

responsibilities between the Federal Government and Indian tribes.

### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

### Environment

We have analyzed this rule under Commandant Instruction M16475.ID and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. This regulation establishes a security zone. A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are available in the docket where indicated under

### ADDRESSES.

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.507 to read as follows:

#### § 165.507 Security Zone; Chesapeake Bay, between Sandy Point and Kent Island, MD.

(a) *Definitions.* The *Captain of the Port, Baltimore, Maryland* means the Commander, Coast Guard Sector Baltimore, Maryland or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port, Baltimore, Maryland to act on his or her behalf.

(b) *Location.* The following area is a security zone: All waters of the Chesapeake Bay, from the surface to the bottom, within 250 yards north of the north (westbound) span of the William P. Lane Jr. Memorial Bridge, and 250 yards south of the south (eastbound) span of the William P. Lane Jr. Memorial Bridge, from the western shore at Sandy Point to the eastern shore at Kent Island, Maryland.

(c) *Regulations.* (1) All persons are required to comply with the general regulations governing security zones found in § 165.33 of this part.

(2) Entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Baltimore, Maryland.

(3) Persons or vessels requiring entry into or passage through the security zone must first request authorization from the Captain of the Port, Baltimore to seek permission to transit the area. The Captain of the Port, Baltimore, Maryland can be contacted at telephone number (410) 576–2693. The Coast Guard vessels enforcing this section can be contacted on VHF Marine Band Radio, VHF channel 16 (156.8 MHz). Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port,

Baltimore, Maryland and proceed at the minimum speed necessary to maintain a safe course while within the zone.

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State, and local agencies.

(e) *Enforcement period.* This section will be enforced annually on the first Sunday in May from 7 a.m. to 5 p.m. local time.

Dated: March 16, 2007.

**Brian D. Kelley,**

*Captain, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland.*

[FR Doc. E7–5718 Filed 3–27–07; 8:45 am]

**BILLING CODE 4910–15–P**

### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 81

[EPA–R09–OAR–2006–AZ–0558; FRL–8292–6]

#### Approval and Promulgation of Implementation Plans; Designation of Areas for Air Quality Planning Purposes; State of Arizona; Boundary Redesignation; Finding of Attainment for Miami Particulate Matter of 10 Microns or Less (PM<sub>10</sub>) Nonattainment Area; Determination Regarding Applicability of Certain Clean Air Act Requirements; Correction

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve the State of Arizona's boundary redesignation of the Hayden/Miami PM<sub>10</sub> nonattainment area into two separate PM<sub>10</sub> nonattainment areas: Hayden and Miami. EPA is also finding that the Miami PM<sub>10</sub> nonattainment area is attaining the PM<sub>10</sub> national ambient air quality standard, and, based on this attainment finding, EPA is determining that certain Clean Air Act requirements are not applicable for so long as the Miami area shows continued attainment of the standard based on current, publicly available, quality-assured monitoring data. EPA is taking this action consistent with obligations under the Clean Air Act to act on State redesignations. Lastly, EPA is correcting two errors in previous rulemakings that involved the designations of PM<sub>10</sub> areas within the State of Arizona.

**DATES:** This rule is effective on May 29, 2007, without further notice, unless EPA receives adverse comments by April 27, 2007. If adverse comment is received, EPA will publish a timely

withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R09-OAR-2006-AZ-0558 by one of the following methods:

- **Federal eRulemaking portal:** <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

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

- **Fax:** (415) 947-3579 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).

- **Mail:** Wienke Tax, Office of Air Planning, Environmental Protection Agency (EPA), Region 9, Mailcode AIR-2, 75 Hawthorne Street, San Francisco, California 94105-3901.

- **Hand Delivery:** Wienke Tax, Office of Air Planning, Environmental Protection Agency (EPA), Region 9, Mailcode AIR-2, 75 Hawthorne Street, San Francisco, California 94105-3901. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:55 p.m., excluding federal holidays. Special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA-R09-OAR-2006-AZ-0558. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of

special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

**Docket:** All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Office of Air Planning, Environmental Protection Agency (EPA), Region 9, Mailcode AIR-2, 75 Hawthorne Street, San Francisco, California 94105-3901. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Wienke Tax, Office of Air Planning, Environmental Protection Agency (EPA), Region 9, Mailcode AIR-2, 75 Hawthorne Street, San Francisco, California 94105-3901, (520) 622-1622, [tax.wienke@epa.gov](mailto:tax.wienke@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, wherever "we," "us," or "our" is used, we mean the EPA.

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## I. Background

### A. What NAAQS Are Considered in this Action?

National ambient air quality standards (NAAQS) are thresholds for certain ambient air pollutants set by EPA under the Clean Air Act (CAA or "Act") to protect public health and welfare. Particulate matter with an aerodynamic diameter less than or equal to 10 micrometers, or PM<sub>10</sub>, is the subject of this action. PM<sub>10</sub> is among the ambient air pollutants for which EPA has established NAAQS. PM<sub>10</sub> causes adverse health effects by penetrating deep in the lungs, aggravating the cardiopulmonary system. Children, the elderly, and people with asthma and heart conditions are the most vulnerable.

In 1971, EPA promulgated the first NAAQS for particulate matter (PM) and defined the standard in terms of an indicator referred to as "total suspended particulate," or "TSP," which roughly included all particles with diameters of 30 microns or less. In 1987, EPA established new PM NAAQS and defined the new standards in terms of PM<sub>10</sub> instead of TSP. See 52 FR 24634 (July 1, 1987). Ten years later, in 1997, EPA established another PM NAAQS and defined this new standard in terms of particulate matter with an aerodynamic diameter less than or equal to 2.5 micrometers, or PM<sub>2.5</sub>, but in our 1997 final rule, we decided to retain a PM<sub>10</sub> NAAQS as well. See 62 FR 38652 (July 18, 1997). In 2006, EPA completed a review of both the PM<sub>2.5</sub> NAAQS and PM<sub>10</sub> NAAQS and, among other actions, decided to retain the 24-hour-average PM<sub>10</sub> standard at its current level but to revoke the annual-average PM<sub>10</sub> standard. See 71 FR 61144 (October 17, 2006). The level of the primary (i.e., public health) PM<sub>10</sub> standard is 150 micrograms per cubic meter (µg/m<sup>3</sup>), 24-hour average concentration.<sup>1</sup> See 40 CFR 50.6. The secondary PM<sub>10</sub> standard, promulgated to protect against adverse welfare effects, is identical to the primary standard.

<sup>1</sup> The effective date of EPA's October 17, 2006 final rule revoking the annual-average standard was December 18, 2006. Thus, we make no finding in this direct final rule relative to the annual-average PM<sub>10</sub> NAAQS but have included annual-average PM<sub>10</sub> concentration data for informational purposes only. The now-revoked annual-average PM<sub>10</sub> NAAQS was set at a level of 50 µg/m<sup>3</sup>.

*B. What is the Designation and Classification of this PM<sub>10</sub> Nonattainment Area?*

Under the Clean Air Act Amendments of 1977, and due to recorded violations of the former TSP-defined NAAQS and the location of major industrial sources, EPA designated one township in each of the Hayden and Miami areas as separate nonattainment areas for TSP (44 FR 21261, April 10, 1979, as corrected at 44 FR 53081, September 12, 1979).<sup>2</sup> As noted above, in 1987, we revised the PM NAAQS to include only particulate matter of a size range less than or equal to a nominal 10 microns (PM<sub>10</sub>). As part of the implementation policy for the new standards, where insufficient PM<sub>10</sub> data were available, EPA categorized areas based on their probability of violating the standard using TSP data. The categories were: Group I, areas with a high probability of violating the standards; Group II, areas with a moderate probability of violating; and Group III, areas that were likely to be attaining the standards.

