



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2020-0735; FRL-10020-57-Region 9]

Air Plan Approval; Arizona; Miami Copper Smelter Sulfur Dioxide Control Measures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the Arizona State Implementation Plan (SIP). These revisions concern emissions of sulfur dioxide (SO₂) from the copper smelter in Miami, Arizona. We are proposing to approve the rescission of two Arizona Department of Environmental Quality (ADEQ) Arizona Administrative Code (A.A.C.) provisions from the Arizona SIP that are no longer needed to regulate this emission source 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-2020-0735 at <https://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 <https://www.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

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.

Table of Contents

- I. The State’s Submittal
 - A. Of what rule provisions did the State request rescission?
 - B. What was the purpose of the SIP-approved rule provisions, and what is the purpose of the State’s rescission request?
- II. The EPA’s Evaluation and Action
 - A. How is the EPA evaluating the request for rescission?
 - B. Does the rule rescission meet the evaluation criteria?
 - C. Public comment and proposed action
- III. Incorporation by Reference
- IV. Statutory and Executive Order Reviews

I. The State’s Submittal

- A. *Of what rule provisions did the State request rescission?*

Table 1 lists the rule provisions addressed by this proposal with the dates that they were adopted, submitted, and approved. On March 10, 2020, ADEQ submitted a formal request to the EPA requesting that the EPA rescind these provisions from the SIP.¹

TABLE 1–RULE FOR WHICH RESCISSION FROM THE SIP IS REQUESTED

¹ Letter from Daniel Czecholinski, Director, Air Quality Division, ADEQ, to John Busterud, Regional Administrator, EPA Region IX, RE: Miami SO₂ Nonattainment Area State Implementation Plan Revision (undated; received by EPA on March 10, 2020).

Local Agency	Citation	Rule Title	Adopted	SIP Approval Date
ADEQ	A.A.C. R18-2-715(F)(2) and (H)	Standards of Performance for Existing Primary Copper Smelters; Site-specific Requirements	March 7, 2009	September 23, 2014

On September 10, 2020 the submittal for the rescission of A.A.C. R18-2-715(F)(2) and (H) was deemed by operation of law to meet the completeness criteria in 40 CFR part 51 appendix V, which must be met before formal EPA review.

B. *What was the purpose of the SIP-approved rule provisions, and what is the purpose of the State's rescission request?*

ADEQ adopted A.A.C. R18-2-715(F)(2) and (H) in order to establish source-specific SO₂ emissions limits for the copper smelter located in Miami, Arizona (“Miami Smelter”). ADEQ also adopted compliance and monitoring provisions for these limits in A.A.C. R18-2-715.01. These provisions were necessary to provide for attainment of the 1971 National Ambient Air Quality Standard (NAAQS), for which the Miami area was designated nonattainment in 1978.² The State of Arizona submitted regulations to the EPA in 1979 and 1980 to reduce emissions from criteria pollutant sources in Miami and across the state. The EPA approved these measures on January 14, 1983, but found that further analysis and control of smelter fugitive emissions was needed.³ The Miami smelter operators submitted fugitive emissions studies in the 1990s to better estimate fugitive emissions during typical operation to eventually determine maximum emissions. This analysis resulted in the implementation of further control measures and emission limits at the Miami Smelter to provide for attainment of the 1971 SO₂ NAAQS. On November 1, 2004, the EPA

² The Miami SO₂ NAA (nonattainment area) initially included all of Gila County (43 FR 8968, March 3, 1978), but its boundaries were later revised to include only the nine townships in and around Miami (44 FR 21261, April 10, 1979).

³ 48 FR 1717. These provisions were codified within A.A.C. R9-3-515, which was the predecessor to A.A.C. R18-2-715.

approved rules R18-2-715 (sections F, G, and H), R18-2-715.01 and R18-2-715.02, which codified these new requirements.⁴ In 2007, the EPA redesignated the Miami area to attainment for the 1971 NAAQS.⁵

In 2010, the EPA promulgated a new 1-hour SO₂ NAAQS, and simultaneously established provisions for revoking the 1971 SO₂ NAAQS.⁶ The EPA designated the Miami area as nonattainment for the 2010 SO₂ NAAQS in 2013.⁷ ADEQ submitted a new SO₂ attainment plan and rule for Miami (R18-2-C1302) in 2017 to comply with CAA requirements for 2010 SO₂ nonattainment areas. ADEQ also submitted new transitional provisions in A.A.C. R18-2-715(I) and R18-2-715.01(V) in order to sunset the existing rule provisions upon the effective date of R18-2-B1302, which regulates SO₂ emissions from the copper smelter in Hayden, Arizona along with the provisions for Miami, Arizona in R18-2-C1302.

The EPA approved A.A.C. R18-2-C1302 into the Arizona SIP on November 14, 2018,⁸ and approved the Miami SO₂ attainment plan on March 12, 2019.⁹ However, we have not yet proposed to act on the transitional provisions in A.A.C. R18-2-715(I) and R18-2-715.01(V). As explained in our recent final limited approval and limited disapproval of R18-2-B1302 (“Limits on SO₂ Emissions from the Hayden Smelter”) “because the transitional provisions that apply to Hayden and Miami are inseverable from one another (i.e., both are contained within a single paragraph within R18-2-715(I) and R18-2-715.01(V)), we cannot separately approve the transitional provisions for Miami without also approving the provisions for Hayden, which is prohibited by CAA section 110(l).”¹⁰ Therefore, the Miami smelter remains subject to the emission limits in R18-2-715(F)(2) and (H) and associated requirements in R18-2-715.01.

ADEQ is requesting that EPA rescind R18-2-715(F)(2) and (H) from the Arizona SIP in

⁴ 69 FR 63324. The EPA later approved minor revisions to A.A.C. R18-2-715. 79 FR 56655 (September 23, 2014).

