E. National PM_{10} Standard

Comment: EPA should not apply a nationwide PM_{10} standard to an arid Southwest region such as the PPA.

Response: Section 109 of the CAA requires EPA to promulgate primary and secondary NAAQS for certain types of air pollutants. These standards are based on criteria which reflect current scientific knowledge of the effect of these pollutants on public health and welfare.

On July 1, 1987 EPA promulgated the NAAQS for PM_{10}. 52 FR 24663 (July 1, 1987). While the types of sources and the ability to control them differ from one area of the country to another, the human health effects of PM_{10} pollution are the same whether one resides in New York City or Phoenix. Therefore, in order to protect human health, the standards must be the same nationwide.

However, unlike the NAAQS, the SIP development process is intended to address variability in source types. While the CAA does impose certain minimum control requirements, ultimately it is up to the state and the affected local communities to choose the particular control measures that best address their unique air pollution problem. In developing the control measures, a state may consider the economic and technological feasibility of implementing a particular control measure.

III. Today's Final Action

EPA is today taking final action to find that the PPA did not attain the PM_{10} NAAQS by December 31, 1994, the CAA attainment date for moderate PM_{10} nonattainment areas. As a result of this final finding, the PPA is reclassified by operation of law as a serious PM_{10} nonattainment area.

IV. Executive Order (EO) 12866

Under E.O. 12866, 58 FR 51735 (October 4, 1993), EPA is required to determine whether regulatory actions

are significant and therefore should be subject to OMB review, economic analysis, and the requirements of the Executive Order. The Executive Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may meet at least one of the four criteria identified in section 3(f), including, under paragraph (1), that the rule may ''have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.''

The Agency has determined that the finding of failure to attain finalized today would result in none of the effects identified in section 3(f). Under section 188(b)(2) of the CAA, findings of failure to attain and reclassification of nonattainment areas are based upon air quality considerations and must occur by operation of law in light of certain air quality conditions. They do not, in-and-of-themselves, impose any new requirements on any sectors of the economy. In addition, because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by classifications that, in turn, are triggered by air quality values, findings of failure to attain and reclassification cannot be said to impose a materially adverse impact on State, local, or tribal governments or communities.

V. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. § 601 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C §§ 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

As discussed in sections II.A. and IV of this notice, findings of failure to attain and reclassification of nonattainment areas under section 188(b)(2) of the CAA do not in-and-of-themselves create any new requirements. Therefore, I certify that today's final action does not have a significant impact on small entities.

VI. Unfunded Mandates

Under sections 202, 203 and 205 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), signed into law on March 22, 1995, EPA must assess whether various actions undertaken in association with proposed or final regulations include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local or tribal governments in the aggregate.

EPA believes, as discussed above, that the finding of failure to attain and reclassification of the Phoenix Planning Area are factual determinations based upon air quality considerations and must occur by operation of law and, hence, do not impose any federal intergovernmental mandate, as defined in section 101 of the Unfunded Mandates Act.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter.

Dated: April 29, 1996.

Felicia Marcus,

Regional Administrator.

40 CFR part 81 is amended as follows:

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7407, 7501–7515, 7601.

2. Section 81.303 is amended by revising the table for Arizona—PM–10, to read as follows:

§ 81.303 Arizona.

* * * * *

ARIZONA—PM–10

Designated Area	Designation		Classification	
	Date	Type	Date	Type
Cochise County:				
Paul Spur/Douglas planning area	11/15/90	Nonattainment	11/15/90	Moderate.
Township 23 South, Range 25 East (T23S, R25E):				
T23S,R26E				
T23S, R27E				
T23S, R28E				
T24S, R25E				
T24S, R26E				
T24S, R27E				
T24S, R28E				
Santa Cruz County:				
Nogales planning area	11/15/90	Nonattainment	11/15/90	Moderate.
The portions of the following Townships which are within the State of Arizona and lie east of 111° longitude:				
T23S, R13E				
T23S, R14E				
T24S, R13E				
T24S, R14E				
Rillito planning area	11/15/90	Nonattainment	11/15/90	Moderate.

ARIZONA—PM–10—Continued

Designated Area	Designation		Classification	
	Date	Type	Date	Type
Townships:				
T11S, R9E				
T11S, R10E				
T11S, R11E				
T11S, R12E				
T12S, R8E				
T12S, R9E				
T12S, R10E				
T12S, R11E				
T12S, R12E				
Pima County				
Ajo planning area	11/15/90	Nonattainment	11/15/90	Moderate.
Township T12S, R6W, and the following sections of Township T12S, R5W:				
a. Sections 6–8				
b. Sections 17–20, and				
c. Sections 29–32				
Maricopa and Pinal Counties				
Phoenix planning area	11/15/90	Nonattainment	6/10/96	Serious.
The rectangle determined by, and including—				
T6N, R3W				
T6N, R7E				
T2S, R3W				
T2S, R7E				
T1N, R8E				
Yuma County:				
Yuma planning area	11/15/90	Nonattainment	11/15/90	Moderate.
Townships:				
T7S-R21W, R22W;				
T8S-R21W, R22W, R23W, R24W				
T9S-R21W, R22W, R23W, R24W, R25W;				
T10S-R21W, R22W, R23W, R24W, R25W				
Pinal and Gila Counties:				
Hayden/Miami planning area	11/15/90	Nonattainment	11/15/90	Moderate.
Townships: T4S, R16E T5S, R16E T6S, R16E plus the portion of Township T3S, R16E that does not lie on the San Carlos Indian Reservation, and the rectangle formed by, and including, Townships				
T1N, R13E				
T1N, R15E				
T6S, R13E				
T6S, R15E				
Gila County (part):				
Payson: T10N, Sections 1–3, 10–15, 22–27, and 34–36 of R9E; T11N, Sections 1–3, 10–15, 22- 27, and 34–36 of R9E; T10–11N, R10E; T10N, Sections 4–9, 16–21, and 28–33 of R11E; T11N, Sections 4–9, 16–21, and 28–33 of R11E..	1/20/94	Nonattainment	1/20/94	Moderate.
Mohave County (part):				
Bullhead City: T21N, R20–21W, excluding Lake Mead National Recreation Area; T20N, R20- 22W; T19N, R21–22W excluding Fort Mohave Indian Reservation..	1/20/94	Nonattainment	1/20/90	Moderate.
Rest of State	11/15/90	Unclassifiable.		

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[FR Doc. 96–11736 Filed 5–9–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 180

[PP 9F3714/R2214; FRL–5354–1]

RIN 2070–AB78

Fenoxaprop-Ethyl; Extension of Study Due Date and Time-Limited Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule extends the time-limited tolerances for fenoxaprop-ethyl from April 12, l996 to November 1, l997. This time extension was requested by AgrEvo USA Company to coordinate a delay in initiation of a repeat oncogenicity study required to change the interim (time-limited) tolerances, required for the use of fenoxaprop-ethyl in the culture of wheat, to permanent tolerances. The originial petitioner was Hoechst Celanese Corp. of North Somerville, NJ 08876. In l994 Hoechst Celanese Corp. and NOR-AM Chemical formed a partnership Company, AgrEvo USA Company; and AgrEvo USA