In 1987, EPA identified the "Hayden/Miami area" as one of the Group I areas for PM<sub>10</sub>. See 52 FR 29383 (August 7, 1987). In a 1990 clarification, we defined the geographic area of the combined Hayden/Miami Group I area as including all or part of 26 contiguous townships in and around the towns of Hayden and Miami (55 FR 45799, October 31, 1990).<sup>3</sup>

Subsequent to our 1990 clarification and upon enactment of the Clean Air Act Amendments of 1990, all "Group I" areas, such as the Hayden/Miami planning area, were designated as "nonattainment" for the PM<sub>10</sub> NAAQS by operation of law and classified as "moderate." See CAA sections 107(d)(4)(B) and 188(a). In March 1991, EPA announced the designations and classifications of areas with respect to PM<sub>10</sub> NAAQS that occurred by operation of law upon enactment of the 1990 Amendments to the CAA. See 56 FR 11101 (March 15, 1991). In August 1991, EPA rejected challenges made by

the State of Arizona and industry to the geographic size of the Hayden/Miami PM<sub>10</sub> nonattainment area. See 56 FR 37654 (August 8, 1991). Later that same year, we codified the PM<sub>10</sub> nonattainment designations and moderate area classifications in 40 CFR part 81. See 56 FR 56694 (November 6, 1991). For "moderate" nonattainment areas such as the Hayden/Miami PM<sub>10</sub> nonattainment area, CAA section 188(c) of the 1990 Amended Act establishes an attainment date of December 31, 1994.

Along with the new designations, classifications, and attainment dates, the CAA as amended in 1990 also established new planning requirements. In accordance with section 189(a) of the CAA, Arizona was required to submit a state implementation plan (SIP) revision by November 15, 1991 demonstrating attainment of the PM<sub>10</sub> standards and providing for implementation of reasonably available control measures (RACM) by December 31, 1994 for the Hayden/Miami area. The State of Arizona relied upon a SIP revision ("Final PM-10 State Implementation Plan for the Hayden Group I Area" dated September 1989) that it had submitted on October 16, 1989 to meet the requirements of the CAA as amended in 1990 for "moderate" PM<sub>10</sub> nonattainment areas.

In 1994, we proposed a limited approval and limited disapproval of Arizona's 1989 SIP revision. See 59 FR 36116 (July 15, 1994). The primary reason for the proposed limited disapproval was that the plan addressed only the Hayden portion of the Hayden/Miami PM<sub>10</sub> nonattainment area. In response, by letter dated November 10, 1994, the Governor's designee for CAA matters, the Arizona Department of Environmental Quality (ADEQ), submitted a formal petition for rulemaking to realign the Hayden/Miami PM<sub>10</sub> nonattainment area boundary. Specifically, ADEQ requested that EPA correct the purported error the Agency had made in including the Miami area in the original Group I area in 1987 and called for exclusion of the northern third of the area (*i.e.*, the Miami portion) from the nonattainment area. We have not taken final action on our 1994 proposed limited approval/limited disapproval of ADEQ's 1989 SIP revision. In today's direct final rule, we again are taking no action on ADEQ's 1989 SIP revision but will address applicable CAA requirements for the Hayden area in a future rulemaking. For the Miami area, in this direct final rule, we are making an attainment finding and a determination regarding applicability of certain CAA requirements (see section III, below).

On June 20, 2006, under CAA section 107(d)(3)(D), ADEQ submitted a request for a boundary redesignation of the Hayden/Miami PM<sub>10</sub> nonattainment area to EPA for approval. In contrast with ADEQ's 1994 petition, ADEQ's 2006 boundary redesignation would not reduce the overall size of the area designated as nonattainment for PM<sub>10</sub> but would simply divide a single PM<sub>10</sub> nonattainment area into two PM<sub>10</sub> nonattainment areas. We consider ADEQ's June 20, 2006 boundary redesignation (discussed in the following section of this direct final rule) to supersede the State's 1994 petition and thus plan no further action on that earlier request.

## II. Boundary Redesignation

### A. What Did the State Submit?

On June 20, 2006, ADEQ submitted to EPA under CAA section 107(d)(3)(D) a request for a boundary redesignation of the Hayden/Miami PM<sub>10</sub> nonattainment area into two separate, but adjoining, PM<sub>10</sub> nonattainment areas, namely, the Hayden nonattainment area and the Miami nonattainment area. ADEQ enclosed a technical justification report entitled, "Request to Revise the Hayden/Miami PM<sub>10</sub> Nonattainment Area Boundary" (May 2006), in support of this boundary redesignation. ADEQ's technical justification report includes a discussion of the regulatory background and the topographical and meteorological characteristics of the Hayden and Miami areas. The report also includes tables summarizing emission inventory and ambient air quality data and maps showing the existing nonattainment area boundaries, topographical features, the locations of permitted emissions sources, and the boundary delineating the new Miami and Hayden PM<sub>10</sub> nonattainment areas. Together, these two new PM<sub>10</sub> nonattainment areas would cover the same geographic area as the original Hayden/Miami PM<sub>10</sub> nonattainment area. ADEQ's boundary separating the Miami and Hayden PM<sub>10</sub> areas runs east-west in steps using township and section identifiers to roughly trace the ridgeline of the Pinal Mountains.

### B. How Does EPA Evaluate Boundary Redesignations?

Under section 107(d)(3)(D) of the CAA, the Governor of any State may, on the Governor's own motion, submit to EPA a revised designation of any area or portion thereof within the State.<sup>4</sup> EPA is required to approve or deny a submittal

<sup>2</sup> Hayden and Miami are towns located near significant mining and copper smelting activities in east central Arizona, roughly 70 to 80 miles east-southeast of Phoenix. Miami is located in Gila County; Hayden straddles the boundary between Gila County and Pinal County approximately 27 miles south of Miami.

<sup>3</sup> The Hayden/Miami "Group I" area encompassed the following townships: T1N, R13E; T1N, R14E; T1N, R15E; T1S, R13E; T1S, R14E; T1S, R14½E; T1S, R15E; T2S, R13E; T2S, R14E; T2S, R15E; T3S, R13E; T3S, R14E; T3S, R15E; T3S, R16E (except that portion in the San Carlos Indian Reservation); T4S, R13E; T4S, R14E; T4S, R15E; T4S, R16E; T5S, R13E; T5S, R14E; T5S, R15E; T5S, R16E; T6S, R13E; T6S, R14E; T6S, R15E; and T6S, R16E.

<sup>4</sup> Boundary changes are an inherent part of a designation or redesignation of an area under the CAA. See CAA section 107(d)(1)(B)(ii).

for redesignation within 18 months of receipt. The type of redesignation that ADEQ submitted on June 20, 2006 involves just a boundary change and does not involve a change in status (*i.e.*, does not involve a change from "nonattainment," for example, to "attainment" or "unclassifiable") of any area. In this notice, we refer to the former type of redesignation as a "boundary redesignation."

