

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 81

[EPA-R09-OAR-2010-0491; FRL-9209-4]

### Designation of Areas for Air Quality Planning Purposes; State of Arizona; Pinal County; PM<sub>10</sub>

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

**ACTION:** Proposed rule.

**SUMMARY:** Pursuant to section 107(d)(3) of the Clean Air Act, EPA is proposing to redesignate from “unclassifiable” to “nonattainment” an area generally covering the western half of Pinal County, Arizona, for the 1987 national ambient air quality standard for particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM<sub>10</sub>), and therefore also proposing to revise the boundaries of the existing “rest of state” unclassifiable area. EPA’s proposal to establish this new PM<sub>10</sub> nonattainment area, referred to as “West Pinal,” is based on numerous recorded violations of the PM<sub>10</sub> standard at various monitoring sites within the county. EPA’s proposed boundaries would encompass all land geographically located within Pinal County west of the north-south line defined by the boundary between Townships 10E and 11E, but excluding the main reservation of the Tohono O’odham Nation (TON) and excluding the Apache Junction portion of the existing Phoenix PM<sub>10</sub> nonattainment area. San Carlos Apache lands, which are located in the eastern quarter of the county, would be excluded from the proposed nonattainment area along with the rest of the eastern half of the county. If finalized as proposed, the new “West Pinal” PM<sub>10</sub> nonattainment area would be classified as “moderate” by operation of law. The effect of this action would be to establish and delineate a new PM<sub>10</sub> nonattainment area within Pinal County and thereby to impose certain planning requirements on the State of Arizona to reduce PM<sub>10</sub> concentrations within this area, including, but not limited to, the requirement to submit, within 18 months of redesignation, a revision to the Arizona state implementation plan that provides for attainment of the PM<sub>10</sub> standard as expeditiously as practicable but no later than the end of the sixth calendar year after redesignation. Lastly, EPA is deferring action on the status of certain tribal lands located within this area, including the tribal lands of the Ak-Chin Indian Community and the Gila River Indian Community, as well as TON’s Florence Village and San Lucy

Farm, pending further consultation with the affected tribes.

**DATES:** Any comments must arrive by November 1, 2010.

**ADDRESSES:** Submit comments, identified by docket number EPA-R09-OAR-2010-0491, by one of the following methods:

1. *Federal eRulemaking Portal:* <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 <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 <http://www.regulations.gov> or e-mail. <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 <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, EPA Region IX, (415) 972-3964, [vagenas.ginger@epa.gov](mailto:vagenas.ginger@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us” and “our” refer to EPA.

### Table of Contents

- I. Background
- II. EPA’s Decision to Address PM<sub>10</sub> Violations Monitored in Pinal County Through Redesignation

- III. State of Arizona’s Recommendation for Boundaries for New Nonattainment Area
- IV. EPA’s Review of the State’s Recommendation and Rationale for Proposed Boundaries
- V. EPA’s Review of Recommendations From Affected Indian Tribes
- VI. Proposed Action and Request for Public Comment
- VII. Statutory and Executive Order Reviews

### I. Background

On July 1, 1987, EPA revised the national ambient air quality standards (NAAQS or “standards”) for particulate matter (52 FR 24634), replacing total suspended particulates as the indicator for particulate matter with a new indicator called PM<sub>10</sub> that includes only those particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers.<sup>1</sup> In order to attain the NAAQS for 24-hour PM<sub>10</sub>, an air quality monitor cannot measure levels of PM<sub>10</sub> greater than 150 micrograms per cubic meter (µg/m<sup>3</sup>) more than once per year on average over a consecutive three-year period. The rate of expected exceedances, therefore, indicates whether a monitor attains the air quality standard.

Most of Pinal County, Arizona, including the area that is the subject of today’s action, was included in the “rest of state” area, which was designated “unclassifiable” for PM<sub>10</sub> by operation of law upon enactment of the 1990 amendments to the Clean Air Act (CAA or “Act”).<sup>2</sup> See section 107(d)(4)(B)(iii). The PM<sub>10</sub> designations established by operation of law under the CAA, as amended in 1990, are known as “initial” designations. The CAA grants EPA the authority to change the designation of, or “redesignate,” such areas in light of changes in circumstances. More specifically, CAA section 107(d)(3) authorizes EPA to revise the designation of areas (or portions thereof) on the

<sup>1</sup> The 1987 PM<sub>10</sub> standard included a 24-hour (150 micrograms per cubic meter (µg/m<sup>3</sup>)) and an annual standard (50 µg/m<sup>3</sup>). In 2006, EPA revoked the annual standard. See 71 FR 61144 (October 17, 2006) and 40 CFR 50.6.

<sup>2</sup> While most of Pinal County was designated “unclassifiable,” two PM<sub>10</sub> planning areas that extend into Pinal County were designated under the CAA, as amended in 1990, as “nonattainment:” The Phoenix planning area, which includes the Apache Junction area within Pinal County; and the Hayden/Miami planning area, which includes the northeastern portion of the county. See 56 FR 11101 (March 15, 1991); 56 FR 56694 (November 6, 1991); and 57 FR 56762 (November 30, 1992). In 2007, we approved a redesignation request by the State of Arizona to split the Hayden/Miami PM<sub>10</sub> nonattainment area into two separate PM<sub>10</sub> nonattainment areas. See 72 FR 14422 (March 28, 2007). Today’s proposed action would not affect these pre-existing PM<sub>10</sub> nonattainment areas. EPA codifies area designations in 40 CFR part 81. The area designations for the State of Arizona are codified at 40 CFR 81.303.

basis of air quality data, planning and control considerations, or any other air-quality-related considerations that EPA deems appropriate. Pursuant to CAA section 107(d)(3), EPA in the past has redesignated certain areas in Arizona to nonattainment for the PM<sub>10</sub> NAAQS, including the Payson and Bullhead City areas. See 56 FR 16274 (April 22, 1991); and 58 FR 67334 (December 21, 1993).

## II. EPA's Decision to Address PM<sub>10</sub> Violations Monitored in Pinal County Through Redesignation

As noted above, EPA has the authority under CAA section 107(d)(3) to

redesignate areas (or portions thereof) on the basis of air quality data, planning and control considerations, or any other air-quality-related considerations. Last year, under CAA section 107(d)(3)(A), EPA notified the Governor of Arizona and tribal leaders of the four Indian Tribes (whose Indian country is located entirely, or in part, within Pinal County) that the designation for Pinal County, and any nearby areas that may be contributing to the monitored violations in Pinal County, should be revised. Our decision to initiate the redesignation process stemmed from review of 2006–

2008 ambient PM<sub>10</sub> monitoring data from PM<sub>10</sub> monitoring stations within the county that showed widespread, frequent, and in some instances, severe, violations of the PM<sub>10</sub> standard.<sup>3</sup>

Table 1, below, presents a summary of the latest available quality-assured PM<sub>10</sub> monitoring data (2007–2009). A map showing the location of the monitors is included in our Technical Support Document (TSD), contained in the docket for this rulemaking.

