

Seitz memo as one of the prerequisites to redesignation.

(4) Monitoring. ADEQ has confirmed that the State commits to resume monitoring before any major source of SO₂ commences to operate. This addresses the monitoring provision of the Seitz Memo.

B. Has the State Met the Remaining Maintenance Plan Provisions?

As discussed above, CAA Section 175A sets forth the statutory requirements for maintenance plans, and the Calcagni and Shaver Memos cited above contain specific EPA guidance. The only maintenance plan element not covered by the Seitz Memo is the contingency provision. CAA Section 175A provides that maintenance plans "contain such contingency provisions as the Administrator deems necessary to assure that the State will promptly correct any violation of the standard which occurs after the redesignation of the area as an attainment area."

The Ajo Maintenance Plan includes the State's commitment to continue to implement and enforce measures necessary to maintain the SO₂ NAAQS. ADEQ's current operating permit program places limits on SO₂ emissions from existing sources. Should an existing facility want to upgrade or increase SO₂ emissions, the facility would be subject to the PSD program. Should a new facility be constructed in the Ajo area, the facility would also be subject to PSD as required in the Calcagni Memo.

If these measures prove insufficient to protect against exceedances of the NAAQS, the State has also committed to adopt, submit as a SIP revision, and implement expeditiously any and all measures needed to ensure maintenance of the NAAQS.

The Calcagni Memo emphasizes the importance of specific contingency measures, schedules for adoption, and action levels to trigger implementation of the contingency plan. Since there are no remaining sources of SO₂ emissions of the magnitude of the Phelps Dodge smelter and there is no SO₂ monitoring in the Ajo area, we agree with the State that this level of specificity is not appropriate, and we conclude that the State's commitment satisfactorily addresses the CAA provisions. We believe that the State and County's PSD permitting program is sufficient to track future air quality trends and to assure that the Ajo area will not violate the NAAQS. If either the State or the County identifies the potential for a NAAQS violation through the permitting process, they would

ascertain what measures would be needed to avoid the violation.

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

1. Has the Area Attained the 24-Hour and Annual SO₂ NAAQS?

As discussed above, the normal prerequisite for redesignation is submittal of quality-assured ambient data with no violations of the SO₂ NAAQS for the last eight consecutive quarters. However, the Seitz Memo recognizes that states should be provided an opportunity to request redesignation where there is no longer monitoring but where there is no reasonable basis for assuming that SO₂ violations persist after closure of the sources that were the primary or sole cause of these violations. Ajo is such an area, and the State has submitted convincing evidence that no major stationary sources of SO_x emissions remain in operation in or within 50 kilometers of the area that might cause a violation of the SO₂ NAAQS. We do not believe that, even in the aggregate, the remaining minor sources which are present would cause a violation of the SO₂ NAAQS.

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

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

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

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

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

Yes. The Maintenance Plan shows that the exclusive cause of past SO₂

NAAQS violations (the Phelps Dodge copper smelter in Ajo) no longer exists. As a result, there is no reason to expect that SO₂ ambient concentrations will exceed background levels.

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

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

IV. Final Action

We are approving the Maintenance Plan for the Ajo area under CAA Sections 110 and 175A. We are also approving the State's request to redesignate the Ajo area to attainment of the primary SO₂ NAAQS.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the State plan and redesignate the area if relevant adverse comments are filed. This rule will be effective January 2, 2004 without further notice unless relevant adverse comments are received by December 3, 2003. If we receive such comments, this action will be withdrawn before the effective date. All public comments received will then be addressed in a subsequent final rule based on the proposed action. We will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective January 2, 2004.

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements