December 19, 2025

Michael Martucci
Acting Regional Administrator
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105
Attn: Karina O'Connor, Environmental Engineer

SUBMITTED VIA REGULATIONS.GOV AND EMAIL

RE: Determination of Attainment by the Attainment Date but for International Emissions for the 2015 Ozone National Ambient Air Quality Standards; Phoenix-Mesa Nonattainment Area, Arizona [EPA-R09-OAR-2025-2833]

Dear Acting Regional Administrator Martucci:

Sierra Club, Earthjustice, the Center for Biological Diversity, Public Employees for Environmental Responsibility, Utah Physicians for a Healthy Environment, and the Natural Resources Defense Council (together, "Public Interest Groups") submit these comments on the United States Environmental Protection Agency's (EPA) proposal to determine that the Phoenix-Mesa ozone nonattainment area (NAA) would have attained the 2015 ozone National Ambient Air Quality Standards (NAAQS) by its August 3, 2024 moderate attainment date, but for emissions emanating from outside the United States.[1] To the severe detriment of the people who reside and spend time in the Phoenix-Mesa nonattainment area, EPA has failed to implement the Clean Air Act as Congress intended in the proposed rule, and rests its conclusions on an unlawful, arbitrary, and erroneous assessment, neglecting a crucial responsibility to reduce ozone-forming air pollution that will help improve the Phoenix-Mesa area's air quality and environmental justice crises.

The Phoenix-Mesa area is one of the most afflicted ozone nonattainment areas in the United States.[2] Designated nonattainment for the 2008 ozone NAAQS in 2012, this problem is both chronic and egregious. 77 Fed. Reg. 30088 (May 21, 2012).

Ozone pollution is detrimental to human health and the environment. Ozone can cause cardiovascular and respiratory problems, and premature death. 85 Fed. Reg. 87256, 87268 (Dec.

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[1] *Determination of Attainment by the Attainment Date but for International Emissions for the 2015 Ozone National Ambient Air Quality Standards; Phoenix-Mesa Nonattainment Area, Arizona*, 90 Fed. Reg. 52019, 52021 (Nov. 19, 2025) [hereinafter, "Proposed Rule"].

[2] In a recent report on air quality across the United States, the Phoenix-Mesa area was ranked fourth among the 25 worst cities for ozone pollution. Am. Lung Ass'n, *Most Polluted Cities*, https://www.lung.org/research/sota/city-rankings/most-polluted-cities (last accessed Dec. 19, 2025), attached as Exhibit 1.

31, 2020); 80 Fed. Reg. 65292, 65302-17 (Oct. 26, 2015). The evidence is also suggestive of a causal relationship between exposure to ozone and adverse reproductive and developmental effects, including adverse birth outcomes. 80 Fed. Reg. at 65338. Children, the elderly, people with respiratory conditions like asthma, and people who work or recreate outdoors are most at risk from ozone. *Id*. at 65322. The American Lung Association calls ozone one of the most dangerous air pollutants in the nation.[3] Immediate problems from ozone exposure—in addition to increased risk of premature death—include: shortness of breath, wheezing and coughing; asthma attacks; increased risk of respiratory infections; increased susceptibility to pulmonary inflammation; and increased need for people with lung diseases, like asthma or chronic obstructive pulmonary disease (COPD), to receive medical treatment and to go to the hospital.[4]

Ozone also degrades the environment. Acute and chronic exposures to ozone lead to foliar injury, decreased photosynthesis, and decreased vegetation and commercial crop growth. 85 Fed. Reg. at 87310. The reduction in tree growth can, in turn, damage ecosystem services such as "provision of food, fiber, timber, other forest products, habitat, and recreational opportunities; climate and water regulation; erosion control; air pollution removal, and desired fire regimes." *Id.* at 87312. Damage to native vegetation results in ecosystem damage, including diminished ecosystem services, that is, the life-sustaining services that ecosystems provide to people for free, such as clean air, clean water, and carbon sequestration.

EPA, the Maricopa Association of Governments (MAG), and the State of Arizona have further contributed to the problem through a history of inaction and delay. After failing to attain the 2015 ozone NAAQS by the August 3, 2021, attainment date, EPA reclassified the Phoenix-Mesa area to a "moderate" classification, eight months after the Clean Air Act deadline for this reclassification. 87 Fed. Reg. 60897 (Oct. 7, 2022). This required Arizona to create a moderate Nonattainment State Implementation Plan (NSIP) to reduce the unhealthy ozone levels burdening the Phoenix-Mesa populace. The moderate NSIP was due, and RACM/RACT was required to be implemented, no later than January 1, 2023. *Id*. at 60900. When MAG and Arizona failed to submit this NSIP to reduce pollution on time, EPA issued a Finding of Failure to Submit, triggering deadlines for sanctions on the state and for EPA to promulgate a Federal Implementation Plan to fill the gap. 88 Fed. Reg. 71757. Still, Arizona and MAG did not submit the moderate NSIP for the Phoenix-Mesa area until April 2025, and EPA has not acted on the submittal to finalize its requirements for reducing harmful ozone levels.[5] This further delays the federal enforceability of the electric arc furnaces, solvent cleaning, and semiconductor manufacturing RACT, accompanying the separate delay around the Pinal County RACT for gas stations and surface coatings.[6]

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[3] Am. Lung Ass'n, *What Makes Outdoor Air Unhealthy: Ozone*, https://www.lung.org/clean-air/outdoors/what-makes-air-unhealthy/ozone (accessed Dec. 19, 2025).
[4] *Id*.
[5] EPA, SPeCS for SIPS Public Element Dashboard, https://awsedap.epa.gov/public/extensions/specs-element-dashboard/index.html (accessed Dec. 18, 2025), [hereinafter, "SPeCS Dashboard"].
[6] Maricopa Ass'n of Governments, *MAG 2025 Eight-Hour Ozone Plan – Submittal of Applicable Moderate Area Requirements for the Maricopa Nonattainment Area* at 7-9 (Apr. 2025), https://azmag.gov/portals/0/Environmental/Air-Quality/2025/Final-MAG-2025-Eight-Hour-Ozone-Plan-4-23-25.pdf [hereinafter, "MAG 2025 Submittal"].

Delay is not the only way Arizona and MAG have contributed to the ozone problem despite the availability of real solutions to locally reduce ozone in the Phoenix-Mesa area, without dodging Clean Air Act requirements through reliance on CAA section 179B. Crucially, this long-delayed NSIP submittal still contains significant deficiencies that violate the Clean Air Act and undermine public health and protection of the environment. First, MAG concedes that the NSIP does not meet the 15% VOC reduction requirement for the newly added portion of the nonattainment area.[7] Second, EPA disapproved Maricopa County's RACT demonstrations for control of VOC leaks from gasoline tank trucks and vapor collection systems, Rule 352, and design criteria for stage I vapor control systems for gasoline service stations, Rule 353, and issued a limited disapproval of these rules, but MAG and EPA have not finalized a correction of the deficiencies in the RACT or the RACT demonstrations. 90 Fed. Reg. 1903 (Jan. 10, 2025). Nor has ADEQ provided EPA with RACT rules for gas stations and surface coatings for the Pinal County portion of the nonattainment area, and thus EPA has not finalized these rules.[8]

Critically, the NSIP does not even attempt to identify RACM that would help reduce ozone-forming emissions in the nonattainment area.[9] That failure renders the plan legally deficient. A RACM demonstration is required for all nonattainment SIPs. 42 USC 7502(c)(1). EPA's implementing regulations promulgated under the 2015 Ozone Implementation Rule also specify that areas classified as Moderate are required to submit a RACM demonstration. 40 CFR 51.1312(c). If the area had been reclassified to serious, it may have been allowed to submit its RACM demonstration as part of its serious area plan. But the area has not been so reclassified and is attempting to avoid that reclassification through its 179B(b) demonstration. The NSIP's failure to even consider additional RACM also shows that regional governments are hardly doing all they can to curb local ozone-forming emissions.

The MAG 2025 Submittal does contain two contingency measures to reduce ozone pollution, limiting VOC emissions from composting and architectural coatings, Rules 327 and 335, respectively.[10] However, MAG asserts that these measures will reduce VOCs by approximately 2.5% from the 2017 baseline, while simultaneously acknowledging that EPA's prior interpretations of the contingency measure requirement necessitates a 3% reduction.[11] Reliance on a 2.5% reduction represents illegal backsliding from EPA's longstanding 3% reduction requirement for contingency measures,[12] undermines this important tool of the Clean Air Act, and further demonstrates MAG and Arizona's failure to properly address the ozone problem through tools at their disposal that can drive local reductions in ozone. MAG also asserts that it will not need finalized moderate contingency measures because of an impending reclassification to serious nonattainment.[13] This reclassification, however, has not occurred, so this exception from adopting and implementing moderate contingency measures does not apply.

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[7] *Id.* at ES-3, 21.
[8] *Id*. at 7; *see also* SPeCS Dashboard.
[9] MAG 2025 Submittal at 5.
[10] *Id.* at ES-3 to ES-4.
[11] *Id.* at 24-26, 30-31.
[12] *See, e.g.,* 83 Fed. Reg. 62998, 63026 (Dec. 6, 2018).
[13] MAG 2025 Submittal at 4-5.

EPA, MAG, and Arizona have perpetually delayed important ozone reduction measures to control ozone locally. Where these measures have been put forward, they have been inadequate and insufficient to meet the requirements of the Clean Air Act. EPA, MAG, and Arizona have also adopted interpretations of the Act that undermine its crucial protections at every turn.

EPA's proposal now completely abdicates the agency's responsibility to ensure that the Phoenix-Mesa area gets on track to attaining the health- and welfare-based 2015 ozone NAAQS, violates the Clean Air Act and EPA's implementing regulations, and is grounded on arbitrary reasoning and flawed analyses. Public health and the environment will continue to suffer as EPA illegally and arbitrarily expands Section 179B of the Clean Air Act and undermines the Act's clear and effective nonattainment State Implementation Plan requirements.

I. EPA's Proposal Impermissibly Seeks to Revise or Flout Nationally Applicable Requirements.[14]

EPA's proposal to change its interpretation of CAA section 179B(b) to no longer require a state to demonstrate that a nonattainment area could not attain by adopting and implementing the measures required for the area's classification, such as RACM/RACT for areas classified Moderate and higher, suffers from threshold rulemaking defects. As an initial matter, EPA improperly seeks to amend, or alternatively, flout its nationally applicable interpretation of 179(B)(b) for the 2015 ozone NAAQS, as set forth and codified in the equally nationally applicable 2015 Ozone Implementation Rule. 81 Fed. Reg. 81276 (Nov. 17, 2016).

Despite its assertions to the contrary in the present proposal, EPA in the 2015 Ozone Implementation Rule clearly characterized its interpretation that demonstrations under Section 179B(b) must include a showing that the air agency has adopted and implemented all reasonably available control measures (RACM), including reasonably available control technologies (RACT), as a *requirement* and not merely guidance. In its proposal for the 2015 Ozone Implementation Rule, EPA proposed and sought comment on "a *requirement* that all demonstrations under CAA section 179B(b), regardless of an area's classification (including nonattainment areas classified as Marginal), must include a showing that the air agency adopted all RACM, including RACT, for the area in accordance with CAA section 172(c)(1), 42 U.S.C. 7502(c)(1)." 81 Fed. Reg. at 81304 (emphasis added).

In its notice finalizing the 2015 Ozone Implementation Rule, EPA explained that it was not finalizing its "proposed *requirement* that all demonstrations under CAA section 179B(b) must include a showing that the air agency adopted all RACM, including RACT." (emphasis added). 83 Fed. Reg. at 63010. Rather, EPA stated that, "[f]or purposes of CAA section 179B demonstrations for the 2015 ozone NAAQS, we are maintaining the approach used for prior ozone standards that only areas classified Moderate and higher *must* show that they have implemented RACM/RACT." (emphasis added). *Id.* EPA further elaborated that,"[f]or this final rule, we are adopting our existing approach grounded in the plain language of CAA section 179B(b), which applies specifically to the ozone NAAQS and does not explicitly modify the

[14] The section headers in these comments are intended to guide the reader and do not limit the scope of the content of the comments.

subpart 2 planning requirements in CAA section 182." *Id*. These statements make clear that EPA intended to adopt in its 2015 Ozone Implementation Rule, as a legally binding and regulatory matter, its interpretation that CAA section 179B(b) requires a state to demonstrate it has implemented RACM/RACT and other controls required for ozone nonattainment areas classified Moderate and above in order to show such area would have attained the NAAQS "but for" certain international emissions. These preamble statements "(mark) the consummation of the agency's decisionmaking process and that establishes rights and obligations or creates binding legal consequences."[15] Subsequent to the 2015 Ozone Implementation Rule, EPA has applied its prior interpretation of section 179B(b) outlined therein to at least one other state's demonstration, evincing the prior interpretation marked the consummation of the Agency's decisionmaking process, established obligations on the states, and created binding legal consequences. EPA disapproved a section 179B(b) demonstration from Utah for the Northern Wasatch Front 2015 Marginal ozone nonattainment area, partially on the basis that, "CAA section 179B does not relieve an air agency of its planning or control obligations, and Utah did not address what measures the State has evaluated to address local sources of emissions that contribute to violations of the NAAQS in the area."[16]

In addition to the previously described preamble statements in the 2015 Ozone Implementation Rule, EPA also explicitly proposed new regulatory provisions at 40 CFR 51.1309 as part of that rule to require that states must also demonstrate adoption and implementation of RACM/RACT for Marginal areas for purposes of treatment under CAA section 179B. 81 Fed. Reg. 81304. EPA also proposed, and subsequently finalized, regulatory text at 50 CFR 51.1308 and 51.1312 that makes clear that areas classified Moderate and above for the 2015 ozone NAAQS must adopt and implement RACM/RACT by dates certain. EPA's proposed, but not finalized, regulatory text at 40 CFR 51.1309 clearly matches its preamble descriptions of its proposed, but not finalized, interpretation of CAA section 179B to require adoption and implementation of RACM/RACT for areas classified Marginal. It therefore follows that between the proposed, separate, and unfinalized regulatory text for Marginal areas and areas classified Moderate and above, and the preambles' mandatorily phrased statements regarding Moderate and above areas adopting and implementing RACM/RACT for purposes of CAA section 179B(b), and making this showing, the 2015 Ozone Implementation Rule codified EPA's interpretation of CAA section 179B(b) with respect to Moderate and above areas that the Agency now seeks to change.

