

(5) No vessel shall anchor, stop, remain or drift without power at any time in the RNA;

(6) All vessels shall continually monitor VHF-FM channel 13 on their radio-telephone while operating in, near, or approaching the RNA;

(7) Before entering the RNA, downbound vessels shall make a broadcast in the blind on VHF-FM channel 13 announcing their estimated time of arrival at the upriver start of the RNA at mile 535 to ensure that there are no upbound vessels within the RNA and in sufficient time that:

(i) If there are vessels in the RNA the downbound vessel shall adjust its speed so as to avoid a meeting situation in the RNA.

(ii) If the RNA is temporarily closed to vessel traffic the downbound vessel can take all way off and hold station or push in upriver of mile 535.

(iii) The site representative can pass any pertinent information that would aid the vessel in the safe transit of the demolition site. If the Commander, Eighth Coast Guard District determines that hazardous conditions exist, a towboat (tug) shall be provided by the contractor or bridge owner to assist vessels through the bridge on demand; and

(8) Before entering the RNA, upbound vessels shall make a broadcast in the blind on VHF-FM channel 13 announcing their estimated time of arrival at the downriver start of the RNA at mile 528 to ensure that there are no downbound vessels within the RNA and in sufficient time that:

(i) If there are vessels in the RNA the upbound vessel shall adjust its speed so as to avoid a meeting situation in the RNA.

(ii) If the RNA is temporarily closed to vessel traffic the upbound vessel can take all way off and hold station or push in downriver of mile 528.

(iii) The site representative can pass any pertinent information that would aid the vessel in the safe transit of the demolition site. If the Commander, Eighth Coast Guard District determines that hazardous conditions exist, a towboat (tug) shall be provided by the contractor or bridge owner to assist vessels through the bridge on demand.

(f) *Informational Broadcasts.* The Captain of the Port, Lower Mississippi River will inform the public as soon as practical when closures are expected via Broadcast Notice to Mariners. Notice for any closure that will last longer than 4 hours will be given a minimum of 7 days before the scheduled closure, unless an emergent situation exists. Notice for any closure that will last longer than 2 hours but less than 4

hours will be given at least 72 hours before the closure. Broadcast Notice to Mariners will be broadcast every two hours while the RNA is closed to traffic. Additionally, a schedule of known closures will be published in the Eighth District Local Notice to Mariners and at <http://homeport.uscg.mil>. Select "LOWER MISSISSIPPI RIVER (MEMPHIS)" under the Port Directory tab. The schedule will appear under the Notice to Mariners subcategory.

Dated: October 22, 2010.

Peter Troedsson,

Captain, U.S. Coast Guard, Acting Commander, Eighth Coast Guard District.

[FR Doc. 2010-27587 Filed 11-1-10; 8:45 am]

BILLING CODE 9110-04-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA-R09-OAR-2010-0718; FRL-9219-7]

Determinations of Attainment by the Applicable Attainment Date for the Hayden, Nogales, Paul Spur/Douglas PM₁₀ Nonattainment Areas, Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA has determined that the Hayden, Nogales, and Paul Spur/Douglas nonattainment areas in Arizona attained the National Ambient Air Quality Standard (NAAQS) for particulate matter with an aerodynamic diameter of less than or equal to a nominal ten micrometers (PM₁₀) by the applicable attainment date of December 31, 1994. On the basis of this determination, EPA concludes that these three "moderate" nonattainment areas are not subject to reclassification by operation of law to "serious." Lastly, on the basis of a review of more recent ambient monitoring data, EPA has determined that the Hayden, Nogales, and Paul Spur/Douglas nonattainment areas are not currently attaining the PM₁₀ standard.

DATES: This action is effective on January 3, 2011 without further notice, unless EPA receives adverse comment by December 2, 2010. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA-R09-OAR-2010-0718, by one of the following methods:

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

2. *E-mail:* tax.wienke@epa.gov.

3. *Mail or deliver:* Wienke Tax, Air Planning Office, EPA 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 an e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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: Wienke Tax at *telephone number:* (415) 947-4192; *e-mail address:* tax.wienke@epa.gov, or the above EPA, Region IX address.

SUPPLEMENTARY INFORMATION:

Throughout this document, wherever "we", "us" or "our" are used, we mean EPA. Information is organized as follows:

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I. Background

A. PM₁₀ NAAQS

The NAAQS are levels for certain ambient air pollutants set by EPA to protect public health and welfare. PM₁₀, or particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers, is among the ambient air pollutants for which EPA has established health-based standards. On July 1, 1987 (52 FR 24634), EPA promulgated two primary standards for PM₁₀: A 24-hour standard of 150 micrograms per cubic meter (µg/m³) and an annual PM₁₀ standard of 50 µg/m³. EPA also promulgated secondary PM₁₀ standards that were identical to the primary standards.

Effective December 18, 2006, EPA revoked the annual PM₁₀ standard but retained the 24-hour PM₁₀ standard. 71 FR 61144 (October 17, 2006). The 24-hour PM₁₀ standard is attained when the expected number of days per calendar year with a 24-hour concentration in excess of the standard (referred to herein as "exceedance"), as determined in accordance with 40 CFR part 50, appendix K, is equal to or less than one.¹ See 40 CFR 50.6 and 40 CFR part 50, appendix K.

