

compliance, please contact Sector Buffalo (see **ADDRESSES**).

Small businesses may send comments on actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

### Collection of Information

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

### Taking of Private Property

This rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

### Protection of Children

The Coast Guard has analyzed this rule under Executive Order 13045, Protection of Children from

Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

### Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does 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.

### 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. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs 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 procedure; and related management system 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 M16475.1D, which guides 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.

Under figure 2-1, paragraph (34)(g), of the Instruction, an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are not required for this rule because we are disestablishing a safety zone.

### 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.

#### § 165.917 [Removed]

■ 2. Section 165.917 is removed.

Dated: January 4, 2007.

**S.J. Ferguson,**

*Captain, U.S. Coast Guard, Captain of the Port Buffalo, Sector Buffalo.*

[FR Doc. E7-1004 Filed 1-23-07; 8:45 am]

**BILLING CODE 4910-15-P**

### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Parts 52 and 81

[EPA-R09-OAR-2006-0580; FRL-8270-3]

#### Approval and Promulgation of Air Quality Implementation Plans; Designation of Areas for Air Quality Planning Purposes; Arizona; Miami Sulfur Dioxide State Implementation Plan and Request for Redesignation to Attainment; Correction of Boundary of Miami Sulfur Dioxide Nonattainment Area

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action under the Clean Air Act to approve the Miami Sulfur Dioxide Nonattainment Area State

Implementation and Maintenance Plan as a revision to the Arizona state implementation plan. The Arizona Department of Environmental Quality developed this plan to maintain the sulfur dioxide national ambient air quality standards in the Miami (Gila County) area. The maintenance plan contains various elements, including contingency provisions that will be implemented if measured ambient concentrations of sulfur dioxide are above certain trigger levels. EPA is also approving the State of Arizona's request for redesignation of the Miami area from nonattainment to attainment for the sulfur dioxide standards. Lastly, EPA is correcting the boundary of the Miami sulfur dioxide nonattainment area to exclude a noncontiguous township that was erroneously included in the description of the area and to fix a transcription error in the listing of one of the other townships.

EPA is taking these actions consistent with provisions in the Clean Air Act that obligate the Agency to approve or disapprove submittals of revisions to state implementation plans and requests for redesignation. The intended effect is to redesignate the Miami, Arizona sulfur dioxide nonattainment area to attainment, provide for maintenance of the standard for the ten-year period following redesignation, and correct long-standing errors in the codified description of the area.

**DATES:** This rule is effective on March 26, 2007 without further notice, unless EPA receives adverse comments by February 23, 2007. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

**ADDRESSES:** Submit comments, identified by docket number EPA-R09-OAR-2006-0580, by one of the following methods:

1. *Federal eRulemaking Portal:* [www.regulations.gov](http://www.regulations.gov). Follow the on-line instructions.

2. *E-mail:* [vagenas.ginger@epa.gov](mailto:vagenas.ginger@epa.gov).

3. *Mail or deliver:* Ginger Vagenas (Air-2), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

*Instructions:* All comments will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and

should not be submitted through the [www.regulations.gov](http://www.regulations.gov) or e-mail. [www.regulations.gov](http://www.regulations.gov) is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. 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.

**Docket:** The index to the docket for this action is available electronically at [www.regulations.gov](http://www.regulations.gov) and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Ginger Vagenas, Air Planning Office, (415) 972-3964 or by e-mail at [vagenas.ginger@epa.gov](mailto:vagenas.ginger@epa.gov).

**SUPPLEMENTARY INFORMATION:** Elsewhere in this **Federal Register**, we are proposing approval and soliciting written comment on this action. Throughout this document, the words "we," "us," or "our" mean U.S. EPA.

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#### I. Summary of Today's Direct Final Action

On June 26, 2002, the Arizona Department of Environmental Quality ("ADEQ" or "State") submitted to EPA Region IX its Miami Sulfur Dioxide State Implementation and Maintenance Plan and its request for redesignation to attainment ("Miami SO<sub>2</sub> Maintenance Plan" or "submittal"). The submittal summarizes the progress the State has made in attaining the sulfur dioxide (SO<sub>2</sub>) national ambient air quality standards (NAAQS) in the Miami nonattainment area (Gila County, Arizona) ("Miami area") and includes a plan to assure continued attainment of the SO<sub>2</sub> NAAQS for at least the next 10 years. The June 26, 2002 submittal also includes a request for redesignation of the boundary of the area and for redesignation of the status of the area, as amended, to "attainment" under section 107(d) of the Clean Air Act ("Act" or CAA). On June 30, 2004, ADEQ submitted certain replacement pages correcting errors in the June 26, 2002 submittal. On June 20, 2006, ADEQ submitted a letter withdrawing the boundary redesignation request and requesting EPA to address the boundary issue as an error correction under CAA section 110(k)(6) instead.

In today's direct final action, because we find that the Miami SO<sub>2</sub> Maintenance Plan meets the requirements for maintenance plans under section 175A of the Act and that the Miami area qualifies for redesignation under CAA section 107(d)(3)(E), we are approving the submittal (as amended by the submittals dated June 30, 2004 and June 20, 2006) as a revision to the Arizona SIP and redesignating the Miami area from nonattainment to attainment for the SO<sub>2</sub> NAAQS. Also, based on a review of the relevant State and EPA materials from the late 1970's, we are correcting errors under CAA section 110(k)(6) in the listing of the townships that comprise the Miami SO<sub>2</sub> nonattainment area to exclude a noncontiguous township and

to fix a transcription error in one of the other townships so listed.

## II. Introduction

The following section discusses the NAAQS for SO<sub>2</sub>, CAA requirements for state implementation plans, SO<sub>2</sub> planning in Arizona generally and in the Miami area more specifically, and sources of emissions in the Miami area.

### A. SO<sub>2</sub> NAAQS

The NAAQS for SO<sub>2</sub> consists of three standards: Two primary standards for the protection of public health and a secondary standard for protection of public welfare. The primary SO<sub>2</sub> standards address 24-hour average and annual average ambient SO<sub>2</sub> concentrations. The secondary standard addresses 3-hour average ambient SO<sub>2</sub> concentrations. The level of the annual SO<sub>2</sub> standard is 0.030 parts per million (ppm), which is equivalent to 80 micrograms per cubic meter (µg/m<sup>3</sup>), not to be exceeded in a calendar year. The level of the 24-hour standard is 0.14 ppm (365 µg/m<sup>3</sup>), not to be exceeded more than once per calendar year. The level of the secondary SO<sub>2</sub> standard is a 3-hour standard of 0.5 ppm (1,300 µg/m<sup>3</sup>), not to be exceeded more than once per calendar year. See 40 CFR 50.2–50.5.

### B. State Implementation Plan

The CAA requires states to implement, maintain, and enforce ambient air quality equal to or better than the NAAQS. A state's strategies for implementing, maintaining, and enforcing the NAAQS are submitted to EPA for approval, and, once approved, become part of the State Implementation Plan (or SIP) for that State. SIPs are compilations of regulatory and non-regulatory elements adopted, submitted, and approved at different times to address various types of changes in circumstances, such as new or revised NAAQS or amendments to the CAA. SIPs include, among other things, the following: (1) An inventory of emission sources; (2) statutes and regulations adopted by the state legislature and executive agencies; (3) air quality analyses that include demonstrations that adequate controls are in place to meet the NAAQS; and (4) contingency measures to be undertaken if an area fails to attain the standard or make reasonable progress toward attainment by the required date. The state must make proposed changes to the SIP available for public review and comment through a public hearing, and must formally adopt the changes before submitting them to EPA for approval.

Upon our approval, a SIP revision becomes federally enforceable.

### C. History of SO<sub>2</sub> Planning in Arizona

#### 1. Development of the SO<sub>2</sub> SIP

In the early 1970's, soon after the Clean Air Amendments of 1970 were passed, Arizona began developing air quality regulations that applied to all Arizona primary copper smelters, including the one operating in the Miami area. These regulations focused on establishing an air quality monitoring network in the areas surrounding the smelters and determining the allowable emission rates from the smelters so that the SO<sub>2</sub> NAAQS could be attained and maintained. Arizona submitted various SIP revisions during the 1970s to establish approvable emission limitations for the primary copper smelters operating in the state. On September 20, 1979, the State submitted its SIP revision to EPA which contained its multi-point rollback (MPR) technique to establish operating limitations on smelters. After EPA's proposed conditional approval on November 30, 1981 (46 FR 58098), Arizona made necessary changes which corrected identified deficiencies. EPA granted full approval of the MPR-based SIP submittal on January 14, 1983 (48 FR 1717), but was not able to grant full approval to the SO<sub>2</sub> SIPs for six smelter areas (including Miami) because they lacked a strategy for addressing fugitive<sup>1</sup> sources of SO<sub>2</sub>.

On November 1, 2004, EPA approved several revisions to the SO<sub>2</sub> SIP, including site-specific requirements, compliance and monitoring, and fugitive emissions standards for existing primary copper smelters. See 69 FR 63321. In that same notice, EPA promulgated a limited approval/limited disapproval of R18–2–Appendix 8, which sets out procedures for calculating sulfur emissions using a sulfur balance method. ADEQ subsequently corrected the identified deficiencies and EPA approved the new version of R18–2–Appendix 8 as a SIP revision on April 12, 2006. See 71 FR 18624. The effective date for our April 12, 2006 final approval is June 12, 2006.