Though its current proposal in effect seeks to amend[17] the Agency's prior nationally applicable interpretation of CAA section 179B(b) as set forth in the 2015 Ozone Implementation Rule, EPA does not sufficiently make clear to the public in this rulemaking that is what it is

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[15] *NRDC v. EPA*, 559 F.3d 561, 564-565 (D.C. Cir. 2009), *see also Bennett v. Spear*, 520 U.S. 154, 177-78 (1997) (emphasis added).

[16] EPA, *Technical Support Document, Northern Wasatch Front (NWF), Utah: Failure to Attain 2015 Ozone National Ambient Air Quality Standard by Attainment Date; Reclassification and Disapproval of International Emissions Demonstration* at 3, Docket No. EPA-HQ-OAR-2021-0742, Document No. EPA-HQ-OAR-2021-0742-0043 (Jan. 2022), https://www regulations.gov/document/EPA-HQ-OAR-2021-0742-0043 [hereinafter, "NWF, Utah 2022 TSD"], attached as Exhibit 2.

[17] Alternatively, as EPA is not proposing to amend its 2015 Ozone Implementation Rule, its current proposal is in violation of that nationally applicable rulemaking and associated regulations.

doing. The current proposal is in several ways facially styled as a state-specific rulemaking,[18] and it analyzes MAG's CAA section 179B(b) demonstration for the Phoenix-Mesa 2015 ozone nonattainment area. However, EPA's proposed new interpretation of CAA section 179B(b) is by its own terms **not** limited to Arizona, and is instead nationally applicable. The portion of EPA's proposal setting out its new interpretation does not once suggest or otherwise discuss that it is applicable only to Arizona, and instead contains broad language suggesting the Agency's intent to apply this new interpretation nationally. For example, the proposal states that, "Under the proposed new interpretation, *states* will no longer be expected to show that they could not attain with on-the-books measures and potential reductions associated with controls required to be implemented by the attainment date in order to qualify for approval of a 179B(b) determination." Proposed Rule at 52023 (emphasis added). Nor could EPA otherwise suggest that its new interpretation is specific to Arizona. The Agency is proposing to interpret CAA section 179B(b) in a way that applies equally to any state seeking to make a demonstration under this provision, and EPA in the current proposal does not suggest that any aspect of its new interpretation is locally or regionally-specific. And tellingly, EPA fails to even discuss the status of the Phoenix area's moderate area ozone SIP for the 2015 ozone standard. EPA's failure to fairly notify the public of the nature of its action here renders its notice deficient for purposes of the Clean Air Act and Administrative Procedure Act. Further, EPA cannot claim an action finalizing this proposal must be challenged in a regional circuit court, as CAA section 307(b)(1) requires that a petition for review of any nationally applicable regulations may be filed only in the United States Court of Appeals for the District of Columbia.

II. EPA's Proposed New Interpretation and Policy for CAA Section 179B(b) is Unlawful, Arbitrary, and Capricious.

In proposing to amend a nationally applicable rule, or at minimum in changing a nationally applicable interpretation of CAA section 179B(b), EPA also fails to meet the legal requirements for such change, rendering its proposal both unlawful and arbitrary and capricious. First and foremost, EPA's approach here violates the statute. Further, EPA has failed to follow the Supreme Court's directive that an agency action must be "reasonable and reasonably explained."[19] The agency must "articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made,'" and cannot "entirely fail[] to

[18] State-specific SIP and attainment-related actions are often handled by EPA Regional Offices, and the signature for such actions delegated to EPA Regional Administrators. The Acting Administrator for EPA Region 9 signed this proposal, however it is unclear whether he was delegated to do so given the proposal seeks to amend a national rulemaking, or at minimum, seeks to impose a nationally applicable legal interpretation and policy. EPA must clarify the authority for Region 9 to issue a nationally applicable rulemaking, especially as the EPA Administrator has previously exercised his authority to interpret 179B(b) in the manner the Acting Regional Administrator seeks to now (e.g. 2015 Ozone Implementation Rule, signed by then-Acting Administrator Andrew Wheeler; Administrator Lee Zeldin's attempted withdrawal of Guidance on the Preparation of Clean Air Act Section (CAA) 179B Demonstrations for Nonattainment Areas Affected by International Transport of Emissions, https://www.epa.gov/newsreleases/administrator-zeldin-moves-forward-ensuring-us-states-are-not-punished-foreign-air).

[19] *FCC v. Prometheus Radio Projec*t, 592 U.S. 414, 423 (2021); *see also FDA v. Wages & White Lion Invs., L.L.C.*, 604 U.S. 542, 567-69 (2025) (citing *Encino Motorcars, L.L.C. v. Navarro*, 579 U.S. 211, 221-22 (2016); *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009); *Motor Vehicle Mfrs. Ass'n of United States, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

consider an important aspect of the problem."[20] Nor can it "offer[] an explanation for its decision that runs counter to the evidence before the agency."[21] And where an agency is reversing course from a prior policy, as EPA is doing here, the agency must not only show awareness that it is changing course, but it must also provide a reasoned explanation for its change in policy.[22]

EPA's proposal neglects to provide the required lawful and reasoned explanation for its change in policy and interpretation of CAA section 179B(b), and entirely fails to consider an important aspect of the ozone nonattainment problem. In changing its interpretation of CAA section 179B(b) to not require implementation of controls required by the relevant attainment date, EPA claims that its prior interpretation was not the best reading of the CAA by a single sentence explaining that this statutory provision "does not expressly require that a state meet all CAA requirements for an area's classification before the EPA can approve a retrospective demonstration." Proposed Rule at 52023. This scant rationale is legally deficient and arbitrary on multiple grounds. It fails to apply the traditional tools of statutory construction. By contrast, EPA's interpretation of CAA section 179B(b) prior to this proposal, including as reflected by the 2015 Ozone Implementation Rule, is the best interpretation of the statute. That prior interpretation considered the overall text, context, structure, and history of the statute, whereas EPA's new interpretation does not.[23] EPA justified its prior interpretation of CAA section 179B(a) and (b) by explaining that these provisions only narrowly eliminate the obligation for a state to submit an attainment demonstration, conditioned upon the state meeting all other nonattainment plan requirements, and voids certain, explicitly articulated consequences of an area's failure to attain, including mandatory reclassification. EPA correctly observed that CAA section 179B's narrow exemptions do not alter the general construct in the Act's part D nonattainment provisions, which is that states will take reasonable and specific actions to mitigate public health impacts of exposure to pollution that violates the NAAQS and that are within the jurisdiction of the state. Based on this construction, EPA concluded previously that "adopting an interpretation of CAA section 179B that would allow people to continue to be subjected to levels of ozone above the NAAQS that a state could reasonably reduce—in this case not to attainment level, but to a level below the current level—would be antithetical to the objectives of the CAA." 81 Fed. Reg. at 81304. By now failing to explain how its new interpretation of CAA section 179B(b) considers the traditional canons of statutory interpretation or even attempting to refute its own prior rationale EPA fails to provide the required reasoned explanation for its change in interpretation.

To begin with, CAA section 179B(b) by its terms only waives CAA section 181(b)(2)'s reclassification requirements, and CAA section 185's fees requirements. By explicitly describing which provisions are waived upon EPA approving a CAA section 179B(b) demonstration, the statute makes clear that all other applicable nonattainment planning provisions under the Act and

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[20] *State Farm*, 463 U.S. at 43 (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)).
[21] *Id*.
[22] *Fox*, 556 U.S. at 515-16.
[23] *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 403 (2024) ("Courts interpret statutes, no matter the context, based on the traditional tools of statutory construction, not individual policy preferences."); *id.* at n.4, citing *Pulsifer v. United States*, 601 U.S. 124, 133 (2024) ("But statutes can be sensibly understood only 'by reviewing text in context.'"); *id*. at 401 ("The very point of the traditional tools of statutory construction is to resolve statutory ambiguities.").

EPA's implementing regulations are *not* waived.[24] Supportive of EPA's assertion in its proposal that approval of a demonstration does not relieve a state of its obligation to adopt and submit the required SIP elements for its existing classification,[25] this includes the obligation for Moderate areas such as Phoenix to adopt and submit RACM and RACT under CAA sections 172(c)(1) and 182(b)(2), as neither provision is among the two Congress specified as waived. Nor does 179B(b) waive section 182(b)(1)(A)'s mandate for 15% rate of progress plans[26] or section 172(c)(9)'s contingency measures requirement.

However, EPA's proposed interpretation that a state need merely adopt and submit these measures someday ignores the applicable requirements of Subpart 2 and is therefore legally flawed and arbitrary. CAA section 182(b)(2) *also* requires that Moderate area plans provide for the implementation of RACT as expeditiously as practicable but no later than a certain date. Consistent with CAA section 182(i), EPA's ozone regulations specify that for RACT required pursuant to reclassification, the state shall provide for implementation of such RACT as expeditiously as practicable, but no later than 18 months after the RACT SIP submittal deadline or the beginning of the attainment year ozone season associated with the area's new attainment deadline, whichever is earlier, unless the Administrator establishes a different date.[27] Pursuant to this authority, EPA established January 1, 2023 as the deadline for reclassified 2015 Moderate nonattainment areas, including Phoenix, to implement RACM and RACT.[28] CAA section 179B(b) neither exempts the RACM/RACT adoption *or* implementation requirements, therefore these measures were required to be implemented by January 1, 2023. EPA's implementing regulations promulgated under the 2015 Ozone Implementation Rule also specify that areas classified as Moderate are required to submit a RACM demonstration. 40 CFR 51.1312(c). As EPA notes in the present proposal, the demonstration requirement under CAA section 179B(b) is a retrospective one. The statutory and regulatory purpose of RACM/RACT is to help an area reach attainment of the NAAQS. Therefore the best reading of section 179B(b), particularly the phrase "would have attained the NAAQS for ozone by the attainment date", is to require that the demonstration establish the area has both adopted *and* implemented all measures associated with the area's nonattainment planning requirements that were intended to get the area into attainment, such as RACM/RACT. If adoption and implementation of these measures would have resulted in attainment "but for" international emissions, then CAA section 179B(b) provides relief from reclassification. To excuse an area from implementing the measures associated with its current classification, such as RACM/RACT, suggests the area is in violation of the statutory and regulatory requirements for implementing those measures by a certain deadline. Nothing in CAA section 179(B) or subpart 2 indicates this was Congress's intent or is the best reading of the Act.

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[24] *See Tennessee Valley Auth. v. Hill,* 437 U.S. 153, 188 (1978) (applying the maxim *expressio unius est exclusio alterius*).
[25] Proposed Rule at 52023.
[26] CAA section 179B(b) also does not waive EPA's 2015 Ozone Implementation Rule requirements for 15% rate of progress plans. 40 CFR § 51.1310.
[27] 40 CFR § 51.1402(b)(1)(ii).
[28] Determinations of Attainment by the Attainment Date, Extensions of the Attainment Date, and Reclassification of Areas Classified as Marginal for the 2015 Ozone National Ambient Air Quality Standards, 87 Fed. Reg. 60897, 60900 (Oct. 7, 2022).

Put another way, the required showing that an area would have timely attained but for foreign emissions necessarily requires EPA to assure itself that the area has adopted the level of pollution control that the Act required and still could not attain.[29] That is the legally required baseline for the decision. EPA is plainly not authorized to grant a 179B(b) waiver where an area would have timely attained "but for" failure of the state to adopt all the controls the Act required, including RACM, RACT, rate-of-progress plans and other measures. Yet that is what EPA's reading of the statute allows. Further refuting EPA's position is the language of 179B(a)(1) that predicates prospective showings of attainment but for international emissions on the SIP's meeting all the requirements applicable to it under the Act other than the requirement to demonstrate timely attainment. Section 179B(a)(1). Although directly applicable to prospective "but for" waivers, this language also shows that Congress expected adoption of SIPs meeting all applicable requirements well before the attainment date even if the area purported to show it would not timely attain but for international emissions.[30] There is no plausible basis for concluding that Congress nonetheless meant to excuse adoption of such SIPs for areas that later failed to timely attain.[31]

EPA's claim that its position is the best reading of the statute is further undermined by legislative history. As noted elsewhere in these comments, Congress meant for section 179B to be invoked in "very limited circumstances."[32] S. REP. No. 98-426 at 38 (1984). But EPA's proposed reading would expand the nonattainment areas eligible for 179B(b) waivers to those that have failed to adopt all or even most of the controls required by the Act for moderate areas. Congress also "recognize[ed] that failure to meet health based standards in such areas [that do not attain the standards] poses a continued risk to individuals living there and that **ongoing efforts to attain these standards must be made**." *Id*. (emphasis added). EPA's reading would

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[29] *See, e.g.,* NWF, Utah 2022 TSD at 11 ("EPA believes that CAA section 179B is intended to apply to areas that could not attain the NAAQS, even after adopting all feasible emissions control measures and technologies because of large contributions from international transport").