¹ An exceedance is defined as a daily value that is above the level of the 24-hour standard (150 µg/m³) after rounding to the nearest 10 µg/m³ (*i.e.*, values ending in 5 or greater are to be rounded up). Thus, a recorded value of 154 µg/m³ would not be an exceedance since it would be rounded to 150 µg/m³ whereas a recorded value of 155 µg/m³ would be an exceedance since it would be rounded to 160 µg/m³. See 40 CFR part 50, appendix K, section 1.0.

B. Designation and Classification of PM₁₀ Nonattainment Areas

Areas meeting the requirements of section 107(d)(4)(B) of the Clean Air Act (CAA or "Act") were designated nonattainment for PM₁₀ by operation of law and classified "moderate" upon enactment of the 1990 Clean Air Act Amendments. These areas included all former Group I PM₁₀ planning areas identified in 52 FR 29383 (August 7, 1987), as further clarified in 55 FR 45799 (October 31, 1990), and any other areas violating the NAAQS for PM₁₀ prior to January 1, 1989. A **Federal Register** notice announcing the areas designated nonattainment for PM₁₀ upon enactment of the 1990 Amendments, known as "initial" PM₁₀ nonattainment areas, was published on March 15, 1991 (56 FR 11101) and a subsequent **Federal Register** document correcting the description of some of these areas was published on August 8, 1991 (56 FR 37654).

As former "group I" areas, the Hayden/Miami² and Paul Spur/Douglas³ areas were included in the list of initial moderate PM₁₀ nonattainment areas. Nogales, a former "Group II" area, was included in the initial list of moderate PM₁₀ nonattainment areas based on monitored violations of the PM₁₀ NAAQS prior to January 1, 1989.⁴ Later in 1991, we codified the PM₁₀ nonattainment designations and moderate area classifications in 40 CFR part 81. See 56 FR 56694 (November 6, 1991). For "moderate" nonattainment areas such as the three Arizona areas

² On March 28, 2007, EPA approved a request by the State of Arizona to split the Hayden/Miami PM₁₀ nonattainment area into two separate PM₁₀ nonattainment areas. See 72 FR 14422 (March 28, 2007). In our March 28, 2007 direct final rule, we also determined that the Miami PM₁₀ nonattainment area had attained the PM₁₀ NAAQS. In today's action, we have determined that the Hayden PM₁₀ nonattainment area attained the PM₁₀ NAAQS by the applicable attainment date. The Hayden planning area straddles Gila and Pinal counties at the confluence of the Gila and San Pedro rivers in east central Arizona. The nonattainment area covers roughly 700 miles of mountainous terrain. Cities and towns within this area include Kearney (population roughly 2,800), Hayden (population roughly 800), and Winkelman (population roughly 400).

³ The Paul Spur/Douglas planning area covers approximately 220 square miles along the border with Mexico within Cochise County. Cities and towns within this area include Douglas (population roughly 20,000) and Pirtleville (population roughly 1,500). The population of Agua Prieta, Mexico, which lies just across the border from Douglas is roughly 70,000.

⁴ The Nogales planning area covers approximately 70 square miles along the border with Mexico within Santa Cruz County. The only significant population center in this area is the city of Nogales with a population of roughly 21,000. The population of Nogales, Mexico, which lies just across the border from Nogales, Arizona is roughly 160,000.

that are the subject of this document, CAA section 188(c) of the 1990 Amended Act establishes an attainment date of December 31, 1994. The designations, classifications, and boundaries of these three Arizona nonattainment areas are codified at 40 CFR 81.303.

C. How does EPA make attainment determinations?

Section 188(b)(2) of the Act requires EPA to determine within six months of the applicable attainment date whether, based on air quality data, PM₁₀ nonattainment areas attained the PM₁₀ NAAQS by that date. Generally, EPA determines whether an area's air quality is meeting the PM₁₀ NAAQS based upon complete (minimum of 75 percent of scheduled PM₁₀ samples recorded), quality-assured data gathered at established state and local air monitoring stations (SLAMS) and national air monitoring stations (NAMS) in the nonattainment area and entered into the EPA Air Quality System (AQS) database. Data from air monitors operated by State/local/tribal agencies in compliance with EPA monitoring requirements must be submitted to AQS. EPA relies primarily on data in AQS when determining the attainment status of an area. See 40 CFR 50.6; 40 CFR part 50, appendix J; 40 CFR part 53; 40 CFR part 58, appendix A. EPA will also consider air quality data from other air monitoring stations in the nonattainment area provided that the stations meet the Federal monitoring requirements for SLAMS, including the quality assurance and quality control criteria in 40 CFR part 58, appendix A. 40 CFR 58.14 (2006) and 58.20 (2007);⁵ 71 FR 61236, 61242 (October 17, 2006). All valid data are reviewed to determine the area's air quality status in accordance with 40 CFR part 50, appendix K.

Attainment of the 24-hour PM₁₀ standard is determined by calculating the expected number of exceedances of the standard in a year. The 24-hour PM₁₀ standard is attained when the expected number of exceedances averaged over a three-year period is less than or equal to one at each monitoring site within the nonattainment area. Generally, three consecutive years of air quality data are required to show attainment of the 24-hour PM₁₀

⁵ EPA promulgated amendments to the ambient air monitoring regulations in 40 CFR parts 53 and 58 on October 17, 2006. See 71 FR 61236. The requirements for Special Purpose Monitors were revised and moved from 40 CFR 58.14 to 40 CFR 58.20.

standard. See 40 CFR part 50 and appendix K.⁶

To demonstrate attainment of the 24-hour PM₁₀ standard at a monitoring site, the monitor must provide sufficient data to perform the required calculations in 40 CFR part 50, appendix K. The amount of data required varies with the sampling frequency, data capture rate and the number of years of record. In all cases, three years of representative monitoring data that meet the 75 percent criterion of the previous paragraph should be utilized, if available, and would suffice. More than three years may be considered, if all additional representative years of data meeting the 75 percent criterion are utilized. Data not meeting these criteria may also suffice to show attainment; however, such exceptions must be approved by the appropriate Regional Administrator in accordance with EPA guidance. See 40 CFR part 50, appendix K, section 2.3.

