



6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2017-0468; FRL-9971-20-Region 9]

#### Approval of Arizona Air Plan Revisions, Arizona Department of Environmental Quality

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a revision to the Arizona Department of Environmental Quality (ADEQ) portion of the Arizona State Implementation Plan (SIP). This revision concerns emissions of lead-bearing fugitive dust from roads, storage piles and other activities associated with the primary copper smelter located in Hayden, Arizona. We are proposing to approve a state rule and associated appendix to regulate these emissions under the Clean Air Act (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

**DATES:** Any comments must arrive by [**Insert date 30 days after the date of publication in the Federal Register**].

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R09-OAR-2017-0468 at <http://www.regulations.gov>, or via email to Christine Vineyard, Rulemaking Office at [Vineyard.Christine@epa.gov](mailto:Vineyard.Christine@epa.gov). For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be removed or edited from Regulations.gov. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be

Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “**FOR FURTHER INFORMATION CONTACT**” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Christine Vineyard, EPA Region IX, (415) 947-4125, [vineyard.christine@epa.gov](mailto:vineyard.christine@epa.gov).

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

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**I. The State's Submittal**

A. *What rule and appendix did the State submit?*

Table 1 lists the rule and appendix addressed by this proposal with the dates that they were submitted by ADEQ.

TABLE 1 - SUBMITTED RULES

Local Agency	Rule #	Rule Title	Submitted
ADEQ	R18-2-B1301.01	Limits on Lead-Bearing Fugitive Dust from the Hayden Smelter	04/06/17
ADEQ	Appendix 15	Test Methods for Determining Opacity and Stabilization of Unpaved Roads	04/06/17

On July 17, 2017 the EPA determined that the submittal for ADEQ Rule R18-2-B1301.01 and Appendix 15 met the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. *Are there other versions of this rule and appendix?*

There are no previous versions of Rule 18-2-B1301.01 and Appendix 15 in the SIP.

C. *What is the purpose of the submitted rule and appendix?*

On November 12, 2008 the EPA published a final rule revising the lead National

Ambient Air Quality Standards (NAAQS). The revisions to the primary and secondary lead NAAQS were to provide increased protection for children and other at-risk populations against an array of health effects including neurological effects. Section 110(a) of the CAA requires States to submit regulations that control lead emissions. ADEQ Rule R18-2-B1302.01 and Appendix 15 establish control requirements and test methods for lead-bearing fugitive dust sources at the Hayden primary copper smelter. The EPA's technical support document (TSD) has more information about this rule and appendix.

## **II. The EPA's Evaluation and Action**

### *A. How is the EPA evaluating the rule and appendix?*

SIP rules must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193). On September 3, 2014 the EPA issued a final rule redesignating the Hayden, Arizona area to nonattainment for the 2008 lead NAAQS (79 FR 52205). Under CAA section 172(c)(1), the Arizona SIP must provide for implementation of all reasonably available control measures (RACM), including reasonably available control technology (RACT) for lead, and must provide for attainment of the NAAQS in the Hayden nonattainment area. The EPA will address the overall RACM/RACT requirement for the Hayden lead nonattainment area separately, in the context of our action on the "SIP Revision: Hayden Lead Nonattainment Area" submitted by ADEQ to the EPA on March 3, 2017. Therefore, our stringency evaluation considers whether Rule 18-2-B1301.01 implements reasonable controls for leaded fugitive dust

at the Hayden primary copper smelter.

Guidance and policy documents that we use to evaluate enforceability, revision/relaxation and rule stringency requirements for the applicable criteria pollutants include the following:

1. “Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990” (58 FR 67748, December 22, 1993).
  2. “Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,” EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).
  3. “Guidance Document for Correcting Common VOC & Other Rule Deficiencies,” EPA Region 9, August 21, 2001 (the Little Bluebook).
  4. “Implementation of the 2008 Lead National Ambient Air Quality Standards Guide to Developing Reasonable Available Control Measures (RACM) for Controlling Lead Emissions,” EPA-457/R-12-001, March 2012.
- B. *Do the rule and appendix meet the evaluation criteria?*

We have determined that the rule and appendix are consistent with CAA requirements and relevant guidance regarding enforceability and SIP revisions. R18-2-B1301.01 establishes controls for lead-bearing fugitive dust emissions surrounding the Hayden copper smelter that include a facility-wide 20% opacity limit, wind fences for storage piles and chemical dust-suppression application for unpaved roads. Appendix 15 describes appropriate test methods to help ensure enforceability. We also have determined that R18-2-B1301.01 generally implements reasonably available controls for lead-bearing fugitive dust at the Hayden smelter. The TSD has more information on our evaluation.

C. *EPA recommendations to further improve the rule and appendix*

The TSD describes additional revisions that we recommend for the next time ADEQ modifies the rule and appendix.

D. *Public comment and proposed action*

As authorized in section 110(k)(3) of the Act, the EPA proposes to fully approve the submitted rule and appendix because they fulfill all relevant requirements. We will accept comments from the public on this proposal until [**Insert date 30 days after date of publication in the Federal Register**]. If we take final action to approve the submitted rule and appendix, our final action will incorporate them into the federally enforceable SIP.

### **III. Incorporation by Reference**

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the ADEQ rules described in Table 1 of this preamble. The EPA has made, and will continue to make, these materials available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region IX Office (please contact the person identified in the “FOR FURTHER INFORMATION CONTACT” section of this preamble for more information).

### **IV. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely

proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- 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 (Public Law 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 the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: November 16, 2017.

Alexis Strauss,  
Acting Regional Administrator,  
Region IX.