#### 2. Miami SO<sub>2</sub> Nonattainment Area

Originally, the air quality planning area we refer to as the Miami SO<sub>2</sub> nonattainment area was not separately defined but rather was included in a county-wide SO<sub>2</sub> nonattainment area

<sup>1</sup>“Fugitive” in this context refers to emissions that could not reasonably pass through a stack, chimney, vent for a functionally equivalent opening.

(see 43 FR 8969, March 3, 1978). At the request of the state of Arizona, the boundaries were reduced to nine townships in and around the city of Miami (44 FR 21261, April 10, 1979). See also, 40 CFR 81.303.<sup>2</sup> In addition, six adjacent townships were designated as “cannot be classified”. Section 107(d)(1)(C) of the 1990 Clean Air Act Amendments (CAAA) brought forward, by operation of law, the nonattainment designations for areas, such as the Miami SO<sub>2</sub> area, that continued to be designated as nonattainment at the time of enactment of the CAAA, i.e., areas that had not been redesignated to “attainment” prior to November 1990.

### D. Sources of SO<sub>2</sub> Emissions in the Miami Area

The dominant source of SO<sub>2</sub> emissions in the Miami area is the Phelps-Dodge Miami primary copper smelter (“Miami smelter”). Combined stack and fugitive SO<sub>2</sub> emissions from the smelter are limited under the source-specific EPA-approved rule (i.e., R18–2–7–715) to 2,420 pounds per hour annual average, which amounts to approximately 10,368 tons per year based on 357 days of operation (set forth for the permit for this facility) or approximately 10,600 tons per year assuming 365 days per year of smelter operation. Between 1996 and 2000, the smelter's actual SO<sub>2</sub> emissions ranged from 5,737 tons per year to 7,819 tons per year and represented 97 to 99% of the total stationary source SO<sub>2</sub> emissions in the Miami nonattainment area. See tables 4.1, 4.3, and 5.2 of the Miami SO<sub>2</sub> Maintenance Plan. There are several other point sources of SO<sub>2</sub> in the Miami area, all of which are relatively minor: BHP Copper, Pinto Valley; BHP Copper, Miami East Unit; Carlota Copper Company Mine; and the Phelps-Dodge Miami Mine. Viewed collectively, these sources are permitted to emit a total of approximately 100 tons per year. Actual emissions, however, are generally less than 10 tons per year. SO<sub>2</sub> emissions from area and mobile sources

<sup>2</sup>The nine townships that comprise the Miami SO<sub>2</sub> nonattainment area are: T2N, R14E; T2N, R15E; T1N, R13E (only that portion in Gila County); T1N, R14E; T1N, R15E; T1N, R16E; T1S, R14E (only that portion in Gila County); T1S, R14½E; and T1S, R15E. Code of Federal Regulations, title 40, part 81, section 303 (40 CFR 81.303) also identifies six other townships as areas that “cannot be classified.” These six townships are: T2N, R13E (only that portion in Gila County); T2N, R16E; T1S, R13E (only that portion in Gila County); T1S, R16E; T2S, R14E (only that portion in Gila County); and T2S, R15E. All of the townships discussed in this notice relate to the Gila and Salt River Base Line. In section V of this notice, we discuss our decision to amend 40 CFR 81.303 to correct the boundary of the Miami area to exclude a noncontiguous township and to fix a typographical error.

are about 150 tons per year. See sections 4.1 and 4.3 of the Miami SO<sub>2</sub> Maintenance Plan and table 1, below.

TABLE 1.—POINT, AREA, AND MOBILE SOURCES OF SO<sub>2</sub> EMISSIONS IN THE MIAMI SO<sub>2</sub> NONATTAINMENT AREA (TONS PER YEAR, TPY)

Source name or type	Allowable emissions	Actual emissions (1999)
Stationary Sources (not including Phelps-Dodge primary copper smelter):		
BHP Copper, Pinto Valley Unit .....	6 <sup>a</sup>	<1
BHP Copper, Miami East Unit .....	<1	<1
Carlotta Copper Company Mine .....	1	0
Phelps-Dodge Miami Mine .....	92	7
Area and Mobile .....	NA	149
Phelps-Dodge Miami Smelting Operations .....	10,368	7,819
<b>Total From All Sources .....</b>	<b>NA</b>	<b>7,975</b>

<sup>a</sup>When burning diesel; lower limits exist for other fuels.  
 NA = not applicable.  
 Source: Sections 4.1 and 4.3 from the Miami SO<sub>2</sub> Maintenance Plan.

**III. CAA Requirements for Redesignation Requests and Maintenance Plans**

As stated in the summary section of this rule, Arizona has requested that we redesignate the Miami SO<sub>2</sub> nonattainment area to attainment. Any redesignation from nonattainment to attainment requires EPA to determine whether the requirements of Clean Air Act section 107(d)(3)(E), have been met. These criteria are: (1) At the time of the redesignation, we must find that the area has attained the relevant NAAQS; (2) the State must have a fully approved SIP for the area; (3) we must determine that the improvements in air quality are due to permanent and enforceable reductions in emissions resulting from implementation of the SIP and applicable federal regulations and other permanent and enforceable reductions; (4) the state must have met all the nonattainment area requirements applicable to the area; and (5) we must have fully approved a maintenance plan for the area under CAA section 175A.

To evaluate the State's redesignation request for the Miami area, we relied upon the Clean Air Act itself, particularly section 110 and part D (of title I), EPA's NAAQS and SIP regulations in 40 CFR parts 50 and 51, and guidance set forth in "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (57 FR 13498, April 16, 1992), and in the following EPA guidance documents: "Procedures for Processing Requests to Redesignate Areas to Attainment," dated September 4, 1992, from John Calcagni, ("Calcagni Memo"), "Attainment Determination Policy for Sulfur Dioxide Nonattainment Areas," dated January 26, 1995, from Sally L. Shaver, ("Shaver Memo"), and "Part D New Source Review (part D NSR)

Requirements for Areas Requesting Redesignation to Attainment," dated October 14, 1994, from Mary D. Nichols ("Nichols Memo").

**IV. EPA's Evaluation of Redesignation Request and Maintenance Plan for the Miami, Arizona SO<sub>2</sub> Nonattainment Area**

*A. The Area Must Be Attaining the SO<sub>2</sub> NAAQS*

Under CAA section 107(d)(3)(E)(i), in order for an area to be redesignated, we must determine that the area has attained the applicable NAAQS. The air quality data should be representative of the area of highest concentration and should be measured by monitors that remain at the same location for the duration of the monitoring period required for demonstrating attainment. The data should be collected and quality-assured in accordance with 40 CFR part 58 and recorded in EPA's Air Quality System database (AQS) to be available for public review. Under 40 CFR part 58, States certify data that is entered into AQS on an annual basis.

For the purposes of determining whether an area has attained the SO<sub>2</sub> NAAQS, we require no fewer than two consecutive years of "clean" data (i.e., no violations) as recorded in AQS. In addition, to qualify for attainment determination purposes, the annual average and second-highest 24-hour average concentrations must be based upon hourly data that are at least 75 percent complete in each calendar quarter. See 40 CFR 50.4.

The State of Arizona initiated ambient monitoring of SO<sub>2</sub> in the Miami area in 1970. In order to establish coverage sufficient to evaluate the ambient impact of smelter emissions, this initial effort was expanded. Eventually more than sixteen stationary monitoring sites

were established, with as many as seven monitors operating concurrently. Historic ambient SO<sub>2</sub> monitoring site locations and periods of operation are provided in Table 3.1, and Figures 3.1 and 3.2 of the State's submittal.

Following the Miami smelter's compliance with stack emissions limits (using continuous control technology) as required under Arizona Administrative Code (AAC) R9-3-515, which was submitted and approved by EPA as a revision to the Arizona SIP in the 1980's (but since amended and re-codified as R18-2-7-715), the number of SO<sub>2</sub> monitors has decreased. Between 1990 and 1996, the number of monitors varied from three to four and several monitoring locations changed, but since 1997, the three presently-operating monitors have remained at their current locations: the Jones Ranch monitor along Cherry Flats Road, the Ridgeline monitor along Linden Street, and the Townsite monitor along Sullivan Street.

All three presently-operating monitors are located south of the smelter, but vary in distance and elevation relative to smelter sources. The Townsite monitor lies closest to the smelter and at the lowest elevation among the three sites while the Jones Ranch monitor lies furthest from the smelter but at the highest elevation. The Jones Ranch and Townsite monitors are operated by Phelps Dodge using Thermal Electron pulsed fluorescent (TECO) samplers, and the Ridgeline monitor is operated by ADEQ using a Thermo pulse fluorescence analyzer.

Table 2 below summarizes the SO<sub>2</sub> monitoring data collected at the various monitors operated by ADEQ (or, in the case of Jones Ranch, ADEQ or the smelter operator) from 1988 through 2005. ADEQ ended its monitoring at Jones Ranch in 1994, but the smelter

operator continues to monitor SO<sub>2</sub> at that location. Table 3 below presents

estimated annual SO<sub>2</sub> emissions from the smelter over the same time period.