D. What PM₁₀ planning has occurred for the Hayden, Nogales, and Paul Spur/Douglas PM₁₀ Nonattainment Areas?

Along with the new designations, classifications, and attainment dates, the CAA as amended in 1990 also established new planning requirements. All initial moderate PM₁₀ nonattainment areas had the same applicable attainment date of December 31, 1994. States containing initial moderate PM₁₀ nonattainment areas were required to develop and submit to EPA by November 15, 1991, a state implementation plan (SIP) revision providing for implementation of reasonably available control measures (RACM) for the control of PM₁₀, and either a demonstration that the plan would provide for attainment by the applicable attainment date (December 31, 1994) or a demonstration that attainment by such date was impracticable. See CAA section 189(a).

1. Hayden PM₁₀ Nonattainment Area

By November 15, 1991, States were required to submit SIP revisions addressing certain CAA requirements for initial PM₁₀ nonattainment areas. The State of Arizona relied upon a SIP revision ("Final PM₁₀ State Implementation Plan for the Hayden Group I Area," September 1989) (herein referred to as the "1989 Hayden PM₁₀ Plan") that it had submitted on October 16, 1989 to meet the requirements of the CAA as amended in 1990 for the Hayden/Miami moderate PM₁₀

nonattainment area. See letter from Edward Z. Fox, Director, Arizona Department of Environmental Quality (ADEQ), to Daniel W. McGovern, Regional Administrator, EPA Region IX, dated February 3, 1992. The inventory in the 1989 Hayden PM₁₀ Plan identifies the ASARCO copper smelter and related sources, such as the smelter stack, copper ore tailings, ore crushing, the slag dump, road dust, smelter building fugitives, and copper ore, as the principal sources of PM₁₀ emissions in the Hayden portion of the Hayden/Miami PM₁₀ nonattainment area.

In 1994, we proposed a limited approval and limited disapproval of the 1989 Hayden PM₁₀ Plan. See 59 FR 36116 (July 15, 1994). In our 1994 proposed action, we identified deficiencies in the 1989 Hayden PM₁₀ Plan including the failure of the plan to address the Miami portion of the Hayden/Miami PM₁₀ nonattainment area and the failure to meet the general monitoring requirements for the entire nonattainment area. (As noted above in footnote 2, we have since approved ADEQ's request to split the Hayden and Miami portions of the area into separate PM₁₀ nonattainment areas.) We have not finalized our 1994 proposed limited approval/limited disapproval or otherwise taken action on the 1989 Hayden PM₁₀ Plan.

2. Nogales PM₁₀ Nonattainment Area

Arizona did not submit the required moderate PM₁₀ plan by the November 15, 1991 deadline for the Nogales nonattainment area, and on December 16, 1991, we made a finding of failure to submit the moderate PM₁₀ plan for Nogales. See letter from Daniel W. McGovern, Regional Administrator, EPA Region IX, to Fife Symington, Governor of Arizona, dated December 16, 1991. See 57 FR 19906 (May 8, 1992). In response, on June 14, 1993, ADEQ submitted the "Final State Implementation Plan for the Nogales PM₁₀ Nonattainment Area," June 1993 (herein referred to as the "1993 Nogales PM₁₀ Plan"), to EPA as a SIP revision. We found the plan to be complete and notified the State of our finding by letter dated November 30, 1993.

The 1993 Nogales PM₁₀ Plan identifies emissions sources located in Mexico as the principal sources affecting ambient PM₁₀ concentrations in the area, and includes an analysis which concludes that the plan would be adequate to attain the PM₁₀ NAAQS but for emissions emanating from outside the United States. Section 179B ("International Border Areas") of the CAA provides EPA with the authority to approve such a demonstration. We have

not taken action to approve or disapprove the 1993 Nogales PM₁₀ Plan.

3. Paul Spur/Douglas PM₁₀ Nonattainment Area

Similar to the situation in Hayden, the State of Arizona relied upon a SIP revision ("Final PM₁₀ State Implementation Plan for the Paul Spur Group I Area," July 1990) (herein referred to as the "1990 Paul Spur PM₁₀ Plan") that it had submitted prior to the CAA Amendments of 1990 (in this instance, June 25, 1990) to meet the requirements of the CAA as amended in 1990 for the Paul Spur portion of the Paul Spur/Douglas moderate PM₁₀ nonattainment area. See letter from Edward Z. Fox, Director, ADEQ, to Daniel W. McGovern, Regional Administrator, EPA Region IX, dated February 3, 1992. The 1990 Paul Spur PM₁₀ Plan identifies the lime plant located at Paul Spur as the only significant source of emissions in the immediate vicinity and includes control measures for this source of emissions.

