

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 April 10, 2006. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 20, 2005.

**Jane Diamond,**

*Acting Regional Administrator, Region IX.*

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

**PART 52—[AMENDED]**

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

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

**Subpart F—California**

■ 2. Section 52.220 is amended by adding paragraph (c)(335)(i)(D) to read as follows:

**§ 52.220 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(335) \* \* \*

(i) \* \* \*

(D) South Coast Air Quality Management District.

(1) Rule 1122, adopted on October 1, 2004.

\* \* \* \* \*

[FR Doc. 06-1171 Filed 2-7-06; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 52 and 81**

[EPA-R09-OAR-2005-AZ-0006; FRL-8029-2]

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

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to determine that the Ajo moderate PM<sub>10</sub> nonattainment area in Arizona has attained the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM<sub>10</sub>). This determination is based upon monitored air quality data for the PM<sub>10</sub> NAAQS during the years 2002-2004. EPA also finds that the Ajo area has continued to attain the PM<sub>10</sub> NAAQS since 2004. Based on this determination, EPA is also determining that certain Clean Air Act requirements are not applicable for so long as the Ajo area continues to attain the PM<sub>10</sub> NAAQS.

**DATES:** This direct final rule is effective on April 10, 2006 without further notice, unless EPA receives adverse comment by March 10, 2006. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R09-OAR-2005-AZ-0006 by one of the following methods:

- <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- E-mail: [tax.wienke@epa.gov](mailto:tax.wienke@epa.gov).
- Fax: (415) 947-3579 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- Mail: Wienke Tax, Office of Air Planning, Environmental Protection Agency (EPA), Region 9, Mailcode AIR-2, 75 Hawthorne Street, San Francisco, California 94105-3901.
- Hand Delivery: Wienke Tax, Office of Air Planning, Environmental Protection Agency (EPA), Region 9,

Mailcode AIR-2, 75 Hawthorne Street, San Francisco, California 94105-3901. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:55 p.m., excluding federal holidays. Special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA-R09-OAR-2005-AZ-0006. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>. For additional instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

**Docket:** All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at

the Office of Air Planning, Environmental Protection Agency (EPA), Regional 9, Mailcode AIR-2, 75 Hawthorne Street, San Francisco, California 94105-3901. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding federal holidays.

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

**SUPPLEMENTARY INFORMATION:**

Throughout this document, wherever “we,” “us,” or “our” is used, we mean the EPA.

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**I. Background**

*A. What National Ambient Air Quality Standards (NAAQS) Are Considered in Today's Finding?*

The NAAQS are safety thresholds for certain ambient air pollutants set by EPA to protect public health and welfare. Particulate matter with an aerodynamic diameter of less than or equal to 10 micrometers, or PM<sub>10</sub>, is the subject of this action. PM<sub>10</sub> is among the ambient air pollutants for which EPA has established health-based standards.

PM<sub>10</sub> causes adverse health effects by penetrating deep in the lungs, aggravating the cardiopulmonary system. Children, the elderly, and people with asthma and heart conditions are the most vulnerable.

On July 1, 1987 (52 FR 24634), EPA revised the NAAQS for particulate matter with an indicator that includes only those particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers. (See 40 CFR 50.6). The 24-hour primary PM<sub>10</sub>

standard is 150 micrograms per cubic meter (µg/m<sup>3</sup>) with no more than one expected exceedance per year. The annual primary PM<sub>10</sub> standard is 50 µg/m<sup>3</sup> as an annual arithmetic mean. The secondary PM<sub>10</sub> standards, promulgated to protect against adverse welfare effects, are identical to the primary standards.