TABLE 2.—SUMMARY OF SULFUR DIOXIDE AMBIENT AIR QUALITY DATA—MIAMI, ARIZONA: 1988–2005

Year	Averaging period	Concentrations (µg/m <sup>3</sup> ) at individual sites			
		Jones ranch	Cities services bldg.	Little acres	Ridgeline
1988	Max 3-hour	655	413	153	—
	Max 24-hour	180	73	29	—
	Annual	21	13	6	—
1989	Max 3-hour	814	169	86	—
	Max 24-hour	133	29	18	—
	Annual	17	4	3	—
1990	Max 3-hour	715	—	—	—
	Max 24-hour	136	—	—	—
	Annual	*16	—	—	—
1991	Max 3-hour	767	—	—	—
	Max 24-hour	143	—	—	—
	Annual	*18	—	—	—
1992	Max 3-hour	875	—	—	—
	Max 24-hour	128	—	—	—
	Annual	*8	—	—	—
1993	Max 3-hour	721	—	—	—
	Max 24-hour	123	—	—	—
	Annual	10	—	—	—
1994	Max 3-hour	566	—	—	—
	Max 24-hour	121	—	—	—
	Annual	16	—	—	—
1995	Max 3-hour	433	—	—	244
	Max 24-hour	122	—	—	89
	Annual	8	—	—	10
1996	Max 3-hour	593	—	—	338
	Max 24-hour	146	—	—	110
	Annual	11	—	—	8
1997	Max 3-hour	820	—	—	524
	Max 24-hour	138	—	—	92
	Annual	10	—	—	5
1998	Max 3-hour	840	—	—	175
	Max 24-hour	123	—	—	40
	Annual	10	—	—	8
1999	Max 3-hour	897	—	—	198
	Max 24-hour	152	—	—	65
	Annual	8	—	—	14
2000	Max 3-hour	895	—	—	307
	Max 24-hour	133	—	—	70
	Annual	11	—	—	17
2001	Max 3-hour	577	—	—	338
	Max 24-hour	145	—	—	110
	Annual	19	—	—	19
2002	Max 3-hour	628	—	—	174
	Max 24-hour	184	—	—	78
	Annual	16	—	—	18
2003	Max 3-hour	578	—	—	250
	Max 24-hour	152	—	—	70
	Annual	21	—	—	13
2004	Max 3-hour	326	—	—	291
	Max 24-hour	99	—	—	78
	Annual	13	—	—	11
2005	Max 3-hour	—	—	—	250
	Max 24-hour	—	—	—	78
	Annual	—	—	—	12

**Notes:** The primary NAAQS for SO<sub>2</sub> are 365 µg/m<sup>3</sup>, 24-hour average, not to be exceeded more than once per calendar year, and 80 µg/m<sup>3</sup>, annual average. The secondary NAAQS for SO<sub>2</sub> is 1,300 µg/m<sup>3</sup>, 3-hour average, not to be exceeded more than once per calendar year. The \* indicates that the annual average does not satisfy summary criteria. The — indicates little or no data in a given year from a given monitor. EPA's AQS database is the source of data shown in *italics*. ADEQ's Air Quality Annual Reports are the sources of the non-italicized data shown in this table.

**Monitoring Sites:**

- The Jones Ranch monitoring site is located along Cherry Flats Road, approximately 1.8 miles south-southeast of the smelter stack at an elevation of 4,100 feet above sea level. ADEQ operated a monitor at this site through 1994. From 1991 through 1994, the State-operated monitor at Jones Ranch was referred to as "Nolan Ranch". More recent data shown in this table for Jones Ranch was collected and compiled by the smelter operator.

- The Cities Services Building monitoring site was located approximately 2.2 miles east-northeast of the smelter stack. ADEQ operated a monitor at this site through 1989.

- The Little Acres monitoring site was located approximately 2 miles southeast of the smelter. ADEQ operated a monitor at this site through 1989.
- The Ridgeline monitoring site, which is the current ADEQ monitoring site for SO<sub>2</sub> in the Miami area, is located along Linden Street at an elevation of 3,600 feet.

TABLE 3.—MIAMI SMELTER SULFUR DIOXIDE EMISSIONS: 1988–2005

Year	Sulfur dioxide emissions tons per year
1988	3,988
1989	6,398
1990	4,141
1991	11,145
1992	4,813
1993	7,678
1994	9,260
1995	5,108
1996	5,737
1997	6,368
1998	6,097
1999	7,819
2000	6,810
2001	9,062
2002	5,667
2003	8,005
2004	8,754
2005	7,366

Sources: Miami SO<sub>2</sub> Maintenance Plan, page 35; e-mail correspondence from Bruce Friedl, ADEQ, dated September 29, 2006.

Review of historic data supports identification of the Jones Ranch monitor as the monitoring location where the highest concentrations are recorded among the network of monitoring locations selected to measure the impact of smelter-related emissions on ambient air quality. We note that the Jones Ranch monitoring site was determined to be the “limiting site” for the purposes of establishing emissions limits for the smelter. ADEQ closed its monitoring site at Jones Ranch in 1994, and while Phelps-Dodge continues to operate an SO<sub>2</sub> monitor at that site, the data is not recorded in AQS.<sup>3</sup> In 1995, ADEQ began monitoring at the Ridgeline site, and no exceedances have ever been recorded there.

Based on a review of the data from the Miami SO<sub>2</sub> Maintenance Plan as well as tables 2 and 3 presented above, we find that the Miami nonattainment area has attained the SO<sub>2</sub> NAAQS and thereby meets the first criterion for redesignation. Our conclusion is based on six basic interrelated facts:

- Ambient SO<sub>2</sub> concentrations in the Miami air quality planning area are determined by emissions from the

Phelps-Dodge primary copper smelter<sup>4</sup> and local meteorological and topographic characteristics, and all other SO<sub>2</sub> sources have essentially no effect on ambient levels in the planning area;

- The monitor at the Jones Ranch site records SO<sub>2</sub> concentrations that are representative of the highest ambient levels in the nonattainment area;

• There are two consecutive and complete years of “clean” data from the Jones Ranch monitor, i.e., the limiting site, as recorded in AQS (1988 and 1989);

• During the 1988–1989 period, maximum concentrations were approximately 60% of the 3-hour-average secondary NAAQS and approximately 50% of the 24-hour-average primary NAAQS, and the highest of the annual-average concentrations measured in the area during this period was approximately 30% of the corresponding primary NAAQS;

• While annual emissions from the smelter have varied from year to year, they have generally been no higher than 50% above those that occurred during the 1988–1989 period; and

• No SO<sub>2</sub> exceedances have been measured at any of the monitoring sites over the 1988 to 2005 period.

#### *B. The Area’s Applicable Implementation Plan Must Be Fully Approved Under CAA Section 110(k)*

Under CAA section 107(d)(3)(E)(ii), the SIP for the Miami area must be fully approved under CAA section 110(k) of the Act. We examined the applicable SIP for Arizona and also looked at the disapprovals listed in 40 CFR 52.125 and have determined that no disapprovals listed remain relevant to the applicable SIP. Arizona has a fully approved SIP with respect to SO<sub>2</sub> in the Miami area.

#### *C. The Improvement in Air Quality Must Be Due to Permanent and Enforceable Reductions in Emissions*

CAA section 107(d)(3)(E)(iii) requires that EPA determine that the improvement in air quality is due to permanent and enforceable reductions

<sup>4</sup> There is one significant point source located outside the Miami nonattainment area but within 50 kilometers of the Miami nonattainment area. The ASARCO Hayden Smelter is located approximately 46 kilometers south of the Miami smelter. However, because the ASARCO Hayden smelter is geographically separated from the Miami area by the 7,000 foot Pinal Mountains, its emissions do not have an impact on air quality in the Miami area.

in emissions resulting from implementation of the SIP and/or applicable federal measures. Figure 6.1 of the Miami SO<sub>2</sub> Maintenance Plan (as amended in ADEQ’s submittal dated June 30, 2004) illustrates the significant decline in emissions from the Miami smelter since the 1970’s in inverse proportion to the level of control over smelter emissions sources.

Control over the smelter’s SO<sub>2</sub> emissions has been made permanent and enforceable through EPA approval of State rules limiting such emissions as a revision to the Arizona SIP (specifically, R18–2–715, R18–2–715.01, R18–2–715.02, and R18–2–Appendix 8) and through ADEQ’s issuance of a title V permit for the Miami smelter.

Arizona’s primary copper smelter rules and ADEQ’s title V permit contain enforceable emission limitations that cap emissions at a level that has been shown to be protective of the NAAQS. Any relaxation to the SIP-approved limits must be approved by EPA as a revision to the Arizona SIP, and EPA may not approve any such SIP revision without a demonstration that the relaxation in the limits would not interfere with attainment or maintenance of the NAAQS. See CAA section 110(l). Therefore, we find that the improvement in ambient SO<sub>2</sub> concentrations in the Miami, AZ area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP.

#### *D. The Area Must Have Met All Applicable Requirements Under Section 110 and Part D*

Under CAA section 107(d)(3)(E)(v), we must determine whether the State of Arizona has met all requirements under section 110 and under part D (of title I) of the CAA applicable to the Miami SO<sub>2</sub> nonattainment area.