ADEQ did not submit the required plan for the Douglas portion of the Paul Spur/Douglas nonattainment area by the November 15, 1991 deadline, and thus, on December 16, 1991, we made a finding of failure to submit a moderate PM₁₀ plan for Douglas portion of Paul Spur/Douglas PM₁₀ nonattainment area. See letter from Daniel W. McGovern, Regional Administrator, EPA Region IX, to Fife Symington, Governor of Arizona, dated December 16, 1991. See 57 FR 19906 (May 8, 1992). In response, on June 17, 1993, ADEQ submitted the "Final State Implementation Plan for the Douglas PM₁₀ Nonattainment Area," April 1993 (herein referred to as the "1993 Douglas PM₁₀ Plan"), to EPA as a SIP revision. We found the plan to be complete by letter dated November 30, 1993. Similar to the Nogales plan, the 1993 Douglas PM₁₀ plan identifies emissions sources located in Mexico as the principal sources of emissions affecting ambient PM₁₀ concentrations in the area, and includes an analysis which concludes that the plan would be adequate to attain the PM₁₀ NAAQS but for emissions emanating from outside the United States.

A decade later, and based on a number of years of ambient data showing that the standard had been attained, ADEQ withdrew the 1993 Douglas PM₁₀ Plan. See letter from Stephen A. Owens, Director, ADEQ, to Wayne Nastri, Regional Administrator, EPA Region IX, dated December 22, 2004. Recently, ADEQ revoked the 2004 withdrawal of the 1993 Douglas PM₁₀ Plan; thus, once again, the plan is subject to EPA approval or disapproval

⁶ Because the annual PM₁₀ standard was revoked effective December 18, 2006, see 71 FR 61144 (October 17, 2006), this document discusses only attainment of the 24-hour PM₁₀ standard.

action as a revision to the Arizona SIP. See letter from Benjamin H. Grumbles, Director, ADEQ, to Jared Blumenfeld, Regional Administrator, EPA Region IX, dated September 13, 2010. We have not taken action to approve or disapprove either the 1990 Paul Spur PM₁₀ Plan or the 1993 Douglas PM₁₀ Plan.

II. EPA's Analysis

A. What does the air quality data show as of the December 31, 1994 attainment date?

ADEQ is responsible for monitoring ambient air quality outside the metropolitan areas in Arizona. ADEQ submits monitoring network plan reports to EPA on an annual basis. These reports discuss the status of the air monitoring network, as required under 40 CFR part 58. Beginning in 2007, EPA reviews these annual plans for compliance with the applicable

reporting requirements in 40 CFR 58.10. With respect to PM₁₀, we have found that ADEQ's annual network plans meet the applicable requirements under 40 CFR part 58. See EPA letters to ADEQ concerning ADEQ's annual network plan reports for years 2007, 2008, and 2009 that have been placed in the docket for this rulemaking. Furthermore, we concluded in our *Technical System Audit Report* (September 2010) for ADEQ's ambient air quality monitoring program (a copy of which has been placed in the docket) that ADEQ's ambient air monitoring network currently meets or exceeds the requirements for the minimum number of monitoring sites designated as SLAMS for all of the criteria pollutants, and that all of the monitoring sites are properly located with respect to monitoring objectives, spatial scales and other siting criteria.

1. Hayden PM₁₀ Nonattainment Area

ADEQ has operated a PM₁₀ monitor at the Old Town Jail site, which is near the center of the Town of Hayden, for many years, including the period 1992 through 1994. The Old Town Jail monitoring site is part of the ADEQ's SLAMS network and is located roughly one-half mile west of the ASARCO smelter. During the 1992–1994 period, ADEQ used a filter-based method (low-volume dichotomous monitor) to monitor ambient PM₁₀ concentrations, sampling PM₁₀ concentrations every sixth day. The Old Town Jail monitor was sited to provide PM₁₀ concentration data at a neighborhood scale⁷ for the purpose of determining source impacts from ASARCO operations. Table 1 below summarizes the PM₁₀ concentration data collected at the Old Town Jail site over the 1992–1994 period.

TABLE 1—SUMMARY OF PM₁₀ MONITORING DATA, HAYDEN NONATTAINMENT AREA, 1992–1994^a

| Monitoring site | Highest 24-hour PM ₁₀ concentration (µg/m ³) | | | Expected exceedances per year |
|-----------------------|---|------|------|-------------------------------|
| | 1992 | 1993 | 1994 | 1992–1994 |
| Hayden Old Jail | 85 | 68 | 67 | 0.0 |

PM₁₀ NAAQS = 150 µg/m³.

^a Source: AQS QuickLook report dated June 23, 2010.

As noted above, to be considered “complete,” valid measurements must be made for 75% of all the scheduled sampling dates in each quarter of the year, and generally, three years of representative monitoring data that meet the 75 percent criterion should be utilized, where available.

During the 1992–1994 period, the data collected by ADEQ meets the completeness criterion for all quarters except for the fourth quarter of year 1994, when the number of valid samples was one short of constituting a complete quarter. EPA may find that data not meeting the completeness criterion suffice to show attainment. See 40 CFR part 50, appendix K, section 2.3(b). Relevant considerations that we take into account when evaluating whether data not meeting the completeness criterion would suffice include, but are not limited to, monitoring site closures/moves, monitoring diligence, consistency and levels of the valid concentration measurements that are available, and nearby concentrations. See, e.g., considerations taken into

account for analogous circumstances involving evaluating of ambient lead (Pb) concentrations at 40 CFR part 50, appendix F, section 4(d).