In determining whether to approve or deny a State's submittal of a boundary redesignation under section 107(d)(3)(D), EPA uses the same factors Congress directed EPA to consider when the Agency initiates a revision to a designation of an area on its own motion under section 107(d)(3)(A). These factors include "air quality data, planning and control considerations, or any other air quality-related considerations the Administrator deems appropriate." See CAA section 107(d)(3)(A). In addition, because ADEQ's redesignation involves a nonattainment area, we also take into account CAA section 107(d)(1)(A), which provides that nonattainment areas are to include the geographic area that does not meet, or that contributes to ambient air quality in a nearby area that does not meet, the NAAQS for a given pollutant.

### *C. What is EPA's Evaluation of the State's Submittal?*

We have reviewed and evaluated ADEQ's technical justification report and conclude that ADEQ has adequately demonstrated that the Miami and Hayden PM<sub>10</sub> nonattainment areas lie in separate airsheds in which air quality is determined by topographical and meteorological factors and local emissions sources specific to each airshed with no significant PM<sub>10</sub> transport between the two areas. We also conclude that ADEQ's division of the two areas essentially along the ridgeline of the Pinal Mountains follows logically from the identification of these separate airsheds. As such, each new PM<sub>10</sub> nonattainment area encompasses the geographic area of historic PM<sub>10</sub> (or, in the case of Miami, TSP) NAAQS violations as well as the sources which contributed to those violations. Therefore, we are approving the State's boundary redesignation of the Hayden/Miami PM<sub>10</sub> nonattainment area and are thereby establishing separate Hayden and Miami PM<sub>10</sub> nonattainment areas. We provide further detail on our evaluation in the paragraphs that follow.

### *Topography*

As noted previously, the Hayden/Miami PM<sub>10</sub> nonattainment area is

located in east central Arizona. The town of Hayden is situated in the southern portion of the nonattainment area, approximately 27 miles south of the town of Miami, which is located in the northern portion of the nonattainment area. Between the two towns lie the predominant geographic features of the nonattainment area: the Pinal, Mescal, and Dripping Spring Mountain ranges.

Airsheds refer to areas with common weather or meteorological conditions and sources of air pollution. Generally speaking, an airshed contains source and receptor areas. The Pinal and Mescal Mountains, the highest of the three mountain ranges in this area, form a boundary between the Lower Salt River Airshed and the Gila River Airshed. These two interconnecting ranges separate the southern or Hayden portion of the nonattainment area from the northern or Miami portion. Figure 1 in the State's technical justification report illustrates the topographical features in the region.

Elevations in the Pinal and Mescal Mountains are well over 5,000 feet above sea level with numerous peaks above 6,000 feet. Pinal Peak is the highest point at 7,848 feet. Elevational differences between lower elevations in the southern portion of the nonattainment area and the airshed boundary (*i.e.*, the ridgeline of the Pinal Mountains) generally range between 4,000 and 6,000 feet. Elevational differences between the northern portion of the nonattainment area and the airshed boundary (ridgeline of the Pinal Mountains) generally range between 2,000 and 4,000 feet.

### *Meteorology*

The speed and direction of air pollutant transport in both the Lower Salt River Airshed (Miami area) and the Gila River Airshed (Hayden area) are greatly influenced by local topography. Both airsheds contain extensive areas of complex terrain that is responsible for complicated wind patterns.

Hayden is located in a relatively narrow portion of the Gila River valley, immediately downstream from the confluence of the Gila and San Pedro Rivers. The Dripping Spring Mountains are located northeast of Hayden. In ADEQ's technical justification report, wind patterns in Hayden, where a number of stationary sources are located, are described as distinctly up-valley/down-valley. Such patterns are typical of mountainous areas, and are characterized by up-valley or up-slope flows during the day and down-valley or down-slope winds during the night. ADEQ notes that low southeasterly

winds in the Gila River valley from nighttime down-slope or drainage flow can combine with stable atmospheric conditions to cause elevated pollutant concentrations within low lying areas. Up-slope convection during the day increases dispersion and flow out of the low lying areas. Under normal daytime conditions, surface winds become west-southwesterly to west-northwesterly (up-valley) in the Hayden area, replacing nighttime down-slope winds as the atmosphere becomes less stable. This pattern is repeated locally throughout much of the complex terrain found in the southern portion of the Hayden/Miami PM<sub>10</sub> nonattainment area.

Due to widespread areas of complex terrain, a similar up-valley/down-valley pattern is found throughout much of the northern portion of the Hayden/Miami PM<sub>10</sub> nonattainment area, where Miami is located. Miami is located along U.S. Highway 60 in a steep canyon of the Pinal Mountains. As described for Hayden, Miami is similarly influenced by up-slope/down-slope wind patterns. Generally, the Miami area exhibits a diurnal pattern of having a stronger average easterly component to nighttime airflow with a westerly component evident during the day.

ADEQ's technical justification report notes that stronger regional air flow can at times override local patterns and overcome elevational differences, and that, under these conditions, direction of flow can vary. However, ADEQ notes also that mixing, dispersion, and dilution of emissions are increased under these conditions, especially with distance. Thus, localized complex terrain windflow patterns are the primary forces affecting dispersion from sources within each of the Hayden and Miami areas. We agree with ADEQ's conclusion that the greater emissions impacts are local, and any cross-airshed boundary contributions that may occur are minimal relative to local impacts.

### *Locations of Emissions Sources*

The topographical and meteorological characteristics described above support the conclusion that Hayden and Miami lie in separate airsheds with minimal PM<sub>10</sub> pollutant transport between the two. However, ADEQ also provides information on the locations and magnitude of permitted PM<sub>10</sub> sources in the two areas that lends further support to this conclusion.

ADEQ notes that the majority of permitted sources in the Hayden/Miami PM<sub>10</sub> nonattainment area are associated with mining and smelting activities. These sources are located primarily in the extreme south and north of the

Hayden/Miami nonattainment area near the two mining towns, Hayden and Miami.<sup>5</sup> Hayden area sources are clustered primarily in lower elevation areas in the southern portion of the nonattainment area, south of the Township 2 South/Township 3 South boundary. Miami area sources are located generally north of the Township 1 North/Township 1 South line. The central portion of the nonattainment area, dominated by the Pinal and Mescal Mountain ranges that divide the lower elevation areas to the north and south, contains no permitted stationary sources. This buffer between the two concentrations of emissions sources to the south and north further minimizes the possibility of significant PM<sub>10</sub> pollutant transport between the Hayden and Miami areas.

#### Planning Considerations

ADEQ notes that dividing the single PM<sub>10</sub> nonattainment area into two areas would facilitate air quality management by enabling separate analyses that reflect local air transport patterns and the development of control strategies and planning processes specific to each area. While we find that the existence of a single PM<sub>10</sub> air quality planning area does not preclude separate analyses and development of subarea-specific control strategies, we do recognize that dividing the single area into two would allow for de-coupling of the air quality planning processes for the Hayden and Miami areas, thereby allowing one of the two areas to seek redesignation and to begin the maintenance phase of CAA planning sooner than might otherwise be possible.