##### 1. Section 110 Requirements

CAA section 110 contains the general requirements for SIPs (enforceable emissions limits, ambient monitoring, permitting of new sources, adequate funding, etc.). EPA’s guidance for implementing section 110 of the Act is discussed in the General Preamble to Title I (57 FR 13498, April 16, 1992). Over the years, we have approved Arizona’s SIP as meeting these basic requirements. The SIP includes enforceable emission limitations; requires monitoring, compiling, and analyzing of ambient air quality data; requires preconstruction review of new

<sup>3</sup> ADEQ has committed to working with Phelps-Dodge to begin entering SO<sub>2</sub> monitoring data collected at the Jones Ranch site to AQS beginning with the first quarter of 2008. See letter from Nancy C. Wrona, Director, Air Quality Division, ADEQ, to Deborah Jordan, Air Division Director, EPA—Region IX, dated October 18, 2006.

major stationary sources and major modifications to existing ones; provides for adequate funding, staff, and associated resources necessary to implement its requirements; and requires stationary source emission monitoring and reporting.

## 2. Part D Requirements

Before an area can be redesignated to attainment, it must have fulfilled the applicable requirements under part D (of title I). For this area, the relevant requirements are found in subparts 1 and 5 of part D. Subpart 1 of part D specifies the basic requirements applicable to all nonattainment areas. Subpart 5 sets out additional provisions for areas designated nonattainment for SO<sub>2</sub>. As discussed below, EPA finds that Arizona has met the requirements of subpart 1 of part D, specifically sections 172(c) and 176, and subpart 5 as applicable for the Miami SO<sub>2</sub> nonattainment area.

### a. Section 172

CAA section 172 contains the general requirements for nonattainment SIPs. A thorough discussion of the requirements of 172(c) can be found in the General Preamble for the implementation of title I (57 FR 13498, April 16, 1992). Additional guidance can be found in the Calcagni memo.

EPA has interpreted the requirements of CAA sections 172(c)(2) (reasonable further progress—RFP), 172(c)(6) (other measures), and 172(c)(9) (contingency measures) as not relevant to a redesignation request because they only have meaning for an area that is not attaining the standard (see the General Preamble and the Calcagni Memo), and as discussed above in section IV.A. of this notice, we find that the Miami area is attaining the SO<sub>2</sub> standard. Furthermore, the State has not sought to exercise options that would trigger section 172(c)(4) (identification of certain emissions increases). Thus, this provision is also not relevant to this redesignation request. The other provisions under 172(c) are discussed below.

*Reasonably available control measures.* Under CAA section 172(c)(1), reasonably available control measures (RACM), which include requirements for reasonably available control technology (RACT), are required for existing sources in nonattainment areas. In 1983, we approved the State's submittal of Rule R9-3-315, a predecessor to the State's current smelter rules codified at Arizona Administrative Code (AAC) R18-2-715. See 48 FR 1717 (January 14, 1983). This rule limited stack emissions from

primary copper smelters, including the smelter in the Miami area. We concluded, however, that the control strategy for SO<sub>2</sub> in Arizona's six SO<sub>2</sub> nonattainment areas was incomplete due to the failure to address fugitive emissions problems. See 48 FR 1717 (January 14, 1983) and 40 CFR 52.125(a)(1).

In 1998, 2003, and 2006, the State submitted amended rules (AAC R18-2-715 (sections F, G, and H), R18-2-715.01, R18-2-715.02, and R18-2-Appendix 8).<sup>5</sup> These rules address both fugitive and stack emissions from smelters and, in approving the rules, we found that the amended rules met the RACT requirement under CAA sections 172(c)(1) and 191(b). See 69 FR 26789 at 26788 (May 14, 2004), 69 FR 63321 (November 2, 2004), and 71 FR 18624 at 18625 (April 12, 2006). Furthermore, because the area has attained the standard, no further demonstration that RACM has been implemented need be submitted by the State.

*Emissions inventory.* The emissions inventory requirement of section 172(c)(3) is satisfied by the maintenance plan inventory requirements. The maintenance plan inventory is evaluated below, in section IV.E.1.

*NSR permit program.* Section 172(c)(5) requires new source review (NSR) permits for the construction and operation of new and modified major stationary sources located in nonattainment areas. ADEQ is the agency responsible for implementing the nonattainment area NSR permit program in the Miami area. Under ADEQ's rules, all new major sources and modifications to existing major sources are subject to the NSR requirements of these rules.

We have not yet fully approved the ADEQ NSR rules.<sup>6</sup> We have, however, determined that an area being redesignated from nonattainment to attainment does not need to have an approved NSR program prior to redesignation, provided that the area demonstrates maintenance of the standard without nonattainment NSR in effect. See memorandum from Mary Nichols dated October 14, 1994 ("Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment.") We have

<sup>5</sup> A more extensive summary of the regulatory history of copper smelters in Arizona is included in EPA's proposed action on these rules. See 69 FR 26786 (May 14, 2004).

<sup>6</sup> ADEQ's NSR rules are included in the preconstruction review and permitting provisions of Arizona Administrative Code (AAC), Title 18, Chapter 2, Articles 3 and 4. EPA approved an earlier version of ADEQ's NSR requirements (AAC R9-3-302) on May 5, 1982 (47 FR 19328) and August 10, 1988 (53 FR 30220).

determined that the maintenance demonstration for Miami does not rely on nonattainment NSR.

Prevention of significant deterioration (PSD) is the permitting program that applies in attainment areas. PSD was established to preserve air quality in areas that are meeting the NAAQS. The PSD program requires new, modified, or reconstructed stationary sources to undergo preconstruction review and to apply best available control technology. In addition, sources are required to review PSD increment consumption and undertake preconstruction modeling. ADEQ has an EPA-approved PSD permitting program (Arizona Air Pollution Rule R9-3-304) for all criteria pollutants except respirable particulate matter (PM<sup>10</sup>). See 48 FR 19878 (May 3, 1983). The federal PSD program for PM<sup>10</sup> was delegated to the State on March 12, 1999. ADEQ's partially approved, partially delegated PSD program will apply automatically to new major sources or major modifications to existing sources of SO<sub>2</sub> in the Miami area once the area is redesignated to attainment.

*Compliance with section 110(a)(2).* Under section 172(c)(7), plan provisions submitted to satisfy part D must meet the applicable provisions of section 110(a)(2) of the CAA. As noted in section IV.B. above, the Miami portion of the Arizona SIP meets these requirements.

*Equivalent techniques.* Under section 172(c)(8), EPA may allow the use of equivalent modeling, emission inventory, and planning procedures, unless EPA determines that the proposed techniques are, in the aggregate, less effective than the methods specified by EPA. The Miami SO<sub>2</sub> Maintenance Plan relies on an equivalent modeling technique referred to as Multipoint Rollback (MPR). MPR was used to derive emissions limits for the Miami smelter that provide for attainment and maintenance of the SO<sub>2</sub> NAAQS. The State's rules containing MPR-derived emission limits for the Miami smelter were approved by EPA on January 14, 1983 (48 FR 1717) and amended versions of the rules were approved by EPA on November 1, 2004 (69 FR 63321).

### b. Section 176

Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs, and projects developed, funded or approved

under title 23 U.S.C. or the Federal Transit Laws (“transportation conformity”) as well as to all other federally supported or funded projects (“general conformity”). Because EPA does not consider SO<sub>2</sub> a transportation-related pollutant, only the requirements related to general conformity apply to the Miami SO<sub>2</sub> area. The State of Arizona adopted general conformity criteria and procedures as a revision to the Arizona SIP. EPA approved Arizona’s general conformity SIP on April 23, 1999 (64 FR 19916). Thus, the requirements of CAA section 176 have been satisfied.

c. Subpart 5

Subpart 5 of part D contains additional provisions for areas designated nonattainment for SO<sub>2</sub>. Under CAA section 191(b), States with existing nonattainment areas for the primary SO<sub>2</sub> NAAQS where those areas lack fully approved SIPs, including part D plans, must submit implementation plans meeting the requirements of subpart 1 of part D. As discussed in section IV.D.2.a of this notice, the State of Arizona has met the requirements of subpart 1 of part D for the Miami area. Under CAA section 192(b), such areas were required to meet the primary SO<sub>2</sub> NAAQS as expeditiously as possible but no later than November 15, 1995. As discussed in section IV.A of this notice, the Miami SO<sub>2</sub> nonattainment area met the primary SO<sub>2</sub> standards well before the applicable attainment date of

November 15, 1995 and has continued to attain since then.

E. The Area Must Have a Fully Approved Maintenance Plan

Section 107(d)(3)(E)(iv) of the Act makes EPA approval of a maintenance plan meeting the requirements of section 175A another prerequisite to redesignation. Under section 175A, a maintenance plan must provide for maintenance of the NAAQS for at least 10 years after redesignation, and include any additional control measures as may be necessary to ensure such maintenance. In addition, maintenance plans are to contain such contingency provisions as EPA deems necessary to assure the prompt correction of a violation of the NAAQS that occurs after redesignation. The contingency measures must include, at a minimum, a requirement that the state will implement all control measures contained in the nonattainment SIP prior to redesignation.

The Calcagni Memo contains EPA guidance on the contents of maintenance plans submitted for the purposes of meeting section 175A. Generally, such plans should address the following five topics: the attainment emissions inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan.