TABLE 1—PINAL COUNTY—PM<sub>10</sub> AIR QUALITY MONITORING DATA, 2007–2009

Site name	AQS* ID	PM <sub>10</sub> Expected exceedances** 2007–2009
Apache Junction***	04–021–3002–1	0
Casa Grande	04–021–0001–1	0
	04–021–0001–3	4.7
Combs School (Queen Creek)	04–021–3009–3	17.6
Coolidge	04–021–3004–1	2
Cowtown (southeast of Maricopa)	04–021–3013–1	112.9
	04–021–3013–3	139.8
Eloy	04–021–3014–1	0
Mammoth	04–021–3006–1	0
Marana (Pinal Air Park)	04–021–3007–1	0
Maricopa	04–021–3010–3	12.6
Pinal County Housing/PCH (approx. 11 miles east of Casa Grande)	04–021–3011–1	6.5
	04–021–3011–2	5.9
	04–021–3011–3	15.6
Riverside (Kearny)	04–021–3012–1	0
Stanfield (approx. 15 miles west of Casa Grande)	04–021–3008–1	16.4
	04–021–3008–3	17.8
Bapchule (Gila River Indian Community monitors)	04–021–7004–1	6.6
	04–021–7004–2	7.9

\*AQS (Air Quality System) is an EPA database of ambient air quality.

\*\*The 24-hour PM<sub>10</sub> standard is met when the 3-year average of the expected exceedances is equal to or less than one.

\*\*\*The Apache Junction site is located in the existing Phoenix PM<sub>10</sub> nonattainment area.

As shown in Table 1, the data from 2007–2009 reveal violations at the PM<sub>10</sub> monitors located in Queen Creek, Casa Grande, Coolidge, Cowtown (which is southeast of Maricopa), Maricopa, Stanfield, at the Pinal County Housing Complex (which is east of Casa Grande, roughly half-way between Coolidge and Eloy), and within the Gila River Indian Reservation. Expected annual exceedances (of the 150 µg/m<sup>3</sup> 24-hour standard) at these monitoring sites range from two (at Coolidge) to more than 100 (at Cowtown). (For the purposes of comparison, the NAAQS is met when the 3-year average of the expected exceedances is equal to or less than one.) Maximum 24-hour concentrations measured at a number of these sites (such as Cowtown, Maricopa and

Stanfield) can be more than two to three times the level of the standard. In light of the widespread, frequent, and severe violations of the PM<sub>10</sub> standard monitored at various monitoring sites in Pinal County, EPA continues to believe that the SIP planning and control requirements that are triggered by redesignation of an area to nonattainment for the PM<sub>10</sub> NAAQS would be the most appropriate means to ensure that this air quality problem is remedied.

Section III of this document describes the State of Arizona's recommendation with respect to the boundaries of this new PM<sub>10</sub> nonattainment area, and section IV of this document summarizes EPA's review of the State's recommendation and rationale for EPA's

proposed boundaries. Section V describes the Indian Tribes' recommendations and our corresponding responses. Section VI describes our proposed action and the corresponding CAA planning requirements that would thereby be triggered.

## III. State of Arizona's Recommendation for Boundaries for New Nonattainment Area

Pursuant to section 107(d)(3)(B) of the Act, the Governor of Arizona responded to EPA's October 14, 2009 notification that the PM<sub>10</sub> designation of Pinal County, and any nearby areas that may be contributing to violations in Pinal County, should be revised. The Governor responded in a letter dated

<sup>3</sup>In a letter dated October 14, 2009, EPA notified the State of Arizona that the PM<sub>10</sub> designation in Pinal County should be revised. EPA notified the

tribal leaders of the Ak-Chin Indian Community, Gila River Indian Community, San Carlos Apache

Tribe, and Tohono O'odham Nation by letters dated December 30, 2009.

March 23, 2010 in which the Governor recommended a partial-county nonattainment area.<sup>4</sup>

The boundaries of the prospective PM<sub>10</sub> nonattainment area recommended by the Governor of Arizona encompass a portion of central and western Pinal County, and form an area that resembles a backwards “L.”<sup>5</sup> See figure 2 of EPA’s TSD for a map of both the State’s recommended boundaries as well as EPA’s proposed boundaries. The state-recommended area includes all or most of the cities of Maricopa, Coolidge, Casa Grande and the Pinal County portion of the town of Queen Creek, as well as the western-most portion of the town of Florence and the northern-most portion of the city of Eloy. It includes an area that at its western-most boundary includes nearly all of the City of Maricopa. The southern boundary is defined by a line that coincides approximately with Interstate 8. The area continues to the east for approximately 35 miles where it extends to the north, including portions of Florence and Coolidge, and the Pinal County portion of Queen Creek, and terminates just south of Apache Junction. The eastern boundary is defined by the north-south line between Townships 8E and 9E. The northern boundary follows the county line south from the Apache Junction area and then follows the boundary of the Gila River Indian Reservation to close back around to the recommended western boundary. See the Governor’s March 23, 2010 letter for the legal description of the State’s recommended boundaries by township and range and for an enclosed map illustrating this area.

In support of the Governor’s recommendation, on March 26, 2010, the Arizona Department of Environmental Quality (ADEQ) submitted to EPA a technical report entitled, “Arizona Air Quality Designations, Technical Support Document, Boundary Recommendation for the Pinal County 24-hour PM<sub>10</sub> Nonattainment Area (March 15, 2010),” (herein referred to as ADEQ’s “technical report”). ADEQ’s technical report compiles and evaluates information addressing nine factors<sup>6</sup> derived from

and discussed in EPA guidance on designation criteria; see citation on page 2 of ADEQ’s technical report to Memorandum from Robert J. Meyers, EPA Acting Assistant Administrator, “Area Designations for the Revised 24-Hour Fine Particle National Ambient Air Quality Standard,” dated June 8, 2007.

ADEQ points to a number of elements that it believes support the recommended boundaries. Specifically, ADEQ claims that its recommended area would include: all of the violating monitors; the majority of PM<sub>10</sub> emissions generated within the county; the vast majority of the county’s population; the rapidly growing urbanized and developed areas, high-traffic Interstate corridors and areas with the highest employment densities; the significant growth areas along Interstates 8 and 10; and the agricultural basin where stagnation conditions are known to impact PM<sub>10</sub> concentrations. ADEQ also believes that its recommended redesignation would maintain jurisdictional cohesiveness. To buttress its recommended exclusion of eastern Pinal County from the new nonattainment area, ADEQ compares these factors as they apply to western Pinal County with those for eastern Pinal County. ADEQ asserts that in contrast to the western portion of Pinal County, the eastern portion has no violating monitors, contains few emissions sources (other than certain major sources that are already included in an existing PM<sub>10</sub> nonattainment area), is largely undeveloped and has limited growth potential. As set forth below in more detail, while EPA believes this characterization applies to the eastern half of Pinal County, EPA also believes that the western portion that should be redesignated is far more extensive than the State’s recommendation.

#### IV. EPA’s Review of the State’s Recommendation and Rationale for Proposed Boundaries

CAA section 107(d)(1)(A) generally defines a nonattainment area as any area that does not meet, or that contributes to ambient air quality in a nearby area that does not meet, the national primary or secondary ambient air quality standard for the relevant pollutant. Thus, in reviewing the State’s recommended boundaries, EPA has considered not only areas where violations of the relevant NAAQS have

population density and degree of urbanization, traffic and commuting patterns, growth rates and patterns, meteorology, geography/topography, jurisdictional boundaries, and level of control of emission sources.

been monitored, but also that contribute to such violations.

