



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2020-0173; FRL-10009-01-Region 9]

Limited Approval, Limited Disapproval of Arizona Air Plan Revisions, Hayden Area;

Sulfur Dioxide Control Measures - Copper Smelters

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing a limited approval and limited disapproval of revisions to the Arizona State Implementation Plan (SIP). This revision concerns sulfur dioxide (SO₂) emissions from the primary copper smelter in Hayden, Arizona. We are proposing action on a local rule submitted by the Arizona Department of Environmental Quality (ADEQ) that regulates 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: Comments must be received on or before [**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-2020-0173 at <http://www.regulations.gov>. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. 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://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Kevin Gong, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972-3073 or by email at gong.kevin@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 did the State submit?

Table 1 lists the rule addressed by this proposal with the dates that it was adopted and submitted by the ADEQ.

TABLE 1 - SUBMITTED RULE

Rule #	Rule Title	Effective Date	Submitted
R18-2-B1302	Limits on SO ₂ Emissions from the Hayden Smelter	July 1, 2018	April 6, 2017

On July 17, 2017, the EPA determined that the submittal for the rules and documents in Table 1 met the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review.¹

B. Are there other versions of this rule?

There are no previous versions of R18-2-B1302 (“Rule B1302”) in the SIP.

C. What is the purpose of the submitted rule?

On June 22, 2010, the EPA promulgated a new 1-hour primary sulfur dioxide (SO₂) National Ambient Air Quality Standard (NAAQS) of 75 parts per billion (ppb). On August 5, 2013, the EPA designated the Hayden area within Arizona as nonattainment for the 2010 SO₂ NAAQS. This designation became effective on October 4, 2013. Section 191(a) of the CAA directs states to submit SIPs for areas designated as nonattainment for the SO₂ NAAQS to the EPA within 18 months of the effective date of the designation, i.e., by no later than April 4, 2015, in this case. Under CAA section 192(a), these plans are required to have measures that will help their respective areas attain the NAAQS as expeditiously as practicable, but no later than 5 years from the effective date of designation, which for the Hayden SO₂ NAA was October 4, 2018.

¹ Letter dated July 17, 2017 from Elizabeth Adams, Director, Air Division, EPA, Region IX to Timothy S. Franquist, Director, Air Quality Division, ADEQ.

ADEQ submitted an attainment plan for the Hayden SO₂ nonattainment area on March 9, 2017 (“Hayden SO₂ Plan”) and submitted associated final rules, including Rule B1302, on April 6, 2017.² Rule R18-2-B1302 establishes control requirements for SO₂ emissions from the copper smelter located in the Hayden, AZ nonattainment area (“Hayden Smelter”).

II. The EPA’s Evaluation and Action

A. How is the EPA evaluating the rule?

Rules in a SIP 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). CAA section 172(c)(1) requires that SIPs for nonattainment areas provide for the implementation of all reasonably available control measures (RACM), including any reasonably available control technology (RACT), in order to provide for attainment of the NAAQS, and CAA section 172(c)(6) requires that such SIPs “include enforceable emission limitations, and such other control measures means or techniques . . . as well as schedules and timetables for compliance, as may be necessary or appropriate to provide for attainment of such standard in such area by the applicable attainment date . . .”

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

- "State Implementation Plans; General Preamble for the Implementation of Title I of the

² Letters dated March 8, 2017 and April 6, 2017 from Timothy S. Franquist, Director, Air Quality Division, ADEQ, to Alexis Strauss, Acting Regional Administrator, EPA, Region IX. Although the cover letter for the Hayden SO₂ Plan was dated March 8, 2017, the Plan was transmitted to the EPA on March 9, 2017.

Clean Air Act Amendments of 1990," 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).

- "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).
- "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).
- "Guidance for 1-Hour SO₂ Nonattainment Area SIP Submissions," EPA Office of Air Quality Planning and Standards (April 23, 2014).