Lastly, under CAA section 175A(b), states are required to submit a subsequent maintenance plan eight years after redesignation providing for

maintenance of the NAAQS for an additional 10-year period beyond the initial 10-year maintenance period.

1. Attainment Inventory

The Miami SO<sub>2</sub> Maintenance Plan includes an emissions inventory for point sources, area sources, and mobile sources for 1999 and 2000 as well as a projection of emissions to 2015. See table 4 below. As discussed in section IV.A of this notice, the Miami area has continued to attain the SO<sub>2</sub> NAAQS since at least 1990 and thus 1999 and 2000 are acceptable as the basis upon which to develop an “attainment emissions inventory” for the purposes of a maintenance plan.

ADEQ developed the area and mobile source estimates shown in table 4 based on EPA’s AIRData for Gila County. Point source estimates are based on ADEQ annual emissions inventory data. See section 4.0 and appendix B of the Miami SO<sub>2</sub> Maintenance Plan. Sulfur dioxide emissions from the Phelps-Dodge smelter copper smelter itself are based on continuous emission monitoring systems and the assumption that stack emissions represent 25 percent of the facility’s total annual (i.e., stack plus fugitive) SO<sub>2</sub> emissions. The actual percentage of total facility emissions emanating from the stacks varies from year to year (e.g., from 19 percent to 33 percent over the 1996 to 2000 period) but the 25 percent assumption is a reasonable average annual value based on material balance calculation methods.

TABLE 4.—SO<sub>2</sub> EMISSIONS INVENTORIES FOR 1999, 2000, AND PROJECTED INVENTORY FOR 2015 FOR THE MIAMI AREA (IN TPY)

Source type	1999	2000	2015
Area and Mobile .....	149	150	162
Point (excluding Miami smelter) .....	7	4	9
Miami Smelter .....	7,819	6,810	8,000
<b>Total .....</b>	<b>7,975</b>	<b>6,964</b>	<b>8,171</b>

Source: Miami SO<sub>2</sub> Maintenance Plan, tables 4.4 and 4.6.

Based on our review of the submitted plan, we conclude that the emissions inventory is based on reasonable methods and assumptions and is comprehensive and accurate.

2. Maintenance Demonstration

EPA allows states to demonstrate maintenance of the NAAQS by either showing that future emissions of a pollutant or its precursors will not exceed the level of the attainment inventory, or by modeling to show that the future mix of sources and emission rates will not cause a violation of the

NAAQS.<sup>7</sup> In the case of the Miami nonattainment area, the demonstration of maintenance relies on both a projected emissions inventory for future years of 2005, 2010, and 2015 for sources in the Miami nonattainment area as well as SO<sub>2</sub> emission limits for the Miami smelter that were developed using a variant of Multipoint Rollback (MPR) modeling and intended to minimize the probability of an exceedance of the SO<sub>2</sub> NAAQS due to smelter emissions.

<sup>7</sup> See Calcagni Memo, at p. 9.

The inventory from the Miami SO<sub>2</sub> Maintenance Plan shows that about 98% of the total SO<sub>2</sub> emissions in the Miami nonattainment area are generated by the smelter.<sup>8</sup> Projections for the Miami smelter itself anticipate a minor increase from those in 1999 [7,819 tons per year (tpy)] to 2005 and beyond (8,000 tpy). The remaining point sources in the nonattainment area have existing permits that limit their allowable emissions to less than 100 tpy. Projections for area and mobile sources

<sup>8</sup> See appendix B of submitted plan.



(increasing from 149 tpy<sup>9</sup> to 162 tpy) are based on anticipated moderate increases in population and the assumption that SO<sub>2</sub> emissions from such sources are proportionate to the population. Total projected actual emissions of point, area, and mobile sources are expected to remain relatively constant, with total SO<sub>2</sub> emissions projected to be less than 24 tons on a daily basis and approximately 8,200 tons on annual basis by 2015.<sup>10</sup> This represents an increase of only about 2 percent from 1999 levels. Thus, throughout the maintenance period, the Miami smelter is expected to continue to be the overwhelming source of SO<sub>2</sub> emissions in the area.

The emissions projections for the smelter (from 7,819 tpy) in 1999 to 8,000 tpy in 2005 and beyond are based on the expectation that, through 2015, the copper industry will not expand. While the expectation of continued low price pressures on copper may well have been reasonable in 2002 when the maintenance plan was adopted, changes in the copper market in fact have occurred over the past several years raising the price for copper thereby leading to a reasonable expectation of higher production levels at the Miami smelter than anticipated in the Miami SO<sub>2</sub> Maintenance Plan.

Nonetheless, the demonstration of maintenance of the SO<sub>2</sub> NAAQS in the Miami area does not rely solely on the emissions projections, but also on the SO<sub>2</sub> emission limits established under SIP rule AAC R18-2-715 (approved by EPA in 2004 and, as amended, in 2006) and incorporated into the title V operating permit for the Phelps-Dodge Miami smelter. These limits cap stack emissions at 604 pounds per hour (lbs/hr) on an annual average basis and total facility (i.e., stacks plus fugitives) emissions at 2,420 lbs/hr on an annual basis. SIP rule AAC R18-2-715 also establishes a cumulative occurrence table that caps the number of occurrences of 3-hour average emissions above various levels with, for example, only two occurrences allowed per year of stack SO<sub>2</sub> emissions greater than 5,900 lbs/hr, 3-hour average. The total facility emissions cap (2,420 lbs/hr) corresponds to approximately 10,600 tpy assuming round-the-clock, year-round operation (the permit however cites 10,400 tpy based on 357 work days in a given year).

<sup>9</sup> The most recent quality assured inventory is from 1996. The 1999 SO<sub>2</sub> inventory for area and mobile sources is based on economic growth activity.

<sup>10</sup> See table 4.6 of submitted plan.

As explained below, ADEQ has demonstrated that the new limits are protective of the SO<sub>2</sub> NAAQS. In order to increase the smelter's emissions limits the State would have to submit a SIP revision that demonstrates that, consistent with CAA section 110(l), the revision does not interfere with maintenance of the SO<sub>2</sub> NAAQS. Therefore, the emission limits for the smelter, supported by the emissions inventory projections that show that the smelter will remain the overwhelming source of SO<sub>2</sub> emissions in the area for the foreseeable future, in essence provide the demonstration necessary to show that the Miami area will continue to attain the SO<sub>2</sub> standard indefinitely, and thereby comply with CAA section 175A(a), which requires maintenance plans to provide for maintenance of the NAAQS for at least 10 years after redesignation.

Given the link then between the SO<sub>2</sub> emission limits on the Phelps-Dodge Miami smelter and the demonstration of maintenance, the Miami SO<sub>2</sub> Maintenance Plan provides a detailed explanation of how the limits were derived and how they minimize the probability of exceedance of the SO<sub>2</sub> NAAQS due to smelter operations. See chapter 5 of the submitted plan. First, it is important to note that ADEQ used a variant of the Multipoint Rollback (MPR) method to derive these emissions limits. In brief, MPR uses the ratio of monitored concentrations to the NAAQS to determine how much to scale the smelter's existing hourly distribution of emission rates so that they meet the NAAQS. Unlike simple rollback, which yields a single maximum emission rate never to be exceeded, MPR yields limitations on the number of times per year that the facility may exceed each of a series of emission rates. In the resulting cumulative occurrence table, the larger the emissions rate, the fewer number of occurrences are allowed per year. The emission rates are chosen so that the full hourly distribution results in attainment of the NAAQS on a probabilistic basis. This approach has been approved by EPA for use with smelters because of their highly variable emission rates.<sup>11</sup> ADEQ used a variant of MPR, as explained further below, to show that the new limits are protective of the NAAQS.

<sup>11</sup> See EPA Final Rule, "Approval and Promulgation of Implementation Plans; Arizona Plan Revision: Sulfur Oxides Control Strategy and Regulations for Existing Nonferrous Smelters," 48 FR 1717 (January 14, 1983); and the SO<sub>2</sub> Guideline Document, EPA-452/R-94-008, February 1994, section 6.4.4.

ADEQ derived the original emissions limits for the smelter in the late 1970's using MPR, and adopted the original smelter SO<sub>2</sub> emissions rule in 1979. To derive new, enforceable limits on the smelter stacks, it was necessary to distinguish stack emissions from total emissions, which include fugitives (those emissions not vented through the stack). The new emissions limits were derived by apportioning the old facility-wide emission limits between the stack emissions and fugitive emissions. Using mass balance, the total amount of emissions can be calculated from the total mass of sulfur entering the plant in raw materials. Stack emissions are monitored, and account for about 25% of the total sulfur. The fugitive emissions were then determined by subtracting the monitored stack emissions from the calculated total emissions. Because the release height of the stack and fugitive emissions is similar, and their emissions are fairly well-mixed by the time they reach the monitor, the stack also accounts for 25% of the observed concentration at the monitor, on average. Thus, 25% of the existing facility-wide limits (2,420 lb/hr) are what the stack must be limited to (605 lb/hr; the SIP rule caps the emissions at 604 lb/hr, which is slightly more conservative) in order to meet the NAAQS.