EPA guidance<sup>7</sup> provides for the use of “a qualitative analysis of the area of representativeness of the monitoring station, together with the consideration of terrain, meteorology, and sources of emissions \* \* \*” in defining nonattainment area boundaries for PM<sub>10</sub>. Consistent with that guidance, EPA generally recommends that States identify nonattainment area boundaries based on the weight of evidence of the following factors and other relevant information:

- Air quality data;
- Pollutant emissions;
- Population density and degree of urbanization;
- Traffic and commuting patterns;
- Growth;
- Meteorology;
- Geography and topography;
- Jurisdictional boundaries; and
- Level of control of emissions sources.

See, e.g., Memorandum from Robert J. Meyers, EPA Acting Assistant Administrator, “Area Designations for the Revised 24-Hour Fine Particle National Ambient Air Quality Standard,” dated June 8, 2007. EPA also looks to the same kinds of factors in the context of redesignations. See, e.g., EPA’s proposed (73 FR 22307, at 22308–22310, April 25, 2008) and final approval (73 FR 66759, November 12, 2008) of a state request to redesignate the San Joaquin Valley PM<sub>10</sub> nonattainment area. In addition, CAA section 107(d)(3)(A) allows EPA, in redesignating areas to nonattainment, to take into consideration “any other air-quality-related considerations.” In its technical report, ADEQ refers to the nine factors in developing the State’s recommended boundaries for the new PM<sub>10</sub> nonattainment area. In the following paragraphs, we review and evaluate ADEQ’s nine factor analysis.

*Air Quality Data.* ADEQ’s technical report summarizes 2006–2008 PM<sub>10</sub> monitoring data from 12 monitoring sites within Pinal County. Most of the monitoring sites are located in the west central portion of the county (Maricopa, Cowtown, Stanfield, Casa Grande, Pinal County Housing Complex, and Coolidge). Two are located in the southern portion (Eloy and Pinal Air Park); two are located in the northern portion [Apache Junction and Combs School (located in Queen Creek)]; and two are located in the far eastern portion of the county (Riverside and Mammoth). The Apache Junction and Riverside

<sup>4</sup> Letter from Jan Brewer, Governor of Arizona, to Jared Blumenfeld, Regional Administrator, EPA Region IX, dated March 23, 2010.

<sup>5</sup> The Governor explicitly excludes Indian country, which is appropriate given that the State of Arizona is not authorized to administer programs under the CAA in the affected Indian country. The “backwards L” shape of the recommended area is partly explained by this exclusion because the recommended area partially surrounds Indian country.

<sup>6</sup> The nine factors considered in ADEQ’s technical report are air quality data, emissions data,

<sup>7</sup> PM<sub>10</sub> SIP Development Guideline, EPA-450/2-86-001, June 1987.

monitoring sites are located within existing PM<sub>10</sub> nonattainment areas.

Based on 2006–2008 data, ADEQ finds six of the monitoring sites to be in violation of the PM<sub>10</sub> NAAQS. EPA has updated this monitoring information by reviewing 2007–2009 data. Although we find that these data are largely consistent with the data presented by ADEQ, the more recent data set shows seven violating monitors (not counting the PM<sub>10</sub> monitoring site on the Gila River Indian Reservation) rather than six. Coolidge is the additional monitoring site that is newly violating based on the more recent data set. In its technical report, ADEQ notes that its proposed boundaries include the locations of all of the violating monitors within Pinal County. While we agree that Arizona's proposed boundaries do in fact include all of the violating monitors (*i.e.*, other than the monitoring site located within the Gila River Indian Reservation and those located within existing PM<sub>10</sub> nonattainment areas), we disagree with ADEQ's contention that its proposed boundaries include all areas that do not experience violations but nonetheless contribute to the violations that are recorded at the monitoring sites based on an evaluation of the other eight factors as discussed in the following paragraphs.

**Emissions Data.** ADEQ developed an annual emissions inventory of PM<sub>10</sub> sources in the county for the year 2007 for the purpose of defining a boundary for the new nonattainment area. ADEQ's inventory relies on a number of different data sources, assumptions, and methods (including EPA's MOBILE model and compilation of emissions factors (AP-42)) to calculate annual PM<sub>10</sub> emissions in the county. ADEQ's inventory points to fugitive emissions from vehicular traffic on paved and unpaved roads as the single largest source category, followed in importance by agricultural sources (including concentrated animal feeding operations), industrial sources, and construction. ADEQ's technical report includes maps that show the relative distribution of emissions generated within the county using 4-kilometer grid cells. *See* in particular the following maps in the State's technical report: Figure 3–3 on page 8 (all PM<sub>10</sub> sources) and figure 3–4 on page 11 (paved and unpaved on-road sources). The maps show that PM<sub>10</sub> emissions in the county are concentrated in the western half of the county, with the highest emissions densities in the west central portion of the county. In contrast, the eastern half of the county (outside of the existing nonattainment areas) is characterized predominantly by the lowest category of

emissions densities (*i.e.*, 0 to 20 tons per year per 4-kilometer grid). *See* page 8 of ADEQ's technical report.

While EPA finds that the PM<sub>10</sub> emissions inventory for Pinal County and ADEQ's corresponding maps are helpful in defining the boundaries of the new nonattainment area, we do not believe that they justify ADEQ's conclusions about its recommended boundaries. ADEQ claims that the emissions inventory and maps demonstrate that sources in the eastern and southern regions of the county do not "significantly contribute" to violations in the other regions of the county. *See* page ES–3 of ADEQ's technical report. EPA notes, however, that CAA section 107(d)(1)(A) defines a nonattainment area as one that does not meet, or that "contributes to" ambient air quality in a nearby area that does not meet the NAAQS. The definition of nonattainment areas is not limited to areas that, in ADEQ's words, "significantly" contribute to a violating area. Moreover, ADEQ's maps show that areas immediately to the east and south of the recommended area (but still within the western half of the county) include the same types of emissions sources, with similar emissions densities, as those that predominate within the recommended area. For example, figure 3–3 (page 8 of State's technical report) shows emissions densities similar to those estimated within the State's recommended boundaries to the east in Coolidge and Florence, as well as south to Eloy. In addition, figures 3–4, 3–7, and 3–10 (on pages 11, 14, and 17, respectively, of the State's technical report) illustrate the locations of unpaved roads (with average daily traffic volumes greater than 100) and show that higher relative concentrations of PM<sub>10</sub> emissions from such sources as vehicle entrainment of dust over paved and unpaved roads, tilling and harvesting, and concentrated animal feeding operations (CAFOs) extend to central, and south central Pinal County. Thus, the emissions inventory data and related maps do not support the State's recommended boundaries but rather argue for a larger nonattainment area consisting of the western half of the county.

In contrast, EPA's proposed boundaries include all of the areas for which emissions data show relatively higher PM<sub>10</sub> emissions from the types of sources contributing the most to the overall PM<sub>10</sub> emissions inventory. For instance, based on the information sources described above in the State's technical report, EPA's proposed boundaries include the areas of relatively higher emissions densities in

and around Coolidge, Florence, and Eloy that reflect the same types of PM<sub>10</sub>-generating activities (vehicle entrainment of dust over paved and unpaved roads, tilling and harvesting, and CAFOs) as found within the smaller nonattainment area boundaries recommended by the State.