#### Conclusion

Based on our review of ADEQ's technical justification report and other available information, we find that ADEQ has sufficiently demonstrated that the Miami and Hayden areas lie in separate airsheds in which local topographical and meteorological factors and local emissions sources determine ambient PM<sub>10</sub> conditions and

between which PM<sub>10</sub> pollutant transport is minimal. The concentration of PM<sub>10</sub> emissions sources to the south and north ends of the Hayden/Miami PM<sub>10</sub> nonattainment area adds separation distance to the list of factors that minimize the potential for PM<sub>10</sub> pollutant transport between the Miami and Hayden areas. We also find that dividing the single area into two would be beneficial from a planning perspective by allowing one of the areas to proceed to the maintenance phase of air quality planning under the CAA sooner than might otherwise be possible.<sup>6</sup>

#### *D. What Are the Implications of EPA's Approval of the State's Boundary Redesignation?*

In approving ADEQ's boundary redesignation of the Hayden/Miami PM<sub>10</sub> nonattainment area into two areas, we approve ADEQ's boundary, which roughly traces the ridgeline of the Pinal Mountains.

The new Miami PM<sub>10</sub> nonattainment area encompasses all or part of the following seven townships: T1N, R13E; T1N, R14E; T1N, R15E; T1S, R13E (sections 1–6); T1S, R14E (sections 1–24); T1S, R14½E; and T1S, R15E. The new Hayden PM<sub>10</sub> nonattainment area encompasses all or part of the following 21 townships: T1S, R13E (sections 7–36); T1S, R14E (sections 25–36); T2S, R13E; T2S, R14E; T2S, R15E; T3S, R13E; T3S, R14E; T3S, R15E; T3S, R16E (except that portion in the San Carlos Indian Reservation); T4S, R13E; T4S, R14E; T4S, R15E; T4S, R16E; T5S, R13E; T5S, R14E; T5S, R15E; T5S, R16E; T6S, R13E; T6S, R14E; T6S, R15E; and T6S, R16E.

Together, the two new PM<sub>10</sub> nonattainment areas cover the same geographic area as the original Hayden/Miami PM<sub>10</sub> nonattainment area. Both of the new PM<sub>10</sub> nonattainment areas retain the “moderate” classification associated with the Hayden/Miami PM<sub>10</sub> nonattainment area.

### **III. Finding of Attainment for Miami Area and Determination Regarding Applicability of Certain Clean Air Act Requirements**

#### *A. How Do We Make Attainment Determinations?*

Generally, we will determine whether an area's air quality meets the PM<sub>10</sub> NAAQS based upon data gathered at established state and local air monitoring stations (SLAMS) and national air monitoring stations (NAMS) in the nonattainment area and entered into EPA's Air Quality System (AQS) database. Data entered into AQS have been determined to meet Federal monitoring requirements (see 40 CFR 50.6; 40 CFR part 50, appendix J; 40 CFR part 53; 40 CFR part 58, appendices A and B) and may be used to determine the attainment status of areas. We will also consider air quality data from other air monitoring stations in the nonattainment area, such as Special Purpose Monitors (SPM), some of which are run by industrial sources, provided that the stations meet the Federal monitoring requirements for SLAMS and that the data is publicly available.<sup>7</sup> All data are reviewed to determine the area's air quality status in accordance with our guidance at 40 CFR part 50, appendix K.

Attainment of the 24-hour standard is determined by calculating the expected number of days in a year with PM<sub>10</sub> concentrations greater than 150 µg/m<sup>3</sup>. The 24-hour standard is attained when the expected number of days with levels above 150 µg/m<sup>3</sup> (averaged over a three-year period) is less than or equal to one. Three consecutive years of air quality data are necessary to show attainment of the PM<sub>10</sub> NAAQS. See 40 CFR part 50, appendix K. A complete year of air quality data, as referred to in 40 CFR part 50, appendix K, is composed of all four calendar quarters with each quarter containing data from at least 75 percent of the scheduled sampling days.

#### *B. What Is the Basis for EPA's Determination that the Miami Area Is Attaining the PM<sub>10</sub> NAAQS?*

Beginning in 1987, PM<sub>10</sub> has been monitored at seven different sites in the Miami area. ADEQ operated some of these PM<sub>10</sub> monitoring sites and the owner and operator of the primary copper smelter (*i.e.*, Phelps-Dodge Miami, Inc. or “Phelps-Dodge”), which is the largest single industrial source of emissions in the area, operated others. Different monitoring locations were

<sup>5</sup> ADEQ estimates that, in 2004, permitted sources in Hayden emitted 1,974 tons of PM<sub>10</sub> or 84 percent of total nonattainment area PM<sub>10</sub> emissions. Emissions for Miami area sources totaled 375 tons or 16 percent of total nonattainment area emissions, and about one-fifth of Hayden area emissions. As expected in areas where local topographical and meteorological factors are the primary determinants of ambient air conditions and given the relative PM<sub>10</sub> source strengths in the two areas, PM<sub>10</sub> monitors in the Hayden area record higher PM<sub>10</sub> concentrations than those in the Miami area. For example, whereas violations of both the 24-hour and now-revoked annual PM<sub>10</sub> NAAQS have been recorded in the Hayden area (although none in recent years), no PM<sub>10</sub> violations have ever been recorded in the Miami area.

<sup>6</sup> We note that our action here today is consistent with prior EPA rulemakings redesignating PM<sub>10</sub> nonattainment areas into multiple nonattainment areas that together cover the same geographic area as the original nonattainment area. See, *e.g.*, 63 FR 59722 (November 5, 1998), involving the division of a PM<sub>10</sub> nonattainment area in Idaho into two areas delineated by the boundary between State lands and the Fort Hall Indian Reservation; and 67 FR 50805 (August 6, 2002), corrected at 67 FR 59005 (September 19, 2002), involving the division of a PM<sub>10</sub> nonattainment area in California into three areas delineated by the boundaries of Inyo, Kern and San Bernardino counties.

<sup>7</sup> See EPA Memorandum, “Use of Special Purpose Monitoring Data,” from John S. Seitz, Director, Office of Air Quality Planning and Standards, August 22, 1997.

selected in an effort to locate the maximum PM<sub>10</sub> impacts from the smelter. Since 1991, two monitors have remained at their current locations: the Golf Course monitor and the Ridgeline monitor. Both are operated by Phelps-Dodge and are considered Special Purpose Monitors (SPMs). ADEQ ended PM<sub>10</sub> monitoring at its Nolan Ranch site (also known as "Miami South" or "Jones Ranch") in 1994 and no longer operates any PM<sub>10</sub> monitor in the Miami area. No violations of the PM<sub>10</sub> NAAQS have been monitored at any of the seven

monitoring sites in the Miami area since monitoring began in 1987.

The PM<sub>10</sub> data collected by Phelps-Dodge at the two SPMs (*i.e.*, the Golf Course and Ridgeline sites) are not normally certified by ADEQ and entered into AQS, but to provide for this attainment finding, ADEQ worked with Phelps-Dodge to certify PM<sub>10</sub> monitoring data collected over the past several years and to enter the certified data into AQS. Table 1 provides a summary of the data collected at the Golf Course and Ridgeline sites during the 2003–2005 period.

Phelps-Dodge collected the PM<sub>10</sub> data shown in Table 1 below using Graseby-Anderson Dichotomous samplers, devices designated by EPA as a manual reference method sampler. The samplers operated on an approved operating schedule of once every six days and the data sets meet EPA requirements for 75 percent data capture as discussed in 40 CFR 50, appendix K. ADEQ has reviewed the operation and maintenance records for these monitors and has certified that the data collected by Phelps-Dodge meets EPA's quality assurance requirements.

