

**PART 52—[AMENDED]**

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

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

**Subpart Q—Iowa**

■ 2. In § 52.820 the table in paragraph (c) is amended by revising the entry for 567–22.1 to read as follows:

**EPA-APPROVED IOWA REGULATIONS****§ 52.820 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

Iowa Citation	Title	State effective date	EPA approval date	Explanation
<b>IOWA DEPARTMENT OF NATURAL RESOURCES ENVIRONMENTAL PROTECTION COMMISSION [567]</b>				
*	*	*	*	*
<b>Chapter 22—Controlling Pollution</b>				
567–22.1	Permits Required for New or Existing Stationary Sources .....	10/19/05	02/28/06 [insert FR page number where the document begins]	
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[FR Doc. 06–1788 Filed 2–27–06; 8:45 am]

**BILLING CODE 6560–50–P**

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Parts 52 and 81**

[EPA–R09–OAR–2005–AZ–0008;  
FRL–8022–5]

**Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Arizona**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving the maintenance plan for the Douglas area in Cochise County, Arizona and granting the request submitted by the State to redesignate this area from nonattainment to attainment for the National Ambient Air Quality Standards (NAAQS) for sulfur dioxide (SO<sub>2</sub>). Elsewhere in this **Federal Register**, we are proposing approval and soliciting written comment on this action; if adverse written comments are received, we will withdraw the direct final rule and address the comments received in a new final rule; otherwise no further rulemaking will occur on this approval action.

**DATES:** This action will be effective on May 1, 2006, without further notice, unless EPA receives adverse comments by March 30, 2006.

If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect and that we will respond to submitted comments and take subsequent final action.

**ADDRESSES:** Submit comments, identified by docket number EPA–R09–OAR–2005–AZ–0008, by one of the following methods:

1. Agency web site: <http://www.regulations.gov>. EPA prefers receiving comments through this electronic public docket and comment system. Follow the on-line instructions to submit comments.
2. Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions.
3. E-mail: [tax.wienke@epa.gov](mailto:tax.wienke@epa.gov).
4. Mail or deliver: Wienke Tax, Office of Air Planning (AIR–2), U.S. Environmental Protection Agency, Region 9, 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 <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 agency Web site, eRulemaking portal, or e-mail. The agency Web site and eRulemaking portal are “anonymous access” systems, 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 <http://www.regulations.gov> and in hard copy at EPA Region 9, 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:** Wienke Tax, U.S. EPA Region 9, (520) 622–1622, [tax.wienke@epa.gov](mailto:tax.wienke@epa.gov), or [www.epa.gov/region09/air/actions](http://www.epa.gov/region09/air/actions).

**SUPPLEMENTARY INFORMATION:**

Throughout this document, the terms “we,” “us,” and “our” mean U.S. EPA.

**Table of Contents**

- I. Summary of Action
- II. Introduction
  - A. What National Ambient Air Quality Standards Are Considered In Today’s Rulemaking?
  - B. What Is a State Implementation Plan (SIP)?
  - C. What Is the Background for This Action?
  - D. What Are the Applicable CAA Provisions for SO<sub>2</sub> Nonattainment Area Plans?

- E. What Are the Applicable Provisions for SO<sub>2</sub> Maintenance Plans and Redesignation Requests?
- III. Review of the Arizona State Submittals Addressing These Provisions
  - A. Is the Maintenance Plan Approvable?
  - B. Has the State Met the Redesignation Provisions of CAA Section 107(d)(3)(E)?
- IV. Final Action
- V. Statutory and Executive Order Reviews

## I. Summary of Action

We are approving the maintenance plan for the Douglas SO<sub>2</sub> nonattainment area.<sup>1</sup> We are also approving the State of Arizona's request to redesignate the Douglas area from nonattainment to attainment for the primary SO<sub>2</sub> NAAQS.

## II. Introduction

### A. What National Ambient Air Quality Standards Are Considered in Today's Rulemaking?

The subject of this action is SO<sub>2</sub>. The NAAQS are safety thresholds for certain ambient air pollutants set to protect public health and welfare. SO<sub>2</sub> is among the ambient air pollutants for which we have established health-based standards.

SO<sub>2</sub> causes adverse health effects: Reducing lung function, increasing respiratory illness, altering the lung's defenses, and aggravating existing cardiovascular disease. Children, the elderly, and people with asthma are the most vulnerable. SO<sub>2</sub> has a variety of additional impacts, including acidic deposition, damage to crops and vegetation, and corrosion of natural and man-made materials.