This provides only an annual average emission rate. To derive MPR-style limits on allowed occurrences of various emission rates (i.e., a cumulative occurrence table), ADEQ used the shape of the current hourly emission distribution<sup>12</sup> and scaled it to match the required annual average emission rate. Since the new average limit is 1.75 times the current average actual emissions (604 lb/hr limit vs. 345 lb/hr current average), the current distribution and occurrence emission levels were scaled up by this factor. The result is new occurrence limits consistent with the new average limit of 604 lb/hr, the level needed to meet the NAAQS based upon the 1979 MPR analysis and the 25% stack fraction.

However, scaling according to the 1979 limits assumes that the 1979 relationship between emissions and ambient concentrations has not changed. There have been substantial operational and emissions changes at the smelter since the 1979 average

<sup>12</sup> Emissions from each hour of 1999 were averaged with the corresponding hour in 2000, which represents a minor departure from how original MPR was carried out; i.e., using all data in a single distribution. EPA believes any resulting changes to the calculations are insignificant in the context of the Miami MPR analysis and finds this to be an acceptable approach.

emission limit and occurrence table were derived, which could have altered the shape of the emissions curve. If the current distribution shape has a broader peak than the 1979 one, then there will be relatively more instances of high ambient impacts, and so scaling of the average will not guarantee NAAQS-protective limits on short-term emissions.

In order to address this, ADEQ carried out a second step in the submittal that is more consistent with the MPR

procedure, in that it incorporated the ambient effect of the current emissions distribution, rather than relying on the 1979 relationship. ADEQ used monitoring data from 1996–2000, and emissions during that same period. The new emission limits, though a decrease from the old limits, represent an increase over the current actual emissions, and so should be shown to be consistent with the NAAQS. ADEQ assumed the smelter operated at the higher emissions rate allowed in the

new limits, and applied the fractional emissions increase to ambient 3-hour, 24-hour, and annual SO<sub>2</sub> concentrations. This uses the current relationship between emissions and ambient concentration to show that the scaled-up emissions allowed in the new limits are consistent with the NAAQS. The result of this “rollback” scaling is shown in figure 5.4 of the Miami SO<sub>2</sub> Maintenance Plan, and also in table 5 below.

TABLE 5.—PREDICTED AMBIENT SO<sub>2</sub> CONCENTRATIONS BASED ON EMISSIONS LIMITS

Averaging time	Predicted level µg/m <sup>3</sup>	NAAQS µg/m <sup>3</sup>	Percent of NAAQS
3-hour .....	1,180	1,300	91
24-hour .....	230	365	63
Annual .....	25	80	31

**Note:** The predicted 3-hour and 24-hour average concentrations represent second-high values in a given year. Predicted levels listed in this table are derived from figure 5.4 of the Miami SO<sub>2</sub> Maintenance Plan.

With this second verification step, ADEQ used a procedure consistent with MPR, an EPA-approved method for smelter attainment demonstrations, to show that the new limits are protective of the NAAQS. We find that the protection of the NAAQS provided by the smelter’s SO<sub>2</sub> emissions limits, considered in the context of emissions projections that show that the smelter will remain the overwhelming source of SO<sub>2</sub> emissions in the area for the foreseeable future, sufficient to demonstrate maintenance through the maintenance period and beyond.

3. Monitoring Network

Currently, there are three monitoring sites in the Miami nonattainment area: the Ridgeline monitor operated by ADEQ, and the Jones Ranch and Townsite monitors operated by Phelps-Dodge. ADEQ and Phelps-Dodge Miami commit to continue monitoring ambient SO<sub>2</sub> concentrations at their respective sites for at least 10 years following the approval of the Miami SO<sub>2</sub> Maintenance Plan. Phelps-Dodge has the option of shutting down the monitors if the smelter has not operated for more than 2 years but commits to resume monitoring at the two sites three months prior to restarting of smelting operations. In addition, ADEQ commits to discussing changes to monitor locations with EPA and indicates that all ambient monitoring data will continue to be quality-assured in accordance with the requirements of 40 CFR part 58, Ambient Air Quality Surveillance. See section 7.2 of the submitted plan. We find that the Miami SO<sub>2</sub> Maintenance Plan adequately

provides for continued monitoring of SO<sub>2</sub> concentrations in the Miami area.

At the present time, only the SO<sub>2</sub> monitoring data collected at ADEQ’s Ridgeline site is certified and entered into AQS. However, because the Jones Ranch site has historically measured the highest SO<sub>2</sub> concentrations in the area and because the data from Jones Ranch is used in connection with the contingency plan, EPA has requested that ADEQ commit to working with Phelps-Dodge to ensure that SO<sub>2</sub> monitoring data from the Jones Ranch site is entered into AQS. By letter to EPA dated October 18, 2006, ADEQ has agreed that entering SO<sub>2</sub> monitoring data from the Jones Ranch site into AQS is appropriate and has committed to working with Phelps-Dodge to accomplish this task no later than the first quarter of 2008. This commitment provides additional assurance that a suitable monitoring network will be maintained within the Miami area through the maintenance period and provides additional support for the contingency plan discussed below in section IV.E.5 of this action.

4. Verification of Continued Attainment

ADEQ intends to track the progress of the Miami SO<sub>2</sub> Maintenance Plan through implementation and enforcement of the monitoring, reporting, and certification procedures to which permitted sources are subject under AAC R18–2–306 and R18–2–309. As a permitted source, the Phelps-Dodge Miami smelter is subject to these State requirements. ADEQ also notes that it has authority pursuant to Arizona Revised Statutes section 49–101 to

monitor and ensure source compliance with all applicable rules and permit conditions. See section 7.3 of the submitted plan. Lastly, we note that ADEQ is required under 40 CFR part 51, subpart A, to report emissions data for large stationary sources, such as the Phelps-Dodge Miami smelter, on an annual basis. Considered together, the submitted plan and relevant EPA regulations adequately provide for verification of continued attainment of the SO<sub>2</sub> NAAQS in the Miami area.

5. Contingency Plan

Section 175A(d) of the CAA requires that maintenance plans include contingency provisions to promptly correct any violation of the NAAQS that occurs after redesignation of the area. The Calcagni memo provides additional guidance, noting that, although a state is not required to have fully adopted contingency measures that will take effect without further action by the state in order for the maintenance plan to be approved, the maintenance plan should ensure that the contingency measures are adopted expeditiously once they are triggered. Specifically, the maintenance plan should clearly identify the measures to be adopted, include a schedule and procedure for adoption and implementation of the measures, and contain a specific time limit for action by the state. In addition, the state should identify specific indicators, or triggers, that will be used to determine when the contingency measures need to be implemented.

Because the Phelps-Dodge smelter is the overwhelming source of SO<sub>2</sub> emissions in the Miami area, the

contingency plan contained in section 7.4 of the Miami SO<sub>2</sub> Maintenance Plan focuses on ambient impacts and emissions attributable to it. The contingency plan uses monitored ambient concentrations of SO<sub>2</sub> to trigger actions designed to ensure continued attainment of the SO<sub>2</sub> NAAQS. The trigger levels and associated notification procedures and associated actions are described below.

**Notification Procedure:** If either of the Phelps-Dodge monitors or the ADEQ-operated monitor record ambient 3-hour average SO<sub>2</sub> levels between 0.425 ppm and 0.5 ppm (i.e., levels greater than 85%, but less than 100%, of the secondary SO<sub>2</sub> NAAQS),<sup>13</sup> the entity that operates the monitor is required to notify the other party. A second occurrence in a calendar year of ambient concentrations between 0.425 ppm and 0.5 ppm, or an exceedance of the secondary NAAQS is defined as the protective trigger level (PTL). The response required by a triggering of the PTL is divided into two action levels.

**First Action Level:** If the PTL is tripped, Phelps-Dodge must undertake a series of inspections and a full calibration check of the ambient SO<sub>2</sub> analyzers and recording systems in order to validate the data. If the data are determined to be valid, Phelps-Dodge must perform any needed repairs or corrective actions and implement specified preventive measures. The source must also submit a report to ADEQ by the close of the second business day following an exceedance in which it describes the nature of the event, any corrective actions taken to resolve the event, and recommendations for future corrective actions to avoid recurrence of such an event.

**Second Action Level:** If the source is unable to correct the triggering of the PTL by implementing the actions required under the first action level, Phelps-Dodge must undertake an analysis to identify additional control measures needed to ensure maintenance of the NAAQS. Phelps-Dodge is required to submit recommendations to ADEQ within 30 business days following the triggering of the PTL. Using all available data, ADEQ will determine the cause and appropriate resolution of the event, and will require the adoption and implementation of additional control measures, as needed.

<sup>13</sup> See Table 5, above, which shows that the three-hour SO<sub>2</sub> NAAQS is "limiting" in the sense of being the most constraining on emissions, since this averaging time has the least room for additional emission increases. This is consistent with past findings that the three-hour average requires the most stringent reduction in emissions. See 46 FR 58098 (November 30, 1981) at page 58102.

ADEQ commits to initiating changes to the rules or to the permit as soon as possible.

**Special Measure:** A violation of the secondary NAAQS (i.e., a second exceedance in a calendar year) triggers the implementation of a special measure within 24 hours of the monitored violation that requires the source to reduce its operating rate by the same percentage as that by which the 3-hour standard was exceeded. These circumstances also require that the source comply with first action level requirements and, if necessary, second action level requirements. A second and higher concentration violation of the secondary NAAQS within the same calendar year requires that the operating rate be recalculated accordingly.