In this instance, we find that data that is available is sufficient to determine whether the area attained the standard by the applicable attainment date. First, we note the large extent to which the maximum monitored levels during the 1992–1994 period (67 to 85 µg/m³—see table 1 above) fall below the applicable standard (150 µg/m³). We also note that 11 of the 12 quarters in question were complete (based on the 75% criterion), and that the one quarter that did not meet the criterion was but one sample short. Further, we have reviewed the monitoring data for year 1995, which is comprised of four quarters of data meeting the completeness criterion, and during which the maximum 24-hour concentration was, at 108 µg/m³, well below the standard, providing further evidence that the area attained by the applicable attainment date.

Based on our rationale presented above, we find the available data

sufficient to determine whether the Hayden nonattainment area met the PM₁₀ standard by December 31, 1994 (i.e., the applicable attainment date), and based on our review of the air quality data during the three-year period ending with the December 31, 1994 attainment date (and summarized above in table 1), we find that the expected number of exceedances per year for the Hayden PM₁₀ nonattainment area for 1992 to 1994 was 0 days per year. With less than an annual expected exceedance rate for the 24-hour PM₁₀ NAAQS of 1.0, these data represent attainment of the standard. Therefore, EPA has determined that the Hayden PM₁₀ nonattainment area attained the PM₁₀ NAAQS by the applicable attainment date.

2. Nogales PM₁₀ Nonattainment Area

ADEQ has operated a PM₁₀ monitor at the Nogales Post Office site (300 North Morley Avenue) for many years, including the period 1992 through 1994. The Nogales Post Office monitoring site is part of the ADEQ's SLAMS network

⁷ In this context, “neighborhood scale” refers to conditions throughout some reasonably

homogeneous urban sub-region with dimensions of

a few kilometers. See 40 CFR part 58, appendix D, section 4.6.

and is located roughly 0.4 mile north of the border with Mexico. During year 1994, ADEQ also collected a total of 120 samples of 24-hour-average ambient PM₁₀ concentrations at three additional locations in Nogales, all of which were located north of the Post Office Site.

During the 1992–1994 period, ADEQ used a filter-based method (low-volume dichotomous monitor) to monitor ambient PM₁₀ concentrations in the Nogales area. At the Nogales Post Office site, the sampling schedule was every sixth day. The Nogales Post Office

monitor was sited to provide PM₁₀ concentration data at a neighborhood scale for the purpose of determining population exposure. Table 2 below summarizes the PM₁₀ concentration data collected in the Nogales area over the 1992–1994 period.

TABLE 2—SUMMARY OF PM₁₀ MONITORING DATA, NOGALES NONATTAINMENT AREA, 1992–1994^a

| Monitoring site | Highest 24-hour PM ₁₀ concentration (µg/m ³) | Expected exceedances per year | | |
|--------------------------------|---|-------------------------------|------|-----------|
| | | 1992 | 1993 | 1992–1994 |
| Nogales Post Office | 153 | 119 | 116 | 0.0 |
| 885 North Carrillo Place | | | 52 | |
| 156 West Mariposa Road | | | 59 | |
| 1852 North Mastick Way | | | 83 | |

PM₁₀ NAAQS = 150 µg/m³. The 153 µg/m³ concentration measured in 1992 does not represent an exceedance due to rounding conventions. See footnote 1 of this document for a description of the rounding conventions. Measurements at the North Carrillo, West Mariposa, and North Mastick sites were not collected in 1992 or 1993.

^a Source: AQS QuickLook report dated June 23, 2010.

As noted above, to be considered “complete,” valid measurements must be made for 75% of all the scheduled sampling dates in each quarter of the year, and generally, three years of representative monitoring data that meet the 75 percent criterion should be utilized, where available.

During the 1992–1994 period, 150 samples were collected at the Nogales Post Office site out of a total of 183 scheduled sample days. However, on a quarter-by-quarter basis, a number of quarters (one in 1992, three in 1993, and 1 in 1994) failed to meet the 75% completeness criterion. For three of the quarters that failed to meet the 75% criterion, the criterion was missed by a single sample day, and for the two other quarters that failed to meet the 75% criterion, the criterion was missed by two sample days. In summary, a substantial amount of data was collected during the quarters that failed to meet the 75% criterion, but not enough to meet the test. As noted above for the Hayden area, EPA may find that data not meeting the completeness criterion suffice to show attainment. See 40 CFR part 50, appendix K, section 2.3(b).

Like Hayden, again, we find that data is available and sufficient to determine whether the Nogales area attained the standard by the applicable attainment date. First, despite a number of quarters that did not meet the 75% criterion, we note that a substantial amount of data was collected; and, other than two samples taken in year 1992 (1st high of 153 µg/m³ and 2nd high of 147 µg/m³),

the ambient concentrations that were collected were consistently well below the 150 µg/m³ standard. Second, we take note of the supplemental ambient PM₁₀ monitoring data collected by ADEQ during 1994 showing ambient concentrations at sites north of the Post Office site well below the 150 µg/m³ standard (the maximum was 83 µg/m³—see table 2, above). Lastly, we have reviewed the monitoring data for year 1995, which is comprised of 53 samples out of a total number of scheduled sample days of 61, and during which the maximum 24-hour concentration was, at 123 µg/m³, well below the standard, providing further evidence that the area attained by the applicable attainment date.

Based on our rationale presented above, we find the available data sufficient to determine whether the Nogales nonattainment area met the PM₁₀ standard by December 31, 1994 (i.e., the applicable attainment date), and based on our review of the air quality data during the three-year period ending with the December 31, 1994 attainment date (and summarized above in table 2), we find that the expected number of exceedances per year for the Nogales PM₁₀ nonattainment area for 1992 to 1994 was 0 days per year. With less than an annual expected exceedance rate for the 24-hour PM₁₀ NAAQS of 1.0, these data represent attainment of the standard. Therefore, EPA has determined that the Nogales PM₁₀ nonattainment area attained the

PM₁₀ NAAQS by the applicable attainment date.