There are both short- and long-term primary NAAQS for SO<sub>2</sub>. The short-term (24-hour) standard of 0.14 parts per million (ppm) is not to be exceeded more than once per year. The long-term standard specifies an annual arithmetic mean not to exceed 0.030 ppm.<sup>2</sup> The primary standards were established in 1972. (See 40 CFR 50.4).

<sup>1</sup> For the definition of the Douglas nonattainment area, see 40 CFR 81.303. On March 3, 1978, EPA designated the entire area of Cochise County as nonattainment for SO<sub>2</sub> for lack of a State recommendation. On April 10, 1979, EPA approved Arizona's request that the SO<sub>2</sub>-affected portion of Cochise County be limited to three townships surrounding Douglas (44 FR 21261). Townships T23S, R27E; T24S, R27E; and T24S, R28E comprise the nonattainment area. Townships T23S, R26E; T23S, R28E; and T24S, R26E are designated as "cannot be classified". Douglas is a town in southern Cochise County near the Mexican border.

<sup>2</sup> The secondary SO<sub>2</sub> NAAQS (3-hour) of 0.50 ppm is not to be exceeded more than once per year. Secondary NAAQS are promulgated to protect welfare. The Douglas area is not classified as nonattainment for the secondary SO<sub>2</sub> standard, and this action relates only to the primary NAAQS.

### B. What Is a State Implementation Plan (SIP)?

The Clean Air Act (CAA) requires states to attain and maintain ambient air quality equal to or better than the NAAQS. The state's commitments for attaining and maintaining the NAAQS are outlined in the approved SIP for that state. The SIP is a planning document that, when implemented, is designed to ensure the achievement of the NAAQS. Each state currently has a SIP in place, and the Act requires that SIP revisions be made periodically as necessary to provide continued compliance with the standards.

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 a SIP submittal such as the one we are addressing available for public review and comment through a public hearing, it must be adopted by the state, and submitted to us by the Governor or her/his designee. We take federal action on the SIP submittal, rendering the rules and regulations federally enforceable if and when we approve them. The approved SIP serves as the state's commitment to take actions that will reduce or eliminate air quality problems. Any subsequent proposals to revise the SIP must go through the formal EPA SIP revision process specified in the Act.

### C. What Is the Background for This Action?

#### 1. When Was the Nonattainment Area Established?

The Phelps Dodge Douglas Reduction Works Smelter (PDDRWS) operation was the largest SO<sub>2</sub> point source in the Douglas nonattainment area during its operation. PDDRWS was located 1.5 miles west of Douglas.

The details of the initial designation of the Douglas SO<sub>2</sub> nonattainment area are provided in footnote 1 in this **Federal Register** action. On the date of enactment of the 1990 CAA Amendments, SO<sub>2</sub> areas meeting the conditions of section 107(d) of the Act, including the pre-existing SO<sub>2</sub> nonattainment areas, were designated nonattainment for the SO<sub>2</sub> NAAQS by operation of law. Thus, the Douglas area remained nonattainment for the primary

SO<sub>2</sub> NAAQS following enactment of the 1990 CAA Amendments on November 15, 1990.

#### 2. How Has the SIP Addressed CAA Provisions?

Arizona submitted a SIP for all major sources in the State in January 1972. EPA disapproved the portion of the 1972 Arizona SIP related to smelters (37 FR 10849 and 37 FR 15081) on May 31 and July 27, 1972. On November 30, 1981, EPA proposed conditional approval of Arizona's Multipoint Rollback (MPR) SIP revision (46 FR 58098). On June 3, 1982, Arizona submitted SIP revisions to correct the conditional approval. EPA formally approved Arizona's revised MPR rule as a final rulemaking on January 14, 1983 (48 FR 1717). To complete the Arizona SO<sub>2</sub> SIPs, EPA required that Arizona submit the necessary fugitive emissions control strategies and regulations for existing smelters by August 1, 1984. The PDDRWS smelter closed in 1987 and was dismantled in 1991. In December of 2001, ADEQ submitted a redesignation request and maintenance plan to us.

