State citation	Title/subject	State approval/ submittal date	EPA approval date	Explanation
Section 116.922	Notice of Final Action	12/16/1999	1/11/2011, [Insert FR page number where document begins].	
Section 116.926	Permit Fee	5/22/2002	1/11/2011, [Insert FR page number where document begins].	
Section 116.928	Delegation	5/22/2002	1/11/2011, [Insert FR page number where document begins].	
Section 116.930	Amendments and Alterations Issued Under this Subchapter.	5/22/2002	1/11/2011, [Insert FR page number where document begins].	
Section 116.931	Renewal	12/16/1999	1/11/2011, [Insert FR page number where document begins].	
*	*	*	*	*	*	*

■ 3. Section 52.2273 is amended by adding a new paragraph (f) to read as follows:

§ 52.2273 Approval status.

* * * * *

(f) EPA is disapproving the Texas SIP revision submittals under 30 TAC Chapter 116—Control of Air Pollution by Permits for New Construction or Modification as follows:

(1) Subchapter I—Electric Generating Facility Permits—Section 116.911(a)(2) (Electric Generating Facility Permit), adopted December 16, 1999, and submitted January 3, 2000.

[FR Doc. 2011–222 Filed 1–10–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–R09–OAR–2010–0718; FRL–9250–1]

Determinations of Attainment by the Applicable Attainment Date for the Hayden, Nogales, Paul Spur/Douglas PM_{10} Nonattainment Areas, Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is making final determinations 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 (PM_{10}) by their applicable attainment dates of December 31, 1994. On the basis of these determinations, EPA concludes that these three "moderate" nonattainment areas are not subject to reclassification by operation of law to "serious." EPA is not finalizing determinations with respect to the air quality in these areas subsequent to their 1994 attainment dates.

DATES: *Effective Date:* This rule is effective on February 10, 2011.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2010–0718 for this action. The index to the docket 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:

Table of Contents

I. Context for Today's Actions

On November 2, 2010 (75 FR 67220), we published a direct final rule that made certain determinations we are making in this document. On November 2, 2010 (75 FR 67303), we also published a corresponding proposed rule in the event that we received adverse comment leading us to withdraw the direct final rule. In our direct final rule, we indicated that we would withdraw the direct final rule if we received adverse comments, and address public comments in a subsequent final rule based on the proposed rule. On November 3, 2010, we received adverse comments, and subsequently withdrew the direct final rule (75 FR 72964, November 29, 2010). Today, we take final action based on our November 2, 2010 proposed rule and our consideration of the public comments received.

II. Summary of Proposed Actions

In our November 2, 2010 proposed rule, we proposed to determine, pursuant to section 188(b)(2) of the Clean Air Act, that three Arizona "moderate" PM_{10} nonattainment areas (Hayden, Nogales, and Paul Spur/Douglas) had attained the PM_{10} NAAQS by the applicable attainment date (December 31, 1994), and that, based on these proposed determinations, we concluded that none of these areas is subject to reclassification to serious by operation of law. We also proposed to find that more recent data for 2007–2009 show none of the areas is currently attaining the standard. More detailed information is contained in the November 2 direct final rule, which is summarized in the paragraphs that follow.

First, our direct final rule described the relevant NAAQS, 150 micrograms per cubic meter ($\mu g/m^3$), 24-hour average, against which monitored ambient concentrations of PM_{10} in the three subject areas (Hayden,[1] Nogales,[2]

[1] 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 square 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).

[2] 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

and Paul Spur/Douglas [3]) are to be compared in evaluating whether the areas attained the standard. Next, we described the designations and classifications of these three areas, all of which are classified as "moderate" nonattainment with an applicable attainment date of December 31, 1994 under CAA section 188(c). Also, we discussed the status of the various air quality plans submitted by the State of Arizona to address moderate area PM_{10} requirements in the three subject areas (Hayden, Nogales, Paul Spur/Douglas).

In our direct final rule, we also described how EPA makes attainment determinations. As explained therein, the 24-hour PM_{10} 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 an "exceedance"), as determined in accordance with 40 CFR part 50, appendix K, is equal to or less than one.[4] See 40 CFR 50.6 and 40 CFR part 50, appendix K. Generally, EPA determines whether an area's air quality is meeting the PM_{10} NAAQS based upon complete (minimum of 75 percent of scheduled PM_{10} samples recorded in each quarter), 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. Attainment of the 24-hour PM_{10} standard is determined by calculating the expected number of exceedances of the standard in a year. The 24-hour PM_{10} 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 PM_{10} standard. See 40 CFR part 50 and appendix K.

Based on the available monitoring data for the 1992–1994 period collected in the three subject Arizona nonattainment areas (Hayden, Nogales,[5] and Paul Spur/Douglas) and the application of the PM_{10} NAAQS attainment criteria described above, we proposed to determine that all three areas attained the PM_{10} NAAQS by the December 31, 1994 attainment date for "moderate" areas, and thus, are not subject to reclassification to "serious" by operation of law under CAA section 188(b)(2). In addition, we proposed to find that, although the three areas attained the standard by the applicable attainment date, none appears to be currently attaining based on the most recent available data, although Hayden appears likely to attain in the near future if current trends continue. We indicated that we plan to address the PM_{10} needs for Nogales and Paul Spur/Douglas areas over the next few years. In today's action, EPA is not finalizing any of the proposed determinations with respect to recent data. Instead, we plan to further assess recent data, including data available for 2010 and 2011, in the context of future rulemaking actions on the submitted, but not yet approved, air quality plans for these areas. Section 188(b)(2) obligates EPA to make a determination only as to whether these areas have attained by their applicable 1994 attainment dates, and we are not required by that section to make determinations regarding subsequent time periods. Other portions of the Clean Air Act authorize EPA to address current air quality issues as needed through separate statutory authority and mechanisms.

Please see our November 2, 2010 direct final rule for more information about our proposal of the same date.

III. Public Comments and EPA Responses

As noted previously, we published a proposed rule (75 FR 67303) on November 2, 2010. We received comments from WildEarth Guardians ("WildEarth"), dated November 3, 2010, challenging EPA's interpretation of CAA section 188(b)(2) that limits reclassifications by operation of law to the air quality conditions as of the applicable attainment date.

Comment: WildEarth contends that section 188(b)(2) of the Clean Air Act does not state that the EPA is limited only to considering air quality data up until the attainment date when it makes its finding, but rather requires any moderate nonattainment area that fails to attain "after the applicable attainment date" to be reclassified to "serious" regardless of whether EPA makes a timely finding.

WildEarth finds further support for its interpretation by noting that CAA section 188(b)(2) uses both past-tense and present-tense wording with regards to the context of EPA's assessment of an area's attainment status. Specifically, the statute states that EPA's finding "shall determine whether the area *attained* * * *" (emphasis added), but then states "If the Administrator finds that any Moderate Area *is not in attainment* * * *" (emphasis added). WildEarth contends that use of both the past-tense and present-tense in this context indicates that, although the Clean Air Act intended EPA to assess an area's attainment status based on whether it attained the NAAQS by the attainment date, it also required that a moderate nonattainment area be reclassified to "serious" if it "is not in attainment" at the time the EPA makes its finding. If EPA's assessment were to be limited only to whether an area "attained" in the past, WildEarth contends that it would render meaningless the Clean Air Act's substantive requirement that a moderate area be bumped up to "serious" if it "is not in attainment" when EPA makes its finding. WildEarth contends that, as such, EPA's interpretation reads a substantive provision out of the Clean Air Act.

Response: First, we note that WildEarth does not object to any aspect of EPA's proposed rulemaking other than the interpretation as to the legal consequences that they contend would flow from finalizing determinations that, although the three areas attained by their applicable 1994 attainment dates, sixteen years later they are not currently in attainment. First, we note that in today's rulemaking EPA is not finalizing any proposed determinations with respect to the air quality in these areas subsequent to the areas' applicable dates. Nor does section 188(b)(2) impose such an obligation. Pursuant to section

across the border from Nogales, Arizona is roughly 160,000.

[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] An exceedance is defined as a daily value that is above the level of the 24-hour standard (150 µg/m^3) after rounding to the nearest 10 µg/m^3 (*i.e.,* values ending in 5 or greater are to be rounded up). Thus, a recorded value of 154 µg/m^3 would not be an exceedance since it would be rounded to 150 µg/m^3 whereas a recorded value of 155 µg/m^3 would be an exceedance since it would be rounded to 160 µg/m^3. See 40 CFR part 50, appendix K, section 1.0.

[5] Table 2 ("Summary of PM_{10} Monitoring Data, Nogales Nonattainment Area, 1992–1994"), as published in our November 2, 2010 direct final rule, contains a publisher's error that erroneously combines certain columns and rows and thereby causes a mismatch between concentrations and the corresponding years in which they were monitored. The correct values for the highest 24-hour PM_{10} concentrations (µg/m^3) are 153 in 1992, 119 for 1993, and 116 for 1994 from the Nogales Post Office monitor. Also, the maximum concentrations shown for the other three monitors located in Nogales were collected in 1994, not 1993. These errors do not appear in the version of the direct final rule that was signed by the EPA Region IX Regional Administrator. In any event, these errors would not have affected the outcome of our attainment determinations since none of the values for any of the years exceeded 154 µg/m^3.