Upon review of the contingency plan in the Miami SO<sub>2</sub> Maintenance Plan summarized above, we find that ADEQ has established a workable contingency plan, including trigger levels, notification procedures, and appropriate actions, for promptly correcting any violations of the SO<sub>2</sub> NAAQS that occur after the redesignation of the Miami area to attainment and thereby satisfies the requirements of CAA section 175A(d).

#### 6. Subsequent Maintenance Plan Revisions

As noted previously, CAA section 175A(b) requires states to submit a subsequent maintenance plan revision eight years after the redesignation request is approved by EPA. The subsequent maintenance plan is to provide for maintenance of the NAAQS for an additional 10 years following the first 10-year maintenance period. ADEQ has made a commitment to submit a subsequent maintenance plan to EPA eight years into the initial 10-year maintenance period (see page 53 of the submitted plan) and thereby satisfies CAA section 175A(b).

#### 7. Conclusion

ADEQ's Miami SO<sub>2</sub> Maintenance Plan adequately addresses the five basic topics that such plans should address, including attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and contingency plan, and also provides for submittal of a subsequent maintenance plan. Therefore, we approve the Miami SO<sub>2</sub> Maintenance Plan as a revision to the Arizona SIP and thereby satisfy the related redesignation criterion of CAA section 107(d)(3)(E)(iv).

## V. Boundary Correction

### A. Background

Under section 107(d) of the Clean Air Act Amendments of 1977, each State was directed to submit to EPA a list identifying the NAAQS attainment status for all areas within the State. EPA was required under section 107(d)(2) of the 1977 Amended Act to promulgate the State lists, with any necessary modifications, within 60 days of their submittal. In 1978, in the absence of recommendations from the State of Arizona, EPA promulgated the original area designations for Arizona for each of the NAAQS. See 43 FR 8962 (March 3, 1978).<sup>14</sup> EPA selected counties as the geographic basis for the original nonattainment area designations for SO<sub>2</sub> in Arizona and designated all of Gila County as a nonattainment area for the SO<sub>2</sub> NAAQS. See 43 FR 8962, at 8968.

On August 15, 1978, the State of Arizona submitted its area designations to EPA with the intent that EPA redesignate the original EPA-promulgated nonattainment areas to reflect the State's recommendations. The State's August 15, 1978 submittal included a background document prepared by the Arizona Department of Health Services and entitled, "Identification of Areas within Arizona that do or do not meet National Ambient Air Quality Standards (August 1, 1978)" (referred to herein as the "State's designations background report"). The State's designations background report identifies townships, or identifiable portions thereof, as the smallest geographic unit defining air quality planning areas in Arizona.

With respect to SO<sub>2</sub> in the Miami area, the State's designations background report includes a map showing a nonattainment area comprised by a total of nine townships: two townships in which the major source of SO<sub>2</sub> emissions in the area (i.e., the primary copper smelter) is located (T1N, R14E and T1N, R15E) and seven adjacent townships (or portions thereof) to the east, west, north and south. The State's map also shows six additional adjacent townships with the designation of "cannot be classified."

In the State's designations background report, the State provided a specific list of townships defining the nonattainment and "cannot be classified" areas. However, the list of townships and the map illustrating the areas are not entirely consistent with

<sup>14</sup> EPA has codified the designations for air quality planning areas at 40 CFR part 81. The Arizona area designations are codified at 40 CFR 81.303.

one another. The State's list of townships for the Miami SO<sub>2</sub> nonattainment area includes, among others, the following townships moving west to east: T1N, R13E; T1N, R14E; T1N, R15E; and T1N, R16E. The township immediately east of T1N, R15E, however, is T1N, R15½E not T1N, R16E, and thus the list inadvertently created a noncontiguous nonattainment area with a single township (T1N, R16E) isolated from the rest of the larger designated area.<sup>15</sup> In contrast, the map submitted as part of the designations background report shows the nonattainment area boundary as a single contiguous area including both T1N, R15½E and the western half of T1N, R16E. On April 10, 1979 (44 FR 21261), we approved the redesignation request by Arizona for the Miami SO<sub>2</sub> nonattainment area without modification and thereby codified the State's submitted list of townships (not the map) as the geographic definition for the Miami SO<sub>2</sub> nonattainment area thereby creating a noncontiguous nonattainment area (i.e., one township isolated from the rest of the townships comprising the nonattainment area). In its June 26, 2002 submittal of the Miami SO<sub>2</sub> Maintenance Plan and supplemental June 30, 2004 submittal, ADEQ requested that we redesignate the boundaries under CAA section 107(d)(3)(D) to create a single, contiguous planning area and to exclude tribal lands from the planning area. By letter dated June 26, 2006, however, ADEQ withdrew the boundary redesignation request as previously formulated but requested that EPA act to correct the boundary under section 110(k)(6) of the Act instead. As explained further below, we agree with ADEQ that a boundary correction is warranted, and we make the related corrections to the boundary in today's notice.

Also, while our April 10, 1979 final rule redesignating nonattainment areas in Arizona correctly listed T1S, R14½E as one of the townships comprising the Miami SO<sub>2</sub> nonattainment area, the 1979 version of 40 CFR part 81 included a transcription error and listed this particular township as "T1S, R14¼E" instead of "T1S, R14½E." We are

<sup>15</sup> Township T1N, R16E straddles the boundary of the San Carlos Indian Reservation. Most of the township (roughly 31 or 32 of the 36 square miles) lies within the reservation and is characterized by rugged mountainous terrain traversed in places by jeep trails. The 4 to 5 square miles of land that lie within State jurisdiction have similar characteristics as the portion within the reservation. No population centers are found within this township. ADEQ indicates that no permits have been issued to any stationary source within the portion of the township that lies within State jurisdiction.

correcting the transcription error in this notice as well.

#### B. Authority for Correcting Errors

Section 110(k)(6) of the Clean Air Act, as amended in 1990, provides, "Whenever the Administrator determines that the Administrator's action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification or reclassification was in error, the Administrator may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the State. Such determination and the basis thereof shall be provided to the State and the public."

We interpret this provision to authorize the Agency to make corrections to a promulgated regulation when it is shown to our satisfaction that (1) we clearly erred in failing to consider or in inappropriately considering information made available to EPA at the time of the promulgation, or the information made available at the time of promulgation is subsequently demonstrated to have been clearly inadequate, and (2) other information persuasively supports a change in the regulation. See 57 FR 56762, at 56763 (November 30, 1992).

In this instance, we have found clear error in our 1979 consideration of the State of Arizona's submitted recommendations for area redesignations and believe that correction of the error to be appropriate at this time in support of the State's submittal of a redesignation request and maintenance plan for the SO<sub>2</sub> NAAQS within the Miami air quality planning area.

#### C. Evaluation and Conclusion

Based on a comparison of the map submitted by the State in its 1978 designations background report that illustrates the nonattainment area with the accompanying list of townships defining the area, we find that the State erred by assuming that the township immediately east of T1N, R15E is T1N, R16E when it is actually T1N, R15½E and by then including the former instead of the latter in the list of townships defining the nonattainment area. Whereas T1N, R15½E lies immediately adjacent to one of the townships in which the major source of SO<sub>2</sub> emissions is located, T1N, R16E lies mostly within the San Carlos Indian Reservation, is more distant from the major source in the area, and has no known source of SO<sub>2</sub> emissions. EPA

then erred in failing to discover this error in our 1979 consideration and approval of the State's recommended redesignation for the Miami SO<sub>2</sub> nonattainment area. By virtue of the State's designations background report submitted in August 15, 1978, EPA had the relevant information necessary to discover this error at the time of our April 10, 1979 final rule but failed to do so. The State has now requested redesignation of the Miami SO<sub>2</sub> nonattainment area to "attainment" and submitted a maintenance plan, which if approved as proposed herein, will begin the next phase ("maintenance") of air quality planning in the Miami area.

We believe that correction of the error that resulted in the creation of a noncontiguous area would help provide a solid regulatory foundation for the maintenance phase of CAA planning in the Miami area by eliminating the noncontiguous portion of the otherwise contiguous Miami air quality planning area and by removing any uncertainties as to the area designation status and applicable requirements for township T1N, R16E. Furthermore, ADEQ's redesignation request and maintenance plan for the Miami area do not rely on any control measure within T1N, R16E to demonstrate attainment and maintenance of the SO<sub>2</sub> standard in the Miami area. We are therefore taking direct final action under CAA section 110(k)(6) to correct the designation for T1N, R16E and thereby remove it from the list of townships comprising the Miami SO<sub>2</sub> nonattainment area (which we are herein taking direct final action to redesignate to attainment). Specifically, we are correcting the error by revising the designation of T1N, R16E from "does not meet primary standards" to "cannot be classified" in the listing for Miami in the Arizona SO<sub>2</sub> table in 40 CFR 81.303. We are changing the designation of the township to "cannot be classified" for the SO<sub>2</sub> standard consistent with the State's 1978 approach for areas that, while in the general proximity of a recommended SO<sub>2</sub> nonattainment area, would be unlikely to experience violations of the standard because of the distance from the source and the terrain. For example, using this rationale, the State recommended, and we approved, "cannot be classified" designations for townships T2N, R16E and T1S, R16E.

