6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA-R09-OAR-2014-0266; FRL-9910-31-Region-9]

Designation of Areas for Air Quality Planning Purposes; State of Arizona; Pinal County and Gila County; Pb

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to section 107(d)(3) of the Clean Air Act, the Environmental Protection Agency (EPA) is proposing to redesignate the Hayden area in Arizona, which encompasses portions of southern Gila and eastern Pinal counties, from "unclassifiable" to "nonattainment" for the 2008 national ambient air quality standards for lead (Pb). EPA's proposal to redesignate the Hayden area is based on recorded violations of the Pb standards at the Arizona Department of Environmental Quality's (ADEQ's) Globe Highway monitoring site, located near the towns of Hayden and Winkleman, Arizona, and additional relevant air quality information. The effect of this action would be to redesignate the Hayden area to nonattainment for the Pb standards and thereby to impose certain planning requirements on the State of Arizona to reduce Pb concentrations within this area, including, but not limited to, the requirement to submit, within 18 months of redesignation, a revision to the Arizona

state implementation plan that provides for attainment of the Pb standards as expeditiously as practicable, but no later than five years after the date of redesignation to nonattainment.

DATE: Any comments must arrive by [Insert date 30 days from the date of publication in the Federal Register].

ADDRESSES: Submit comments, identified by docket number EPA-R09-OAR-2014-0266, by one of the following methods:

1. Federal eRulemaking Portal: www.regulations.gov. Follow the on-line instructions.
2. E-mail: vagenas.ginger@epa.gov.
3. Mail or deliver: Ginger Vagenas (Air-2), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Instructions: All comments will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through www.regulations.gov or e-mail. www.regulations.gov is an "anonymous access" system, and EPA will not know your identity or contact information unless you

provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at www.regulations.gov and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While 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, large format or voluminous documents), 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: Ginger Vagenas, EPA Region IX, (415) 972-3964, vagenas.ginger@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. Background

EPA revised the primary (health-based) Pb national ambient air quality standard (NAAQS) on October 15, 2008, lowering it from the 1.5 micrograms per cubic meter ($\mu g/m^3$) level set in 1978 to a level of 0.15 $\mu g/m^3$. The secondary (welfare-based) standard was revised to be identical in all respects to the primary standard. See 73 FR 66964, November 12, 2008. An area violates the revised standards if any arithmetic 3-month mean (hereafter referred to as "average") concentration measured within the preceding three years is greater than 0.15 $\mu g/m^3$. EPA also expanded the Pb monitoring network by requiring new monitors to be sited near sources emitting one ton or more of Pb per year by January 1, 2010 and in certain non-source oriented locations by January 1, 2011.

Section 107(d) of the Clean Air Act (CAA or "Act") establishes a process for making initial area designations when a NAAQS is revised. In general, states are required to submit designation recommendations to EPA within one year of

promulgation of a new or revised standard and EPA is required to complete initial designations within two years of promulgation. However, if EPA has insufficient information to promulgate designations, it can extend the period for initial designations for up to one year. For the initial designations for the 2008 Pb NAAQS, data from pre-existing monitors provided sufficient information to make some designations within the two-year timeframe. Because other areas would not have monitoring data until after the newly required monitors were in place, EPA decided to promulgate initial designations for the Pb NAAQS in two separate actions. The first round of designations (promulgated November 16, 2010 (75 FR 71033, November 22, 2010)) included areas with sufficient monitoring information at the time to determine nonattainment; the second round (promulgated November 8, 2011 (76 FR 72097, November 22, 2011)) included all other areas.

On December 15, 2009, in accordance with the process set out in CAA section 107(d)(1), Arizona submitted its recommended designations for the revised standard to EPA. At that time, ambient air quality data collected by EPA Region 9's Superfund Division from a monitor sited at the Hayden Maintenance Building, located just west of the ASARCO copper concentrate and smelting facility, indicated that the Hayden area was violating

the new standard.[1] Arizona recommended that EPA promulgate an unclassifiable/attainment designation for most of the State, but recommended that EPA delay designating the Hayden area because the Asarco Hayden copper smelter (ASARCO), the source of Pb emissions in the area, had committed to improve its control of Pb emissions. Arizona further recommended that if the Hayden area continued to violate the Pb NAAQS on or after March 2010, it should be designated nonattainment. Subsequently, ADEQ recommended that if EPA were to determine that monitored concentrations in the Hayden area were exceeding the standard, the EPA should follow the Governor's recommendation to promulgate a lead nonattainment area with boundaries identical to the Hayden sulfur dioxide nonattainment area boundaries with respect to State lands.[2]

In 2010, in conjunction with the initial designations for the 2008 Pb NAAQS, EPA undertook a technical analysis for the Hayden, Arizona area to evaluate the available air quality data and to determine whether the boundary recommended by the State encompassed the area that did not meet, or that contributed to ambient air quality in the area that did not meet, the 2008 Pb

[1] Values from July, August, and September 2008 resulted in a 3-month average design value of 0.17 μg/m³ at the Hayden Maintenance Building monitor.
[2] Letter (with enclosure) from Benjamin H. Grumbles, Director, ADEQ, to Laura Yoshii, Acting Regional Administrator, U.S. EPA Region 9, dated December 17, 2009.

standard, consistent with section 107(d)(1)(A). The analysis identified the monitor that was violating the newly revised standard and evaluated nearby areas for contributions to ambient lead concentrations in the area.[3] EPA evaluated the surrounding area based on the weight of evidence of the following factors recommended in previous EPA guidance:

- Air quality in potentially included versus excluded areas;
- Emissions and emissions-related data in areas potentially included versus excluded from the nonattainment area, including population data, growth rates and patterns and emissions controls;
- Meteorology (weather and transport patterns);
- Topography (surface features such as mountain ranges or other air basin boundaries);
- Jurisdictional boundaries (e.g., counties, air districts, and reservations); and
- Any other relevant information submitted to or collected by EPA.

Based on our consideration of available air quality data and the factors listed above, EPA determined that a designation

[3] See the 2010 draft technical support document entitled "ARIZONA, Area Designations for the 2008 Lead National Ambient Air Quality Standards."

of nonattainment was appropriate and that the Hayden area boundaries recommended by the State in 2009 encompassed the entire area that did not meet (or that contributed to ambient air quality in a nearby area that did not meet) the 2008 Pb NAAQS. Accordingly, in a letter dated June 14, 2010, EPA notified Arizona that we intended to designate the Hayden area nonattainment for the 2008 Pb NAAQS.[4]

EPA subsequently published a notice in the Federal Register providing an opportunity for the public to comment on our intended designations (75 FR 39254, July 8, 2010). Commenters challenged our proposal to designate the Hayden area nonattainment and asserted that the monitoring data we relied upon (i.e., the data collected at the Superfund Divison's Hayden Maintenance Building site), was not collected in accordance with applicable quality assurance and quality control ("QA/QC") requirements. Based on our evaluation of the monitoring data issues raised in these comments, we determined that we did not have sufficient information to promulgate a nonattainment designation for the Hayden area at that time. Accordingly, we delayed our designation for the Hayden area until the final round of designations, slated for the following year.

[4] Letter from Jared Blumenfeld, Regional Administrator, U.S. EPA, Region 9, to Janice K. Brewer, Governor of Arizona, dated June 14, 2010.

On November 8, 2011, EPA completed its initial designations for the revised Pb standard.[5] Most of Arizona was designated unclassifiable/attainment for the Pb NAAQS. We designated the Hayden area, with the boundaries Arizona recommended,[6] as unclassifiable rather than nonattainment because there were available monitoring data recorded at ADEQ's new Globe Highway monitoring site indicating a significant likelihood that the area was violating the 2008 Pb NAAQS, but the available information was insufficient at that time to make a nonattainment designation.[7] In our letter to Governor Brewer notifying her of our action, EPA explained that, should we subsequently determine that the lead standards were being violated, we would initiate the process to redesignate the Hayden area to nonattainment.[8]

II. EPA's Decision to Address Pb Violations Monitored in the Hayden Area Through Redesignation

The CAA grants EPA the authority to change the designation of, or "redesignate," areas in light of changes in