TABLE 1.—SUMMARY OF 24 HOUR AND ANNUAL PM<sub>10</sub> CONCENTRATIONS (µg/M<sup>3</sup>) FOR MIAMI, 2003–2005

Year	PM <sub>10</sub> Concentrations					
	Ridgeline			Golf Course		
	24-hr max	Annual average	3 year annual average	24-hr max	Annual average	3 year annual average
2003 .....	59	14.6	12.4	53	20.7	19.4
2004 .....	26	10.2		40	16.4	
2005 .....	23	12.4		40	21.0	

**Note:** Data for the annual-average are included in this table for informational purposes only because the annual-average PM<sub>10</sub> standard has been revoked. The former annual-average PM<sub>10</sub> standard was attained when the annual arithmetic mean PM<sub>10</sub> concentration over a three-year period is equal to or less than 50 µg/m<sup>3</sup>. We note that the Miami area would have been found to attain the annual standard as well as the 24-hour standard had the former not been revoked.

As noted above, the 24-hour PM<sub>10</sub> standard is attained when the expected number of days with levels above 150 µg/m<sup>3</sup> (averaged over a three-year period) is less than or equal to one. Based on the data summarized in table 1, above, we find no exceedances of the 24-hour PM<sub>10</sub> standard for the 2003 to 2005 period and thus the expected number of days with levels above 150 µg/m<sup>3</sup> (averaged over that three-year period) is zero. As such, we find that Miami is attaining the 24-hour PM<sub>10</sub> NAAQS.

#### *C. What Are the Applicable Planning Requirements for the Miami Area as a Result of EPA's Attainment Determination?*

The air quality planning requirements for moderate PM<sub>10</sub> nonattainment areas, such as the Miami PM<sub>10</sub> nonattainment area, are set out in part D, subparts 1 and 4 of title I of the Act. We have issued guidance in a General Preamble<sup>8</sup>

describing how we will review SIPs and SIP revisions submitted under title I of the Act, including those containing moderate PM<sub>10</sub> nonattainment area SIP provisions.

In some designated nonattainment areas, monitored data demonstrates that the NAAQS has already been achieved. Based on its interpretation of the Act, EPA has determined that certain requirements of part D, subparts 1 and 2 (of title I) of the Act do not apply and therefore do not require certain submissions for an area that has attained the NAAQS. These include reasonable further progress (RFP) requirements, attainment demonstrations and contingency measures, because these provisions have the purpose of helping achieve attainment of the NAAQS.

EPA's Clean Data Policy is the subject of two memoranda setting forth our interpretation of the provisions of the Act as they apply to areas that have attained the relevant NAAQS. EPA also finalized the statutory interpretation set forth in the policy in a final rule, 40 CFR 51.918, as part of its "Final Rule to Implement the 8-hour Ozone National Ambient Air Quality Standard—Phase 2" (Phase 2 Final Rule). See discussion in the preamble to the rule at 70 FR 71645–71646 (November 29, 2005). EPA believes that the legal bases set forth in detail in our Phase 2 Final Rule; our May 10, 1995 memorandum from John S. Seitz, entitled "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the

Ozone National Ambient Air Quality Standard" (Seitz memo); and our December 14, 2004 memorandum from Stephen D. Page entitled "Clean Data Policy for the Fine Particle National Ambient Air Quality Standards" (Page memo) are equally pertinent to the interpretation of provisions of subparts 1 and 4 applicable to PM<sub>10</sub>. EPA's interpretation of how the provisions of the Act apply to areas with "clean data" is not logically limited to ozone and PM<sub>2.5</sub>, because the rationale is not dependent upon the type of pollutant. Our interpretation that an area that is attaining the standard is relieved of obligations to demonstrate RFP and to provide an attainment demonstration and contingency measures pursuant to part D of the CAA, pertains whether the standard is PM<sub>10</sub>, ozone, or PM<sub>2.5</sub>.

The reasons for relieving an area that has attained the relevant standard of certain part D, subparts 1 and 2 obligations, applies equally to part D, subpart 4, which contains specific attainment demonstration and RFP provisions for PM<sub>10</sub> nonattainment areas. As we have explained in the Phase 2 Final Rule and our ozone and PM<sub>2.5</sub> clean data memoranda, EPA believes it is reasonable to interpret provisions regarding RFP and attainment demonstrations, along with related requirements, so as not to require SIP submissions if an area subject to those requirements is already attaining the NAAQS (*i.e.*, attainment of the NAAQS is demonstrated with three consecutive years of complete, quality-

<sup>8</sup> "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (57 FR 13498, April 16, 1992, as supplemented 57 FR 18070, April 28, 1992).

assured air quality monitoring data). Three U.S. Circuit Courts of Appeals have upheld EPA rulemakings applying its interpretation of subparts 1 and 2 with respect to ozone. *Sierra Club v. EPA*, 99 F.3d 1551 (10th Cir. 1996); *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004); *Our Children's Earth Foundation v. EPA*, No. 04-73032 (9th Cir. June 28, 2005) (memorandum opinion). It has been EPA's longstanding interpretation that the general provisions of part D, subpart 1 of the Act (sections 171 and 172) do not require the submission of SIP revisions concerning RFP for areas already attaining the ozone NAAQS. In the General Preamble, we stated:

[R]equirements for RFP will not apply in evaluating a request for redesignation to attainment since, at a minimum, the air quality data for the area must show that the area has already attained. Showing that the State will make RFP towards attainment will, therefore, have no meaning at that point. 57 FR at 13564.

EPA believes the same reasoning applies to the PM<sub>10</sub> provisions of part D, subpart 4.

With respect to RFP, section 171(1) states that, for purposes of part D of title I, RFP "means such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable date." Thus, whether dealing with the general RFP requirement of section 172(c)(2), the ozone-specific RFP requirements of sections 182(b) and (c), or the specific RFP requirements for PM<sub>10</sub> areas of part D, subpart 4, section 189(c)(1), the stated purpose of RFP is to ensure attainment by the applicable attainment date. Section 189(c)(1) states that:

Plan revisions demonstrating attainment submitted to the Administrator for approval under this subpart shall contain quantitative milestones which are to be achieved every 3 years until the area is redesignated attainment and which demonstrate reasonable further progress, as defined in section 7501(1) of this title, toward attainment by the applicable date.

Although this section states that revisions shall contain milestones which are to be achieved until the area is redesignated to attainment, such milestones are designed to show reasonable further progress "toward attainment by the applicable attainment date", as defined by section 171. Thus, it is clear that once the area has attained the standard, no further milestones are necessary or meaningful. This interpretation is supported by language in section 189(c)(3), which mandates

that a state that fails to achieve a milestone must submit a plan that assures that the state will achieve the next milestone or attain the NAAQS if there is no next milestone. Section 189(c)(3) assumes that the requirement to submit and achieve milestones does not continue after attainment of the NAAQS.

In the General Preamble, we noted with respect to section 189(c) that "the purpose of the milestone requirement is to 'provide for emission reductions adequate to achieve the standards by the applicable attainment date' (H.R. Rep. No. 490 101st Cong., 2d Sess. 267 (1990))." 57 FR 13539 (April 16, 1992). If an area has in fact attained the standard, the stated purpose of the RFP requirement will have already been fulfilled.<sup>9</sup> EPA took this position with respect to the general RFP requirement of section 172(c)(2) in the April 16, 1992 General Preamble and also in the May 10, 1995 memorandum with respect to the requirements of sections 182(b) and (c). We are extending that interpretation to the specific provisions of part D, subpart 4. In the General Preamble, we stated, in the context of a discussion of the requirements applicable to the evaluation of requests to redesignate nonattainment areas to attainment, that the "requirements for RFP will not apply in evaluating a request for redesignation to attainment since, at a minimum, the air quality data for the area must show that the area has already attained. Showing that the State will make RFP towards attainment will, therefore, have no meaning at that point." (57 FR 13564). See also our September 4, 1992 memorandum from John Calcagni, entitled "Procedures for Processing Requests to Redesignate Areas to Attainment" (Calcagni memo), p. 6.