**Population density, degree of urbanization, growth rate and patterns.** This factor reflects EPA's belief that the size, density, and location of population can be indicative of emissions activity that contributes to violations of the PM<sub>10</sub> NAAQS in an area. ADEQ's technical report presents population growth and density figures for municipalities in Pinal County. The data show that Pinal County has grown dramatically over the past decade (nearly doubling from a population of approximately 180,000 in 2000 to nearly 360,000 in 2008). EPA independently collected and reviewed population-related information and notes that the populations of the largest cities and towns in the western half of the county, such as (the city of) Maricopa (2008 population of approximately 46,000), Casa Grande (41,000), Apache Junction (33,000), Florence (21,000), and Eloy (13,000), contrast sharply with much smaller populations in the largest cities and towns in the eastern half of the county, including Superior (3,000), Kearny (3,000), and Mammoth (3,000). *See* page 14 of EPA's TSD.

ADEQ also submitted maps showing population densities both under current conditions and projections for the year 2030 when the population of Pinal County is anticipated to exceed 1,000,000. Under existing conditions, higher population densities are found in the west central portion of the county, but there are also population centers in the northern (Apache Junction and Queen Creek) and southern portions (Eloy) of the county. ADEQ's maps show that future growth is expected to be concentrated in the Interstate 8 and 10 corridors, which extend through the west central and southern portions of the county, although a certain amount of growth is also expected in the Falcon Valley area farther to the east.

In its technical report, ADEQ concludes that the eastern and southern portions of the county are largely undeveloped and have very low population densities, and finds that this information provides support for the State's recommended boundaries. However, like the emissions data discussed above, we believe that the data do not justify the restricted nature of the State's recommended boundaries, which exclude much of the western half of the County. Specifically, EPA

believes that the State's recommended exclusion of areas in the eastern and southern sections of the western half of the county is contradicted by evidence showing that land use development in Pinal County extends further east and south than the State's recommended boundaries. For example, the State's recommended boundaries fail to include the agricultural and more urbanized uses in and around Eloy and the future growth areas along the two Interstate corridors. See figures 3–13 and 3–14 from the State's technical report. In contrast, EPA's proposed boundaries would include all of the western half of Pinal County (excluding TON's main reservation and the Apache Junction portion of the Phoenix PM<sub>10</sub> nonattainment area) and thereby would include the areas with relatively higher population densities and most of the areas where significant levels of growth are expected.

*Traffic and commuting patterns.* This factor considers the commuting patterns of residents in, and commuters to, Pinal County. More specifically, this factor considers the number of commuters in each surrounding county who drive to Pinal County, the percent of total commuters in each county who commute to Pinal County, the percent of total commuters in each county who commute into the statistical area in which Pinal County is located, as well as the total vehicle miles traveled (VMT) for each county.

ADEQ's technical report (page 23) presents statistics from the 2000 census quantifying the number of commuters from each county within the State of Arizona to jobs within Pinal County, and the number of commuters residing in Pinal County to jobs in Maricopa and Pima counties. The data from 2000 indicate that approximately 10,000 commuters, or roughly 20% of total commuters to jobs within Pinal County, reside outside of Pinal County. Conversely, approximately 36,000 (roughly 80%) of commuters travel solely within Pinal County. Almost 80% of the out-of-county commuters reside to the north in Maricopa County, and nearly all remaining out-of-county commuters commuting to Pinal County reside to the south in Pima County. Moreover, nearly 40% of commuters residing in Pinal County work in either Maricopa or Pima counties, whereas 60% of commuters residing in Pinal County also work in Pinal County.

EPA independently reviewed these same data and observed that the principal route for traffic through Pinal County (serving in-county as well as out-of-county commuters) is Interstate 10, which bisects the western half of the

county and connects metropolitan Phoenix (largely in Maricopa County) to the north with metropolitan Tucson (in Pima County) to the south. ADEQ cites traffic and commuting patterns as a factor supporting the exclusion of the eastern half of the county from the new nonattainment area. While EPA agrees that it is reasonable to distinguish between the eastern and western halves of the county, EPA believes that the data indicate that the entire western half of the county, and not a small portion of it, as the State recommends, should be redesignated to nonattainment. Thus, EPA finds that traffic and commuting patterns do not make a case for the state's recommendation, but rather lend support to the creation of a larger nonattainment area generally encompassing the western half of the County. See figure 3–17 from the State's technical report, which shows much higher employment densities projections for year 2030 in the western half of the county than those in the eastern half but which also show higher employment densities east and south of the State's recommended boundaries (but still within the western half of the county).

*Meteorology.* Generally, the analysis of meteorology looks to wind data for evidence that emissions originating from areas in certain locations relative to violating monitors may be more prone to contribute than emissions originating from sources located elsewhere. ADEQ's technical report describes the dynamics responsible for region-wide weather patterns and the associated winds blowing across Arizona, as well as the frequent occurrence of "drainage" winds, which occur when large-scale weather influences wane. ADEQ describes how steep pressure gradients result from strong high pressure building over the western United States and low pressure to the east. As the high pressure builds, a steep pressure differential is created that causes strong winds over Arizona to entrain and transport dust from in-county and out-of-county sources. These can cause elevated PM<sub>10</sub> concentrations. ADEQ also notes however, that not all exceedances of the PM<sub>10</sub> standard are wind-related and that stagnation conditions in the fall and winter occur when cold air and the absence of winds trap ambient PM<sub>10</sub> in the lower atmosphere. ADEQ notes that the region of the county most impacted by stagnation conditions is the western agricultural basin.

The State recommends including the agricultural basin region of the county where stagnation conditions are known to impact PM<sub>10</sub> concentrations. While

we agree that the new nonattainment area should include the agricultural basin region where stagnation conditions occur, we find that the State's recommended boundaries do not in fact accomplish this. As shown on page 14 of the ADEQ's technical report, the agricultural basin region of the county, roughly defined based on tilling and harvesting emissions within the county, lies in the western half of the county, and also extends south of Interstate 10 towards the southern county line. Moreover, as discussed in the following paragraph, a review of available wind data supports the inclusion of areas to the south and east of the violating monitors (*i.e.*, beyond the State's recommended boundaries) based on the prevalence of winds from the southeast quadrant.

EPA has considered the information provided by ADEQ but also reviewed available wind data for Pinal County and finds that winds are similar throughout central and western Pinal County in that the predominant wind directions are from the southeast quadrant. See figure 10 of EPA's TSD. (We note that winds blow out of the north and northwest far less frequently, making transport of PM<sub>10</sub> from the metropolitan Phoenix area unlikely under most circumstances.) In this instance, the predominance of southeast winds support boundaries that extend south and east of the violating monitors because PM<sub>10</sub> sources, including agricultural activities and unpaved roads, are found in those directions. EPA's recommended boundaries encompass the types of sources that are believed to cause or contribute to the monitored violations and that are located east and south of the violating monitors, whereas the State's recommended boundaries largely exclude these sources. See figure 2 (PM<sub>10</sub> monitors, ADEQ's recommended nonattainment area boundary, and EPA's proposed nonattainment area boundary), figure 4 (Pinal County agriculture, cattle operations, and unpaved roads), and figure 5 (ADEQ's map illustrating the distribution of emissions in Pinal County) from EPA's TSD.