#### 3. What Is the Current Status of the Area?

Currently, there are no operating ambient SO<sub>2</sub> monitors in the Douglas area. Since the smelter was by far the largest source of SO<sub>2</sub> in the area, it was not necessary to continue monitoring for this pollutant once the source was permanently shut down. We do not expect the cumulative impact of the minor sources of SO<sub>2</sub> in and around Douglas to cause a violation of the NAAQS. A few new minor sources have located in the area but the smelter was the obvious cause of past violations.

### D. What Are the Applicable CAA Provisions for SO<sub>2</sub> Nonattainment Area Plans?

The air quality planning requirements for SO<sub>2</sub> nonattainment areas are set out in subparts 1 and 5 of Part D of title I of the Act. We have issued guidance in a General Preamble describing how we will review SIPs and SIP revisions submitted under title I of the Act, including those containing SO<sub>2</sub> nonattainment area and maintenance area SIP provisions. 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992). The General Preamble discusses our interpretation of the title I requirements, and lists SO<sub>2</sub> policy and guidance documents.

#### 1. What Statutory Provisions Apply?

Douglas is subject to the requirements of subpart 1 of Part D of title I of the CAA (Sections 171–179B). Section 172

of this subpart contains provisions for nonattainment plans in general; these provisions were not significantly changed by the 1990 CAA Amendments. Among other requirements, CAA Section 172 provides that SIPs must assure that reasonably available control measures (RACM) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT)) shall be implemented as expeditiously as practicable and shall provide for attainment.

#### *E. What Are the Applicable Provisions for SO<sub>2</sub> Maintenance Plans and Redesignation Requests?*

##### 1. What Are the Statutory Provisions?

###### a. CAA Section 107(d)(3)(E)

The 1990 CAA Amendments revised section 107(d)(3)(E) to provide five specific requirements that an area must meet in order to be redesignated from nonattainment to attainment:

- (1) The area must have attained the applicable NAAQS;
- (2) The area has met all relevant requirements under section 110 and Part D of the Act;
- (3) The area has a fully approved SIP under section 110(k) of the Act;
- (4) The air quality improvement must be permanent and enforceable; and,
- (5) The area must have a fully approved maintenance plan pursuant to section 175A of the Act.

###### b. CAA Section 175A

CAA section 175A provides the general framework for maintenance plans. The maintenance plan must provide for maintenance of the NAAQS for at least 10 years after redesignation, including any additional control measures as may be necessary to ensure such maintenance. In addition, maintenance plans are to contain contingency provisions that are 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. Beyond these provisions, however, CAA section 175A does not define the content of a maintenance plan.

##### 2. What General EPA Guidance Applies to Maintenance Plans?

General guidance on maintenance plans and redesignation requests is provided in a September 4, 1992 memo from John Calcagni, entitled

“Procedures for Processing Requests to Redesignate Areas to Attainment” (“Calcagni Memo”). Specific guidance on SO<sub>2</sub> redesignations also appears in a January 26, 1995 memo from Sally L. Shaver, entitled “Attainment Determination Policy for Sulfur Dioxide Nonattainment Areas” (“Shaver Memo”).

Guidance on SO<sub>2</sub> maintenance plan requirements for an area lacking ambient monitoring data, if the area’s historic violations were caused by a major point source that is no longer in operation, is found in an October 18, 2000 memo from John S. Seitz entitled “Redesignation of Sulfur Dioxide Nonattainment Areas in the Absence of Monitored Data” (“Seitz Memo”). The Seitz memo exempts eligible areas from the maintenance plan requirements of continued monitoring.

##### 3. What Are the Requirements for Redesignation of Single-Source SO<sub>2</sub> Nonattainment Areas in the Absence of Monitored Data?

Our historic redesignation policy for SO<sub>2</sub> has called for eight quarters of clean ambient air quality data as a necessary prerequisite to redesignation of any area to attainment. The Seitz memo provides guidance on SO<sub>2</sub> maintenance plan requirements for an area lacking monitored ambient data, if the area’s historic violations were caused by a major point source that is no longer in operation. In order to allow for these areas to qualify for redesignation to attainment, this policy requires that the maintenance plan address otherwise applicable provisions, and include:

- (1) Emissions inventories representing actual emissions when violations occurred; current emissions; and emissions projected to the 10th year after redesignation;
- (2) Dispersion modeling showing that no NAAQS violations will occur over the next 10 years and that the shut down source was the dominant cause of the high concentrations in the past;
- (3) Evidence that if the shut down source resumes operation, it would be considered a new source and be required to obtain a permit under the Prevention of Significant Deterioration provisions of the CAA; and
- (4) A commitment to resume monitoring before any major SO<sub>2</sub> source commences operation.