[30] This provision of the Act must be read in the context of the mandatory deadlines set by Congress. To read it to excuse non-compliance with those deadlines cannot be the best reading. EPA's so-called "interpretation" of the Act to moot these NSIP elements rests on an assumption that EPA will illegally fail to finalize these elements in a timely fashion. This cannot be what Congress intended. Congress was entitled in enacting the 1990 Amendments to assume EPA would carry out its obligations in a timely manner. Indeed, the ozone provisions in Subpart 2 were enacted by Congress in the 1990 Amendments in response to years of state and EPA failure to bring ozone areas into attainment. Furthermore, mootness is a judge-made doctrine. As the seemingly illegal perpetrator here of the situation, EPA cannot "be a judge in [its] own cause." *Arnett v. Kennedy*, 416 U.S. 134, 197 (1974) (quoting *Bonham's Case*, 8 Co. 114a, 118a, 77 Eng. Rep. 646, 652 (1610)). In short, EPA's interpretation that moots critical NSIP elements cannot be the best reading of the Act. It rests on an assumption that EPA will act illegally to create the very situation EPA claims to be interpreting the Act to address. Congress does not ordinarily assume agency lawlessness when writing such a provision.

[31] EPA's proposed new interpretation is especially arbitrary and capricious and lacks the required reasoned explanation given that Maricopa County itself asserts it is not asking to be exempted from its control obligations for the 2015 ozone NAAQS. *See* Maricopa County, *Comments in Support of EPA's Proposed Approval of Maricopa County's Clean Air Act § 179B Demonstration for the 2015 Ozone NAAQS,* Docket ID EPA-R09-OAR-2025-2833 (Dec. 18, 2025), https://www.regulations.gov/comment/EPA-R09-OAR-2025-2833-0017, [hereinafter, "Maricopa County Comments"].

[32] S. REP. No. 98-426 at 38 (1984), https://www.govinfo.gov/app/details/SERIALSET-13558_00_00-027-0426-0000#:~:text=Senate%2C%20Congress.%20().,13558_00_00%2D027%2D0426%2D0000, excerpt attached as Exhibit 3.

flout that intent by allowing 179B waivers for areas that have not even made the basic efforts expressly mandated by Congress.

Similarly, EPA's proposal to interpret that the contingency measure requirements of CAA section 172(c)(9) would no longer apply to the Phoenix-Mesa Moderate 2015 ozone nonattainment area, if EPA finalizes its CAA section 179B(b) determination, is not a lawful reading of the Act. As a threshold legal matter, EPA's proposed interpretation regarding the application of the contingency measures requirement is barred by prior national EPA regulations. In promulgating the 2015 ozone NAAQS, which directly controls the present action, EPA stated:

> Section 179B also does not provide for any relaxation of mandatory emissions control measures (including contingency measures) or the prescribed emissions reductions necessary to achieve periodic emissions reduction progress requirements. In this way, section 179B insures that states will take actions to mitigate the public health impacts of exposure to ambient levels of pollution that violate the NAAQS by imposing reasonable control measures on the sources that *are* within the jurisdiction of the state while also authorizing EPA to approve such attainment plans and demonstrations even though they do not fully address the public health impacts of international transport. 80 Fed. Reg. 65292, 65444 (Oct. 26, 2025).

Likewise, EPA took the position in the proposed 2015 Ozone Implementation Requirements Rule that "section 179B of the CAA does not provide for any relaxation of mandatory emissions control measures *(including contingency measures)* or the prescribed emissions reductions."81 Fed. Reg. at 81276, 81304 (emphasis added). As described in this comment letter, EPA finalized this interpretation in the final rule, which accordingly controls the present action for the 2015 ozone NAAQS. Even if EPA could change its 2015 rulemaking in this state-specific SIP action - which it cannot - EPA's proposal fails to show awareness that it is changing position regarding this interpretation, and fails to provide a reasoned explanation for its change, as required under *FCC v. Fox Television*. EPA cites to the fact that it took the same interpretation regarding contingency measures in its action approving the 179B demonstration for Imperial County, California. Proposed Rule at 52021, n.10. But that locally applicable action was taken under the 2008 ozone NAAQS, cannot take precedence over the above-cited nationally applicable regulations, or justify the unlawful action proposed here.

EPA cites to the 1992 General Preamble in support of its proposed interpretation, however that Preamble explicitly states it is nonbinding guidance on both EPA and the public.[33] By contrast, CAA section 179B(a) supports that the best interpretation of (b) is that the contingency measures requirements *do* apply. The plain language of CAA section 179B(a)(1) clearly exempts only the attainment demonstration requirement for nonattainment SIPs, and requires that such SIPs meet all other applicable requirements. This plainly means that a state seeking a CAA section 179B(a) prospective determination is obligated to submit contingency measures. Congress could not have intended for states and EPA respectively to go through the process of adopting and approving nonattainment SIP requirements intended to achieve the statutory purposes of attaining and maintaining the NAAQS, only for those measures to remain

[33] State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990, 57 Fed. Reg. 13498 (Apr. 16, 1992).

on the shelf and unimplemented even when an area has failed to attain the NAAQS. The best interpretation of the broader statutory scheme under CAA section 179B (i.e. reading both (a) and (b) together) is that Congress intended for states to adopt *and* implement all controls and measures required for a particular nonattainment area, except for the attainment demonstration and reclassification requirements to the extent specified as exempted under (a) and (b). EPA's proposed interpretation flouts CAA section 179B's limited exemptions and waivers by broadening them to include nonattainment measures that are within the state's control, violating CAA section 179B's caveat that a state would have attained "but for" international emissions.

EPA claims it has long read the Act as only requiring implementation of contingency measures for RFP failures in moderate areas if the area also fails to timely attain, citing its 1992 General Preamble. 57 Fed. Reg. at 13511. As noted above, that language is nonbinding. Moreover, language on that page contradicts EPA's claim. It states that "[o]zone areas classified as moderate or above must include in their submittals, which are due by November 15, 1993, as set by EPA under section 172(b), contingency measures to be implemented if RFP is not achieved **or** if the standard is not attained by the applicable date**."** *Id.* (emphasis added). Use of the term "or" means the SIP must ensure adequate contingency measures for both an RFP and attainment failures and trigger them for either failure. For EPA to conclude otherwise would violate section 172(c)(9)'s mandate for contingency measures "to be undertaken if the area fails to make reasonable further progress, **or** to attain the national primary ambient air quality standard by the attainment date applicable under this part." 42 U.S.C. § 7502(c)(9) (emphasis added). EPA's position would also flout that sub-provision's mandate for SIP contingency measures "to take effect in any such case without further action by the State or the Administrator." *Id.* Thus, if there is an RFP failure, the triggering of contingency measures must be automatic, regardless of whether a 179B waiver has been granted. EPA also ignores the fact that Congress set out an explicit RFP requirement for moderate areas: a minimum 15% reduction in VOC emissions over a six year period. 42 USC § 7511a(b)(1)(A)(i). That requirement is separate from and in addition to the statute's mandate for a showing of timely attainment.

Also groundless is EPA's apparent position that the requirement for implementing contingency measures for failure to timely attain somehow vanishes when EPA makes a 179B(b) determination. While such a finding relieves EPA of making a failure to attain finding for purposes of triggering a reclassification under section 7511(b)(2), a 179B(b) determination necessarily includes its own finding that the subject area failed to timely attain. Indeed, section 179B(b) only applies if the area has failed to timely attain. The language of section 172(c)(9) does not tie the triggering of contingency measures to a 7511(b)(2) finding but simply states that such measures are to be undertaken if the area fails to attain by the attainment date. Triggering contingency measures is warranted in the face of a 179B(b) finding for the same reasons EPA stated in its promulgation of the 2015 ozone NAAQS: It "insures that states will take actions to mitigate the public health impacts of exposure to ambient levels of pollution that violate the NAAQS by imposing reasonable control measures on the sources that *are* within the jurisdiction of the state while also authorizing EPA to approve such attainment plans and demonstrations even though they do not fully address the public health impacts of international transport." 80 Fed. Reg. at 65444.

EPA also claims that moderate areas do not need to submit milestone demonstrations, as they're not covered by the milestone provisions of 182(g)(2). But all nonattainment areas must submit "a comprehensive, accurate, current inventory of actual emissions from all sources" every three years. *Id.* §§ 7511a(a)(1), (3)(A). That inventory (if accurate) will necessarily show whether the required RFP reductions have been achieved. EPA has no authority under section 179B(b) or any other statute to waive that requirement. Further, states cannot show RFP achievement by simply documenting implementation of control measures, as that approach has been invalidated by the DC Circuit as contrary to the statute. *Sierra Club v. EPA*, 21 F.4th 815, 823-26 (DC Cir. 2021).

EPA's proposal to eliminate requirements for contingency measures and RFP also violates the Act's anti-backsliding provision. Section 172(e) provides that if the EPA "relaxes a national primary ambient air quality standard," it must "promulgate requirements applicable to all areas which have not attained that standard as of the date of such relaxation" which "shall provide for controls which are not less stringent than the controls applicable to areas designated nonattainment before such relaxation." 42 U.S.C. § 7502(e). Although section 172(e) expressly applies only when the EPA "relaxes" a NAAQS, EPA has long interpreted the language to also apply when it strengthens a NAAQS—as it did when it adopted the 2015 revised 8-hour ozone standard—reasoning that "if Congress intended areas to remain subject to the same level of control where a NAAQS was relaxed, they also intended that such controls not be weakened where the NAAQS is made more stringent." 69 Fed. Reg. 23951, 23972 (Apr. 30, 2004) (Phase 1 Rule)*; see South Coast Air Quality Mgmt. Dist. v. EPA,* 472 F.3d 882, 900 (2006). EPA has never before authorized elimination of requirements for contingency measures and RFP nationally or in Arizona based on the grant of a 179B(b) waiver. To do so for the first time with respect to a moderate nonattainment area under the 2015 ozone standard therefore results in less stringent controls than required under prior NAAQS, and thereby flouts 42 U.S.C. §7502(e). See *Sierra Club v. EPA*, 882 F.3d 1138,1147 (DC Cir. 2018) (contingency measures are controls subject to the Act's anti-backsliding provision); *South Coast*, 472 F.3d at 900 (same as to rate-of-progress targets); *NRDC v. EPA*, 571 F.3d 1245, 1271 (D.C. Cir. 2009).

EPA also proposes two arbitrary and capricious policy changes from its prior treatment of CAA section 179B(b). The agency's prior treatment, which it is now proposing to cursorily abandon, was to consider specific characteristics as necessarily suggesting the need for a more detailed demonstration with additional evidence, and that when a CAA section 179B demonstration shows that international contributions are larger than domestic contributions, the weight of evidence will be more compelling than if the demonstration shows domestic contributions exceeding international contributions. Proposed Rule at 52023. These changes in policy require a reasoned explanation, which the Agency altogether fails to provide. EPA instead baldly asserts that based on the reference to the Administrator's satisfaction, CAA section 179B(b) gives EPA the discretion to determine what technical analyses are sufficient for the purpose of a state demonstrating an area has attained but for international emissions. While it is true the statute does not mandate what such an analysis must entail, and that the Administrator is the arbiter of whether a demonstration is satisfactory, the requirements or guidance for this

demonstration must be tethered to its statutory purpose.[34] EPA has established, time and time again, including in promulgating the 2015 ozone NAAQS itself, that ozone formation is complicated and influenced by complex interactions between precursor emissions, meteorological conditions, and surface characteristics.[35] In promulgating the 2015 ozone NAAQS, EPA asserted that modeling analyses indicate that nationally the majority of ozone exceedances are predominantly caused by anthropogenic emissions from within the U.S. 80 Fed. Reg. 65300. EPA has also recognized that observational and modeling analyses have concluded that concentrations in "some" locations in the U.S. on "some" days can be substantially influenced by sources that cannot be addressed by domestic control measures, and has stated that "these events are relatively infrequent." *Id.*

Based on EPA's scientific determinations regarding the ozone NAAQS, it is therefore reasonable, and considers an important aspect of the ozone nonattainment problem, for EPA to require more detailed information and additional evidence in certain circumstances when assessing impacts on a nonattainment area from international emissions. Given the complicated nature of determining whether particular ozone monitoring impacts are from domestic or international emissions, it is equally reasonable for EPA to find that weight of evidence is more compelling when a demonstration shows international contributions exceed domestic contributions, suggesting an increased likelihood that nonattainment impacts are international rather than domestic. In the present proposal, EPA is completely silent as to whether and how its new policy regarding a weight of evidence demonstration under CAA section 179B addresses the nature of ozone formation and international transport, thus ignoring an important aspect of the ozone nonattainment problem. EPA's failure to provide a reasoned explanation for its new policy is particularly egregious given its analysis that MAG's demonstration does *not* adequately show international impacts on the Phoenix-Mesa's nonattainment problem. As further described in this comment letter, EPA itself has found that "it is difficult to conclude that an increase in Mexican [VOC and NOx] emissions contributed to exceedances in the nonattainment area. [...] While the information provided in this analysis does indicate that there is a possibility of emissions from Mexico affecting the nonattainment area, there is not enough information from this piece of evidence alone to determine the influence of emissions from Mexico."[36] Therefore, EPA's proposed policy change and determination unreasonably rests on "an explanation for its decision that runs counter to the evidence before the agency."[37]

Finally, EPA cannot now address these administrative law deficiencies by finalizing its new interpretation and policies without re-proposal and by instead claiming that this comment letter or others provide grounds for logical outgrowth. Section 553(b) of the Administrative Procedure Act requires that the notice of proposed rule making provide the terms or substance of the proposed rule. As described, EPA has failed to provide the required explanation for its

[34] For example, EPA could not reasonably claim that a demonstration solely assessing water quality impacts would meet the requirements of CAA section 179B(b) just because the Administrator finds it to be to his satisfaction.
[35] *See e.g.,* 2015 National Ambient Air Quality Standards for Ozone, 80 Fed. Reg. 65292 65299.
[36] EPA, *EPA Evaluation of the Clean Air Act Section 179B(b) Demonstration for the Phoenix-Mesa 2015 Ozone NAAQS Nonattainment Area - Modeling and Impact of International Emissions Technical Support Document*, 33 (Oct. 2025), https://www regulations.gov/document/EPA-R09-OAR-2025-2833-0006 [hereinafter, "EPA TSD"].
[37] *State Farm*, 463 U.S. at 43.

proposed change in interpretation of CAA section 179B(b) and policy, depriving the public of an opportunity to comment on key aspects of its proposal.