Lastly, EPA recognizes that high wind events do occur in Pinal County, and that some of these events may result in monitored particulate matter exceedances that qualify as caused by exceptional events under EPA's exceptional events rule.<sup>8</sup> However, as

<sup>8</sup> On March 22, 2007, EPA adopted a final rule, *Treatment of Data Influenced by Exceptional Events*, to govern the review and handling of certain air quality monitoring data for which the normal

ADEQ itself acknowledges, even if EPA were eventually to determine that all of the exceedances that ADEQ has flagged are caused by “exceptional events,” the area would still clearly be in violation of the PM<sub>10</sub> NAAQS.

*Geography/Topography.* The geography/topography factor evaluates physical features of the land that might have an effect on the airshed, and therefore, on the distribution of particulate matter over an area. In its technical report, ADEQ describes the topography of Pinal County in terms of a broad basin, low in elevation (roughly 1,200 feet in elevation), surrounded on all sides by mountain ranges. ADEQ finds that topographic considerations support the State’s inclusion of the basin region of the county, which is characterized by open-ended valleys with few topographic barriers, within the recommended boundaries. Conversely, ADEQ finds that topographic considerations support the State’s exclusion from the recommended boundaries of the eastern portion of the county, which is characterized by rough terrain and steep mountain ranges reaching over 7,000 feet in elevation.

EPA too has considered topography and generally agrees with ADEQ’s description of the topography of Pinal County. We believe that the various mountain ranges found on each side of the county inhibit transport of PM<sub>10</sub> (which is largely crustal in composition—see figure 6 of EPA’s TSD) from outside the county to the violating monitors within the county. Within the county itself, we believe that the mountains in the eastern quarter of the county, which rise to approximately 6,000 feet near the eastern borders with Gila and Graham counties, inhibit intra-county transport from sources located in the eastern quarter to the violating monitors. See figure 11 of EPA’s TSD. (The portion of the San Carlos Apache Reservation that lies within Pinal County is located in the eastern quarter of the county.)

However, the existence of the steep mountain ranges in the eastern quarter of the County does not justify ADEQ’s recommendation to exclude from redesignation a much larger section of the western half of the County. EPA believes that, taking other factors into account, the western half of the County,

located in the basin region that features few topographic barriers, should be redesignated to nonattainment. Indeed, it is arguable that topography alone would lend support to redesignating a far larger area than EPA is proposing, one that would encompass the entire county, excepting only the eastern quarter. However, EPA believes that topography when evaluated in the context of the various other factors, supports redesignation of the western half of the county, rather than the much more restricted boundaries that ADEQ suggests.

*Jurisdictional Boundaries.* The analysis of jurisdictional boundaries evaluates the planning and organizational structure of an area to determine if the implementation of controls in a potential nonattainment area can be carried out in a cohesive manner. ADEQ’s technical report notes the absence of any certified metropolitan planning organization (MPO) for Pinal County and the exclusion of Indian country from the State’s recommendation. As such, ADEQ concludes that the State’s recommended boundaries maintain jurisdictional cohesiveness requiring no new institutional arrangements for accomplishing required tasks.

EPA also considered the planning and organizational structure of the State of Arizona and Pinal County (cities, towns, and unincorporated areas), but also took into account Indian country, to ensure that the implementation of controls within the prospective nonattainment area could be carried out in a cohesive manner. ADEQ exercises overall jurisdiction over environmental programs in the State of Arizona (*i.e.*, excluding Indian country). Under state law, ADEQ has the responsibility for preparing air quality attainment and maintenance plans in Pinal County. With respect to permitting and enforcement, the Pinal County Air Quality Control District (AQCD or “District”) has jurisdiction over most types of stationary sources operating, or proposing to locate, within Pinal County, but state law retains ADEQ’s statewide jurisdiction over certain types of stationary sources (smelters, refineries, coal-fired power plants, and agricultural operations). Neither ADEQ nor the District have jurisdiction within Indian country.

In its technical report, ADEQ notes that five cities and towns (Casa Grande, Coolidge, Eloy, Florence, and City of Maricopa), as well as a portion of a sixth (Queen Creek) are located in central and western Pinal County. ADEQ indicates that the incorporated boundaries of these municipalities have been taken

into account in developing the nonattainment area boundaries. However, EPA’s review of the incorporated boundaries of these municipalities (*see, e.g.*, figure 2 of EPA’s TSD) shows that the State’s recommended boundaries omit portions of the City of Maricopa and Coolidge, and most of Florence and Eloy. In contrast, EPA’s proposed nonattainment area boundaries encompass all of these cities and towns, where most of the county’s population resides. Inclusion of entire cities and towns within the nonattainment area boundaries would facilitate attainment planning to the extent that such local governments will ultimately be relied upon for development and/or implementation of specific PM<sub>10</sub> control measures.

*Level of Control of Emission Sources.* The level of control factor looks at the emissions controls currently implemented in each area. As a general matter, most existing and proposed stationary sources within Pinal County (excluding Indian country) are subject to the generally applicable prohibitory rules and permitting requirements established by the Pinal County AQCD, or, in the case of certain types of stationary sources (smelters, refineries, coal-fired power plants, and agricultural operations), State prohibitory rules and permitting requirements established by ADEQ.

Pinal County AQCD has established rules for dust abatement purposes that apply within a subarea of Pinal County established under state law (Arizona Revised Statutes section 49–541) and referred to as “Area A.” Within Pinal County, “Area A” generally refers to an area encompassing the Pinal County portions of Apache Junction and Queen Creek. Pinal County has also adopted a number of ordinances that are also intended to reduce dust generated within “Area A.” These include ordinances placing restrictions on residential fireplaces, leaf blowers, open burning, vehicle commute trips, and vehicle idling. For one township located within “Area A,” the township included in the Phoenix Area PM<sub>10</sub> nonattainment area (*i.e.*, Township 1 north, range 8 east; referred to as “Apache Junction”), Pinal County AQCD has adopted further dust abatement rules.<sup>9</sup> The State’s recommended boundaries include a portion, but not all, of “Area A.” In contrast, EPA’s proposed boundaries for the new nonattainment area would encompass

<sup>9</sup> The township referred to as Apache Junction would be unaffected by our proposed action and would remain part of the Phoenix planning area, which is designated as a “serious” PM<sub>10</sub> nonattainment area.

planning and regulatory processes are not appropriate. Under the rule, EPA may exclude data from use in determinations of National Ambient Air Quality Standard (NAAQS) exceedances and violations if a state demonstrates that an “exceptional event” caused the exceedances, and satisfies other criteria set forth by the rule. See 72 FR 13560.

all of "Area A," thereby facilitating review and modification of these existing PM<sub>10</sub> emissions controls within the broader SIP attainment planning context.

*Conclusion.* CAA section 107(d)(3)(C) provides that after notifying the Governor of State of its intent to redesignate an area, EPA shall promulgate the redesignation, if any, of the area or portion thereof, submitted by the Governor, "making such modifications as EPA may deem necessary. \* \* \*" Pursuant to CAA section 107(d)(3), we have reviewed the State's recommendation (dated March 23, 2010) and related technical report (submitted on March 26, 2010).