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

Upon enactment of the 1990 Clean Air Act Amendments (CAA or the Act), PM<sub>10</sub> areas meeting the requirements of either (i) or (ii) of section 107(d)(4)(B) of the Act were designated nonattainment for PM<sub>10</sub> by operation of law and classified “moderate.” These areas included all former Group I PM<sub>10</sub> planning areas identified in 52 FR 29383 (August 7, 1987) and further clarified in 55 FR 45799 (October 31, 1990), and any other areas violating the NAAQS for PM<sub>10</sub> prior to January 1, 1989 (many of these areas were identified by footnote 4 in the October 31, 1990 **Federal Register** document). A **Federal Register** notice announcing the areas designated nonattainment for PM<sub>10</sub> upon enactment of the 1990 Amendments, known as “initial” PM<sub>10</sub> nonattainment areas, was published on March 15, 1991 (56 FR 11101). A subsequent **Federal Register** document correcting some of these areas was published on August 8, 1991 (56 FR 37654). These nonattainment designations and moderate area classifications were codified in 40 CFR part 81 in a **Federal Register** document published on November 6, 1991 (56 FR 56694). All other areas in the nation not designated nonattainment at enactment were designated unclassifiable (see section 107(d)(4)(B)(iii) of the Act).

Ajo, Arizona was among the areas listed in the March 15, 1991 **Federal Register** action (see 56 FR at 11103) as meeting the requirements of either (i) or (ii) of section 107(d)(4)(B) of the Act and was designated nonattainment for PM<sub>10</sub> by operation of law and classified “moderate.” In accordance with section 189(a)(2) of the CAA, Arizona was to submit a state implementation plan (SIP) by November 15, 1991 demonstrating attainment of the PM<sub>10</sub> standards by December 31, 1994 for the Ajo area.<sup>1</sup>

<sup>1</sup> Arizona submitted a moderate area plan for the Ajo area on November 14, 1991 but EPA has not taken action on it.

*C. How Do We Make Attainment Determinations?*

Pursuant to sections 179(c) and 188(b)(2) of the Act, we have the responsibility of determining within six months of the applicable attainment date whether, based on air quality data, PM<sub>10</sub> nonattainment areas attained the NAAQS by that date. Determinations under section 179(c)(1) of the Act are to be based upon an area's “air quality as of the attainment date.” Section 188(b)(2) is consistent with this requirement.

Generally, we will determine whether an area's air quality is meeting the PM<sub>10</sub> NAAQS for purposes of section 179(c)(1) and 188(b)(2) based upon data gathered at established state and local air monitoring stations (SLAMS) and national air monitoring sites (NAMS) in the nonattainment area and entered into the EPA's Air Quality System (AQS) database. Data entered into the AQS has been determined to meet federal monitoring requirements (see 40 CFR 50.6; 40 CFR part 50, appendix J; 40 CFR part 53; 40 CFR part 58, appendices A and B) and may be used to determine the attainment status of areas. We will also consider air quality data from other air monitoring stations in the nonattainment area provided that the stations meet the federal monitoring requirements for SLAMS. All data are reviewed to determine the area's air quality status in accordance with our guidance at 40 CFR part 50, appendix K.

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

**II. What Is the Basis for EPA's Determination That the Ajo Area Has Attained the PM<sub>10</sub> NAAQS?**

The Ajo PM<sub>10</sub> nonattainment area is located in western Pima County in southern Arizona. The town of Ajo is

located approximately in the center of this 47 square mile nonattainment area. Ajo is one of several early settlements in Arizona in which mining and copper smelting was of prominent importance. When the New Cornelia mine, operated by Phelps Dodge, closed in 1986, the population of the Ajo area significantly declined. More recent growth in the Ajo area may be attributed to additional employers in the local economy, as well as retirees moving into the area. Employment is mainly in the commercial, service, and tourism sectors.

Ajo has one SLAMS monitor operated by the Arizona Department of Environmental Quality (ADEQ). Table 1 summarizes the one-in-six day PM<sub>10</sub> data collected from 2002–2004. We deemed the data from this site valid and the data has been submitted by the ADEQ to be included in AQS.