### **III. Review of the Arizona State Submittals Addressing These Provisions**

#### *A. Is the Maintenance Plan Approvable?*

##### 1. Did the State Meet the CAA Procedural Provisions?

On December 14, 2001, ADEQ submitted to EPA the “Douglas Sulfur Dioxide State Implementation and Maintenance Plan” and request to redesignate the area to attainment. The State verified that it had adhered to its SIP adoption procedures. In electronic mail correspondences dated March 8, 2002, and August 21, 2002, we asked the state for additional information on emissions inventories and modeling. On May 12, 2003 and April 2, 2004 Arizona submitted additional and revised technical information to EPA to support its redesignation request. A further revision was submitted on September 16, 2005. The 2003 submittal was withdrawn on November 21, 2005, as it was wholly replaced by the 2004 and 2005 submittals.<sup>3</sup> We will refer to the original submittal as the “Douglas maintenance plan” and the additional submittals as the A2004 Supplement” and the A2005 Supplement”.

##### 2. Does the Area Qualify for Review Under the Seitz Memo?

###### a. Were the Area’s Violations Caused by a Major Point Source of SO<sub>2</sub> Emissions That Is No Longer in Operation?

As discussed above, the only major source of SO<sub>2</sub> emissions within the Douglas nonattainment area was the Phelps Dodge Douglas Incorporated (PDDRWS) copper smelter, which ceased operation in 1987. The last recorded 24-hour or annual average exceedances of the primary NAAQS at PDDRWS occurred in 1986, the last year of extensive monitoring. All but one monitor was removed before 1987 and all the remaining monitors owned and operated by Phelps Dodge and by ADEQ in the vicinity of the PDDRWS smelter were removed by 1988. The smelter operating permits expired, the smelting equipment was removed over a period of years, and the smelter was completely dismantled by 1991. No new sources of SO<sub>2</sub> of the magnitude of PDDRWS have located in the area. Thus, Douglas meets this criterion for review under the Seitz Memo.

<sup>3</sup> See letter from Stephen A. Owens, Director, Arizona Department of Environmental Quality, to Wayne Nastri, Regional Administrator, EPA Region 9, dated November 21, 2005.

b. Has the State Met the Requirements of the Seitz Memo?

As discussed below, the State has addressed the requirements in the Seitz Memo for emissions inventories, modeling, permitting of major new sources, and agreement to commence monitoring if a new major source locates in the area. Therefore, the State has met the special criteria in the Seitz Memo for approval of maintenance plans and redesignation requests.

(1) Emissions Inventory. The State provided the three emissions inventories specified in the Seitz Memo

for the sources in, and within 50 kilometers of, the Douglas nonattainment area. These were updated in the "2005 Supplement", based on new emissions and location information for two plants in neighboring Mexico. Projected emissions for 2015 were also corrected in the "2005 Supplement" for area, mobile, and the four existing point sources located within the nonattainment area. For a representative year when the copper smelter was in operation (1985), direct SO<sub>2</sub> emissions from smelting operations were over

330,000 tons per year (tpy). ADEQ identified 826.88 tpy of SO<sub>2</sub> emissions in, or within 50 kilometers (km) of, the nonattainment area in 1999 based on actual emissions, and ADEQ projected 842.97 tpy SO<sub>2</sub> emissions based on actual emissions in, or within 50 kilometers of, Douglas in the 10th year after redesignation (2015). Table 1 presents a summary of actual SO<sub>2</sub> emissions for 1985, 1999, and projected actual emissions for 2015. We conclude that the inventories are complete, accurate, and consistent with applicable CAA provisions and the Seitz Memo.

TABLE 1.—ACTUAL SO<sub>2</sub> EMISSIONS INVENTORIES FOR 1985, 1999, AND 2015 FOR THE DOUGLAS NONATTAINMENT, UNCLASSIFIED, AND 50 KM BOUNDARY AREAS (IN TPY) <sup>a</sup>

Source category	1985	1999	2015
Point Sources .....	330,021.16	746.62	747.03
Area and Mobile Sources .....	93.02	80.26	95.94
Totals .....	330,114.18	826.88	842.97

<sup>a</sup>Source: ADEQ "2005 Supplement", Attachment 6.