III. A Valid 179B Demonstration Must be Limited to International "Border Areas."

EPA's proposal violates the plain language of CAA section 179B because this provision only applies to "International border areas" according to its very title. The Phoenix-Mesa nonattainment area is over 100 miles from the U.S.-Mexico border at its closest point, approximately 220 miles from that border at its farthest point, and over 7,000 miles away from Asia and other intercontinental sources. Of course, neither Arizona nor the Phoenix-Mesa area border those Asian sources, even if one were to construe the U.S. West Coast as "bordering" Asia, which is not accurate. The provision does not apply to border states where the relevant nonattainment area is not on a border, and certainly does not apply to circumstances where emissions may emanate from thousands of miles away where the nonattainment area does not border the region or country from which the pollution originates. Statutory titles are important tools for statutory interpretation and placing the provision in context.[38]

The overriding purpose of the Clean Air Act is to "protect and enhance" air quality, 42 U.S.C. § 7401(a), and mitigate the "mounting dangers to the public health and welfare" caused by air pollution. 42 U.S.C. § 7401(a)(2). To that end, Congress established NAAQS for six of the most common air pollutants, also known as "criteria" air pollutants. 42 U.S.C. § 7409. Congress directed EPA to set the primary, health-based standards at a level that is "requisite to protect the public health" with an adequate margin of safety. 42 U.S.C. § 7409(b)(1). To effectuate the NAAQS program, the Clean Air Act requires states to develop and submit state implementation plans (SIPs) by certain statutory deadlines. These detailed plans provide for the implementation, attainment, maintenance, and enforcement of the NAAQS.

In the 1990 Amendments to the Clean Air Act, Congress added Section 179B which provides EPA with limited authority to adjust certain specific requirements under the NAAQS program for a border area that would have attained an air quality standard (or that would have demonstrated timely prospective attainment) "but for emissions emanating from outside the United States." 42 U.S.C. § 7509a. In drafting the amendment that became Section 179B, appropriately entitled "International border areas," Congress created a narrow exception to be invoked only under these same "very limited circumstances." S. REP. No. 98-426 at 38 (1984). Congress "recognize[ed] that failure to meet health based standards in such areas [that do not attain the standards] poses a continued risk to individuals living there and that ongoing efforts to attain these standards must be made," but offered an exception for "some limited cases [where]

[38] *Pileggi v. Wash. Newspaper Publ'g Co., LLC*, 146 F.4th 1219, 1232-33 (D.C. Cir. 2025) (using statutory title and section heading as starting point for statutory interpretation); *Cannon v. Watermark Ret. Cmtys., Inc.*, 45 F.4th 137, 144 (D.C. Cir. 2022) ("Titles offer clues as to statutory meaning" (citing *Guam v. United States*, 593 U.S. 310, 316 (2021))); *Huisha-Huisha v. Mayorkas*, 27 F.4th 718, 727 (D.C. Cir. 2022) ("The title and headings are permissible indicators of meaning." (quoting Antonin Scalia & Bryan Garner, *Reading Law: The Interpretation of Legal Texts* 221 (2012)); *see also Singh v. Gonzales*, 499 F.3d 969, 977 (9th Cir. 2007) (citing *Almendarez-Torres v. United States*, 523 U.S. 224, 234 (1998) ("[T]he title of a statute and the heading of a section are tools available for the resolution of a doubt about the meaning of a statute." (quotation marks and citation omitted))).

an area may fail to attain ambient standards because of emissions *from immediately adjacent areas in a foreign country.*" *Id.* (emphasis added).

During Senate debate on March 22, 1990, Congress discussed the amendment in detail: Senators Baucus, Bingaman, and Bentsen highlighted concerns about "the growing problem of air degradation along the U.S.–Mexico border" and emphasized that the CAA should protect all Americans, including those living in border areas.[39] Senator Bentsen noted that the amendment gave El Paso and other border cities the opportunity to demonstrate that their nonattainment problems were due to their international location.[40] Senator Baucus further praised the recognition of "the unique environmental problems facing cities along the US-Mexico border."[41] Notably, the Senate discussion made no mention of non-border nonattainment areas or Phoenix-Mesa, suggesting that Congress did not intend § 179B to provide relief beyond border regions, instructive of the provision's proper scope.

The legislative history also contains no indication that Congress intended to relieve states of their obligation to adopt all feasible state and local measures to limit emissions. Instead, Congressional leaders repeatedly emphasized that the Act's "fundamental goal," the protection of public health, would not be compromised, noting that the Clean Air Act at its core "is a health bill."[42]

EPA has never approved a 179B demonstration from an area that was not immediately adjacent to an international border. EPA must adhere to the clear limits Congress placed on this narrow exemption. EPA should only consider 179B Demonstrations from "border areas"—*i.e.*, areas of the U.S. that are directly adjacent a foreign country where the state can show that specific sources of foreign emissions are directly interfering with attainment.[43] EPA has failed to do so here, and has failed to articulate a valid basis from departing from the clear language and purpose of section 179B. *See Am. Lung Ass'n v. EPA*, 134 F.3d 388, 392 (D.C. Cir. 1998) (holding that where Congress has "delegated to an administrative agency the critical task of assessing the public health and the power to make decisions of national importance in which individuals' lives and welfare hang in the balance," EPA has the "heaviest of obligations" to explain its reasoning.).

While EPA's illegal interpretation of CAA section 179B disqualifies the agency from considering emissions claimed to originate both from Mexico and Asia/intercontinental sources, its interpretation is especially egregious with respect to the latter. There is no border involved

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[39] Cong. Rec. 136, S. 5063 (1990), excerpt of Vols. 3-4 attached as Exhibit 4.
[40] *Id*.
[41] *Id*. at 5063-64.
[42] *Id.* at 3386. Mr. Baucus: "it is the result of nearly a month of intense but productive discussions with administration officials and with Senate members from both parties…. We have all had to bend some, all of us. But we never compromised the fundamental goal of the Clean Air Act, that is to protect public health and the environment. Whenever a proposal came up that might compromise this goal, it was flatly rejected."; *Id.* at 3376. Mr. Chafee: "… let us all remember that its principle purpose is to improve the health of the American people…It is a health bill."
[43] The term "outside the United States" takes meaning from context and must be read in tandem with the provision's title, "International border areas." For example, if you say someone is "standing outside my house," you mean they're directly outside the house, not 7,000 miles away. Courts look to context, legislative history and the title as interpretative tools, and here all speak loudly and clearly in favor of limiting section 179B relief to border areas.

with respect to the Phoenix-Mesa area and intercontinental pollution, and no indication that Congress in any way intended section 179B to be stretched so far.

IV. Statements in EPA's Technical Support Document Undermine EPA's Proposed Approval of MAG's 179B(b) Demonstration.

Multiple statements in EPA's TSD indicate that the section 179B(b) demonstration has significant flaws. EPA fails to explain or reconcile its proposed approval of the demonstration in the face of these statements.

1. Mexican Emissions

EPA's TSD identifies several key flaws in the analysis of Mexican emissions:

- "[H]igh springtime bias could lead to an overestimated contribution from international emissions."[44] "As the spring days appear to be overrepresented in the RRF and there is higher modeled international anthropogenic influence in the spring, the international anthropogenic contribution to the nonattainment area quantified in this study may be a high estimate."[45]

- "It is difficult to conclude that an increase in Mexican [VOC and NOx] emissions contributed to exceedances in the nonattainment area. Ramboll does provide emissions on a per capita basis, but there are other factors that are relevant that are not considered. For example, the land area of the Mexican border states is much greater than that of the Phoenix nonattainment area, and the locations of the emissions are further from the Phoenix ozone monitors. In addition, it is less clear how emissions in those border states are spatially distributed. Finer resolution spatial and temporal emissions data would provide more useful information for this piece of evidence. While the information provided in this analysis does indicate that there is a possibility of emissions from Mexico affecting the nonattainment area, there is not enough information from this piece of evidence alone to determine the influence of emissions from Mexico."[46]

- "While the HYSPLIT trajectories indicate that there is some transport from Mexico, the influence of this transport is likely overstated. There is no information on vertical transport on exceedance days provided so it is unclear if all trajectories shown affect surface-level ozone. Ramboll also does not provide any information on whether the Mexican locations traversed by the HYSPLIT trajectories correspond to locations with Mexican precursor emissions or pollution plumes. Furthermore, although there may be some transport from Mexico on certain days, those days likely also have transport from within the nonattainment area, elsewhere in Arizona, and nearby U.S. states."[47]

- "[T]he removal of 84% of days due to the presence of any trajectory over Mexico for any length of time and at any elevation is likely removing too many days, resulting in an

[44] EPA TSD at 32.
[45] *Id*. at 37.
[46] *Id*. at 33.
[47] *Id*. at 34.

analysis of only 16% of days, which may not be representative enough of the entire ozone season."[48]

The foregoing statements raise substantial doubts about the degree of Mexican contribution to nonattainment in the Phoenix area.

2. Conceptual Model

EPA's TSD also identifies flaws in MAG's conceptual model:

- "MAG identified various meteorological drivers that, at different times, may contribute to high ozone in the nonattainment area, making the area's ozone production a complex mix of local emissions and meteorological factors including stratospheric intrusions, nocturnal inversions, urban heat island, transport from fires, and emissions from California, Mexico, and Asia. All meteorological phenomena described by MAG may plausibly contribute to enhanced ozone concentrations. **However, most of the phenomena described by MAG were not specifically linked to high ozone episodes in 2021 to 2023**, with the exception of one day with evidence of stratospheric ozone intrusion and medium-range transport analyzed using HYSPLIT trajectories. **Thus, the extent to which these phenomena contribute to ozone formation during the 2021-2023 attainment period is unclear and complex.** For example, while MAG noted that prior modeling studies performed by MAG showed contributions of 1 to 3 ppb to surface-level ozone from upper air lightning, there is no further information provided on the details of these studies."[49]

3. Ramboll Report

EPA's TSD highlights deficiencies in the Ramboll Report:

- "Ramboll calculated a projected DV without international anthropogenic emissions in a relative sense through the use of an RRF . . . However, we note that the RRF method of correcting for model bias relies on the implicit assumption that the bias applies proportionally to each source contribution (e.g., if the model is biased low by 13%, it is assumed that each source contribution is individually biased low by 13%). Thus, for example, **when applying the RRF method to a model that accurately simulates background and international ozone but is biased low for local ozone production, the RRF will inflate the background and international contributions to ozone and will underestimate the local contributions to ozone.** Additionally, Figure 3-1 shows seasonally varying contributions from international emissions. We note that EPA's RRF method averages contributions over the top-10 modeled days which inherently is designed to capture impacts on "typical" high ozone days. **To the degree that ozone contributions vary across those days, this distinction cannot be disentangled from**

[48] *Id*.
[49] *Id*. at 29-30 (emphasis added).

the standard RRF methods. This adds uncertainty to interpretation of results in cases where different types of contributions are important on different days."[50]

EPA does not explain why it can rely on the RFF methodology here when it underestimates local ozone contribution.

- "In Ramboll's modeled time series of anthropogenic contributions, there is a notable seasonality to the contributions, as discussed in Section 3.3.1 of this TSD. **Although Asia and other non-Mexican emissions make up most of the international anthropogenic contribution in the spring, there is little discussion of the transport of these emissions**. Instead, much of the rest of the Ramboll Report focuses on emissions from Mexico, which have greater contribution in the summer when total international contribution is predicted to be lowest. The weight of evidence for showing the contribution of emissions internationally but outside of Mexico could be stronger if there were more analyses presented explaining the nature of these emissions and how their contributions were quantified.

  "In addition, Figure 3-1 suggests that the model projects some fraction of the top 10 model days to be in the spring. Most observed high days, in contrast, take place in the summer. **The RRF is calculated using the top 10 modeled days, so that the high springtime bias could lead to an overestimated contribution from international emissions.**"[51]

EPA does not explain how it can rely on the demonstration's attempted quantification of international contributions when there is little discussion of the transport of these emissions, and where the RRF approach could lead to overestimated international contribution.

- "Collectively, the weight of evidence in this report effectively shows that international anthropogenic emissions impact ozone in the Phoenix nonattainment area."[52]

The above statement hardly endorses the specific numerical contributions to Phoenix ozone levels that MAG and Ramboll attribute to international emissions. It merely says there is some impact. In this regard, the TSD notes elsewhere an EPA estimate of international anthropogenic contribution of 8.5 ppb for 2018 to 2020 at the Pinnacle Peak monitor.[53] EPA does not explain why the MAG/Ramboll estimate is more credible than EPA's.

4. MAG Report

EPA's TSD identifies several other shortcomings in MAG's analysis:

- "MAG provided time series plots comparing modeled and MDA8 ozone concentrations. As MAG summarized, both models tend to overpredict ozone concentrations in June and underestimate ozone concentrations in August. This is consistent with the seasonality

[50] *Id*. at 3-31 (emphasis added).
[51] *Id*. at 31-32 (emphasis added).
[52] *Id.* at 34.
[53] *Id*. at 32.

causing low bias and higher error that was previously discussed. In this case, the positive bias in June would largely cancel out the negative bias in August when calculating an averaged bias for the entire ozone season, but the errors in both months remain."[54]

EPA does not explain how low bias in August is largely canceled out by high bias in June. Ozone nonattainment is based on daily high 8-hour values at each monitor, with the monitor's design value being the average of the 4th highest value at that monitor in a year. By definition, a low value at a monitor in one month does not and cannot cancel out a high value in another month (or on another day).

- "NO2 and HCHO data presented by MAG largely show underestimates by the model as compared to observations. NO2 time series from CAMx at individual monitors often show peak NO2 concentrations at less than half of the observed amount. **This suggests that there may be a local source of NO2 that is not captured or underrepresented in the model. This could result in an underestimate of ozone formation.** Similarly, negative biases in HCHO concentrations may be attributed to uncertainties in VOC emissions, as MAG had suggested. The underrepresentation of NO2 and HCHO could also be related to the seasonality of contributors to ozone formation, as discussed previously in this section, but not enough information is provided in the precursor time series data to make a clear conclusion."[55]

EPA does not explain why a potential underestimate of ozone formation is not a significant concern in the Section 179B demonstration.

- "Since RRFs for this modeling demonstration were defined to be calculated from the top ten MDA8 modeled design days, this skews the RRF more towards the spring. However, as seen in the observational data in Figure 7-2 of the MAG Report or Figure 4-1 below, most of the observed top ten MDA8 days are in the summer. Thus, there is uncertainty in model results as the distribution of days represented by the RRF is not the same as the distribution of observed top ten MDA8 days over the ozone season. As the spring days appear to be overrepresented in the RRF and there is higher modeled international anthropogenic influence in the spring, **the international anthropogenic contribution to the nonattainment area quantified in this study may be a high estimate.**"[56]

EPA fails to reconcile its apparent reliance on the MAG/Ramboll claim of international contributions in the 10 to 14 ppb range with its repeated admission that these modeled international anthropogenic contributions may be high estimates.

V. EPA Improperly Overestimated International Emissions Contributing to Phoenix-Mesa Ozone Nonattainment.

[54] *Id*. at 36.
[55] *Id*. at 36 (emphasis added).
[56] *Id*. at 37 (emphasis added).

A. EPA and MAG Failed to Account for Emissions Emanating from inside the United States.

Pursuant to the plain language of CAA section 179B(b), emissions must *emanate* from outside of the United States for the provision to apply (". . . but for emissions emanating from outside of the United States . . ."). [57] Thus, emissions emanating within the United States that cross an international border and then reenter the United States cannot be included among the international emissions identified in a 179B demonstration. Accordingly, the question is not whether the air pollution comes from across the border but rather whether it originated there.

EPA failed to consider this important aspect of the problem, rendering its proposal arbitrary. EPA's and MAG's analyses do not account for or otherwise assess emissions emanating from inside the United States, including from the Permian Basin and the Gulf of Mexico, that reach the Phoenix-Mesa area after crossing the U.S.-Mexico border. In other words, EPA and MAG failed to account for emissions that originate in the United States, cross the border into Mexico, and then reenter the United States and contribute to Phoenix-Mesa ozone. Large amounts of ozone and ozone precursor pollution originate in the Permian Basin, including both Texas and New Mexico; Louisiana; and the Gulf of Mexico that travels significant distances,[58] and these emissions cannot be included among the international emissions upon which the 179B demonstration relies.[59]

As MAG determined, and EPA credited, its conceptual model describing ozone transport and formation in the Phoenix-Mesa is contingent upon the seasonal western North American Monsoon, particularly for July and August exceedances partially attributed to ozone and precursors from Mexico.[60] As the analysis recognizes, the monsoon results in a changed

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[57] *See Emanate*, Merriam-Webster (accessed Dec. 18, 2025), https://www merriam-webster.com/dictionary/emanate (defining "emanate" as "to come out from a source," "emit").

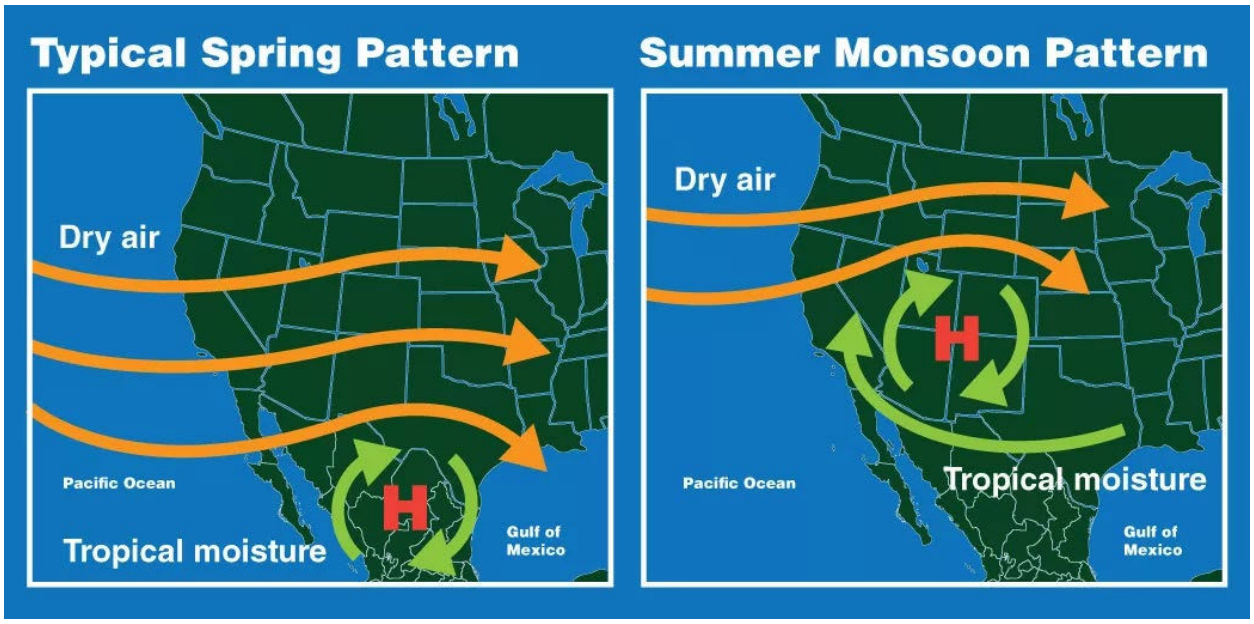
[58] A. Marsavin et al., *Summertime ozone production at Carlsbad Caverns National Park, New Mexico: Influence of oil and natural gas development,* 129 Journal of Geophysical Research: Atmospheres e2024JD040877 (2024), https://doi.org/10.1029/2024JD040877 (finding that ozone precursors emitted from Permian basin oil and gas development activity are responsible for ozone pollution at Carlsbad Caverns in New Mexico), attached as Exhibit 5; A.M. Thompson et al., *Two air quality regimes in total column NO2 over the Gulf of Mexico in May 2019: Shipboard and satellite views,* 10 Earth and Space Science e2022EA002473 (2023), https://doi.org/10.1029/2022EA002473 (finding strong association between near-shore and deepwater oil and gas rigs in the Gulf of Mexico and emissions of ozone precursors), attached as Exhibit 7; *see also* K.N. McPherson et al., L. *Air Pollution from Unconventional Oil and Gas Development in the Eagle Ford Shale*. Atmos. Environ. 2024, *338*, 120812 (oil and gas development in Eagle Ford Shale region of Texas responsible for elevated ozone and ozone precursor emissions); G. Sijie et al., *Characterization and sensitivity analysis on ozone pollution over the Beaumont-Port Arthur Area in Texas of USA through source apportionment technologies*, Atmospheric Research, Volume 247, 2021, 105249, ISSN 0169-8095, https://doi.org/10.1016/j.atmosres.2020.105249 (describing significant ozone emissions from West Louisiana, Gulf of Mexico, and industrial activity in the Beaumont-Port Arthur area).

[59] The CAA provides for other statutory tools to address inter*state* emissions, further supporting that they cannot be accounted for under CAA section 179B, which plainly is intended to address international emissions. Upwind states and EPA must account for interstate pollution impacting attainment and maintenance of the NAAQS under their CAA section 110(a)(2)(D)(i) "good neighbor" SIPs. Downwind states and local governments may also choose to petition EPA to address interstate upwind emissions under CAA section 126(b).

[60] Maricopa Association of Governments, *MAG 2025 Clean Air Act Section 179B(b) Retrospective Demonstration of the Impact of International Emissions on Ozone Concentrations in the Maricopa Nonattainment Area* at 3 (Sept. 2025) [hereinafter, "MAG Demonstration"]; Proposed Rule at 52025.

transport circulation pattern.[61] The analysis, however, fails to account for the full extent of this circulation pattern, which can drive air flow and likely emissions emanating from the Permian Basin, particularly the Texas portion, Louisiana, and the Gulf of Mexico, across the Mexican border and back into the southwestern United States. See, for example, the following depictions of air movement from the western North American monsoon from the National Oceanic and Atmospheric Administration and the National Weather Service:[62]

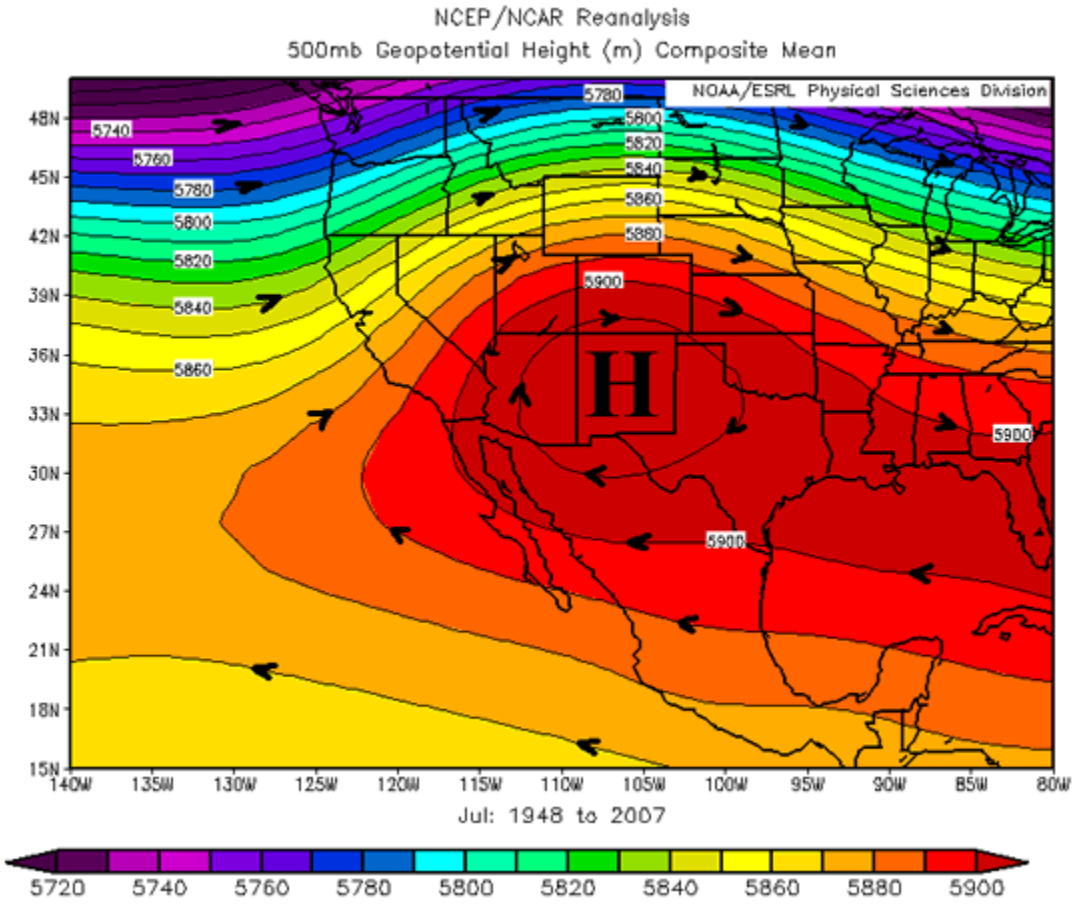
Figure 1 - Monsoon Air Transport Patterns



[61] MAG Demonstration at 26, 34.

[62] NOAA, *What Is a Monsoon?* (Figure 1), https://www.nesdis noaa.gov/about/k-12-education/severe-weather/what-monsoon (accessed Dec. 19, 2025); NWS, *Monsoon Information Page: The North American Monsoon* (Figure 2), https://www.weather.gov/twc/MonsoonInfo (accessed Dec. 19, 2025) (depicting mean 500mb height pattern, July).

Figure 2 - North American Monsoon



The Ramboll analysis underlying the MAG demonstration states that its air parcel transport pattern analysis, which is premised on HYSPLIT back trajectory analysis, identified that "[m]ost trajectories . . . pass close to Ciudad Juarez and northern Mexico within approximately 1 day, while the meridional (north-south) variations occur farther upwind (i.e., around 3 days back in time) *with origins in Texas* and Mexico."[63] Further, the Ramboll Report modeling finds that 134 of 160 exceedance days (84%) "indicate air parcel origins passing over some portion of Mexico," and that when wildfire exceedance days are excluded, 67 of 84 exceedance days (80%) "indicate air parcel origins passing over some portion of Mexico."[64] The

[63] Ramboll Americas Engineering Solutions, Inc., Technical Analyses in Support of the MAG 2025 Clean Air Act §179B(b) Retrospective Demonstration for the Maricopa Ozone Nonattainment Area Report at 41 (Sept. 2025), https://downloads.regulations.gov/EPA-R09-OAR-2025-2833-0004/attachment_3.pdf (emphasis added) [hereinafter, "Ramboll Report"]; *see also id.* at C-39 to C-41 (3-day ensemble back trajectories showing trajectories that originate in Texas, pass through into Mexico, and then reenter the United States and lead to the Phoenix-Mesa area).

[64] *Id*. at 42-43.

question, however, is not whether pollution passed over Mexico, but rather whether it originated there. Ramboll, MAG, and EPA failed to take the additional, necessary step of distinguishing the ozone and precursor pollution that originated in Texas from that originating in Mexico, and thus failed to account for which emissions emanated within the United States.

Further, Ramboll, MAG, and EPA's reliance on an assessment of medium-range 3-day transport[65] fails to properly account for longer range transport, disregarding U.S. emissions emanating from Louisiana and the Gulf of Mexico and reaching the Phoenix-Mesa area by traveling across northern Mexico. The Proposed Rule and underlying analyses fail to trace the thread back far enough, to determine whether the pollution emanating from Louisiana and the Gulf of Mexico associated with this transport can properly be factored into the 179B demonstration.