[5] See 76 FR 72097, November 22, 2011.
[6] See 40 CFR 81.303 for a legal description of the boundary of the Hayden area.
[7] Because of the form of the 2008 Pb NAAQS, one 3-month average ambient air concentration over 0.15 $\mu g/m^3$ is enough to cause a violation of the Pb NAAQS. ADEQ's Globe Highway monitor registered four violations in 2011; however, at the time of designation the data had not been quality assured and certified and therefore could not be relied upon as the basis for a nonattainment designation.
[8] Letter from Lisa P. Jackson, Administrator, U.S. EPA, to Janice K. Brewer, Governor of Arizona, dated November 8, 2011.

circumstances. More specifically EPA has the authority under CAA section 107(d)(3) to redesignate areas (or portions thereof) on the basis of air quality data, planning and control considerations, or any other air quality-related considerations.

Table 1, below, presents a summary of the latest available quality-assured Pb monitoring data from the State-operated monitor (ADEQ's Globe Highway monitor). A map showing the location of the monitor is included in our Technical Support Document (EPA TSD), which is contained in the docket for this rulemaking.

Table 1. 2012 Pb Design Values (DVs, $\mu g/m^3$), ADEQ's Globe Highway Monitor (AQS ID 04-007-1002)

3-month period	2012 DVs
Nov-Dec-Jan	0.07
Dec-Jan-Feb	0.14
Jan-Feb-Mar	0.15
Feb-Mar-Apr	**0.20**
Mar-Apr-May	**0.16**
Apr-May-Jun	**0.20**
May-Jun-Jul	0.15
Jun-Jul-Aug	0.14
Jul-Aug-Sep	0.12
Aug-Sep-Oct	0.11
Sept-Oct-Nov	0.09
Oct-Nov-Dec	0.06

*Data pulled from AQS on March 31, 2014

As shown in Table 1, the ADEQ's Globe Highway monitor recorded three violations in 2012. An area violates the revised standards if any arithmetic 3-month average concentration is

greater than 0.15 $\mu g/m^3$. The NAAQS is met if an area does not measure any exceedances of the standard for three consecutive calendar years.

On June 12, 2013, under CAA section 107(d)(3)(A), EPA notified the Governor of Arizona that the designation for Hayden should be revised. EPA's June 2013 decision to initiate the redesignation process for the Hayden area stemmed from review of the quality assured, certified monitoring data that indicate that three-month rolling average values violated the Pb standards for February-April, March-May, and April-June 2012. In light of the violations of the Pb standard recorded in 2012 at ADEQ's Globe Highway monitor, EPA concluded that the SIP planning and control requirements that are triggered by redesignation of an area to nonattainment for the Pb NAAQS would be the most appropriate means to ensure that this air quality problem is remedied.

Section III of this document describes the State of Arizona's 2013 recommendation with respect to this proposed redesignation to nonattainment and summarizes EPA's review of both the State's recommendation and additional relevant information, and our conclusions based on that review. Section IV describes our proposed action and the corresponding CAA planning requirements that would thereby be triggered.

III. State of Arizona's Recommendation and EPA's Analysis

Monitoring Data

Pursuant to section 107(d)(3)(B) of the Act, on September 25, 2013, the Governor of Arizona responded to EPA's June 12, 2013 notification that the Hayden area should be redesignated to nonattainment for the Pb NAAQS. Governor Brewer recommended that the Hayden area not be redesignated to nonattainment "because there have been no lead [Pb] standard violations since June 2012, when the ASARCO Hayden Copper Smelter completed the addition of controls to reduce lead emissions."[9] The Governor acknowledged that if additional violations of the 2008 Pb NAAQS occur, a designation to nonattainment for the Pb standard would be appropriate and that in such a case, the Pb nonattainment area boundaries should be identical to the Hayden sulfur dioxide (SO_2) nonattainment area boundaries, as recommended in her December 15, 2009 letter.[10,11]

In support of the Governor's recommendation, ADEQ submitted to EPA a technical support document entitled, "Relationship

[9] Letter from Janice K. Brewer, Governor of Arizona, to Jared Blumenfeld, Regional Administrator, U.S. EPA Region 9, dated September 25, 2013.

[10] The boundaries of the SO_2 nonattainment area and the Pb unclassifiable area are identical.

[11] The Governor explicitly excludes Indian country, which is appropriate given that the State of Arizona is not authorized to administer programs under the CAA in the affected Indian country.

Between Ambient Sulfur Dioxide and Lead Concentrations"[12] (ADEQ 2013 TSD). The ADEQ 2013 TSD examines the relationship between ambient concentrations of SO_2 and Pb over time. ADEQ asserts that there is a very strong relationship between the two pollutants, but that the separation between the SO_2 concentrations and Pb concentrations increased after July 2012, which they attribute to a decrease in Pb emissions due to new controls. The document states that ambient SO_2 concentrations were approximately 263 times that of Pb during the period of January 15, 2011 to June 30, 2012. From July 1, 2012 to June 30, 2013, the average SO_2/Pb ratio changed to approximately 719. ADEQ points to this "abrupt change" in the ratio of SO_2 to Pb concentrations that occurred around July 2012 as evidence that the Pb emissions controls installed at that time have reduced the ambient concentrations of Pb. ADEQ concludes that, "[w]hile it is believed that the installed control devices were effective in reducing the ambient Pb concentrations in Hayden, AZ, additional data would be needed to verify that the Globe Highway Pb monitor continues to attain the Pb NAAQS."[13]

EPA has reviewed the Governor's recommendation and ADEQ's 2013 TSD and concurs with the statement that ADEQ's Globe

[12] Letter (with enclosure) from Eric C. Massey, Director, Air Quality, ADEQ, to Jared Blumenfeld, Regional Administrator, U.S. EPA Region 9, dated October 4, 2013.
[13] ADEQ 2013 TSD, page 4.

Highway monitor has not measured a violation since July of 2012. However, given the form of the Pb NAAQS, in order to be considered to be attaining the standard an area must have three years of valid air quality data without any violations of the 2008 Pb NAAQS.[14] As shown in Table 1, the most recent certified monitoring data collected at ADEQ's Globe Highway monitor near the ASARCO facility show three violations of the 2008 Pb NAAQS in 2012. Accordingly, we also concur with ADEQ's conclusion that the data gathered thus far by the ADEQ Globe Highway monitor are not sufficient to determine that the area has attained the NAAQS.

Other Air Quality-Related Considerations

In addition to certified data from 2012 collected at the ADEQ Globe Highway Monitor, EPA has evaluated monitoring data collected in calendar year 2013. Because these data have not yet been certified as being completely submitted and accurate, we present data from 2013 as supplemental information for this action.

As of March 31, 2014, data through December 31, 2013 from ADEQ's Globe Highway monitor (04-007-1002) are available in EPA's Air Quality System (AQS) database. According to the

[14] Data from calendar year 2013 have not yet been certified as being complete and accurate, and are therefore considered to be supplemental data for this action. This certification is due by May 1, 2014 pursuant to 40 CFR 58.15.

preliminary data from the ADEQ Globe Highway monitor, no three-month rolling averages from 2013 have violated the Pb NAAQS, although two monthly averages from 2013 (March and June) were above the 0.15 $\mu g/m^3$ level of the Pb NAAQS. See Table 2.

Table 2. Preliminary 2013 Data from ASARCO's Monitoring Network and ADEQ's Globe Highway Monitor. Pb Concentrations (µg/m^3).

	ASARCO Monitors						ADEQ Monitor
	Hillcrest Ave. ST-23	Parking Lot ST-14	Post Office ST-26	Post Office ST-26 co-located	Winkelman HS ST-02	Globe Highway ST-05	Globe Highway - ADEQ (04-007-1002)
January 2013 monthly average:	--	--	--	--	--	--	0.063
Nov 2012 – Jan 2013 3 month average	--	--	--	--	--	--	0.04
February 2013 monthly average:	--	--	--	--	--	--	0.049
Dec 2012 - Feb 2013 3 month average	--	--	--	--	--	--	0.04
March 2013 monthly average:	--	--	--	--	--	--	0.170
Jan – March 2013 3 month average	--	--	--	--	--	--	0.09
April 2013 monthly average:	--	--	--	--	--	--	0.112
Feb – Apr 2013 3 month average	--	--	--	--	--	--	0.11
May 2013 monthly average:	--	--	--	--	--	--	0.062
Mar – May 2013 3 month average	--	--	--	--	--	--	0.11
June 2013 monthly average:	--	--	--	--	--	--	0.183
Apr – Jun 2013 3 month average	--	--	--	--	--	--	0.12
July 2013 monthly average:	0.096	--	--	--	--	--	0.081
May – Jul 2013	--	--	--	--	--	--	0.11