(2) Modeling. The basic modeling requirements for redesignation of SO<sub>2</sub> nonattainment areas lacking current monitoring data are (1) modeling of sources in the nonattainment area and a 50 km buffer zone, showing that concentrations meet the NAAQS for (a) a current year and (b) for 10 years into the future, and (2) a showing that past monitored violations were due to sources that have since shut down.

ADEQ used the EPA-recommended SCREEN3 dispersion model to estimate SO<sub>2</sub> impacts due to sources in and within 50 km of the nonattainment area. SCREEN3 gives a conservatively high estimate by computing concentrations over a range of wind speed, atmospheric stability, and distance, and then choosing the maximum. For sources outside the nonattainment area, ADEQ used the modeled impact at the nonattainment area boundary, which is conservative since impacts decrease with distance past the first kilometer. Since SCREEN3 is a single-source model, results from multiple runs must be combined to get the total impact for comparison to the NAAQS. The most conservative way to do this is the approach ADEQ used, adding up the maxima from the individual source modeling. (The Agua Prieta power plant in Mexico was modeled separately for an Environmental Assessment Report, included in the SIP submittal. Its impacts were scaled up to reflect expected operations through 2015, and added to the total impacts.) Thus the ADEQ estimates are conservative in multiple ways: They assume that

emissions occur all the time, that worst-case meteorology occurs all the time, and that the individual source maxima all coincide in space.

One way in which the ADEQ modeling was potentially not conservative was in its assumption of simple terrain. Terrain with elevations above stack height, *i.e.*, "complex terrain", can sometimes experience higher impacts than simple terrain. The Perilla Mountains appear to abut the east edge of the nonattainment area. EPA assessed their effect by rerunning SCREEN3 using its complex terrain option (including the Agua Prieta power plant). Terrain height was assumed to be the same as the plume height, to maximize modeled potential impacts. In this case, the complex terrain impacts were lower than the simple terrain algorithm, so the ADEQ results continue to represent a conservative estimate.

ADEQ's SCREEN3 analysis was carried out for both current 1999 emissions, and for emissions projected to 2015 (the latter was based on historic trends for some sources, and on "Potential to Emit" for others). For both current and future years, the sum of all source impacts and monitored background levels is well below the SO<sub>2</sub> NAAQS. For 3-hour, 24-hour, and annual standards, the conservatively high modeled impacts are 39%, 63%, and 59% of the NAAQS, respectively. This demonstrates attainment of the NAAQS both currently and for the future.

There have been no monitored or modeled SO<sub>2</sub> NAAQS violations since the end of operations at the PDDRW

smelter. The smelter's potential emissions of over 400,000 tons per year were over 100 times the total of the current sources combined. The smelter caused NAAQS exceedances when modeled with SCREEN3. Since monitored and modeled NAAQS exceedances occur only with smelter operation, it is reasonable to conclude that the historical NAAQS violations were caused by the smelter, and not by existing sources. This shows that, even without current monitoring data, with the dismantling of the smelter, the sole cause of NAAQS exceedances no longer exists, and the NAAQS is protected.

(3) Permitting of New Sources. For the Douglas SO<sub>2</sub> nonattainment area, the nonattainment area new source review (NSR) permit program responsibilities are held by ADEQ. ADEQ administers the preconstruction review and permitting provisions of Arizona Administrative Code (AAC), Title 18, Chapter 2, Articles 3 and 4. 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. ADEQ's SIP-approved NSR rules are at A.A.C. R9–3–302.

Section 172(c)(5) requires NSR permits for the construction and operation of new and modified major stationary sources anywhere in nonattainment areas. We have determined that areas being redesignated from nonattainment to attainment do not need to comply with the requirement that an NSR program be approved prior to redesignation provided that the area demonstrates

maintenance of the standard without part D nonattainment NSR in effect. The rationale for this decision is described in a 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 determined that the maintenance demonstration for Douglas does not rely on nonattainment NSR. Prevention of Significant Deterioration (PSD) is the replacement for NSR, and part of the obligation under PSD is for a new source to review increment consumption and maintenance of the air quality standards. PSD also requires preconstruction monitoring. Therefore, the State need not have a fully approved nonattainment NSR program prior to approval of the redesignation request.