188(b)(2), EPA is finalizing here its determinations that the areas attained the standard "by that [applicable attainment] date." Section 188(b)(2) does not impose upon EPA any obligation to make a final determination of attainment except with respect to an area's applicable attainment date.

Thus, it is not necessary for the purposes of our final actions here, which are limited to determinations of attainment as of the areas' applicable attainment dates, to respond to WildEarth's assertions regarding the legal consequences of determinations regarding air quality in subsequent decades. Nevertheless, we note our disagreement with WildEarth's interpretation that CAA section 188(b)(2) would require reclassification of any moderate PM_{10} nonattainment area if EPA were to make a final determination that the area was not attaining after the applicable attainment date, regardless of the air quality conditions as of the applicable attainment date itself.

EPA's interpretation of section 188(b)(2) as requiring and authorizing reclassification to serious based only on air quality conditions as of the applicable attainment date, and not thereafter, is confirmed by a reading of that section in its entirety:

> Within 6 months following the applicable attainment date for a PM–10 nonattainment area, the Administrator shall determine whether the area attained the standard by that date. If the Administrator finds that any Moderate Area is not in attainment after the applicable attainment date—
>
> (A) The area shall be reclassified by operation of law as a Serious Area; and
>
> (B) the Administrator shall publish a notice in the **Federal Register** no later than 6 months following the attainment date, identifying the area as having failed to attain and identifying the reclassification described under subparagraph (A).

While the second sentence of section 188(b)(2) contains the language quoted by WildEarth ("any Moderate Area is not in attainment after the applicable attainment date"), it is clear that in the context of the first sentence of the provision, which is the sentence that establishes the duty to make an attainment determination, that the duty is to "determine whether the area attained the standard by that date [referring to the phrase "applicable attainment date" in the opening clause of the first sentence]." Thus, EPA's duty is to determine whether the area attained by its attainment date and the language in the second sentence regarding a finding after the attainment date may reasonably be interpreted as referring to the date the finding is made, which would necessarily be after the attainment date, not to the date used in the determination as the benchmark for determining attainment.

Further, the second sentence of CAA section 188(b)(2), i.e., the one that includes the language cited by WildEarth ("any Moderate Area is not in attainment after the applicable attainment date"), includes two subparagraphs, one of which provides for reclassification of a moderate area to serious by operation of law and another that refers to publication of a notice in the **Federal Register** six months after the attainment date, identifying the area "as having failed to attain" that clearly relates back to the earlier, legally relevant attainment date (in this case, December 31, 1994). Thus, whether EPA's obligation under CAA section 188(b)(2) is viewed in its entirety, or whether the second sentence of CAA section 188(b)(2) is viewed in isolation, it is clear that the question of whether an area must be reclassified is considered along with the question of whether an area has achieved attainment by the attainment date.[6] To accept WildEarth's interpretation would be to ignore the reference to a specific point in time ("no later than 6 months following the attainment date") for publishing a notice in subparagraph (B) of CAA section 188(b)(2) in identifying the appropriate benchmark for reclassifying moderate areas to serious under subparagraph (A).[7]

Commenter's interpretation of section 188(b)(2) fails to harmonize the second sentence of the section with the first sentence and with the sentences that follow. Indeed, it could more plausibly be argued that the second sentence adds a cumulative condition for reclassification—that is, an area will be reclassified if and only it fails to attain by its attainment date and "if the Administrator finds [the area] is not in attainment after the applicable attainment date." Contrary to commenter's contention, EPA does not believe that Congress intended for the language regarding determining attainment as of the attainment date not to apply when an attainment determination occurs more than six months after the attainment date. The second sentence of section 188(b)(2) does not somehow override the language of the first sentence and require reclassification if an area slips back into nonattainment after its attainment date. EPA's reading is consistent with the language of section 188(b)(2) and with other provisions of the Clean Air Act, as well as with its structure and purpose. EPA believes that other parts of the Act, notably section 110(k)(5), provide the means to address nonattainment that occurs after an area's attainment date. Contrary to commenter's contention, EPA's reading does not "nullif[y]" applicable text. Rather, EPA is properly reading 188(b)(2) as requiring EPA to determine whether an area has attained by its attainment date, with reclassification as a consequence for areas that fail to do so.