TABLE 1.—SUMMARY OF 24 HOUR AND ANNUAL PM<sub>10</sub> CONCENTRATIONS (µg/m<sup>3</sup>) FOR AJO, 2002–2004

	Year		
	2002	2003	2004
Maximum 24 hour concentration .....	50	139	43
Annual average .....	18.7	22.7	19.3
3-year annual average .....	21		

The PM<sub>10</sub> concentrations reported at the Ajo monitoring site showed no measured exceedances of the 24-hour PM<sub>10</sub> NAAQS between 2002 and 2004, or since 2004.<sup>2</sup> Thus, the three-year average was less than 1.0, which indicates Ajo has attained the 24-hour PM<sub>10</sub> NAAQS.

Review of the annual standard for calendar years 2002, 2003, and 2004 reveals that Ajo also attained the annual PM<sub>10</sub> NAAQS. There was no violation of the annual standard for the three-year period from 2002 through 2004, or since 2004. See footnote 2.

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

The air quality planning requirements for moderate PM<sub>10</sub> nonattainment areas are set out in subparts 1 and 4 of title I of the Act. We have issued guidance

<sup>2</sup> We have received AQS data from ADEQ through September 30, 2005 and the Ajo nonattainment area continues to attain both PM<sub>10</sub> standards. States are required to report data to the AIRS AQS on a rolling basis and have until 90 days from the end of a given quarter to submit quality-assured monitoring data into AQS. See 40 CFR 58.28.

in a General Preamble<sup>3</sup> describing our views on how we will review SIPs and SIP revisions submitted under title I of the Act, including those containing moderate PM<sub>10</sub> nonattainment area SIP provisions. The General Preamble provides a detailed discussion of our interpretation of the title I requirements.

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

This interpretation of the CAA is known as the Clean Data Policy and is the subject of two EPA memoranda. EPA also finalized the statutory interpretation set forth in the policy in a final rule, 40 CFR 51.918, as part of its "Final Rule to Implement the 8-hour Ozone National Ambient Air Quality Standard—Phase 2" (Phase 2 Final Rule). See discussion in the preamble to the rule at 70 FR 71612, 71645–71646 (November 29, 2005). EPA believes that the legal bases set forth in detail in our Phase 2 Final rule, our May 10, 1995 memorandum from John S. Seitz, entitled "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard," and our December 14, 2004 memorandum from Stephen D. Page entitled "Clean Data Policy for the Fine Particle National Ambient Air Quality Standards" are equally pertinent to the interpretation of provisions of subparts 1 and 4 applicable to PM<sub>10</sub>. Our interpretation that an area that is attaining the standards is relieved of obligations to demonstrate RFP and to provide an attainment demonstration and contingency measures pursuant to part D of the CAA, pertains whether the standard is PM<sub>10</sub>, ozone or PM<sub>2.5</sub>.<sup>4</sup>

It has been EPA's longstanding interpretation that the general provisions of part D, subpart 1 of the

<sup>3</sup> "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (57 FR 13498, April 16, 1992, as supplemented 57 FR 18070, April 28, 1992).

<sup>4</sup> Three U.S. Circuit Courts of Appeals have upheld EPA rulemakings applying its interpretation of subparts 1 and 2 with respect to ozone. *Sierra Club v. EPA*, 99F.3d 1551 (10th Cir. 1996); *Sierra Club v. EPA*, 375 F. 3d 537 (7th Cir. 2004); *Our Children's Earth Foundation v. EPA*, N. 04–73032 (9th Cir. June 28, 2005) (memorandum opinion).

Act (sections 171 and 172) do not require the submission of SIP revisions concerning RFP for areas already attaining the ozone NAAQS because the stated purpose of RFP is to ensure attainment by the applicable date. 57 FR at 13564. EPA believes the same reasoning applies to the PM<sub>10</sub> provisions of part D, subpart 4. Section 189(c)(1), applicable to PM<sub>10</sub> nonattainment areas, states that revisions shall contain milestones which are to be achieved until the area is redesignated to attainment, and such milestones are designed to show reasonable further progress "toward attainment by the applicable date", as defined by section 171. Thus it is clear that once the area has attained the standard, no further milestones are necessary or meaningful.