B. Does the rule meet the evaluation criteria?

Rule B1302 improves the SIP by establishing a more stringent SO₂ emission limit for the main stack at the Hayden smelter than the existing requirements in state law, as well as new operational standards and monitoring, recordkeeping and reporting requirements for the smelter. The rule is partly consistent with CAA requirements and relevant guidance regarding enforceability and SIP revisions. Rule provisions that do not meet the evaluation criteria are summarized below and discussed further in the technical support document (TSD) for this action.

C. What are the rule deficiencies?

These aspects of the rule do not satisfy the requirements of section 110 and 172(c)(6) of the Act and prevent full approval of the SIP revision:

1. The rule does not contain any numeric emission limit(s) or ongoing monitoring requirements corresponding to the levels of fugitive emissions that were modeled

in the Hayden SO₂ Plan.³ Therefore, the rule does not fully satisfy CAA section 172(c)(6).

2. Rule subsection (E)(4) provides an option for alternative sampling points that could undermine the enforceability of the stack emission limit by providing undue flexibility to change sampling points without undergoing a SIP revision.
3. Rule subsection (E)(6) allows for just under 10% of total facility SO₂ emissions annually to be exempt from CEMS; this could compromise the enforceability of the main stack emission limit.
4. The rule lacks a method for measuring or calculating emissions from the shutdown ventilation flue; this could compromise the enforceability of the main stack emission limit.⁴
5. The rule lacks a method for calculating hourly SO₂ emissions, so it is unclear what constitutes a “valid hour” for purposes of allowing data substitution.

D. EPA recommendations to further improve the rule

In addition to detailing the rule deficiencies listed in the previous section, the TSD includes several other recommendations for improvement for the next time the State modifies the rule.

E. Proposed action and public comment

As authorized in sections 110(k)(3) and 301(a) of the Act, the EPA is proposing a limited

³The EPA is proposing to partially approve and partially disapprove the Hayden SO₂ Plan in a separate rulemaking action.

⁴ Rule B1302, section (F)(2) contains a procedure for substituting emissions data for compliance demonstration purposes, “when no valid hour or hours of data have been recorded by a continuous monitoring system.” In the absence of a method for calculating hourly emissions, it is unclear when this procedure is to be used.

approval and limited disapproval of the submitted rule. We will accept comments from the public on this proposal until [**Insert date 30 days after date of publication in the Federal Register**]. If finalized, this action would incorporate the submitted rule into the SIP, including those provisions identified as deficient. This approval is limited because the EPA is simultaneously proposing a limited disapproval of the rule under section 110(k)(3).

Rule B1302 is relied upon by Arizona in the Hayden SO₂ Attainment State Implementation Plan, which is required under CAA title I, part D. Therefore, if finalized, this disapproval would trigger sanctions under CAA section 179 and 40 CFR 52.31, unless the EPA determines that a subsequent SIP revision corrects the rule deficiencies within 18 months of the effective date of the final action.

Note that the submitted rule has been adopted by ADEQ, and the EPA's final limited disapproval would not prevent the State from enforcing it. The limited disapproval also would not prevent any portion of the rule from being incorporated by reference into the federally enforceable SIP.⁵

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 and at the EPA Region IX Office (please contact the person identified in the "**FOR FURTHER INFORMATION CONTACT**") section of this preamble for more

⁵ See Memorandum dated July 21, 1992 from John Calcagni, Director Air Quality Management Division, to EPA Regional Air Directors, Regions I-X, Subject: "Processing of State Implementation Plan (SIP) Submittals."

information).

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <http://www.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563:

Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not expected to be an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA because this action does not impose additional requirements beyond those imposed by state law.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities beyond those imposed by state law.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no

additional costs to state, local, or tribal governments, or to the private sector, will result from this action.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will 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.

G. Executive Order 13175: Coordination with Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, because 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, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

H. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not impose additional requirements beyond those imposed by state law.

I. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

K. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Population

The EPA lacks the discretionary authority to address environmental justice in this rulemaking.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Sulfur dioxide, Reporting and recordkeeping requirements.

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

Dated: May 12, 2020.

John Busterud,
Regional Administrator,
Region IX.

[FR Doc. 2020-10587 Filed: 5/21/2020 8:45 am; Publication Date: 5/22/2020]