In the present case, the air quality data from the years 1992–1994 are the relevant data for determining whether the three Arizona areas must be reclassified to serious because their applicable attainment date is December 31, 1994, and because we have

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[6] EPA's sole obligation under CAA section 188(b)(2) is to determine whether the three Arizona areas attained the PM_{10} standard by the applicable attainment date, and while the statute requires EPA to make this determination within six months of the applicable attainment date, the applicable attainment date (in this case, December 31, 1994) remains the same no matter when EPA actually makes the determination. EPA was not obligated in the November 2, 2010 proposed rule, nor in this final rule, to determine whether the areas are attaining the standard at the present time. As stated above, EPA is not here finalizing any determinations as to the current air quality in the area, but is merely noting what more recent monitoring data suggest about the current air quality area quality in these areas, sixteen years after the 1994 attainment dates that are the subject of the final rulemaking here. We included the observations about current air quality in our proposed rule because we believe that such observations, and the related discussion of future Agency actions, is of as much public interest, if not more, as are the determinations of the air quality conditions that occurred sixteen years ago.

[7] While EPA believes that the plain language of section 188(b)(2) supports EPA's interpretation that reclassifications to "serious" are to be based only on air quality conditions as of the applicable attainment date, and not thereafter, EPA believes that, to the extent section 188(b)(2) is ambiguous, EPA's interpretation is reasonable in that it is consistent with the statutory scheme for SIP revisions upon findings of failure to attain under subpart 1 and for mandatory reclassifications under subparts 2 and 3 for ozone and carbon monoxide areas. See CAA sections 179(c) and (d), 181(b)(2) and 186(b)(2) and compare the language from these sections to section 188(b)(2). While the language for such SIP revisions under subpart 1 and for reclassifications for ozone and carbon monoxide areas under subparts 2 and 3 uses slightly different language to link SIP revisions and reclassifications solely to air quality "as of the attainment date" than the language for reclassification of PM_{10} areas under subpart 4, we find no reason that Congress would have established a different scheme for PM_{10} areas under subpart 4 than generally applicable under subpart 1 or for ozone or carbon monoxide areas under subparts 2 and 3. For further explanation of EPA's interpretation of reclassification under the Clean Air Act, see the responses to comments in EPA's final Determination of Attainment of 1-hour Ozone Standard as of November 15, 1993 for the Birmingham, AL Marginal Ozone Nonattainment Area (67 FR 67113, November 4, 2002). To the extent relevant here, EPA reaffirms and incorporates by reference the responses to comments contained in our November 4, 2002 final rule.

determined that the areas did in fact attain by the applicable attainment date, they are not subject to reclassification to serious by operation of law under CAA section 188(b)(2).

This does not mean that the Clean Air Act provides no means to address NAAQS violations in areas that had initially attained the standard by the applicable attainment date but then experience subsequent violations years after the applicable attainment date. For example, EPA could issue a "SIP call" under CAA section 110(k)(5) if EPA were to determine that the SIP is "substantially inadequate" to attain the PM_{10} NAAQS in areas where violations of the PM_{10} NAAQS occur after the applicable attainment date. Such SIP calls require the State to revise the SIP as necessary to correct the inadequacies. The SIP call, unlike reclassification, is capable of addressing and correcting the specific circumstances causing nonattainment sixteen years after the applicable attainment date. While EPA has no current plans to issue SIP calls for any of the three subject Arizona moderate PM_{10} nonattainment areas, EPA is working with the State of Arizona to update the state's earlier-submitted, but not yet EPA-approved air quality plans. EPA intends to ensure that the plans meet all applicable requirements for moderate PM_{10} nonattainment areas through both cooperative efforts with the State and through subsequent EPA rulemaking actions on the updated plans.

IV. Final Action

EPA has reviewed the comments that have been submitted, and concluded that none of them convince us to change our action as proposed on November 2, 2010 with respect to determinations of attainment as of the applicable attainment date. Thus, under section 188(b)(2) of the Clean Air Act, and based on sufficient, quality-assured data, we take final action to determine that the Hayden, Nogales, and Paul Spur/Douglas PM_{10} nonattainment areas attained the 24-hour PM_{10} 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.

V. Statutory and Executive Order Reviews

This action merely make determinations 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 March 14, 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. 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: December 30, 2010.

Jared Blumenfeld,

Regional Administrator, EPA Region IX.

[FR Doc. 2011–221 Filed 1–10–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2010–0003]

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated in the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The