ADEQ has a PSD permitting program (A.A.C. R9-3-304 is the SIP-approved rule) that was established to preserve the air quality in areas where ambient standards have been met. The State's PSD program for all criteria pollutants except PM-10 was approved into the SIP effective May 3, 1983 (48 FR 19878). The federal PSD program for PM-10 was delegated to the State on March 12, 1999. The PSD program requires stationary sources to undergo preconstruction review before facilities are constructed, modified, or reconstructed and to apply Best Available Control Technology (BACT). These programs will apply to any major source wishing to locate in the Douglas area once the area is redesignated to attainment. The ADEQ commitment to treat any major source in or near Douglas as "new" under the PSD program satisfies the preconstruction permit provision of the Seitz memo as one of the prerequisites to redesignation.

(4) Monitoring. ADEQ has confirmed on page 7.2 of the December 2001 maintenance plan that the State commits to resume monitoring before any major source of SO<sub>2</sub> commences to operate. Moreover, the PSD permit program requires that permit applicants conduct preconstruction monitoring to identify baseline concentrations. Together, these commitments address the monitoring provision of the Seitz Memo.

**c. Has the State Met the Remaining Maintenance Plan Provisions?**

As discussed above, CAA Section 175A sets forth the statutory requirements for maintenance plans, and the Calcagni and Shaver memos cited above contain specific EPA guidance. The only maintenance plan element not covered by the Seitz Memo

is the contingency provision. CAA Section 175A provides that maintenance plans "contain such contingency provisions as the Administrator deems necessary to assure that the State will promptly correct any violation of the standard which occurs after the redesignation of the area as an attainment area".

The Douglas Maintenance Plan includes the State's commitment to continue to implement and enforce measures necessary to maintain the SO<sub>2</sub> NAAQS. ADEQ's current operating permit program places limits on SO<sub>2</sub> emissions from most existing sources. Should an existing facility want to upgrade or increase SO<sub>2</sub> emissions, the facility would be subject to the PSD program, and required to undergo preconstruction review and to apply BACT. Should a new facility be constructed in the Douglas area, the facility would be subject to PSD as required in the Calcagni memo, as well as to A.A.C. R18-2-406, Permit Requirements for Sources Located in Attainment and Unclassifiable Areas, after redesignation.

The Calcagni Memo emphasizes the importance of specific contingency measures, schedules for adoption, and action levels to trigger implementation of the contingency plan. Since there are no remaining sources of SO<sub>2</sub> emissions of the magnitude of the Phelps Dodge smelter and there is no SO<sub>2</sub> monitoring in the Douglas area, we agree with the State that this level of specificity is not appropriate, and we conclude that the State's commitment satisfactorily addresses the CAA provisions. If the State identifies the potential for a NAAQS violation through the permitting process, the State would ascertain what measures would be needed to avoid a violation.

**B. Has the State Met the Redesignation Provisions of CAA Section 107(d)(3)(E)?**

**1. Has the Area Attained the 24-hour and Annual SO<sub>2</sub> NAAQS?**

As discussed above, the normal prerequisite for redesignation is submittal of quality-assured ambient data with no violations of the SO<sub>2</sub> NAAQS for the last eight consecutive quarters. However, the Seitz Memo recognizes that states should be provided an opportunity to request redesignation where there is no longer monitoring but where there is no reasonable basis for assuming that SO<sub>2</sub> violations persist after closure of the sources that were the primary or sole cause of these violations. Douglas is such an area, and the State has submitted convincing evidence that no

major stationary sources of SO<sub>2</sub> emissions remain in operation in or within 50 kilometers of the area that might cause a violation of the SO<sub>2</sub> NAAQS in this area.

**2. Has the Area Met All Relevant Requirements Under Section 110 and Part D of the Act?**

CAA Section 110(a)(2) contains the general requirements for SIPs (enforceable emission limits, ambient monitoring, permitting of new sources, adequate funding, etc.) and Part D contains the general provisions applicable to SIPs for nonattainment areas (emissions inventories, reasonably available control measures, demonstrations of attainment, etc.). Over the years, we have approved Arizona's SIP as meeting the basic requirements of CAA Section 110(a)(2), and the CAA Part D requirements for Douglas were addressed primarily by the regulations applicable to the Phelps Dodge facility during the period of its operation. The State has thus met the basic SIP requirements of the CAA.

**3. Does the Area Have a Fully Approved SIP Under Section 110(k) of the Act?**

We examined the applicable SIP, and also looked at the disapprovals listed in 40 CFR 52.125 and no disapprovals remain relevant to the applicable SIP. Arizona has a fully-approved SIP with respect to the Douglas area.