Similarly, the requirements of section 189(c)(2) with respect to milestones no

<sup>9</sup> Thus, we believe that it is a distinction without a difference that section 189(c)(1) speaks of the RFP requirement as one to be achieved until an area is "redesignated attainment", as opposed to section 172(c)(2), which is silent on the period to which the requirement pertains, or the ozone nonattainment area RFP requirements in sections 182(b)(1) or 182(c)(2), which refer to the RFP requirements as applying until the "attainment date," since section 189(c)(1) defines RFP by reference to section 171(1) of the Act. Reference to section 171(1) clarifies that, as with the general RFP requirements in section 172(c)(2) and the ozone-specific requirements of section 182(b)(1) and 182(c)(2), the PM-specific requirements may only be required "for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date." 42 U.S.C. section 7501(1). As discussed in the text of this rulemaking, EPA interprets the RFP requirements, in light of the definition of RFP in section 171(1), and incorporated in section 189(c)(1), to be a requirement that no longer applies once the standard has been attained.

longer apply so long as an area has attained the standard. Section 189(c)(2) provides in relevant part that:

Not later than 90 days after the date on which a milestone applicable to the area occurs, each State in which all or part of such area is located shall submit to the Administrator a demonstration \* \* \* that the milestone has been met.

Where the area has attained the standard and there are no further milestones, there is no further requirement to make a submission showing that such milestones have been met. As noted above, this is consistent with the position that EPA took with respect to the general RFP requirement of section 172(c)(2) in the April 16, 1992 General Preamble and also in the May 10, 1995 Seitz memorandum with respect to the requirements of section 182(b) and (c). In the May 10, 1995 Seitz memorandum, EPA also noted that section 182(g), the milestone requirement of Subpart 2, which is analogous to provisions in section 189(c), is suspended upon a determination that an area has attained. The memorandum, also citing additional provisions related to attainment demonstration and RFP requirements, stated:

Inasmuch as each of these requirements is linked with the attainment demonstration or RFP requirements of section 182(b)(1) or 182(c)(2), if an area is not subject to the requirement to submit the underlying attainment demonstration or RFP plan, it need not submit the related SIP submission either.

1995 Seitz memorandum at 5.

With respect to the attainment demonstration requirements of section 189(a)(1)(B), an analogous rationale leads to the same result. Section 189(a)(1)(B) requires that the plan provide for "a demonstration (including air quality modeling) that the [SIP] will provide for attainment by the applicable attainment date \* \* \*." As with the RFP requirements, if an area is already monitoring attainment of the standard, EPA believes there is no need for an area to make a further submission containing additional measures to achieve attainment. This is also consistent with the interpretation of the section 172(c) requirements provided by EPA in the General Preamble, the Page memo, and the section 182(b) and (c) requirements set forth in the Seitz memo. As EPA stated in the General Preamble, no other measures to provide for attainment would be needed by areas seeking redesignation to attainment since "attainment will have been reached." (57 FR at 13564).

Other SIP submission requirements are linked with these attainment



demonstration and RFP requirements, and similar reasoning applies to them. These requirements include the contingency measure requirements of sections 172(c)(9) and 182(c)(9). We have interpreted the contingency measure requirements of sections 172(c)(9) and 182(c)(9) as no longer applying when an area has attained the standard because those "contingency measures are directed at ensuring RFP and attainment by the applicable date." (57 FR at 13564); Seitz memo, pp. 5–6.

Both sections 172(c)(1) and 189(a)(1)(C) require "provisions to assure that reasonably available control measures" (*i.e.*, RACM) are implemented in a nonattainment area. The General Preamble, 57 FR at 13560 (April 16, 1992), states that EPA interprets section 172(c)(1) so that RACM requirements are a "component" of an area's attainment demonstration. Thus, for the same reason the attainment demonstration no longer applies by its own terms, the requirement for RACM no longer applies. EPA has consistently interpreted this provision to require only implementation of potential RACM measures that could contribute to reasonable further progress or to attainment. General Preamble, 57 FR at 13498. Thus, where an area is already attaining the standard, no additional RACM measures are required.<sup>10</sup> EPA is interpreting section 189(a)(1)(C) consistent with its interpretation of section 172(c)(1).

Here, as in both our Phase 2 Final Rule and ozone and PM<sub>2.5</sub> clean data memoranda, we emphasize that the suspension of a requirement to submit SIP revisions concerning these RFP, attainment demonstration, RACM, and other related requirements exists only for as long as a nonattainment area continues to monitor attainment of the standard. If such an area experiences a violation of the NAAQS, the basis for the requirements being suspended would no longer exist. Therefore, the area would again be subject to a requirement to submit the pertinent SIP revision or revisions and would need to address those requirements. Thus, a determination that an area need not submit one of the SIP submittals amounts to no more than a suspension of the requirements for so long as the area continues to attain the standard.

However, once EPA ultimately redesignates the area to attainment, the area will be entirely relieved of these requirements to the extent the maintenance plan for the area does not rely on them.

Therefore, we believe that, for the reasons set forth here and established in our prior "clean data" memoranda and rulemakings, a PM<sub>10</sub> nonattainment area that has "clean data," should be relieved of the part D, subpart 4 obligations to provide an attainment demonstration pursuant to section 189(a)(1)(B), the RACM provisions of section 189(a)(1)(C), and the RFP provisions established by section 189(c)(1) of the Act, as well as the aforementioned attainment demonstration, RACM, RFP and contingency measure provisions of part D, subpart 1 contained in section 172 of the Act.<sup>11</sup>

Should EPA at some future time determine that an area that had clean data, but which has not yet been redesignated as attainment for a NAAQS, has violated the relevant standard, the area would again be required to submit the pertinent requirements under the SIP for the area. Attainment determinations under the policy do not shield an area from other required actions, such as provisions to address pollution transport.

As set forth above, EPA finds that because the Miami area is attaining the PM<sub>10</sub> NAAQS, the requirement of an attainment demonstration, reasonable further progress, reasonably available control measures and contingency measures no longer applies for so long as the area continues to monitor attainment of the PM<sub>10</sub> NAAQS.<sup>12</sup>

This determination is contingent on the existence of monitoring data showing continued attainment of the PM<sub>10</sub> NAAQS in the Miami area. Normally, we would simply rely on the

continuation of a State's or local air district's monitoring network to provide the data necessary for the public and EPA to verify continued attainment because a State or local air district administering such a network must, under applicable Federal regulations, use reference methods, meet quality assurance requirements, and enter data periodically into AQS.