3. Paul Spur/Douglas PM₁₀ Nonattainment Area

ADEQ has operated PM₁₀ monitors near the lime plant at Paul Spur (“Paul Spur monitor”) and within the City of Douglas (“Douglas monitor”) for many years, including the period 1992 through 1994. Both sites are part of the ADEQ’s SLAMS network. The Paul Spur monitor is located near the intersection of Paul Spur Road and State Route 80. During the 1992–1994 period, the Douglas monitor was located at 15th Street Park, approximately one mile north of the border with Mexico. In 1998, ADEQ re-located the Douglas monitor to its current location, the Red Cross building just across from the park on 15th Street.

During the 1992–1994 period, ADEQ used a filter-based method (low-volume dichotomous monitor) to monitor ambient PM₁₀ concentrations at both the Paul Spur and Douglas sites, sampling PM₁₀ concentrations every sixth day. The Paul Spur monitor was sited to provide PM₁₀ concentration data at a middle scale⁸ for the purpose of determining source impacts from the chemical lime plant. The Douglas monitor was sited to provide PM₁₀ concentration data at a neighborhood scale for the purpose of determining population exposure. Table 3 below summarizes the PM₁₀ concentration data collected at the Paul Spur and Douglas monitors over the 1992–1994 period.

⁸In this context, “middle scale” refers to conditions characteristic of areas from 100 meters

to several kilometers. See 40 CFR part 58, appendix D, section 4.6.

TABLE 3—SUMMARY OF PM₁₀ MONITORING DATA, PAUL SPUR/DOUGLAS NONATTAINMENT AREA, 1992–1994^a

| Monitoring site | Highest 24-hour PM ₁₀ concentration (µg/m ³) | | | Expected exceedances per year |
|-------------------------------------|---|------|------|-------------------------------|
| | 1992 | 1993 | 1994 | 1992–1994 |
| Paul Spur Chemical Lime Plant | 132 | 69 | 77 | 0.0 |
| Douglas (15th Street Park) | 138 | 66 | 96 | 0.0 |

PM₁₀ NAAQS = 150 µg/m³.

^a Source: AQS QuickLook report dated June 23, 2010.

As noted above, to be considered “complete,” valid measurements must be made for 75% of all the scheduled sampling dates in each quarter of the year, and generally, three years of representative monitoring data that meet the 75 percent criterion should be utilized, where available.

During the 1992–1994 period, the data collected by ADEQ meets the completeness criterion for all quarters at both the Paul Spur and Douglas monitors except for the second quarter of year 1992 at the Paul Spur monitor and the fourth quarter of year 1992 at both monitors. During the second quarter of 1992, the Paul Spur monitor was two samples short of the 75% criterion, and in the fourth quarter of 1992, both monitors were one sample short of the criterion. As noted for Hayden and Nogales, EPA may find that data not meeting the completeness criterion suffice to show attainment. See 40 CFR part 50, appendix K, section 2.3(b).

In this instance, we find that the available data is sufficient to determine whether the area attained the standard by the applicable attainment date. First, we note the large extent to which the maximum monitored levels during the 1992–1994 period (132 µg/m³ at the Paul Spur monitor and 138 µg/m³ at the Douglas monitor—see table 3 above) fall below the applicable standard (150 µg/m³). We also note that 10 of the 12 quarters in question were complete (based on the 75% criterion) at the Paul Spur monitor and 11 of the 12 quarters in question were complete at the Douglas monitor, and that the quarters that did not meet the criterion were but one or two samples short. Further, we have reviewed the monitoring data for year 1995, which is comprised of three quarters of data meeting the completeness criterion at the Paul Spur monitor and four quarters of data meeting the completeness criterion at the Douglas site, and during which the maximum 24-hour concentration was, at 77 µg/m³, (Paul Spur) and 63 µg/m³ (Douglas), well below the standard, providing further evidence that the area

attained by the applicable attainment date.

Based on our rationale presented above, we find the available data sufficient to determine whether the Paul Spur/Douglas nonattainment area met the PM₁₀ standard by December 31, 1994 (*i.e.*, the applicable attainment date), and based on our review of the air quality data during the three-year period ending with the December 31, 1994 attainment date (and summarized above in table 3), we find that the expected number of exceedances per year for the Paul Spur/Douglas PM₁₀ nonattainment area for 1992 to 1994 was 0 days per year. With less than an annual expected exceedance rate for the 24-hour PM₁₀ NAAQS of 1.0, these data represent attainment of the standard. Therefore, EPA has determined that the Paul Spur/Douglas PM₁₀ nonattainment area attained the PM₁₀ NAAQS by the applicable attainment date.

B. Does more recent air quality data also show attainment?

1. Hayden PM₁₀ Nonattainment Area

Since 1994, ADEQ has continued to operate a PM₁₀ monitor at the Old Town Jail in Hayden. ADEQ has, however, changed monitoring methods, and, for a while, operated a second monitor for precision measurement (audit) purposes. Since the second quarter of 2009, ADEQ has operated a single TEOM (*i.e.*, tapered element oscillating microbalance) monitor on a continuous-running basis at the Old Town Jail site in Hayden. In addition, since 2003, the Pinal County Air Quality Control District (AQCD) has operated a PM₁₀ hi-volume sampler on an every sixth day schedule along the Florence-Kelvin Highway near Riverside, Arizona, in the western portion of the Hayden PM₁₀ nonattainment area (“Riverside monitor”).