With respect to the attainment demonstration requirements of section 189(a)(1)(B), an analogous rationale leads to the same result. Section 189(a)(1)(B) requires that the plan provide for "a demonstration (including air quality modeling) that the [SIP] will provide for attainment by the applicable attainment date. \* \* \*" As with the RFP requirements, if an area is already monitoring attainment of the standards, EPA believes there is no need for an area to make a further submission containing additional measures to achieve attainment. This is also consistent with the interpretation of the section 172(c) requirements provided by EPA in the General Preamble (57 FR at 13564), the December 14, 2004 memorandum and of the section 182(b) and (c) requirements set forth in the May 10, 1995 memorandum.

Other SIP submission requirements are linked with these attainment demonstration and RFP requirements, and similar reasoning applies to them. These requirements include the contingency measure requirements of section 172(c)(9) and 182(c)(9). We have interpreted the contingency measure requirements of section 172(c)(9) and 182(c)(9) as no longer applying when an area has attained the standard, because those "contingency measures are directed at ensuring RFP and attainment by the applicable date." (57 FR at 13564; May 10, 1995 memorandum at 5–6.)

Both Sections 172(c) and 189(a)(1)(C) require "provisions to assure that reasonably available control measures" (RACM) are implemented in a nonattainment area. However, the Ajo area was able to attain the PM<sub>10</sub> NAAQS without any additional measures being implemented. The General Preamble, 57 FR at 13560, states that EPA interprets section 172(c)(1) so that RACM requirements are a "component" of an area's attainment demonstration. Thus,

for the same reason the attainment demonstration no longer applies by its own terms, the requirement for RACM no longer applies.

Here, as in both our Phase 2 final rule and ozone and PM<sub>2.5</sub> clean data memoranda, we emphasize that the suspension of a requirement to submit SIP revisions concerning these RFP, attainment demonstration, RACM, and other related requirements exists only for as long as a nonattainment area continues to monitor attainment of the standard. If such an area experiences a violation of the NAAQS, the basis for the requirements being suspended would no longer exist. Therefore, should EPA at some future time determine that an area that had clean data, but which has not yet been redesignated as attainment for a NAAQS has violated the relevant standard, the area would again be required to submit the pertinent CAA requirements for the area.<sup>5</sup>

#### IV. EPA's Final Action

Based on quality-assured data meeting the requirements of 40 CFR part 50, appendix K, we find that the Ajo, Arizona nonattainment area has attained the PM<sub>10</sub> NAAQS. This action is not a redesignation to attainment under CAA section 107(d)(3) because we have not yet approved a maintenance plan as required under section 175(A) of the CAA or determined that the area has met the other CAA requirements for redesignation. The classification and designation status in 40 CFR part 81 will remain moderate nonattainment for this area until such time as Arizona meets the CAA requirements for redesignation of the Ajo area to attainment. See footnote 5.

EPA also finds that, because the Ajo area has continued to attain the NAAQS, the following CAA requirements no longer apply: The part D, subpart 4 obligations to provide an attainment demonstration pursuant to section 189(a)(1)(B), the RACM

provisions of 189(a)(1)(c), the RFP provisions established by section 189(c)(1), and the attainment demonstration, RACM, RFP and contingency measure provisions of part D, subpart 1 contained in section 172 of the Act.

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 April 10, 2006, without further notice unless the EPA receives relevant adverse comments by March 10, 2006.

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 April 10, 2006, and no further action will be taken on the proposed rule.