Rather than reclassifying township T1N, R15½E as part of this redesignation action, we have decided to retain its current air quality planning status of "cannot be classified." First, establishing township T1N, R15½E as part of a future Miami maintenance area (and no longer as part of the "rest of

state" area) could have unintended effects on SO<sub>2</sub> increment tracking under the State's prevention of significant deterioration permitting program. Second, no control measures in T1N, R15½E have been relied upon for attainment or maintenance of the SO<sub>2</sub> standard in the Miami area. Third, including township T1N, R15½E in the maintenance area would inappropriately subject projects in that township to certain CAA requirements, such as general conformity, that are intended only to apply within nonattainment areas and former nonattainment areas that have been redesignated to attainment. See CAA section 176(c)(5).

In addition to the correction described above, we are taking direct final action to correct the transcription error introduced first in the 1979 version of 40 CFR part 81 by replacing T1S, R14¼E with T1S, R14½E in the list of townships comprising the Miami SO<sub>2</sub> air quality planning area.

#### VI. Public Comment and Final Action

As authorized under section 110(k)(3) of the Act, EPA is approving the Miami Sulfur Dioxide Nonattainment Area State Implementation and Maintenance Plan, as submitted by ADEQ on June 26, 2002, corrected by the submittal dated June 30, 2004, and amended by the submittal dated June 20, 2006, as a revision to the Arizona state implementation plan. In so doing, we find that the maintenance plan meets the requirements for such plans under CAA section 175A.

EPA is also approving the State of Arizona's request for redesignation of the Miami area from nonattainment to attainment for the SO<sub>2</sub> NAAQS based on our conclusion that all of the redesignation criteria in CAA section 107(d)(3)(E) have been satisfied. Specifically, we find that (1) the Miami area has attained the SO<sub>2</sub> NAAQS; (2) Arizona has a fully approved SIP for the Miami area; (3) the improvements in air quality in the Miami area are due to permanent and enforceable reductions in emissions resulting from implementation of EPA-approved smelter rules and title V permit conditions; (4) Arizona has met all of the nonattainment area requirements applicable to the Miami area; and (5) the State's submitted maintenance plan meets all relevant CAA requirements and is being approved in this notice.

Lastly, under CAA section 110(k)(6) and for the reasons stated above in section V of this notice, EPA is correcting the boundary of the Miami SO<sub>2</sub> nonattainment area to exclude a noncontiguous township that was

erroneously included in the original description of the nonattainment area. Specifically, we are correcting the error by revising the designation of township T1N, R16E as listed in the Arizona SO<sub>2</sub> table in 40 CFR 81.303 from "does not meet primary standards" to "cannot be classified." We are also correcting the erroneous transcription of one of the townships in the Miami SO<sub>2</sub> planning area in 40 CFR 81.303 by replacing "T1S, R14¼E" with "T1S, R14½E."

EPA is finalizing this action without proposing it in advance because the Agency views this action as noncontroversial and anticipates no adverse comments. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same maintenance plan and request for redesignation and proposing the same corrections to the list of townships comprising the Miami, AZ SO<sub>2</sub> area. If we receive adverse comments by February 23, 2007, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on March 26, 2007. This will approve the redesignation request and maintenance plan submitted by Arizona on June 26, 2002, as amended by submittals dated June 30, 2004 and June 20, 2006, and to revise the designation of township T1N, R16E as listed in the Arizona SO<sub>2</sub> table in 40 CFR 81.303 from "does not meet primary standards" to "cannot be classified" and replace the township incorrectly listed as "T1S, R14¼E" with "T1S, R14½E".

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

#### VII. Statutory and Executive Order Review

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 approves

a state plan and redesignation request as meeting Federal requirements and corrects a long-standing error in the boundary of an air quality planning area. It imposes no additional requirements beyond those imposed by state law. 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 approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, 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 67249, November 9, 2000). Nonetheless, EPA has contacted the San Carlos Apache tribe to provide an opportunity to discuss the implications of exclusion of that portion of township T1N, R16E that lies within the reservation from the Miami SO<sub>2</sub> nonattainment area. In letters dated November 20, 2006 and December 12, 2006, EPA transmitted a fact sheet with background information on this issue and a map illustrating the air quality planning area boundary change.

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 approves a state plan and redesignation request implementing a Federal standard and corrects a long-standing error in the boundary of an air quality planning area. It does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. 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.

In reviewing SIP submissions, EPA's role is to approve state choices,

provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, 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 Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 26, 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**

*40 CFR Part 52*

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

*40 CFR Part 81*

Environmental protection, Air pollution control, National parks, Wilderness areas.

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

Dated: December 22, 2006.

**Sally Seymour,**

*Acting Regional Administrator, Region IX.*

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

**PART 52—[AMENDED]**

■ 1. The authority citation for part 52 continues to read as follows:

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

**Subpart D—Arizona**

■ 2. Section 52.120 is amended by adding paragraph (c)(132) to read as follows:

**§ 52.120 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(132) The following plan revision was submitted on June 26, 2002, by the Governor's designee.

(i) Incorporation by reference.

(A) Arizona Department of Environmental Quality.

(1) Final Miami Sulfur Dioxide Nonattainment Area State Implementation and Maintenance Plan (June 2002), chapter 7 ("Maintenance Plan"), adopted on June 26, 2002 by the Arizona Department of Environmental Quality.

(ii) Additional materials.

(A) Arizona Department of Environmental Quality.

(1) Final Miami Sulfur Dioxide Nonattainment Area State

Implementation and Maintenance Plan (June 2002), excluding the cover page, and pages iii, 2, 3, 4, and 49; chapter 7 ("Maintenance Plan"); appendix A ("SIP Support Information"), sections A.1 ("Pertinent Sections of the Arizona Administrative Code") and A.2 ("Information Regarding Revisions to AAC R18-2-715 and R18-2-715.01, 'Standards of Performance for Primary Copper Smelters: Site Specific Requirements; Compliance and Monitoring'"); and appendix D ("SIP Public Hearing Documentation"), adopted on June 26, 2002 by the Arizona Department of Environmental Quality.

(2) Submittal of Corrections to the Final Miami Sulfur Dioxide Nonattainment Area State Implementation and Maintenance Plan (June 2002), letter and enclosures (replacement pages for the cover page and pages iii, 2, 3, 4 and 49), dated June 30, 2004.

(3) Letter from Stephen A. Owens, Director, Arizona Department of Environmental Quality, dated June 20, 2006, withdrawing a section 107(d)(3)(D) boundary redesignation request included in the Miami Sulfur Dioxide Nonattainment Area State Implementation and Maintenance Plan and requesting a section 110(k)(6) error correction.

\* \* \* \* \*

■ 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—SO<sub>2</sub>" is amended by revising the entry for Miami to read as follows:

**§ 81.303 Arizona.**

\* \* \* \* \*

ARIZONA—SO<sub>2</sub>

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
* * * * *				
Miami:				
T2N, R14E .....				X
T2N, R15E .....				X
T1N, R13E <sup>1</sup> .....				X
T1N, R14E .....				X
T1N, R15E .....				X
T1S, R14E <sup>1</sup> .....				X

ARIZONA—SO<sub>2</sub>—Continued

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
T1S, R14½E .....	.....	.....	.....	X
T1S, R15E .....	.....	.....	.....	X
T2N, R13E <sup>1</sup> .....	.....	.....	X	.....
T2N, R16E .....	.....	.....	X	.....
T1N, R16E .....	.....	.....	X	.....
T1S, R13E <sup>1</sup> .....	.....	.....	X	.....
T1S, R16E .....	.....	.....	X	.....
T2S, R14E <sup>1</sup> .....	.....	.....	X	.....
T2S, R15E .....	.....	.....	X	.....
* * * * *				

<sup>1</sup>Only that portion in Gila County.

\* \* \* \* \*  
 [FR Doc. E7-996 Filed 1-23-07; 8:45 am]  
 BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

[EPA-HQ-OPP-2006-0667; FRL-8110-3]

**Spiromesifen; Pesticide Tolerance**

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

**ACTION:** Final rule.

**SUMMARY:** This regulation revises a tolerance for combined residues of spiromesifen in or on vegetables, fruiting, group 8 and establishes tolerances for inadvertent or indirect combined residues in or on oat (grain, forage, hay, straw). Interregional Research Project No. 4 (IR-4) and Bayer CropScience (respectively) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

**DATES:** This regulation is effective January 24, 2007. Objections and requests for hearings must be received on or before March 26, 2007, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2006-0667. All documents in the docket are listed in the index for the docket. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (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 in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:** Thomas C. Harris, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-9423; e-mail address: [harris.thomas@epa.gov](mailto:harris.thomas@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does This Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

This listing is not intended to be exhaustive, but rather provides a guide

for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Access Electronic Copies of this Document?*

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at <http://www.regulations.gov>, you may access this **Federal Register** document electronically through the EPA Internet under the “**Federal Register**” listings at <http://www.epa.gov/fedrgstr>. You may also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office’s pilot e-CFR site at <http://www.gpoaccess.gov/ecfr>.

*C. Can I File an Objection or Hearing Request?*

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2006-0667 in the subject line on the first page of your submission. All requests must be in writing, and must be