In the Miami area, however, the only monitors collecting PM<sub>10</sub> data are Special Purpose Monitors (SPMs) run by Phelps-Dodge. Historically, these data have not been submitted to the State for certification and subsequent entry into EPA's Air Quality System (AQS) database. Thus, we have requested that ADEQ provide us with evidence that ADEQ and Phelps-Dodge ensure that PM<sub>10</sub> data continues to be collected at Phelps-Dodge's two monitoring sites in the Miami area in a manner that meets Federal monitoring requirements for state and local air monitoring stations (SLAMS) and that ADEQ commits to entering the data into AQS on a periodic basis. ADEQ has submitted sufficient evidence supporting such commitments in the form of two letters: a letter dated May 15, 2006 from Alan H. Binegar, Smelter Manager, Phelps-Dodge Miami Inc. to Nancy Wrona, Director, Air Quality Division, ADEQ, and a letter dated January 19, 2007 from Nancy C. Wrona, Director, Air Quality Division, ADEQ, to Deborah Jordan, Director, Air Division, EPA-Region IX.

Specifically, in its May 15, 2006 letter, Phelps-Dodge agrees to submit calibration records and supporting documentation for its PM<sub>10</sub> monitors to ADEQ with future quarterly PM<sub>10</sub> reports. In its January 19, 2007 letter, ADEQ commits to begin entering data collected during 2006 by March 1, 2007, to complete the entry of 2006 data into AQS by the end of June 2007, and to continue entry of 2007 and subsequent data following applicable EPA quality assurance procedures and validation. We interpret ADEQ's commitment to mean that by the end of 2007, ADEQ will be entering Miami PM<sub>10</sub> monitoring data collected by Phelps-Dodge on the same quarterly schedule as required for SLAMS.

If Phelps-Dodge or ADEQ fails to fulfill the monitoring-related commitments set forth in the letters dated May 15, 2006 and January 19, 2007, then we can no longer be assured of the continued attainment of the PM<sub>10</sub> NAAQS in the Miami area, and a failure to provide current, valid, publicly available PM<sub>10</sub> data will have the same consequence as a measured violation of the PM<sub>10</sub> NAAQS. In either event, the rationale for determining that the CAA

<sup>11</sup> In some prior rulemakings involving the Clean Data Policy and PM<sub>10</sub>, EPA has applied criteria in addition to that of attainment of the standard. See, *e.g.*, 67 FR 43020 (June 26, 2002). EPA does not believe that those additional criteria are required by statute or are necessary for application of the policy for PM<sub>10</sub> areas, and does not employ them in applying the policy to ozone and PM<sub>2.5</sub> areas. EPA intends to make its application of the policy consistent for ozone, PM<sub>10</sub>, and PM<sub>2.5</sub>, and does not intend to require an area to meet additional criteria for PM<sub>10</sub>.

<sup>12</sup> We note that our application of the Clean Data Policy to the Miami PM<sub>10</sub> nonattainment area is consistent with actions we have taken for other PM<sub>10</sub> nonattainment areas that were also attaining the standard. See 71 FR 6352 (February 8, 2006) (Ajo, Arizona area); 71 FR 13021 (March 14, 2006) (Yuma, Arizona area); 71 FR 40023 (July 14, 2006) (Weirton, West Virginia area); 71 FR 44920 (August 8, 2006) (Rillito, Arizona area); and 71 FR 63642 (October 30, 2006) (San Joaquin Valley, California area).

<sup>10</sup> The EPA's interpretation that the statute only requires implementation of RACM measures that would advance attainment was upheld by the United States Court of Appeals for the Fifth Circuit (*Sierra Club v. EPA*, 314 F.3d 735, 743–745 (5th Cir. 2002)), and by the United States Court of Appeals for the D.C. Circuit (*Sierra Club v. EPA*, 294 F.3d 155, 162–163 (DC Cir. 2002)).



requirements discussed above no longer apply in the Miami area will no longer exist, and as a result, we will take action to withdraw our finding that the Miami area is attaining the standard and withdraw our related determination with respect to certain CAA requirements discussed above. Then, the State of Arizona would again be required to submit the pertinent CAA requirements for this nonattainment area.

#### IV. Corrections to the Arizona PM<sub>10</sub> Table in 40 CFR Part 81

In today's notice, we are also correcting two errors in the table found in 40 CFR part 81 (specifically, 40 CFR 81.303) listing the area designations within the State of Arizona for the PM<sub>10</sub> NAAQS. CAA section 110(k)(6) provides EPA with authority to correct errors in rulemakings involving, among other things, area designations and classifications.

First, we are fixing a typographical error in the listing for Payson in the PM<sub>10</sub> table. This error was introduced into the table in a final rule redesignating the Payson area to attainment. See 67 FR 43013 (June 26, 2002). In the June 2002 final rule, we inadvertently listed one of the townships that comprise the Payson air quality planning area as "T01N, \* \* \*" while intending "T10N, \* \* \*." See 67 FR 43013, at 43019. We are correcting the listing in this notice.

Second, we are correcting the erroneous deletion of the designation for "rest of state" in the Arizona PM<sub>10</sub> table in 40 CFR 81.303. This error occurred in two stages. First, in a 1996 final rule, we inadvertently included "rest of state" under the listing for Mohave County. See 61 FR 21372, at 21378 (May 10, 1996). Then, in a final rule published on February 15, 2002, we inadvertently deleted the "rest of state" listing entirely. See 67 FR 7082, at 7085 (February 15, 2002). In this notice, we are correcting this error by restoring the "rest of state" designation ("unclassifiable") as a separate listing in the Arizona PM<sub>10</sub> table.

#### V. EPA's Final Action

Under section 107(d)(3)(D) of the Clean Air Act, EPA is approving the State of Arizona's redesignation of the Hayden/Miami PM<sub>10</sub> nonattainment area into two separate but adjoining PM<sub>10</sub> nonattainment areas (Hayden and Miami) as submitted on June 20, 2006 and making the changes to the table in 40 CFR part 81 that shows Arizona PM<sub>10</sub> area designations accordingly. EPA is approving this boundary redesignation based on topographical, meteorological,

and other air quality-related factors that demonstrate that Hayden and Miami areas lie in different airsheds with little or no cross-airshed transport of PM<sub>10</sub>. Together, the two new PM<sub>10</sub> nonattainment areas cover the same geographic area as the original Hayden/Miami PM<sub>10</sub> nonattainment area and retain a "moderate" classification with respect to the PM<sub>10</sub> NAAQS. The approved boundary between the two new areas roughly traces the ridgeline of the Pinal Mountains.

We also find that the Miami PM<sub>10</sub> nonattainment area is attaining the PM<sub>10</sub> NAAQS. Our finding of attainment is based on quality-assured data that meet the requirements of 40 CFR part 50, appendix K for the period 2003–2005.<sup>13</sup>

EPA also finds that, because the Miami area is attaining the NAAQS, the following CAA requirements are not applicable for so long as the Miami area continues to attain the PM<sub>10</sub> standard: the part D, subpart 4 obligations to provide an attainment demonstration pursuant to section 189(a)(1)(B), the RACM provisions of 189(a)(1)(C), the RFP provisions established by section 189(c)(1), and the attainment demonstration, RACM, RFP and contingency measure provisions of part D, subpart 1 contained in section 172 of the Act. Because our determination with respect to the above CAA requirements relies on the existence of current, valid, publicly-available monitoring data, we are making our determination contingent upon fulfillment of commitments made by Phelps-Dodge and ADEQ in letters dated May 15, 2006 and January 19, 2007 to submit such data from the two current PM<sub>10</sub> monitoring sites in the Miami area to EPA's AQS. If the commitments made by Phelps-Dodge and ADEQ are not fulfilled or if the data shows a violation of the standard, then EPA will act to withdraw the attainment finding and withdraw the related determination with respect to the CAA requirements listed above.

<sup>13</sup> The two actions we are taking today, the boundary redesignation and the finding of attainment, should be distinguished from an action to redesignate an area from "nonattainment" to "attainment" under CAA section 107(d)(3). There are a number of prerequisite conditions that must be met before we can approve a State's request to change (i.e., "redesignate") the air quality planning status of an area from "nonattainment" to "attainment," including, among other conditions, approval of a maintenance plan meeting the requirements of section 175A of the CAA. See section 107(d)(3)(E) of the Act. Thus, the classification and designation status in 40 CFR part 81 will remain moderate nonattainment for the Miami PM<sub>10</sub> area until such time as the State of Arizona meets the CAA requirements under section 107(d)(3)(E) for redesignation of the Miami area to attainment.

Lastly, under CAA section 110(k)(6), we correct two errors that were introduced into the "Arizona—PM<sub>10</sub>" table in 40 CFR 81.303 in previous rulemakings. First, we correct a typographical error in the listings of townships that define the Payson air quality planning area. Second, we correct the erroneous deletion of the designation for "rest of state" by restoring the "rest of state" designation ("unclassifiable") as a separate listing in the Arizona PM<sub>10</sub> table.

We are publishing this rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal should adverse comments be filed. This action will be effective May 29, 2007, without further notice unless the EPA receives relevant adverse comments by April 27, 2007.

If we receive such comments, then we will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. We will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on May 29, 2007 and no further action will be taken on the proposed rule.

#### VI. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely redesignates a boundary of an air quality planning area, makes a determination based on air quality data, and suspends certain requirements that otherwise would apply and does not impose any additional requirements. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule does not impose any additional enforceable duty, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as

described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 97249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely redesignates a boundary of an air quality planning area, makes a determination based on air quality data, and suspends certain requirements that otherwise would apply and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because it is not economically significant.

The requirements of section 12(d) of the National Technology Transfer and

Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 29, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and

shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: March 20, 2007.

**Wayne Nastri,**

*Regional Administrator, Region 9.*

■ Part 81, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

#### PART 81—[AMENDED]

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

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

#### Subpart C—[Amended]

■ 2. In § 81.303, the table entitled “Arizona—PM<sub>10</sub>” is amended by revising the entries for Pinal and Gila Counties and Gila County and by adding an entry for “rest of state” to read as follows:

#### § 81.303 Arizona.

\* \* \* \* \*

#### ARIZONA—PM<sub>10</sub>

Designated Area	Designation		Classification	
	Date	Type	Date	Type
* * * * *				
Pinal and Gila Counties:				
Hayden planning area ..... T1S, R13E (sections 7–36); T1S, R14E (sections 25–36); T2S, R13E; T2S, R14E; T2S, R15E; T3S, R13E; T3S, R14E; T3S, R15E; T3S, R16E (except that portion in the San Carlos Apache Indian Reserva- tion); T4S, R13E; T4S, R14E; T4S, R15E; T4S, R16E; T5S, R13E; T5S, R14E; T5S, R15E; T5S, R16E; T6S, R13E; T6S, R14E; T6S, R15E; and T6S, R16E.	11/15/90	Nonattainment ...	11/15/90	Moderate.
Miami planning area ..... T1N, R13E; T1N, R14E; T1N, R15E; T1S, R13E (sections 1–6); T1S, R14E (sections 124); T1S, R14½E; and T1S, R15E.	11/15/90	Nonattainment ...	11/15/90	Moderate.
Gila County (part): Payson: T10N, sections 1–3, ..... 10–15, 22–27, and 34–36 of R9E; T11N, sections 1–3, 10–15, 22–27, and 34–36 of R9E; T10–11N, R10E; T10N, sections 4–9, 16–21, and 28–33 of R11E; T11N, sections 4–9, 16–21, and 28–33 of R11E.	08/26/02	Attainment .....		
* * * * *				
Rest of State .....	11/15/90	Unclassifiable .....		

\* \* \* \* \*

[FR Doc. E7-5663 Filed 3-27-07; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 82****[EPA-HQ-OAR-2004-0507, FRL-8291-3]****RIN 2060-AN11****Protection of Stratospheric Ozone: Listing of Ozone Depleting Substitutes in Foam Blowing****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

**SUMMARY:** Today the Environmental Protection Agency (EPA) is taking final action to determine that HCFC-22 and HCFC-142b are unacceptable for use in the foam sector under the Significant New Alternatives Policy (SNAP) program under section 612 of the Clean Air Act. The SNAP program reviews alternatives to Class I and Class II ozone depleting substances and approves use of alternatives which do not present a substantially greater risk to public health and the environment than the substance they replace or than other available substitutes. In prior rulemakings, the Agency listed HCFC-22 and HCFC-142b as unacceptable substitutes in several foam end uses; here, EPA is amending a determination for one category of end-uses and taking the following actions for remaining applications. First, EPA is finding HCFC-22 and HCFC-142b unacceptable as substitutes for HCFC-141b in commercial refrigeration, sandwich panels, and slabstock and "other" rigid polyurethane foams and removing narrowed use limits previously established in those applications. Second, EPA is finding HCFC-22 and HCFC-142b unacceptable as substitutes for CFCs in all foam end-uses. Third, the Agency is establishing a grandfathering period to allow existing users of HCFC-22 and HCFC-142b in pour foam applications, including commercial refrigeration, sandwich panels, and

slabstock and "other" rigid polyurethane foams other than foam for marine applications, until March 1, 2008 to implement alternatives; existing users of HCFC-22 and HCFC-142b foam blowing agents in the manufacture of foam for marine applications (*e.g.*, flotation foam) will be allowed to continue use of these blowing agents until September 1, 2009. Fourth, the Agency is grandfathering existing users of HCFC-22 and HCFC-142b in extruded polystyrene (XPS) foam and in all other foam end uses until January 1, 2010 in order to allow time for those users to complete their transition to alternatives.

**DATES:** This final rule is effective on May 29, 2007.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2004-0507. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

**FOR FURTHER INFORMATION CONTACT:** Jeff Cohen, Stratospheric Protection Division, Office of Atmospheric Programs (6205J), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343-9005; fax number: (202) 343-2363; e-mail address: [cohen.jeff@epa.gov](mailto:cohen.jeff@epa.gov). The published versions of notices and rulemakings under the SNAP program are available

on EPA's Stratospheric Ozone Web site at <http://www.epa.gov/ozone/snap/regs>.

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**I. Regulated Entities**

Today's rule regulates the use of HCFC-22 and HCFC-142b as foam blowing agents used in the manufacture of rigid polyurethane/polyisocyanurate and extruded polystyrene foam products. Businesses that currently might be using HCFC-22 and HCFC-142b, or might want to use it in the future, include:

- Businesses that manufacture polyurethane/polyisocyanurate foam systems.
- Businesses that use polyurethane/polyisocyanurate systems to apply insulation to buildings, roofs, pipes, etc.
- Businesses that manufacture extruded polystyrene foam insulation for buildings, roofs, pipes, etc.

Table 1 lists potentially regulated entities:

**TABLE 1.—POTENTIALLY REGULATED ENTITIES, BY NORTH AMERICAN INDUSTRIAL CLASSIFICATION SYSTEM (NAICS) CODE OR SUBSECTOR**

Category	NAICS code or subsector	Description of regulated entities
Industry .....	326150 .....	Urethane and Other Foam Product (except Polystyrene) Manufacturing.
Industry .....	326140 .....	Polystyrene Foam Product Manufacturing.