Both EPA and the State agree that sources outside of the county do not contribute to PM<sub>10</sub> violations at the violating monitors within the county, and that sources in the eastern half of the county do not contribute to the violating monitors (which are concentrated in the central and western portions of the county). But while EPA and the State both use the nine-factor analysis for evaluation of the prospective nonattainment area boundaries, we reach quite different conclusions.

As explained above, and more fully in EPA's TSD, EPA does not believe that the State's recommended boundaries encompass the full geographic area from which emissions-generating activities contribute to the monitored PM<sub>10</sub> violations. More specifically, we believe that the Governor's recommended boundaries, which cut through municipalities and contiguous expanses of agricultural fields, exclude sources that have been identified as dominant sources of PM<sub>10</sub> and that are contributing to elevated levels of PM<sub>10</sub> at violating monitors.

We believe that our proposed boundaries, which are defined as all land geographically located within Pinal County west of the north-south line defined by the boundary between Townships 10E and 11E, but excluding TON's main reservation and excluding the existing Apache Junction portion of the existing Phoenix PM<sub>10</sub> nonattainment area, encompass the areas in which PM<sub>10</sub> violations are being monitored, as well as the areas that contribute to the monitored violations, and that they are thus consistent with the definition of nonattainment areas in CAA section 107(d)(1)(A). Our conclusion is based on EPA's analysis of the factors as set forth in the body of this document and in further detail in the TSD. In sum, we base our proposed boundaries on the following considerations: (1) Monitored violations

occur in the west, central and northern portions of the western half of the county, not in the eastern half (*i.e.*, outside of existing PM<sub>10</sub> nonattainment areas); (2) the emissions from agricultural operations, feedlots, dairies, and other cattle operations, as well as roads, are concentrated in the western half of the county; (3) population densities are much greater in the western half of the county than in the eastern half and growth is expected to be concentrated primarily along the Interstate corridors that extend through the western half of the county; (4) Interstate 10, which connects Pinal County with the employment centers in metropolitan Phoenix and Tucson, bisects the western half of Pinal County; (5) predominant southeasterly winds support inclusion of PM<sub>10</sub> sources in areas to the south and east of the violating monitors; (6) the western half of Pinal County encompasses the incorporated boundaries of all of the cities in Pinal County (Apache Junction, Casa Grande, Coolidge, Eloy, Maricopa), as well as the larger towns (Florence and Queen Creek) thereby potentially facilitating implementation of future control measures; and (7) dust abatement measures already in effect in "Area A" (within Pinal County) can readily be applied, as necessary and appropriate, throughout the other portions of the western half of Pinal County. A map comparing the State's recommended boundaries to EPA's proposed boundaries is included as figure 2 in our TSD.

EPA therefore deems it necessary and appropriate to propose boundaries that differ from the State's recommended boundaries and that we believe better satisfy air quality data, planning, control and other air-quality-related considerations. CAA Section 107(d)(3). Under CAA section 107(d)(3)(C), EPA must notify the State whenever EPA intends to modify State recommendations concerning boundaries for areas to be redesignated, at least 60 days prior to EPA promulgation of final redesignations. EPA intends to notify the State of Arizona of our proposed action soon after this notice is signed.

#### **V. EPA's Review of Recommendations From Affected Indian Tribes**

*Ak-Chin Indian Community.* The Ak-Chin Indian Community is located in western Pinal County, and is included in the existing "rest of state" unclassifiable area for PM<sub>10</sub>. The Ak-Chin Indian Community does not operate a PM<sub>10</sub> monitoring site, but lies in proximity to several PM<sub>10</sub> monitoring sites that do monitor violations of the

PM<sub>10</sub> NAAQS (*e.g.*, the Maricopa and Cowtown sites). In a letter dated September 2, 2010 the Ak-Chin Indian Community responded to EPA's December 30, 2009 letter concerning the PM<sub>10</sub> designation of Pinal County with a recommendation that the Ak-Chin lands be designated attainment/unclassifiable. We have offered formal consultation to the Ak-Chin Indian Community and have decided to defer action on redesignation of the Ak-Chin Indian Community for PM<sub>10</sub> to allow time for formal consultation to occur and for further consideration of this issue as part of that process. If in the future EPA decides to take action to redesignate the Ak-Chin Indian Community, the Agency will do so in a separate rulemaking.

*Gila River Indian Community.* The Gila River Indian Community (GRIC) is a community located on 374,000 acres in south central Arizona. Approximately one-third of GRIC lies within Maricopa County and two-thirds lies within Pinal County. The Maricopa County portion of GRIC is included in the Phoenix Area PM<sub>10</sub> nonattainment area. The Pinal County portion of GRIC is included in the existing "rest of state" unclassifiable area for PM<sub>10</sub>. GRIC operates a PM<sub>10</sub> monitoring site in the Pinal County portion of its lands and GRIC's monitor has recorded a number of PM<sub>10</sub> exceedances. See table 1 above in this document. However, GRIC has flagged a significant number of these exceedances as caused by "exceptional events" under EPA's exceptional event rule (50 CFR 50.14), and EPA has not yet taken action to determine whether any of these data should be excluded on that basis from consideration in a redesignation action. In October 2009, EPA approved GRIC's application for treatment in the same manner as a state for the purposes of CAA section 107(d) air quality designations. More recently, we proposed approval of GRIC's submitted tribal implementation plan. See 75 FR 48880, August 12, 2010.

As noted above, on December 30, 2009, EPA notified GRIC that the PM<sub>10</sub> designation for Pinal County should be revised. GRIC first indicated orally, and later confirmed in a letter dated May 27, 2010, that the community would not be making a recommendation for PM<sub>10</sub> until formal consultation is conducted. By letter dated April 30, 2010, EPA responded to GRIC's oral request with an offer of formal consultation. As with the Ak-Chin Indian Community, we have decided to defer action on a decision whether to redesignate GRIC to allow time for formal consultation to occur and for further consideration of this issue as part of that process. In

addition, the deferral for GRIC will provide EPA with the time necessary to address the exceptional events issues. If in the future EPA decides to undertake redesignation of the Pinal County portion of the Gila River Indian Community, the Agency will do so in a separate rulemaking.

*San Carlos Apache Tribe.* The San Carlos Apache Reservation extends over a portion of eastern Pinal County, as well as portions of Gila and Graham counties. A section of the Pinal County portion of the San Carlos Apache Reservation lies in the existing Hayden PM<sub>10</sub> nonattainment area. The rest of the Pinal County portion of the reservation is located within the “rest of state” unclassifiable area for PM<sub>10</sub>. The San Carlos Apache Tribe did not respond to EPA’s December 30, 2009 letter concerning the PM<sub>10</sub> designation in Pinal County.

For the reasons discussed in section IV of this document, we believe that emissions sources in the eastern half of Pinal County do not contribute to violations monitored in the western half of the county, and thus are proposing only that the western half of the county (excluding TON’s main reservation and the Apache Junction portion of the existing Phoenix PM<sub>10</sub> nonattainment area) be redesignated to nonattainment. Given that the San Carlos Tribe’s Indian country extends only into far eastern Pinal County, we propose to retain the Tribe’s current designations for the PM<sub>10</sub> standard (*i.e.*, a portion remains in the existing Hayden PM<sub>10</sub> nonattainment area, and a portion remains in the existing “rest of state” unclassifiable area).