While not all years since 1994 have complete data (based on the 75% criterion), only one exceedance (158 µg/m³ in 1997) at the Hayden site was monitored until year 2006, when ADEQ added the TEOM working in parallel

with the one-day-in-six partisol sampler at the Old Town Jail site. In 2006 and 2007, four and five exceedances were measured by the TEOM, respectively. ADEQ did not operate the TEOM in 2008, and in 2009, ADEQ resumed operation of the TEOM beginning in the second quarter. Only one exceedance (225 µg/m³) was measured by the TEOM over the final three quarters of 2009. Meanwhile, ADEQ continued operating the partisol sampler over the 2006–2008 period but discontinued the sampler after the end of the first quarter of 2009. At the Riverside monitor, Pinal County AQCD has measured no exceedances of the PM₁₀ standard, and maximum 24-hour PM₁₀ concentrations measured there are well below the standard.

During the most recent three-year calendar period (2007–2009), at the Hayden monitoring site, neither the partisol sampler nor the TEOM provide a complete data set for the purpose of determining whether the area is currently attaining the standard. The partisol sampler provides data for 9 of the 12 quarters, while the TEOM provides data for 7 of the 12 quarters. Based on the partisol sampler, this incomplete data set suggests that the area is currently attaining the standard because no exceedances were measured. The samples collected using the TEOM, however, suggest otherwise, with a total of six exceedances over the discontinuous course of its operation. Based on the TEOM, six exceedances over the course of this period of time is sufficient for us to conclude that the Hayden PM₁₀ nonattainment area is not currently attaining the standard. In 2010, through the first two quarters, the TEOM has not recorded any exceedances; if this trend continues, then, next year, based on 2008–2010 data, the current attainment status of the Hayden area may change once again.

2. Nogales PM₁₀ Nonattainment Area

Since 1994, ADEQ has continued to operate a PM₁₀ monitoring site at the Post Office in Nogales, but has replaced the dichot sampler with a partisol sampler, and has added a continuous-

running beta attenuation monitor (BAM).

The data from AQS indicates that, while the area attained the standard by the applicable attainment date, ambient PM₁₀ concentrations worsened in the late 1990's to the point where exceedances under current conditions have been measured nearly every year. Based on the past three calendar years (2007–2009) of complete quality-assured data, we find that the annual expected exceedance rate for the 24-hour PM₁₀ NAAQS for the Nogales area is 9.7 (based on the BAM). Based on the partisol sampler, the annual expected exceedance rate for the 24-hour PM₁₀ NAAQS of 4.2, but the higher of the two samplers is used to determine whether the area is attaining the standard. Because the annual expected exceedance rate for the area (9.7) is greater than 1.0, we conclude that the area is not currently attaining the PM₁₀ standard.

EPA's determination that the Nogales area is not currently attaining the PM₁₀ standard does not result in reclassification of this "moderate" area to "serious" by operation of law because such reclassification is tied to air quality conditions "as of the attainment date," (see CAA sections 179(c)(1) and 188(b)(2)), and, as discussed in section II.A.2 of this document, we have concluded that the Nogales area attained the standard by the attainment date. We do, however, plan to address the PM₁₀ planning needs for the Nogales area over the next few years. We also note that the Nogales planning area has been designated as nonattainment for the 2006 24-hour NAAQS for fine particles (generally referring to particles less than or equal to 2.5 micrometers in diameter, PM_{2.5}) (74 FR 58688, November 13, 2009), which has triggered a separate air quality planning process.

3. Paul Spur/Douglas PM₁₀ Nonattainment Area

Since 1994, ADEQ has continued to operate PM₁₀ monitoring sites near the Paul Spur Chemical Lime Plant ("Paul Spur monitor") and in the City of Douglas ("Douglas monitor"). At the Paul Spur monitoring site, ADEQ replaced the dichot sampler with a partisol sampler, and added a second partisol sampler for precision measurement purposes. Both monitors continue to run on a one-day-in-six monitoring schedule. At the Douglas monitoring site, ADEQ replaced the dichot sampler with a partisol sampler and, in 1998, re-located the monitor to a nearby location, the Red Cross building just across from the park on

15th Street, where it continues to operate today.

The data from AQS indicates that only two exceedances of the PM₁₀ standard have been measured in the Paul Spur/Douglas nonattainment area over the past 15 years. Both were measured at the Paul Spur monitoring site. One exceedance, 206 µg/m³, was measured in 2003 and the other (159 µg/m³) was measured in 2008.⁹ Based on the past three calendar years (2007–2009) of complete quality-assured data, we find that the annual expected exceedance rate for the 24-hour PM₁₀ NAAQS for the Paul Spur/Douglas area is 2.0 (which is calculated by taking into account the one-day-in-six monitoring schedule).¹⁰ Because the annual expected exceedance rate for the area (2.0) is greater than 1.0, we conclude that the area is not currently attaining the PM₁₀ standard.

EPA's determination that the Paul Spur/Douglas area is not currently attaining the PM₁₀ standard does not result in reclassification of this "moderate" area to "serious" by operation of law because such reclassification is tied to air quality conditions "as of the attainment date," (see CAA sections 179(c)(1) and 188(b)(2)), and, as discussed in section II.A.3 of this document, we have concluded that the Paul Spur/Douglas area attained the standard by the attainment date. We do, however, plan to address the PM₁₀ planning needs for the Paul Spur/Douglas area over the next few years.