#### V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely makes a determination based on air quality data and does not impose any additional requirements. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule does not impose any additional enforceable duty, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the

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

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 10, 2006. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

<sup>5</sup>Note, however, that on December 20, 2005, EPA proposed revisions to the NAAQS for particulate matter. See 71 FR 2620, January 17, 2006. The proposed revisions address two categories of particulate matter: Fine particles which are particles 2.5 micrometers in diameter and smaller; and "inhalable coarse" particles which are particles between 2.5 and 10 micrometers (PM<sub>10-2.5</sub>). Upon finalization of a primary 24-hour standard for PM<sub>10-2.5</sub>, EPA proposes to revoke the current 24-hour PM<sub>10</sub> standard in all areas of the country except in areas where there is at least one monitor located in an urbanized area (as defined by the U.S. Bureau of the Census) with a minimum population of 100,000 that violates the current 24-hour PM<sub>10</sub> standard based on the most recent three years of data. In addition, EPA proposes to revoke the current annual PM<sub>10</sub> standard upon finalization of a primary 24-hour standard for PM<sub>10-2.5</sub>.

## List of Subjects in 40 CFR Parts 52 and 81

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

Dated: January 24, 2006.

**Wayne Nastri,**

*Regional Administrator, Region 9.*

[FR Doc. 06-1174 Filed 2-7-06; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[EPA-HQ-OPP-2005-0508; FRL-7755-8]

#### Imazethapyr; Pesticide Tolerance

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes an increase in tolerances for the sum of the residues of imazethapyr and its metabolites, CL 288511, (2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1H-imidazol-2-yl]-5-(1-hydroxyethyl)-3-pyridine carboxylic acid), and CL 182704, (5-[1-(beta-D-glucopyranosyloxy)ethyl]-2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1H-imidazol-2-yl]-3-pyridinecarboxylic acid), applied as its acid or ammonium salt in or on rice grain at 0.3 ppm, rice straw at 0.4 ppm, and imazethapyr and its metabolite, CL 288511 in or on crayfish at 0.15 ppm. BASF Corporation requested the tolerances for rice grain and rice straw under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), because of a requested increase in the use rate of imazethapyr in rice. In addition, this regulation increases the tolerance on crayfish from 0.10 ppm to 0.15 ppm due to exposure of crayfish raised in rice fields to imazethapyr.

**DATES:** This regulation is effective February 8, 2006. Objections and requests for hearings must be received on or before April 10, 2006.

**ADDRESSES:** To submit a written objection or hearing request follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under Docket identification (ID) number EPA-HQ-OPP-2005-0508. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) web site. (EDOCKET, EPA's electronic public

docket and comment system was replaced on November 25, 2005, by an enhanced Federal-wide electronic docket management and comment system located at <http://www.regulations.gov/>. Follow the on-line instructions.) Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:**

James A. Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-5697; e-mail address: [tompkins.jim@epa.gov](mailto:tompkins.jim@epa.gov).

**SUPPLEMENTARY INFORMATION:**

#### I. General Information

##### A. Does this Action Apply to Me?

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

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

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to

certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

##### B. How Can I Access Electronic Copies of this Document and Other Related Information?

In addition to using EDOCKET (<http://www.epa.gov/edocket/>), you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>. A frequently updated electronic version of 40 CFR part 180 is available on E-CFR Beta Site Two at <http://www.gpoaccess.gov/ecfr/>.

## II. Background and Statutory Findings

In the **Federal Register** of June 29, 2005 (70 FR 37392) (FRL-7718-5), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 5F 6947) by BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, North Carolina 27709-3528. The petition requested that 40 CFR 180.447 be amended by establishing a tolerance for the sum of the residues of the herbicide Imazethapyr, and its metabolites CL 288511 and CL182704, in or on rice grain at 0.3 parts per million (ppm), and rice straw at 0.4 ppm. That notice included a summary of the petition prepared by BASF Corporation, the registrant. Comments were received on the notice of filing. EPA's response to these comments is discussed in Unit IV.C.

In addition, after completion of the dietary risk analysis for imazethapyr residues on rice, the Agency determined that the tolerance for combined residues for imazethapyr and the metabolite CL 288511 in crayfish needs to be increased from 0.10 ppm to 0.15 ppm. Crayfish are often raised in flooded rice fields, and thus are exposed to residues of pesticides that are applied to rice.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section