3 month average							
Aug 2013 monthly average:	0.185	0.664	0.183	--	--	--	0.069
Jun – Aug 2013 3 month average	--	--	--	--	--	--	0.11
Sept 2013 monthly average:	0.115	0.289	0.096	--	0.015	0.063	0.045
Jul-Sep 2013 3 month average:	0.13	--	--	--	--	--	0.06
Oct 2013 monthly average:	0.115	0.257	0.069	--	0.016	0.078	0.055
Aug-Oct 2013 3 month average:	0.14	**0.40**		--	--	--	0.06
Nov 2013 monthly average:	0.346	1.396	0.124	0.118	0.015	0.019	0.021
Sep-Nov 2013 3 month average:	**0.19**	**0.65**	0.10	--	0.02	0.05	0.04
Dec 2013 monthly average:							0.01
Oct-Dec 2013 3 month average:							0.03

In July 2013, ASARCO installed and began collecting monitoring data from a new network of ambient monitors surrounding the facility.[15] Because the ASARCO data are preliminary, EPA has evaluated the use of this set of secondary data by considering trends, gradients, and the magnitude of measured concentrations relative to the standard.

[15] ASARCO's monitors were sited in accordance with 40 CFR 58. See Figure 8 of EPA's TSD for a map showing the locations of the ASARCO-operated monitors.

The new monitoring network includes a monitor (Globe Highway-ASARCO) located 14 meters southwest of ADEQ's Globe Highway monitor. Preliminary, uncertified data from both the ADEQ Globe Highway monitor and the Globe Highway-ASARCO monitor are available for September-November 2013. The Globe Highway-ASARCO monitor measured approximately 0.017 µg/m^3 higher on average than ADEQ's Globe Highway monitor. While the two monitors measured slightly different values, they trend well with one another. See Figure 9 of EPA's TSD. Given the complex terrain in the ravine where these monitors are located, winds may be affecting these monitors differently. The different values measured at the two monitors may also be a result of minor differences in approved analytical procedures that result in lower values from the ADEQ monitor.[16]

Of the five new ASARCO Pb monitors, the three monitors sited to the west and to the southwest of the facility show

[16] In reviewing the analytical procedures employed by the laboratory performing analysis on the ADEQ filters (Pima County Regional Wastewater Reclamation Department Compliance & Regulatory Affairs Office (CRAO) Laboratory) and the laboratory performing analysis on the ASARCO filters (Inter-Mountain Laboratories (IML)), EPA found that the sample preparation step differed between the two laboratories. While both laboratories followed approved Federal Equivalent Methods (FEMs), EPA recommended that CRAO review its sample preparation method to determine if additional best practices may be appropriate. Initial analyses by CRAO indicate employing additional best practices may yield results of approximately 11% more lead per sample. The laboratory analytical procedures were otherwise found to be comparable. See Memorandum "Review of Laboratory Procedures to Address Accuracy Concerns for Inter-Laboratory Bias for the Asarco Superfund Site," from Joe Eidelberg and Mathew Plate, to Gwen Yoshimura and John Hillenbrand, U.S. EPA Region 9. March 31, 2014.

higher averages than the Globe Highway-ASARCO monitor during the period of overlap. In September, the monthly averages for the Post Office, Hillcrest Avenue, and Parking Lot monitors were 1.5 to 4.5 times higher than the monthly average for the Globe Highway-ASARCO monitor. The two complete three-month averages reported to date at the Parking Lot monitor are well over the standard, at 0.40 µg/m^3 for August-October 2013, and 0.65 µg/m^3 (more than four times over the standard) for September-November 2013. The three-month average from September-November 2013 at the Hillcrest Avenue monitor was also over the standard, at 0.19 µg/m^3. These elevated levels indicate that while ADEQ's Globe Highway monitor appears to be recording levels below the standard, other locations around the smelter that the public has access to are experiencing higher concentrations. See Table 2.