*Tohono O’odham Nation.* The Tohono O’odham Nation (TON) extends over portions of Pima, Maricopa and Pinal counties. TON’s main reservation covers much of southwestern Pinal County and extends over portions of Pima and Maricopa counties. TON’s lands also include a small area (approximately 25 acres), known as Florence Village, which is located approximately two miles west of the town of Florence in central Pinal County, and a 3,200-acre parcel east of the main reservation called San Lucy Farm. With the exception of a small portion of TON included within the existing Rillito PM<sub>10</sub> nonattainment area (which is located in Pima County), TON is included in the “rest of state” unclassifiable area for PM<sub>10</sub>.

In a letter dated February 11, 2010, TON responded to EPA’s December 30, 2009 letter concerning the PM<sub>10</sub> designation in Pinal County with a recommendation that the TON land within Pinal County be designated

attainment/unclassifiable for PM<sub>10</sub>. With respect to the main reservation in southwestern Pinal County, we agree with TON’s recommendation and are proposing a nonattainment area with boundaries that exclude TON’s main reservation. We agree with TON’s recommendation in this regard because (1) the closest violating monitors (Stanfield and Casa Grande) are located in the midst of the county’s agricultural basin, well north of TON’s main reservation; (2) the types of emissions sources believed to be responsible for the PM<sub>10</sub> violations, such as agricultural operations, feedlots, and dairies (*see* figure 4 of EPA’s TSD), as well as roads, are largely absent from TON; (3) the population density of TON is very low, and is an order of magnitude less than the average population density of Pinal County (*see* table 5 of EPA’s TSD); and (4) TON is a separate sovereign not subject to state or county jurisdiction thereby complicating planning and implementation issues. We conclude therefore that TON’s main reservation is not contributing to the PM<sub>10</sub> violations monitored elsewhere in Pinal County and propose to exclude TON from the new nonattainment area. Under this proposal, the designation of TON’s main reservation would remain unchanged, *i.e.*, it would remain part of the “rest of state” unclassifiable area for PM<sub>10</sub>.

As to Florence Village and San Lucy Farm, EPA is deferring redesignation to allow for further consultation with TON. If in the future EPA decides to take action to redesignate TON’s Florence Village and San Lucy Farm, the Agency will do so in a separate rulemaking.

## VI. Proposed Action and Request for Public Comment

Pursuant to section 107(d)(3) of the Clean Air Act and based on our evaluation of air quality data, planning, control and other air-quality-related information and considerations, and our review of the Governor’s recommendation, EPA is proposing to redesignate from “unclassifiable” to “nonattainment” an area generally covering the western half of Pinal County, Arizona, for the 1987 PM<sub>10</sub> NAAQS and therefore to revise the boundaries of the existing “rest of state” unclassifiable area. EPA’s proposal to establish this new PM<sub>10</sub> nonattainment area, referred to as “West Pinal,” is based on numerous recorded violations of the PM<sub>10</sub> standard at various monitoring sites within the county, and on the other grounds set forth in this document and in the TSD.

EPA’s proposed boundaries for the nonattainment area would encompass

all of the area recommended by the State of Arizona, but would extend further to the east and south, and to a lesser degree, to the north and west. EPA’s proposed boundaries would encompass all land geographically located within Pinal County west of the north-south line defined by the boundary between Townships 10E and 11E, but excluding TON’s main reservation and excluding the Apache Junction portion of the existing Phoenix PM<sub>10</sub> nonattainment area. If finalized as proposed, the new “West Pinal” PM<sub>10</sub> nonattainment area would be classified as “moderate” by operation of law. *See* figure 2 of EPA’s TSD for a map showing EPA’s proposed boundaries.

We believe that our proposed boundaries as described above encompass the areas in which PM<sub>10</sub> violations are being monitored, as well as the areas that contributes to the monitored violations, and that they are thus consistent with the definition of nonattainment areas in CAA section 107(d)(1)(A). Our conclusion is based on EPA’s analysis of the factors as set forth in the body of this document and in further detail in the TSD. We find support for our proposed boundaries based on the following considerations: (1) Monitored violations occur in the west, central and northern portions of the western half of the county, not in the eastern half (*i.e.*, outside of existing PM<sub>10</sub> nonattainment areas); (2) the emissions from agricultural operations, feedlots, dairies, and other cattle operations, as well as roads, are concentrated in the western half of the county; (3) population densities are much greater in the western half of the county than in the eastern half and growth is expected to be concentrated primarily along the Interstate corridors that extend through the western half of the county; (4) Interstate 10, which connects Pinal County with the employment centers in metropolitan Phoenix and Tucson, bisects the western half of Pinal County; (5) predominant southeasterly winds support inclusion of PM<sub>10</sub> sources in areas to the south and east of the violating monitors; (6) the western half of Pinal County encompasses the incorporated boundaries of all of the cities in Pinal County (Apache Junction, Casa Grande, Coolidge, Eloy, Maricopa), as well as the larger towns (Florence and Queen Creek) thereby potentially facilitating implementation of future control measures; and (7) dust abatement measures already in effect in “Area A” (within Pinal County) can readily be applied, as necessary and appropriate, throughout the other



portions of the western half of Pinal County.

EPA has determined that activities occurring on the main Tohono O'odham Nation (TON) reservation are not causing or contributing to violations occurring in Pinal County and we are therefore proposing to exclude the main TON reservation from the new nonattainment area. San Carlos Apache lands, which are located in the eastern quarter of the county, would be excluded from the proposed nonattainment area along with the rest of the eastern half of the county. EPA is deferring its decision regarding redesignation of the Ak-Chin and Gila River Indian Community lands, as well as TON's Florence Village and San Lucy Farm, pending consideration of issues unique to tribal lands, completion of formal consultation with the tribal governments, and (in the case of GRIC) consideration of exceptional events flags. The existing Phoenix PM<sub>10</sub> nonattainment area (including the Apache Junction portion of western Pinal County) would be unaffected by this action.

Areas redesignated as nonattainment, as proposed herein, are subject to the applicable requirements of part D, title I of the Act and will be classified as moderate by operation of law (see section 188(a) of the Act). Within 18 months of the redesignation, the State is required to submit to EPA an implementation plan for the area containing, among other things, the following requirements: (1) Provisions to assure that reasonably available control measures (including reasonably available control technology) are implemented within 4 years of the redesignation; (2) a permit program meeting the requirements of section 173 governing the construction and operation of new and modified major stationary sources of PM<sub>10</sub>; (3) quantitative milestones which are to be achieved every 3 years until the area is redesignated attainment and which demonstrates reasonable further progress, as defined in section 171(1), toward timely attainment; and (4) either a demonstration (including air quality modeling) that the plan will provide for attainment of the PM<sub>10</sub> NAAQS as expeditiously as practicable, but no later than the end of the sixth calendar year after the area's designation as nonattainment, or a demonstration that attainment by such date is impracticable (see, e.g., section 188(c), 189(a), 189(c), and 172(c) of the Act). We have issued detailed guidance on the statutory requirements applicable to moderate PM<sub>10</sub> nonattainment areas [see 57 FR

13498 (April 16, 1992), and 57 FR 18070 (April 28, 1992)].