III. EPA's Final Action

Under section 188(b)(2) of the Clean Air Act, and based on sufficient, quality-assured data, we find that the Hayden, Nogales, and Paul Spur/Douglas PM₁₀ nonattainment areas attained the 24-hour PM₁₀ NAAQS by the applicable attainment date, December 31, 1994. On the basis of this determination, EPA concludes that these three "moderate" nonattainment areas are not subject to reclassification to "serious" by operation of law. This action is not a redesignation to attainment under CAA section 107(d)(3) because we have not yet approved maintenance plans for these areas as meeting the requirements of section 175A of the CAA or determined that the

⁹ Both of these exceedances were flagged by ADEQ as exceptional events, but EPA has not concurred on the flags.

¹⁰ The collocated (audit) monitor measured two exceedances during 2008, but on both sample-days, the primary monitor also took valid samples, and thus, the measurements from the co-located samplers are not used to report air quality from the site. See 40 CFR part 58, appendix A, section 3.2.5.

areas have met the other CAA requirements for redesignation.

On the basis of a review of more recent ambient monitoring data, EPA has determined that the Hayden, Nogales, and Paul Spur/Douglas nonattainment areas are not currently attaining the PM₁₀ standard. EPA's determination that the Hayden, Nogales, and Paul Spur/Douglas areas are not currently attaining the PM₁₀ standard does not result in reclassification of these "moderate" areas to "serious" by operation of law because such reclassification is tied to air quality conditions "as of the attainment date," (see CAA sections 179(c)(1) and 188(b)(2)), and EPA has determined that both areas attained the standard by the applicable attainment date.

We are publishing this rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal should adverse comments be filed. This action will be effective January 3, 2011, without further notice unless the EPA receives relevant adverse comments by December 2, 2010.

If we receive such comments, then we will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. We will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on January 3, 2011 and no further action will be taken on the proposed rule.

IV. Statutory and Executive Order Reviews

This action merely makes a determination based on air quality data and does not impose any additional Federal requirements. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- 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);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997); is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because it will not impose substantial direct costs on tribal governments or preempt tribal law.

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 action 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 January 3, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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. Parties with objections to this direct final rule are

encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 81

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

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

Dated: October 25, 2010.

Jared Blumenfeld,

Regional Administrator, EPA Region IX.

[FR Doc. 2010-27634 Filed 11-1-10; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 74 and 78

[WT Docket No. 02-55, ET Docket No. 00-258 and 95-18; FCC 10-179]

Relocation Cost Sharing in the Broadcast Auxiliary Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document concludes the Commission's longstanding efforts to relocate the Broadcast Auxiliary Service (BAS) from the 1990-2110 MHz band to the 2025-2110 MHz band, freeing up 35 megahertz of spectrum in order to foster the development of new and innovative services. This decision addresses the outstanding matter of Sprint Nextel Corporation's (Sprint Nextel) inability to agree with Mobile Satellite Service (MSS) operators in the band on the sharing of the costs to relocate the BAS incumbents. To resolve this controversy, the Commission applies its time-honored relocation principles for emerging technologies previously adopted for the BAS band to the instant relocation process, where delays and unanticipated developments have left ambiguities and misconceptions among the relocating parties. In the process, the Commission balances the responsibilities for and benefits of relocating incumbent BAS operations among all the new entrants in the different services that will operate in the band.

DATES: Effective December 2, 2010.

FOR FURTHER INFORMATION CONTACT: Nicholas Oros, (202) 418-0636, Policy and Rules Division, Office of Engineering and Technology, *Nicholas.Oros@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Fifth Report and Order, Eleventh Report and Order, Sixth Report and Order, and Declaratory Ruling*, WT Docket No. 02-55, ET Docket No. 00-258 and 95-18, adopted September 29, 2010, and released September 29, 2010. The full text of this document is available on the Commission's Internet site at *www.fcc.gov*. It is also available for inspection and copying during regular business hours in the FCC Reference Center (Room CY-A257), 445 12th Street, SW., Washington, DC 20554. The full text of this document also may be purchased from the Commission's duplication contractor, Best Copy and Printing Inc., Portals II, 445 12th St., SW., Room CY-B402, Washington, DC 20554; telephone (202) 488-5300; fax (202) 488-5563; e-mail *FCC@BCPIWEB.COM*.

Summary of the Fifth Report and Order, Eleventh Report and Order, Sixth Report and Order, and Declaratory Ruling

1. This Report and Order and Declaratory Ruling concludes the Commission's longstanding efforts to relocate the Broadcast Auxiliary Service (BAS) from the 1990-2110 MHz band to the 2025-2110 MHz band, freeing up 35 megahertz of spectrum in order to foster the development of new and innovative services that can provide mobile broadband and nationwide communications capabilities. This decision in particular addresses the outstanding matter of Sprint Nextel Corporation's (Sprint Nextel) inability to agree with Mobile Satellite Service (MSS) operators in the band on the sharing of the costs to relocate the BAS incumbents. To date, Sprint has shouldered the entire cost of this relocation, which was completed on July 15, 2010.

2. To resolve this important issue, the Commission applied its time-honored relocation principles for emerging technologies previously adopted for the BAS band to the instant relocation process, where delays and unanticipated developments have left ambiguities and misconceptions among the relocating parties. These principles have been a fundamental part of the Commission's past efforts to unlock value and promote investment through the relocation process. In the end, the