⁵ 72 FR 3061 (January 24, 2007).

⁶ 75 FR 35520 (June 22, 2010).

⁷ 78 FR 47191 (August 5, 2013; effective October 4, 2013). This action also established an effective date for revocation of the 1971 SO₂ NAAQS in the Miami area of October 4, 2014. *See* 40 CFR 50.4(e).

⁸ 83 FR 56736.

⁹ 84 FR 8813.

¹⁰ 85 FR 70483, 70485 (November 5, 2020).

order to remove the emissions limits and associated requirements that were established to meet the now-revoked 1971 SO₂ NAAQS. In support of this request, ADEQ submitted a demonstration of how rescission of these provisions from the SIP would comply with applicable CAA requirements.¹¹

II. The EPA's Evaluation and Action

A. How is the EPA evaluating the request for rescission?

Once a rule has been approved as part of a SIP, the rescission of that rule from the SIP constitutes a SIP revision. To approve such a revision, the EPA must determine whether the revision meets relevant CAA criteria for stringency, and complies with restrictions on relaxation of SIP measures under CAA section 110(l), and the General Savings Clause in CAA section 193 for SIP-approved control requirements in effect before November 15, 1990.

Stringency: 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.

Plan Revisions: States must demonstrate that SIP revisions would not interfere with attainment, reasonable further progress (RFP) or any other applicable requirement of the CAA under the provisions of CAA section 110(l). Therefore, consistent with CAA section 110(l) requirements, ADEQ must demonstrate that the rescission of R18-2-715(F)(2) and (H) from the SIP would not interfere with attainment and RFP of the NAAQS or any other applicable CAA requirement.

General Savings Clause: CAA section 193 prohibits the modification of any control requirement in effect, or required to be adopted by an order, settlement agreement or plan in effect before November 15, 1990, in areas designated as nonattainment for an air pollutant unless

¹¹ "State Implementation Plan Revision; Miami SO₂ Nonattainment Area Demonstration of Compliance with Clean Air Act Sections 110(l) and 193 for the 2010 SO₂ National Ambient Air Quality Standards," dated February 27, 2020.

the modification ensures equivalent or greater emission reductions of the relevant pollutant.

B. *Does the rule rescission meet the evaluation criteria?*

The EPA previously determined that R18-2-C1302 and the Miami SO₂ attainment plan meet the requirements for RACM/RACT for the Miami 2010 SO₂ nonattainment area.¹² We have also found that the emissions limits in R18-2-C1302 are more stringent than those in R18-2-715.¹³ In particular, the 30-day rolling average emission limit of 142.45 pounds per hour (lb/hr) in R18-2-C1302(C), which covers both stack and fugitive emissions, is far more stringent than the annual average limit of 2,420 lb/hr for combined stack and fugitive emissions in R18-2-715(H). The 142.45 lb/hr limit in R18-2-C1302 is also clearly more stringent than annual average emission limit of 604 lb/hr and 3-hour limits of 712 - 8,678 lb/hr for stack emissions in R18-2-715(F)(2).

We also note that while ADEQ is not requesting rescission of the compliance and monitoring requirements in R18-2-715.01, the removal of R18-2-715(F)(2) and (H) from the SIP would effectively render the provisions of R18-2-715.01 inapplicable to the Miami smelter.¹⁴ We find that the nullification of these provisions with respect to the Miami smelter would not interfere with any CAA requirements because the Miami smelter is already required to comply with the more prescriptive requirements for compliance and monitoring in R18-2-C1302(E).

For the foregoing reasons, we propose to find that the rescission of R18-2-715(F)(2) and (H) from the Arizona SIP would not interfere with any CAA requirements and would therefore comply with CAA section 110(l). We also propose to find that our prior approval of R18-2-C1302 ensures equivalent or greater emission reductions of SO₂ than the rescission of R18-2-715(F)(2) and (H) and therefore satisfies the requirements of CAA section 193.

¹² EPA, “Technical Support Document for the EPA’s Rulemaking for the Arizona State Implementation Plan; Arizona Administrative Code, Title 18, Chapter 2, Article 13, Part B—Hayden, Arizona, Planning Area, R18-2-B1302—Limits on SO₂ Emissions from the Hayden Smelter,” April 2020 (“Rule B1302 TSD”), 10 -12; 84 FR 8813, March 12, 2019.

¹³ Rule B1302 TSD, 12-13.

¹⁴ The Hayden Smelter will remain subject to the applicable requirements of both R18-2-715 and R18-2-715.01 until we take action to remove those requirements from the SIP or approve the transitional provisions in A.A.C. R18-2-715(I) and R18-2-715.01(V) into the SIP.

C. *Public comment and proposed action*

As authorized in section 110(k)(3) of the Act, the EPA proposes to approve the rescission of R18-2-715(F)(2) and (H) from the Arizona SIP because these provisions are no longer needed to meet any CAA requirement and rescission would comply with CAA sections 110(l) and 193. 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 rule rescission, our final action will rescind these provisions from the federally enforceable SIP.

III. Incorporation by Reference

In this document, the EPA is proposing to amend regulatory text that includes incorporation by reference. The EPA is proposing to remove R18-2-715(F)(2) and (H) as described in Table 1 of this preamble from the Arizona State Implementation Plan, which is incorporated by reference in accordance with the requirements of 1 CFR part 51.

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 Clean Air Act. 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);
- 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 Clean Air Act; 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, Reporting and recordkeeping requirements, Sulfur dioxide.

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

Dated: February 18, 2021.

Deborah Jordan,
Acting Regional Administrator,
Region IX.

[FR Doc. 2021-03753 Filed: 3/2/2021 8:45 am; Publication Date: 3/3/2021]