If we finalize the proposed redesignation, the State would also be required to submit contingency measures (for the new PM<sub>10</sub> nonattainment area), pursuant to section 172(c)(9) of the Act, which are to take effect without further action by the State or EPA, upon a determination by EPA that an area has failed to make reasonable further progress or attain the PM<sub>10</sub> NAAQS by the applicable attainment date (see 57 FR 13510–13512, 13543–13544). The EPA is proposing to establish a deadline for submission of contingency measures as called for in section 172(b) of the Act to coincide with the submittal date requirement for the other SIP elements discussed above, i.e., 18 months after redesignation. Lastly, any new PM<sub>10</sub> nonattainment area would be subject to EPA's general and transportation conformity regulations (40 CFR part 93, subparts A and B) upon the effective date of redesignation. See section 176(c) of the Act.

We will accept comments from the public on this proposal for thirty days from the date of publication of this notice, and will consider any relevant comments in taking final action on today's proposal.

## VII. Statutory and Executive Order Reviews

### A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA has determined that the redesignation to nonattainment proposed today, as well as the establishment of SIP submittal schedules, would result in none of the effects identified in Executive Order 12866, section 3(f). Under section 107(d)(3) of the Act, redesignations to nonattainment are based upon air quality considerations. The proposed redesignation, based upon air quality data showing that West Pinal is not attaining the PM<sub>10</sub> standard and upon other air-quality-related considerations, does not, in and of itself, impose any new requirements on any sectors of the economy. Similarly, the establishment of new SIP submittal schedules would merely establish the dates by which SIPs must be submitted, and would not adversely affect entities.

### B. Paperwork Reduction Act

This action does not impose any information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b).

### C. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, a redesignation to nonattainment under section 107(d)(3), and the establishment of a SIP submittal schedule for a redesignated area, do not, in and of themselves, directly impose any new requirements on small entities. See *Mid-Tex Electric Cooperative, Inc. v. FERC*, 773 F.2d 327 (DC Cir. 1985) (agency's certification need only consider the rule's impact on entities subject to the requirements of the rule). Instead, this rulemaking simply proposes to make a factual determination and to establish a schedule to require the State to submit SIP revisions, and does not propose to directly regulate any entities. Therefore, pursuant to 5 U.S.C. 605(b), EPA certifies that today's proposed action does not have a significant impact on a substantial number of small entities within the meaning of those terms for RFA purposes.

### D. Unfunded Mandates Reform Act

Under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, EPA has concluded that this proposed rule is not likely to result in the promulgation of any Federal mandate that may result in expenditures of \$100 million or more for State, local or tribal governments in the aggregate, or for the private sector, in any one year. It is questionable whether a redesignation would constitute a Federal mandate in any case. The obligation for the state to revise its State Implementation Plan that arises out of a redesignation is not legally enforceable and at most is a condition for continued receipt of federal highway funds. Therefore, it does not appear that such an action creates any enforceable duty within the meaning of section 421(5)(a)(i) of UMRA (2 U.S.C. 658(5)(a)(i)), and if it does the duty would appear to fall within the exception for a condition of Federal assistance under section 421(5)(a)(i)(I) of UMRA (2 U.S.C. 658(5)(a)(i)(I)).

Even if a redesignation were considered a Federal mandate, the anticipated costs resulting from the mandate would not exceed \$100 million to either the private sector or State, local and tribal governments. Redesignation of an area to nonattainment does not, in itself, impose any mandates or costs on the private sector, and thus, there is no private sector mandate within the meaning of section 421(7) of UMRA (2 U.S.C. 658(7)). The only cost resulting from the redesignation itself is the cost to the State of Arizona of developing, adopting, and submitting any necessary

SIP revision. Because that cost will not exceed \$100 million, this proposal (if it is a federal mandate at all) is not subject to the requirements of sections 202 and 205 of UMRA (2 U.S.C. 1532 and 1535). EPA has also determined that this proposal would not result in regulatory requirements that might significantly or uniquely affect small governments because only the State would take any action as result of today's rule, and thus the requirements of section 203 (2 U.S.C. 1533) do not apply.

#### *E. Executive Order 13132, Federalism*

Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." This rule will 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, because it merely proposes to redesignate an area for Clean Air Act planning purposes and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

#### *F. Executive Order 13175, Coordination With Indian Tribal Governments*

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." The area proposed for redesignation does not yet include, and EPA is deferring action on the Ak-Chin Indian Reservation, the Pinal County portion of the Gila River Indian Reservation, and TON's Florence Village and San Lucy Farm. In formulating its further action on these areas, EPA has been communicating with and plans to continue to consult with representatives of the Tribes, as provided in Executive Order 13175. Accordingly, EPA has addressed Executive Order 13175 to the extent that it applies to this action.

#### *G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks*

This proposed rule is not subject to Executive Order 13045 ("Protection of Children from Environmental Health

Risks") (62 FR 19885, April 23, 1997), because it is not an economically significant regulatory action based on health or safety risks.

#### *H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use*

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

#### *I. National Technology Transfer and Advancement Act*

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. The EPA believes that the requirements of NTTAA are inapplicable to this action because they would be inconsistent with the Clean Air Act.

#### *J. Executive Order 12898, Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Today's action proposes to redesignate an area to nonattainment for an ambient air quality standard. It will not have disproportionately high and adverse effects on any communities in the area, including minority and low-income communities.

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

Environmental protection, Air pollution control, Intergovernmental relations, National parks, Particulate Matter, Wilderness areas.

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

Dated: September 21, 2010.

**Jared Blumenfeld,**

*Regional Administrator, Region IX.*

[FR Doc. 2010-24683 Filed 9-30-10; 8:45 am]

**BILLING CODE 6560-50-P**

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 261**

**[EPA-R06-RCRA-2010-0066; SW FRL-9208-6]**

### **Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Rule**

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to grant a petition submitted by Exxon Mobil Beaumont Refining and Supply Company—Beaumont Refinery (Beaumont Refinery) to exclude (or delist) a certain solid waste generated by its Beaumont, Texas, facility from the lists of hazardous wastes. EPA used the Delisting Risk Assessment Software (DRAS) Version 3.0 in the evaluation of the impact of the petitioned waste on human health and the environment.

**DATES:** Comments must be received on or before November 1, 2010.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R06-RCRA-2010-0066 by one of the following methods:

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

2. *E-mail:* [peace.michelle@epa.gov](mailto:peace.michelle@epa.gov).

3. *Mail:* Michelle Peace, Environmental Protection Agency, Multimedia Planning and Permitting Division, RCRA Branch, Mail Code: 6PD-C, 1445 Ross Avenue, Dallas, TX 75202.

4. *Hand Delivery or Courier.* Deliver your comments to: Michelle Peace, Environmental Protection Agency, Multimedia Planning and Permitting Division, RCRA Branch, Mail Code: 6PD-C, 1445 Ross Avenue, Dallas, TX 75202. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

**FOR FURTHER INFORMATION CONTACT:** For further technical information concerning this document or for appointments to view the docket or the Beaumont Refinery facility petition, contact Michelle Peace, Environmental Protection Agency, Multimedia Planning and Permitting Division, RCRA Branch, Mail Code: 6PD-C, 1445 Ross Avenue, Dallas, TX 75202, by calling (214) 665-7430 or by e-mail at [peace.michelle@epa.gov](mailto:peace.michelle@epa.gov).

**SUPPLEMENTARY INFORMATION:** In the Final Rules section of this **Federal Register**, EPA is approving Exxon Mobil's delisting petition as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in