Nor can the source attribution and precursor emissions trend analyses remedy this deficiency. EPA, MAG, and Ramboll rely heavily here on the Eastern Research Group's (ERG) anthropogenic air emission inventories for the three Mexican states of Baja California, Sonora, and Chihuahua,[66] but the ERG reports and materials relied upon are not in the rulemaking record. Nor are these reports and underlying materials publicly available based on a search performed by the Public Interest Groups, though even if they were, they would need to be in the rulemaking record. The burden is not on the public to undertake complicated and time-intensive research, using online resources that are not even hinted at in the proposed rule, to figure out what the agency, MAG, and Ramboll are doing.

The notice and comment requirements of the federal Administrative Procedure Act applied to EPA's rulemaking because certain Clean Air Act-specific rulemaking requirements only apply to an enumerated set of EPA actions, which does not include SIP approvals. 42 U.S.C. § 7607(d). At its most fundamental level, the Administrative Procedure Act requires that before an agency promulgates a rule, it must provide general notice of the rule and "give interested persons an opportunity to participate in the rule making." 5 U.S.C. § 553(b)–(c). Further, "[n]otice of a proposed rule must include sufficient detail on its content and basis in law and evidence to allow for meaningful and informed comment . . ."[67] Without the materials underlying the source attribution analysis, the public, including the undersigned groups, are deprived of the opportunity to fully and adequately comment on the critical ERG materials upon which EPA, MAG, and Ramboll place a significant amount of weight and reliance. At the very least, notwithstanding the other outcomes these comments necessitate, EPA must re-notice its proposal with the materials it relies upon included in the rulemaking docket. EPA has not provided the public with proper notice for this rulemaking. The Public Interest Groups do not

[65] *See, e.g.*, Ramboll Report at 38.
[66] EPA TSD at Section 3.3.2, p. 18; MAG Demonstration at 55; MAG, *Appendix B, Technical Modeling Support Document for the MAG 2025 Clean Air Act Section 179B(b) Retrospective Demonstration of the Impact of International Emissions on Ozone Concentrations in the Maricopa Nonattainment Area* at 73, 140, Docket No. EPA-R09-OAR-2025-2833, Document No. EPA-R09-OAR-2025-2833-004 (Sept. 2025), https://www.regulations.gov/document/EPA-R09-OAR-2025-2833-0004 [hereinafter, "MAG Technical Report"]; Ramboll Report at 34, 49-50, Appendix A.
[67] *Am. Med. Ass'n v. Reno*, 57 F.3d 1129, 1132 (D.C. Cir. 1995).

have all of the information necessary and are being forced to comment without being adequately informed as to what we are commenting on.

Furthermore, the source apportionment, precursor, and accompanying analyses do not properly address this issue because they suffer from the deficiencies EPA itself identified in its TSD, as discussed above in Section IV, as well as the other defects discussed in these comments.

B. Multiple Sites in the Phoenix-Mesa NAA Would Still Be in Nonattainment Even Without Southerly Winds from Mexico.

MAG's own wind modeling indicates that multiple monitoring sites in the Phoenix-Mesa NAA would still exceed nonattainment thresholds with 2021-2023 design values that exceed 70 ppb even if southerly winds from Mexico were excluded from the analysis, undermining MAG's claim that southerly winds carrying emissions from Mexico are a but-for cause of nonattainment in the Phoenix-Mesa nonattainment area.

The Ramboll Report finds that out of 160 exceedance days in the Phoenix-Mesa nonattainment area, 26 days (16%) had northerly wind transport patterns; 44 days (28%) had easterly wind patterns; 39 days (24%) had westerly wind patterns, and 51 days (32%) had southerly wind transport patterns.[68] Proposed Rule at 52028. In other words, there were southerly winds from Mexico on 32% of exceedance days—less than one-third of the time—and from other directions on 68% of those days.

While the Public Interest Groups do not concede that international transport from Mexico was the but-for cause of exceedances in the Phoenix-Mesa NAA on exceedance days with southerly winds, we evaluated the effect on the design values of monitors in the nonattainment area if exceedance days with southerly wind patterns were removed. That analysis shows that two monitoring sites in the Phoenix-Mesa NAA would still exceed nonattainment thresholds even if exceedance days with southerly winds were excluded.

The Public Interest Groups obtained and filtered ozone data using EPA's Download Daily Data tool.[69] The tool was queried for daily ozone measurements from all monitors in Maricopa County for 2021, 2022, and 2023. Wind direction data was obtained from EPA's "Daily Summary Data files, Meteorological: Winds (Resultant)" for 2021, 2023, and 2023.[70] Arithmetic means of daily wind direction (Parameter Name: Wind Direction – Resultant) were paired with the ozone data by date and site ID. For monitors lacking a collocated wind monitor, data from nearby monitor(s) with a collocated wind monitor were used. The closest monitors with wind data were determined by mapping latitude and longitude of each monitor and querying for monitors nearby.

Ozone readings occurring on days where the collocated or nearby monitor registered a predominantly southerly wind were removed from the dataset. For purposes of this analysis, a

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[68] Ramboll Report at 42.
[69] EPA, *Download Daily Data,* https://www.epa.gov/outdoor-air-quality-data/download-daily-data (accessed Dec. 11, 2025).
[70] EPA, *Pre-Generated Data Files*, https://aqs.epa.gov/aqsweb/airdata/download_files.html (accessed Dec. 19, 2025).

wind direction result was considered southerly if it was between 135 and 225 decimal degrees, i.e. if it fell within the 90-degree range centered on due south, which sits at 180 degrees. After eliminating *all* exceedance days with southerly wind patterns, the data showed at least two monitoring sites still registered ozone levels above the 2015 ozone nonattainment threshold of 0.070 ppm: Red Mountain Air Monitoring Station (Site ID 040137021) and Lehi Air Monitoring Station (Site ID 040137022).[71]

For Red Mountain Air Monitoring Station, wind data were obtained from Fountain Hills (Site ID 040139704), approximately 7.5 miles away.[72] For days in 2023 where wind data from Fountain Hills were missing, wind data from South Scottsdale (Site ID 040133003), approximately 9.5 miles away, were substituted.[73] For Lehi Air Monitoring Station, wind data were obtained from South Scottsdale (Site ID 040133003), approximately 6.5 miles away.[74] Removing exceedance days with southerly wind patterns from the Red Mountain data yielded 4th-highest annual values of 0.077, 0.074, and 0.072 ppm, for a 3-year design value of 0.074 ppm (74 ppb).[75] Removing southerly wind days from Lehi yielded 4th-highest annual values of 0.070, 0.070, and 0.072 ppm, for a 3-year design value of 0.071 ppm (71 ppb).[76] The design values at both of these monitoring sites still exceed the ozone standard when southerly wind days are removed, demonstrating that the Phoenix-Mesa area did not attain but for international emissions.

Table 1 - Eliminating all southerly wind days

	4th-highest annual values			
Site Name	2021	2022	2023	**3-year DV**
Red Mountain	0.077	0.074	0.072	**0.074**
Lehi	0.070	0.070	0.072	**0.071**

The Public Interest Groups also evaluated the impact on design values at monitoring sites in the nonattainment area if the exceedance days that MAG classified as wildfire-impacted are removed from the dataset (which is not appropriate as discussed in Section VI.A below), in

[71] *See* Eliminating Southerly Wind Days, attached as Exhibit 6.
[72] *Id.*
[73] *Id.*
[74] *Id.*
[75] *Id.*
[76] *Id.*

addition to removing exceedance days with southerly wind patterns. Excluding the exceedance days that MAG identified as wildfire-impacted from the dataset entirely – in addition to excluding southerly wind days – still resulted in a 3-year design value of 0.071 ppm (71 ppb) for the Red Mountain monitoring site, with 4th-highest annual values of 0.077, 0.067, and 0.068.[77]

Table 2 - Eliminating all southerly wind days and "possible wildfire impact" days

	4th-highest annual values			
Site Name	2021	2022	2023	**3-year DV**
Red Mountain	0.077	0.067	0.069	**0.071**

In other words, when both southerly wind days *and* alleged wildfire-impacted exceedance days are simultaneously excluded from the dataset, the Red Mountain monitoring site still did not meet the ozone standard. This further undermines MAG's claim that southerly winds from Mexico are a but-for cause of nonattainment in the Phoenix-Mesa NAA.

1. MAG Does Not Quantify What Portion of Easterly and Westerly Wind Trajectories Originate in Mexico.

MAG's demonstration also argues that exceedance days with easterly and westerly winds include a substantial share of wind parcels originating in Mexico, but does not provide quantitative data or analysis to support that assertion. As noted above, the Ramboll Report finds that of 160 exceedance days in the Phoenix-Mesa NAA, 26 days (16%) had northerly wind transport patterns "with no indication of transport from Mexico," 44 days (28%) had easterly wind patterns; 39 days (24%) had westerly

wind patterns, and 51 days (32%) had southerly winds.[78] The Ramboll Report modeling finds that 134 of 160 exceedance days (84%) "indicate air parcel origins passing over some portion of Mexico," and that when wildfire exceedance days are excluded, 67 of 84 exceedance days (80%) "indicate air parcel origins passing over some portion of Mexico."[79]

Setting aside the exceedance days with southerly wind patterns, the Ramboll Report argues that a substantial share of the exceedance days with easterly or westerly winds include air parcels that passed over "some portion of Mexico." However, the MAG Demonstration and Ramboll Report do not quantify how much of the wind parcel origins on easterly or westerly exceedance days are asserted to have passed over or originated in Mexico. Nor do these materials

[77] *Id.*
[78] Ramboll Report at 42.
[79] *Id*. at 42-43.

identify with specificity which regions are included in "some portion of Mexico." The Ramboll Report concludes that "[a]fter excluding the possible wildfire-impacted days, most days (52%) were associated with transport from the east with air mass origins that *may* include Ciudad Juarez and northern Mexico."[80] The Ramboll Report's use of the qualifier "may" is significant. A large share of air trajectories on easterly wind days likely originate domestically in New Mexico and Texas, with a smaller share coming from Chihuahua to the southeast, but MAG's submission does not estimate what share of easterly wind trajectories originates in Mexico. This lack of information leaves significant uncertainty about the scope of the Mexican contribution.

Similarly, a large share of air parcels on westerly wind days likely originate domestically in California, with a smaller share originating in Baja California to the southwest, but again, MAG's demonstration does not specify what percentage of wind trajectories on westerly wind days are estimated to originate in versus pass over Mexico. Without this information, it is impossible to isolate the effect of Mexican emissions from the effect of domestic emissions, and there is no basis to claim that emissions from Mexico are a primary contributor to nonattainment in the Phoenix-Mesa NAA on exceedance days with easterly or westerly winds. EPA should require that the MAG Demonstration and Ramboll Report be revised to provide this missing information.

VI. EPA Improperly Determined That the Phoenix-Mesa Area Would Have Attained But for International Emissions.

A. MAG's and EPA's Analyses Illegally and Improperly Rely on "Exceptional Events" That Have Not Qualified as Exceptional Events under the Requirements of the Clean Air Act and EPA's Implementing Regulations.

MAG's CAA section 179B(b) demonstration improperly excludes a significant number of ozone exceedance days that are impacted by wildfire activity, whereas the statute and EPA's regulations require that such data can only be excluded from an attainment determination if they go through the formal process outlined in the Exceptional Events Rule (EER). MAG correctly explains that CAA section 319(b) requires EPA to promulgate regulations prescribing criteria and procedures for a state to petition EPA to exclude air quality monitoring data that is directly due to exceptional events from use in determinations by EPA with respect to exceedances or violations of the NAAQS. As MAG also correctly notes, EPA's regulations under the EER lists the type of regulatory actions for which the EER would apply. However, MAG *incorrectly* asserts, and EPA incorrectly sanctions, that the action requested in its demonstration is an adjustment of the base modeling year design value that "does not readily fall under the type of actions that would trigger using the Exceptional Events Rule."[81] EPA and MAG cannot circumvent the EER by inventing a new, extra-regulatory category of event that is excluded from determining attainment.

The EER, as codified under 40 CFR 50.14, explicitly defines the scope of the rule to cover the treatment of showing NAAQS exceedances for purposes of six enumerated types of determinations by EPA, one of which is a determination by EPA regarding whether a

[80] *Id*. at 43 (emphasis added).
[81] MAG Demonstration at 12.

nonattainment area has attained the level of the NAAQS by the applicable attainment date.[82] While MAG seeks to artificially create a distinction that the action "requested in this demonstration" is an adjustment of base modeling year design value,[83] such distinction arbitrarily ignores the purpose of MAG's modeling, which is to support EPA's proposed determination of attainment by the attainment date but for international emissions. Between the title, summary, and numerous statements throughout EPA's proposal and rulemaking documents, there is no question that EPA is proposing a determination with respect to attainment by the applicable deadline. There is similarly no question that under 40 CFR 50.14(a)(1)(C) the EER applies to EPA's proposed determination and therefore any wildfire exceedance-related data the state seeks to exclude from such determination must go through the EER-prescribed process. Maricopa County itself in its comments on EPA's proposal characterizes this data as exceptional events by suggesting "more *exceptional* and wildfire events should have been included in the analysis."[84] Because the state did not submit the 31 wildfire days for EPA's concurrence through the EER, both CAA section 319 and the EER legally preclude EPA from relying on MAG's modeling, which excludes those days, to support its determination of attainment by the attainment date but for international emissions.