**4. Has the State Shown That the Air Quality Improvement in the Area Is Permanent and Enforceable?**

Yes. The Maintenance Plan shows that the primary cause of past SO<sub>2</sub> NAAQS violations (the Phelps Dodge copper smelter in Douglas) no longer exists. As a result, there is no reason to expect that SO<sub>2</sub> ambient concentrations will exceed background levels.

**5. Does the Area Have a Fully Approved Maintenance Plan Pursuant to Section 175a of the Act?**

Yes. As discussed above, we are approving the Douglas Maintenance Plan in this action.

**IV. Final Action**

We are approving the maintenance plan for the Douglas area under CAA Sections 110 and 175A. We are also approving the State's request to redesignate the Douglas area to attainment of the primary SO<sub>2</sub> NAAQS.

We are publishing this action without prior proposal because we do not view this as a controversial amendment and do not anticipate adverse comments. However, in the proposed rules section of this **Federal Register** publication, we

are publishing a separate document that will serve as the proposal to approve the State plan and redesignate the area if relevant adverse comments are filed. This rule will be effective May 1, 2006 without further notice unless relevant adverse comments are received by March 30, 2006. If we receive such comments, this action will be withdrawn before the effective date. All public comments received will then be addressed in a subsequent final rule based on the proposed action. We will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective May 1, 2006.

## V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a “significant regulatory action” and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and 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). 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 rule implementing a Federal standard, and 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 May 1, 2006. 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, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur dioxide.

### 40 CFR Part 81

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

Dated: December 27, 2005.

**Jane Diamond,**

*Acting Regional Administrator, Region IX.*

■ Parts 52 and 81, chapter I, title 40 of the Code of Federal Regulations are 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 paragraphs (c)(126), (c)(127) and (c)(128) to read as follows:

#### § 52.120 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(126) The following plan was submitted on December 14, 2001, by the Governor’s designee.

(i) Incorporation by reference.

(A) Arizona Department of Environmental Quality.  
(1) Douglas Sulfur Dioxide Nonattainment Area State Implementation and Maintenance Plan, dated November 29, 2001, adopted by the Arizona Department of Environmental Quality on December 14, 2001.

(127) The following plan was submitted on April 2, 2004, by the Governor’s designee.

(i) Incorporation by reference.

(A) Arizona Department of Environmental Quality.  
(1) Modeling Supplement—Douglas Sulfur Dioxide (SO<sub>2</sub>) State Implementation and Maintenance Plan, adopted by the Arizona Department of Environmental Quality on April 2, 2004.

(128) The following plan was submitted on September 16, 2005, by the Governor’s designee.

(i) Incorporation by reference.

(A) Arizona Department of Environmental Quality.  
(1) Modeling and Emissions Inventory Supplement for the Douglas Sulfur

Dioxide Nonattainment Area State Implementation and Maintenance Plan and Redesignation Request, dated September 2005, adopted by the Arizona Department of Environmental Quality on September 16, 2005.

## PART 81—[AMENDED]

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

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

■ 2. In § 81.303 the table entitled “Arizona—SO<sub>2</sub>” is amended by revising the entry for the Douglas area 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
* * * * *				
Douglas:				
T23S, R27E .....				X
T24S, R27E .....				X
T24S, R28E .....				X
T23S, R26E .....			X	
T23S, R28E .....			X	
T24S, R26E .....			X	
* * * * *				

[FR Doc. 06–1850 Filed 2–27–06; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

#### 44 CFR Part 65

#### Changes in Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA), Department of Homeland Security.

**ACTION:** Final rule.

**SUMMARY:** Modified Base (1% annual-chance) Flood Elevations (BFEs) are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

**DATES:** *Effective Dates:* The effective dates for these modified BFEs are indicated on the table below and revise the Flood Insurance Rate Maps (FIRMs) in effect for the listed communities prior to this date.

**ADDRESSES:** The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

**FOR FURTHER INFORMATION CONTACT:** Doug Bellomo, P.E., Hazard Identification Section, Federal Emergency Management Agency, 500 C

Street, SW., Washington, DC 20472, (202) 646–2903.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director has resolved any appeals resulting from this notification.

The modified BFEs are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that

the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified BFEs are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in BFEs are in accordance with 44 CFR 65.4.

*National Environmental Policy Act.* This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

*Regulatory Flexibility Act.* The Mitigation Division Director certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

*Regulatory Classification.* This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

*Executive Order 13132, Federalism.* This rule involves no policies that have