In addition to contravening the statute and regulations for excluding certain wildfire-related exceedance days, both MAG and EPA incorrectly point to Agency guidance as supporting the proposition that an adjustment of the base modeling year design value does not fall within the scope of the EER. Both MAG and EPA point to an April 2019 Memorandum and EPA's 2018 Modeling Guidance as support for the proposition that ambient data not representative to characterize background concentrations or base period concentrations may qualify as "atypical events" that can be removed from modeling without going through the EER. Neither document controls the present situation. As an initial matter, both documents clearly state that they are non-binding guidance, do not create any new regulatory authority, and do not supplant or revise any aspects of the EER or other existing CAA authorities.[85] Furthermore, neither document actually supports MAG's and EPA's assertions in the present case. EPA's 2018 Modeling Guidance states several times throughout the document that it applies to "modeled attainment demonstrations" for ozone.[86] These attainment demonstrations are required to be submitted as part of a state's nonattainment SIPs, and are forward-looking demonstrations "to show that an area *will* likely meet the NAAQS."[87] (emphasis added). Such attainment

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[82] 40 CFR 50.14(a)(1)(C).
[83] MAG Demonstration at 12.
[84] Maricopa County Comments at 2 (emphasis added).
[85] Memorandum from Richard Wayland, EPA Air Quality Assessment Division Director, EPA, to Regional Air Division Directors, *Modeling Guidance for Demonstrating Air Quality Goals for Ozone, PM2.5., and Regional Haze* at 1 (Nov. 20, 2018), https://www.epa.gov/sites/default/files/2020-10/documents/o3-pm-rh-modeling_guidance-2018.pdf [hereinafter "2018 Modeling Guidance"]; Memorandum from Richard Wayland & Anna Marie Wood, EPA, *Clarification Memo on Additional Methods, Determinations, and Analyses to Modify Air Quality Data Beyond Exceptional Events* at 1 (Apr. 4, 2019), https://www.epa.gov/air-quality-analysis/clarification-memo-additional-methods-determinations-and-analyses-modify-air.
[86] 2018 Modeling Guidance at 10 ("Air agencies required to submit an attainment demonstration and/or a reasonable progress analysis for regional haze are encouraged to follow the procedures described in this document. Details on when a state is required to submit a modeled attainment demonstration can be found in the Ozone SIP Requirements Rule and the PM2.5 SIP Requirements Rule." (citing 40 CFR 51.1308's requirements for a modeled attainment demonstration).
[87] *Id*. at 16.

demonstrations are required under statutory provisions governing nonattainment SIP requirements such as 182(b)(1) for Moderate areas. EPA does not explain how the 2018 Guidance is relevant or applicable to MAG's exclusion of data from its retrospective demonstration that the Phoenix nonattainment area would have attained the 2015 ozone NAAQS but for international emissions, an inquiry that happens *well after* the state is required to submit a forward-looking modeled attainment demonstration as part of its nonattainment SIP.

Similarly, EPA's April 2019 Memorandum is flatly inapplicable to the present case. That memo addresses determinations and analyses not covered by the EER, and that may also rely on ambient air quality monitoring data that may have been influenced by "atypical"[88] or unrepresentative events. The memo expressly notes that such determinations and analyses are those not included in the EER's list of covered regulatory actions.[89] As previously described in this comment, determinations of attainment by the attainment date *are* a category of regulatory actions covered by the EER. EPA explicitly proposed its rule in order to satisfy its CAA obligation to make its attainment determination within 6 months of the attainment date ("If finalized, this action will fulfill the EPA's statutory obligation under CAA section 181(b)(2) to determine whether the Phoenix area attained the 2015 ozone NAAQS as of the attainment date of August 3, 2024."). Proposed Rule at 52029. Therefore, EPA's proposal is unequivocally subject to the requirements of the EER, and cannot rely on data that is excluded through other means.

Even if MAG's modeling could be considered as somehow distinct and separate from EPA's determination of attainment by the attainment date but for international emissions, nothing in EPA's 2019 Memorandum suggests this modeling can exclude data through a means outside of the EER. To the contrary, this memo clarifies which types of determinations or analyses are covered by other regulatory programs that are *not* the Exceptional Events program. None of these programs include a retrospective determination of attainment by the attainment date but for international emissions under CAA section 179B(b). The 2019 memo does list "estimating base and future year design values for ozone and PM2.5. **SIP attainment demonstrations**" (original) as a type of determination or analysis not covered by the Exceptional Events program.

As already stated, SIP attainment demonstrations are a different, prospective requirement distinct from the retrospective demonstration required under CAA section 179B(b). The 2019 memo confirms as much, in describing that monitoring data for an ozone SIP attainment demonstration could qualify for exclusion in developing "alternative current and *future* year design values."[90] (emphasis added). Indeed, EPA's 2016 preamble for the EER noted the Agency's intention to develop a supplementary guidance document to describe "the appropriate additional pathways for data exclusion for some 'predicted future' monitoring data applications (e.g., predicting future attainment that is the basis for approval of an attainment demonstration in

[88] As EPA notes, nothing in the CAA or EPA's regulations define "atypical events". MAG's or EPA's use and application of such term must still be consistent with the law.
[89] EPA, *Additional Methods, Determinations, and Analyses to Modify Air Quality Data Beyond Exceptional Events* at 2 (Apr. 4, 2019), https://www.epa.gov/sites/default/files/2019-04/documents/clarification_memo_on_data_modification_methods.pdf.
[90] *Id*. at 5. In pointing out the inapplicability of the 2019 memo to the present case, this comment letter does not endorse or otherwise take a position on the validity of its contents.

the SIP for a nonattainment area)."[91] 81 Fed. Reg. 68229 (Oct. 3, 2016). This statement in the EER, particularly the parenthetical, makes clear that the 2019 memo intended to address prospective attainment demonstrations, not retrospective determinations of attainment by the attainment date.

In analyzing MAG's demonstration and assertions regarding atypical events, EPA identifies no applicable statutory or regulatory provision, or guidance, that authorizes the exclusion of wildfire-related data from a determination of attainment by the attainment date through a process other than the EER. The preamble for EPA's proposal is largely silent as to such potential authority and why in the Agency's view the 31 wildfire-related exceedance days can be excluded without going through the EER's process. EPA's technical support document for reviewing MAG's "atypical events" evaluation as part of its 179B(b) demonstration is equally silent, simply asserting that the EER's requirements do not exist with respect to atypical events.[92] Nowhere in the proposal record does EPA explain[93] why and how these wildfire-related exceedance days are "atypical events" rather than exceptional events that caused a specific air pollution concentration at a particular air quality monitoring location, and that therefore do not need to meet the applicable requirements of the EER for exclusion from EPA's determination of attainment by the attainment date.[94] EPA simply references its 2018 Modeling Guidance and 2019 Memorandum as allowing for removal of specific data at monitors caused by atypical events. Proposed Rule at 52024. As previously discussed, both of these documents are non-binding guidance and by their own terms are irrelevant to the present case of modeling to support a determination of attainment by the attainment date.

By contrast, the statutory and regulatory requirements of CAA section 319 and the EER *do* control, and plainly require that wildfire-related exceedance data can only be excluded for purposes of EPA's determination of attainment by the attainment date if such data is submitted by the state, and concurred upon by EPA, through the EER-prescribed process. Because MAG improperly excluded such wildfire-related exceedance data from its modeling, the state cannot rely on this modeling for purposes of its CAA section 179B(b) demonstration, and EPA cannot legally finalize its proposed determination of attainment based on this demonstration without violating CAA section 319 and its own regulations under 40 CFR 50.14.

B. MAG's Modeling Significantly Overestimates Mexico On-Road NOx Emissions for 2023.

The modeling used in MAG's demonstration likely overestimates 2023 on-road NOx emissions from vehicles in the Mexican border states of Baja California, Sonora, and Chihuahua. MAG's modeling of Mexican on-road NOx emissions used a version of the MOVES-Mexico

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[91] EPA's 2019 memorandum states that this document is intended to fulfill EPA's commitment in the 2016 EER to issue supplementary guidance. *See* fn 1.

[92] EPA, *Technical Support Document for Review of Atypical Events in 2015 8-Hour Ozone Phoenix-Mesa, AZ Nonattainment Area for the 179B(b) Demonstration* at 5, Docket No. EPA-R09-OAR-2025-2833, Document No. EPA-R09-OAR-2025-2833-006 (Nov. 19, 2025), https://www.regulations.gov/document/EPA-R09-OAR-2025-2833-0006.

[93] EPA's relative silence on this issue also violates the bedrock rulemaking requirements that its action be "reasonable and reasonably explained." *State Farm*, 463 U.S. at 43.

[94] 40 CFR 50.14(b)(1).

model, and interpolated 2020 and 2023 emissions outputs from MOVES-Mexico to obtain 2022 values.[95]

MAG's modeling concludes that on-road NOx emissions in the three Mexican border states went up 5% between 2017 and 2023, from 749.72 tons per day (TPD) in 2017 to 788.63 TPD in 2023.[96] Proposed Rule at 52028 (Table 5). That increase in Mexican on-road NOx emissions is likely an overestimate, given large decreases in NOx emissions from new vehicles in the Phoenix-Mesa nonattainment area during that period. The MAG modeling shows a 51% *decrease* in on-road NOx emissions in the Phoenix-Mesa nonattainment area during the same period, from 80.4 TPD in 2017 to 39.59 TPD in 2023.[97] Proposed Rule at 52028 (Table 5).

The stark divergence between a 51% modeled on-road NOx emissions decrease in the Phoenix-Mesa NAA and a 5% modeled increase in the nearby Mexican border states over the same period is not adequately explained in the MAG Demonstration or Ramboll Report, fails to consider an important aspect of the problem, and requires further evaluation. NOx reductions from cars in the United States, including in the Phoenix-Mesa NAA, likely contributed to NOx reductions in Mexican border states (Baja California, Sonora, and Chihuahua) as U.S.-registered vehicles entered Mexico.

A 2023 study of emissions in Baja California (one of the three Mexican border states analyzed in the MAG modeling) prepared for the California Air Resources Board (CARB) found that fleet average concentrations of NOx for cars and light trucks in the Baja California study area "showed drops of 50-70 percent" since 2010.[98] The CARB study collected roadside remote-sensing emissions data in 2022 to update and improve the accuracy of the MOVES-Mexico vehicle emissions inventory for Baja California.[99]

The CARB study found that measured NOx decreases were "likely influenced by the introduction of low sulfur gasoline and fleet turnover to vehicles complying with Mexico's NOM-42 emission standards."[100] Although the CARB study used a different date range than MAG's modeling, these measured emissions decreases are inconsistent with MAG's modeling of a 5% increase in on-road NOx emissions from "general on-road inventory" in Baja California, from 279.30 TPD in 2017 to 293.89 TPD in 2023.[101]

The 2023 CARB study supports the proposition that cleaner U.S. vehicles entering Mexican border states may result in lower average on-road vehicle emissions in those Mexican states. The CARB study concluded that "as a whole, emissions have dropped substantially in the [Baja California] border region over the past decade," and that emissions are "lower on average than those in other Mexican cities, *perhaps benefitting from a large population of U.S. vehicles*

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[95] EPA TSD at 21; MAG Technical Report at 34 (Table 3-14); Ramboll Report at A-9 - A-10.
[96] MAG Demonstration at 56 (Table 4-1); Ramboll Report at 35 (Table 4-1), 37 (Table 4-7).
[97] MAG Demonstration at 56 (Table 4-1); Ramboll Report at 35 (Table 4-1).
[98] John Koupal et al., *Vehicle Emissions and Fleet Characteristics in Baja California, Mexico, Final Report to California Air Resources Board* at 4 (Feb. 13, 2023), https://ww2.arb.ca.gov/sites/default/files/2023-08/Baja_California_Fleet_Characterization_ERG_Final_Report_021323.pdf, provided as Exhibit 10.
[99] *Id*. at 4.
[100] *Id*.
[101] Ramboll Report at 37 (Table 4-7).

operated in the area that were built to more stringent emission standards."[102] The CARB study found that roughly 14% of vehicles in the Baja California study area were registered in California, and roughly 3% were registered in other U.S. states, including Arizona.[103]

Millions of vehicles cross the Mexican border from Arizona into Sonora every year. It is likely that reductions in NOx emissions from Arizona-registered vehicles impact average on-road NOx emissions figures in Sonora, just as the CARB study finds that California-registered vehicles likely contributed to emissions reductions in Baja California. The large modeled reductions in on-road NOx emissions in the Maricopa County NAA likely influenced on-road NOx emissions in the Mexican border states as U.S. vehicles entered Mexico and may result in an overestimate of Mexico on-road NOx emissions. The MAG demonstration fails to consider this influence or its possible effects. EPA should require MAG to update its modeling to analyze this issue.

C. Exceedances Occur on Days When Ramboll's Time Series Modeling Shows Smaller International Anthropogenic Contributions, Even after Removing These Modeled International Anthropogenic Contributions.

Figure 3-5 of the Ramboll Report shows a time series of simulated contributions to Maricopa County ozone monitors' 2023 maximum daily 8-hour ozone averages from Mexico transport and other international transport.[104] By Ramboll's estimate, average international contributions to the maximum daily 8-hour average routinely fall below 10 ppb between mid-July and the end of September, even dipping below 5 ppb for a day in late August, 2023. While the values shown on the time series chart are averages across all monitoring sites, using the information we have,[105] there are a number of monitor readings in that timeframe that, even allowing for and eliminating about 5 pbb International Anthropogenic (IA) emissions, would still exceed 70 ppb.

Table 3 - Air Monitor Readings, August 2023

Date	Site.ID Daily.	Max.8.hour.O3.Conc. (ppm)	Local.Site.Name
8/24/2023	040130019	0.079	WEST PHOENIX
8/24/2023	040131004	0.075	NORTH PHOENIX
8/24/2023	040132001	0.080	GLENDALE
8/24/2023	040139997	0.082	JLG SUPERSITE
8/25/2023	040130019	0.075	WEST PHOENIX
8/25/2023	040131003	0.076	MESA
8/25/2023	040131004	0.075	NORTH PHOENIX
8/25/2023	040132001	0.078	GLENDALE
8/25/2023	040134003	0.076	SOUTH PHOENIX
8/25/2023	040134005	0.078	TEMPE
8/25/2023	040139997	0.077	JLG SUPERSITE

[102] *Id.* at 5, 38 (emphasis added).
[103] *See id*. at 4, 23.
[104] *Id*. at 31.
[105] EPA, *Download Daily Data*, https://www.epa.gov/outdoor-air-quality-data/download-daily-data (accessed Dec. 11, 2025).

Zooming out to the July 15 through September 30, 2023, time period overall (where Ramboll reports international contributions to be approximately 10 ppb or lower on average, notwithstanding several daily international contributions in excess of 10 ppb), there are some days where numerous monitors showed daily 8-hour averages greater than or equal to 80 ppb: 7/24, 7/27, 7/31, 8/17, and 8/24 (MAG also alleges 8/24 is wildfire-impacted). The time series chart shows a spike above 10 ppb that may occur at 8/17, but there are two monitors showing 0.083 ppm and one showing 0.084 ppm, so it is likely that even after removing international emissions, the modified 8/17 daily result would be above 0.070 ppm.

Table 4 - Air Monitor Readings, July-August 2023

Date	Site.ID	Daily. Max.8.hour.O3.Conc. (ppm)	Local.Site.Name
7/24/2023	040131003	0.080	MESA
7/24/2023	040133002	0.080	CENTRAL PHOENIX
7/24/2023	040134005	0.084	TEMPE
7/24/2023	040137022	0.082	Lehi Air Monitoring Station
7/24/2023	040139997	0.085	JLG SUPERSITE
7/27/2023	040130019	0.083	WEST PHOENIX
7/27/2023	040131003	0.085	MESA
7/27/2023	040131004	0.085	NORTH PHOENIX
7/27/2023	040131010	0.090	FALCON FIELD
7/27/2023	040132001	0.083	GLENDALE
7/27/2023	040132005	0.083	PINNACLE PEAK
7/27/2023	040133002	0.080	CENTRAL PHOENIX
7/27/2023	040134005	0.087	TEMPE
7/27/2023	040134008	0.080	CAVE CREEK
7/27/2023	040135100	0.090	Fort McDowell/Yuma Frank
7/27/2023	040137021	0.088	Red Mountain Air Monitoring Station
7/27/2023	040137022	0.086	Lehi Air Monitoring Station
7/27/2023	040139702	0.085	BLUE POINT-SHERIFF STATION-TONTO
7/27/2023	040139704	0.081	FOUNTAIN HILLS
7/27/2023	040139997	0.087	JLG SUPERSITE
7/31/2023	040130019	0.087	WEST PHOENIX
7/31/2023	040131004	0.084	NORTH PHOENIX
7/31/2023	040134005	0.080	TEMPE
7/31/2023	040139997	0.089	JLG SUPERSITE
8/17/2023	040131003	0.084	MESA
8/17/2023	040131010	0.083	FALCON FIELD
8/17/2023	040134005	0.080	TEMPE
8/17/2023	040137021	0.083	Red Mountain Air Monitoring Station
8/17/2023	040137022	0.081	Lehi Air Monitoring Station
8/17/2023	040139702	0.080	BLUE POINT-SHERIFF STATION-TONTO
8/17/2023	040139997	0.081	JLG SUPERSITE
8/24/2023	040132001	0.080	GLENDALE
8/24/2023	040139997	0.082	JLG SUPERSITE

Ramboll only provided a representation of a single year of time series IA contributions data. However, that year shows significant variability in the level of ozone that the source apportionment modeling attributed to IA (Mexico and other sources combined) across the ozone

season. Averaging IA estimates across all monitors for a given day obscures variations in IA contributions at individual monitoring sites that are too low to have caused an exceedance at that site.

D. MAG's Recalculation of 2023 Design Values to Exclude Large Swaths of Data Still Shows Violation of the Standard.

As part of MAG's submission, it included recalculated 2023 design values with all possible 2021-2023 wildfire days and all potential Mexican transport days (as assessed by the HYSPLIT analysis) excluded, see MAG submission pp.53-54. While the Public Interest Groups do not concede that exclusion of ozone measurements from all such days is appropriate here, it is telling that MAG's own analysis finds that a monitor in the Phoenix-Mesa NAA would still not attain the ozone standard under these conditions (*id.* at 54). MAG found that the Pinnacle Peak monitor's recalculated 2023 design value to be 71 ppb even after MAG eliminates days it considers affected by Mexican emissions and/or wildfires. If a monitor within a nonattainment area violates the standard, the area has not attained the standard.

E. Expert Analysis

We incorporate by reference the attached statement of Dr. Tammy Thompson regarding the MAG modeling demonstration.[106] That statement highlights significant concerns regarding the modeling and its use in the Section 179B demonstration.

F. EPA Failed to Act Consistently with Its 2020 179B Guidance or Rationally Explain Why It Is Departing from That Guidance.

In December 2020, EPA adopted – after notice and comment – an extensive guidance document on preparation of 179B demonstrations.[107] On April 7, 2025, without any public participation opportunity, the EPA Administrator rescinded the 2020 Guidance. The only explanation given for this rescission was that the Guidance purportedly "made it unnecessarily difficult for states to demonstrate that foreign air pollution is harming Americans within their borders."[108] A bare conclusory assertion that the Guidance made section 179B demonstrations "unnecessarily difficult" is not a reasoned explanation for abandoning a carefully thought through and developed guidance. Nor does it adequately explain EPA's abandonment of the following specific elements of the 2020 Guidance that are highly relevant to the proposed 179B(b) finding for the Phoenix-Mesa area.

First, EPA's 2020 Guidance specifically calls for 179B demonstrations to include "[i]dentification of specific international anthropogenic emissions sources (e.g., an international emitting facility) or source regions (e.g., an international metropolitan area) that predominantly

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[106] Statement of Dr. Tammy M. Thompson, Ph.D. (Dec. 18, 2025), attached as Exhibit 8.

[107] EPA, Guidance on the Preparation of Clean Air Act Section 179B Demonstrations for Nonattainment Areas Affected by International Transport of Emissions (Dec. 2020), https://downloads.regulations.gov/EPA-HQ-OAR-2019-0668-0027/content.pdf, attached as Exhibit 9.

[108] EPA, *Administrator Zeldin Moves Forward with Ensuring U.S. States Are Not Punished for Foreign Air* (Apr. 7, 2025), https://www.epa.gov/newsreleases/administrator-zeldin-moves-forward-ensuring-us-states-are-not-punished-foreign-air (visited Dec. 12, 2025).

impact the monitor location on internationally influenced days."[109] EPA fails to explain why this information is no longer important. To credibly claim that international emissions from Asia are a "but for" cause of ozone violations in Phoenix, there needs to be more than just a generic claim that the cause is emissions from unidentified sources or regions of that vast continent. As noted elsewhere in these comments, section 179B requires a showing that emissions "emanating from" outside the United States were the "but for" cause of Phoenix's failure to attain. Emanate means "to come out from a source," "emit."[110] Yet MAG has not shown what sources or even what kinds of sources in Asia emitted the pollution claimed to travel thousands of miles to Phoenix, much less which nations the pollution allegedly comes from. EPA's TSD in the proposed section 179B finding for the Phoenix-Mesa area raises similar concerns:

> Although Asia and other non-Mexican emissions make up most of the international anthropogenic contribution in the spring, there is little discussion of the transport of these emissions. Instead, much of the rest of the Ramboll Report focuses on emissions from Mexico, which have greater contribution in the summer when total international contribution is predicted to be lowest. The weight of evidence for showing the contribution of emissions internationally but outside of Mexico could be stronger if there were more analyses presented explaining the nature of these emissions and how their contributions were quantified.[111]

EPA fails to explain why it abandoned 2020 Guidance's call for identification of emission sources or source regions. Further its failure to provide analyses explaining the nature of non-Mexican emissions and how their contributions were quantified undermines the weight of evidence analysis.

Second, the 2020 guidance calls for domestic and international emissions inventories to be developed in a manner consistent with EPA's emission inventory guidance.[112] "The international emissions database may either be developed as a part of the section 179B demonstration or leveraged from a pre-existing public database. In either case, the process for developing the database should be based on the same principles of emission inventory development as are included in the guidance for domestic emissions. When using a pre-existing database, the provenance and methodology used to build the international emissions database should be well documented. MAG does not provide an emissions inventory at all for Asia. Nor do EPA or MAG rationally explain why ensuring that emissions inventories are developed in a reliable manner according to EPA guidance is no longer important.

Third, the Guidance encourages air agencies to conduct a public comment process for all section 179B demonstrations prior to submissions to EPA.[113] MAG's demonstration does not

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[109] EPA, Guidance on the Preparation of Clean Air Act Section 179B Demonstrations for Nonattainment Areas Affected by International Transport of Emissions at 20.
[110] *See Emanate*, Merriam-Webster (accessed Dec. 18, 2025), https://www merriam-webster.com/dictionary/emanate.
[111] EPA TSD at 31-32.
[112] EPA, Guidance on the Preparation of Clean Air Act Section 179B Demonstrations for Nonattainment Areas Affected by International Transport of Emissions at 37, 39.
[113] *Id*. at 47.

document a public comment process, and EPA does not explain why such a process is no longer important.

VII. The Maricopa Association of Governments is Not Authorized to Submit a 179B Demonstration under Section 179B(b) of the Clean Air Act.

CAA section 179B(b) applies where "any *State* . . . establishes to the satisfaction of the Administrator that . . . such State would have attained . . . but for emissions emanating from outside of the United States." The plain language of the statute is clear that the relevant state must demonstrate attainment but for international emissions. EPA recognizes this in its proposal, stating that "CAA section 179B(b) provides that where where *a state* demonstrates to the Administrator's satisfaction that an ozone nonattainment area would have attained the NAAQS by the applicable attainment date but for emissions emanating from outside the United States (U.S.), that area shall not be subject to the mandatory reclassification provision of CAA section 181(b)(2)." Proposed Rule at 52022.

The 179B demonstration EPA evaluated in its proposal is not valid because it was developed and submitted by the Maricopa Association of Governments, not the State of Arizona.[114] The language of both the Proposed Rule and the MAG demonstration, as well as other rulemaking materials, make clear that it is MAG that is attempting to establish to the satisfaction of the Administrator that the Phoenix-Mesa area would have attained but for international emissions. EPA has not explained or justified MAG's lack of authority to develop and submit a 179B demonstration, rendering it contrary to the clear requirements of section 179B(b).

Nor is it relevant that EPA's proposal "is based in part upon data that have been collected and quality-assured by the Arizona Department of Environmental Quality," (ADEQ) along with monitoring data supplied by the Maricopa County Air Quality Department, the Pinal County Air Quality Control District, and the Salt River Pima Maricopa Indian Community. Proposed Rule at 52021. Neither EPA's proposal nor the MAG Demonstration assert or otherwise indicate that ADEQ provided the 179B demonstration or established that the Phoenix-Mesa area would have attained but for international emissions. Indeed, where ADEQ is the source of a Clean Air Act-related submittal, and ADEQ does provide EPA with SIP submittals for the Phoenix-Mesa nonattainment area, not MAG, EPA makes that clear in its rulemakings.[115] It is clear that this demonstration came from MAG, and MAG is not authorized to provide a 179B(b) demonstration pursuant to the plain language of the Clean Air Act, as it is not the state.

VIII. Conclusion

[114] *See generally* MAG Demonstration; Proposed Rule at 52025 ("On September 24, 2025, the Maricopa Association of Governments (MAG) submitted to the EPA for review the [MAG Demonstration]. . . . MAG evaluated the extent to which ambient ozone levels in the Phoenix-Mesa area have been affected by international emissions."); EPA TSD at 4-5.

[115] *See, e.g.*, 87 Fed. Reg. 19629 (Apr. 5, 2022) ("On July 8, 2020, the Arizona Department of Environmental Quality (ADEQ) submitted a revision to the Arizona SIP titled "Maricopa Association of Governments (MAG) 2020 Eight-Hour Ozone Plan").

For the reasons stated above, EPA's proposed rule violates the Clean Air Act and is grounded on erroneous and arbitrary modeling and technical analyses. EPA's interpretation of the Act and the agency's proposed approval are unmoored from the facts and law, and EPA fails to provide a reasoned explanation for its clear departure from the requirements of the Act. People in the Phoenix-Mesa area need real solutions to the severe, enduring ozone problem. This problem demands much, much more than a flawed attempt to shift the blame to Asia and Mexico. Public health and the environment continue to suffer as EPA violates the law, illegally expands and misinterprets section 179B, and undermines the Clean Air Act's clear, effective nonattainment SIP requirements.

Sincerely,

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Exhibit List

Ex. 1 - Am. Lung Ass'n, *Most Polluted Cities* (last accessed Dec. 19, 2025)
Ex. 2 - EPA, Technical Support Document, Northern Wasatch Front (NWF), Utah: Failure to Attain 2015 Ozone National Ambient Air Quality Standard by Attainment Date; Reclassification and Disapproval of International Emissions Demonstration, Docket No. EPA-HQ-OAR-2021-0742, Document No. EPA-HQ-OAR-2021-0742-0043 (Jan. 2022)
Ex. 3 - S. REP. No. 98-426 (1984) (Excerpt)
Ex. 4 - Cong. Rec. 136, S. 5063 (1990) (Excerpt)
Ex. 5 - Summertime ozone production at Carlsbad Caverns National Park, New Mexico: Influence of oil and natural gas development, 129 Journal of Geophysical Research: Atmospheres e2024JD040877 (2024)
Ex. 6 - Eliminating Southerly Wind Days (Excel Spreadsheet)
Ex. 7 - A.M. Thompson et al., *Two Air Quality Regimes in Total Column NO2 Over the Gulf of Mexico in May 2019: Shipboard and Satellite Views* (2023)
Ex. 8 - Statement of Dr. Tammy M. Thompson, Ph.D.
Ex. 9 - EPA, *Guidance on the Preparation of Clean Air Act Guidance on the Preparation of Clean Air Act Section 179B Demonstrations for Nonattainment Areas Affected by International Transport of Emissions* (Dec. 2020)
Ex. 10 - *John Koupal et al., Vehicle Emissions and Fleet Characteristics in Baja California, Mexico, Final Report to California Air Resources Board at 4* (Feb. 13, 2023)