Given that lead is heavy and expected to fall out of the air quickly, lead concentrations would generally be highest next to the facility and near specific facility operations that produce point or fugitive source emissions. An exception to this would be if the main emission point was through a tall stack at high temperatures, resulting in the air mass remaining buoyant for a time before falling out to breathing-level heights. The data collected by the ASARCO monitors show concentrations decreasing as one moves from the monitors closest to the

facility (i.e., the Parking Lot, Hillcrest Avenue, and Post Office monitors) to those farther away (i.e., the Globe Highway and Winkelman High School monitors), indicating that fugitives or other non-stack emissions might have more significant air quality impacts on the neighborhood surrounding the facility than stack emissions.[17] The Hillcrest Avenue and Parking Lot monitors, both to the southwest of the facility and close to materials handling activities, also trend well with one another (see Figure 10 of the EPA TSD).

EPA and ADEQ have discussed the challenge of siting a single, source-specific monitor that will capture the maximum ambient concentration of Pb, given the complex meteorology and topography found in the Hayden area. While the ADEQ Globe Highway site was chosen to capture the maximum concentration using the information available at the time,[18] this recent information gathered by ASARCO's more extensive monitoring network indicates that higher ambient concentrations of Pb exist elsewhere in the Hayden area. Given the strong trends and gradient apparent from the available preliminary data, and that preliminary data collected after the controls on anode furnaces were installed indicate two of the ASARCO monitors are measuring

[17] See Table 7 of the TSD.
[18] Quality Assurance Program Plan for the Lead (Pb) Ambient Air Monitoring Network, Attachment A. Arizona Department of Environmental Quality, October 2011.

violations of the Pb standard (the parking lot monitor is over four times the standard), the secondary data support our decision to redesignate the area to nonattainment.

Boundary of the Hayden Area

In conjunction with the initial designations for the 2008 Pb NAAQS, states submitted recommendations to EPA regarding the status (i.e., attainment, unclassifiable, or nonattainment) and boundaries for areas within each state. CAA section 107(d)(1)(A) generally defines a nonattainment area as any area that does not meet, or that contributes to ambient air quality in a nearby area that does not meet, the national primary or secondary ambient air quality standard for the relevant pollutant. For areas with a violating monitor, the county boundary was the default boundary of the nonattainment area. States could, however, recommend an alternative as long as the proposed nonattainment area boundaries encompassed the entire area that did not meet, and any nearby area that contributed to ambient air quality in the area that did not meet, the 2008 Pb NAAQS. In general, factors such as emissions, air quality, and meteorology were particularly relevant in determining appropriate boundaries. States also were able to take into account jurisdictional considerations when establishing an area's

boundaries.[19]

As noted in the Background section above, in 2009 Arizona recommended that EPA defer designation of the Hayden area, and stated that if EPA were to determine monitored concentrations were exceeding the Pb NAAQS, EPA should promulgate a Pb nonattainment area with boundaries identical to the Hayden SO_2 nonattainment area.[20] In 2010, we undertook a technical analysis of the State's recommended boundary, and determined it encompassed all areas that appeared to be violating or contributing to violations of the Pb NAAQS in the Hayden area. In 2011, we designated the Hayden area, with the boundaries the Governor recommended, as unclassifiable because data indicating violations of the 2008 Pb NAAQS were preliminary at the time final designations were due under the CAA.

For this action, we have reviewed and, where appropriate, updated our 2010 analysis of relevant factors related to establishing an appropriate nonattainment area boundary. A brief summary of the key factors in the Hayden Area boundary analysis is included below.

Air Quality Data

For this factor, we considered the Pb design values for air

[19] See 76 FR 72097 at 72102.
[20] The basis for Arizona's recommended boundary is discussed in ADEQ's 2009 boundary recommendation technical support document.

quality monitors in the Hayden area and the surrounding area based on certified 2010-2012 data. Of the five State-operated Pb monitors located throughout Arizona that collected data within this time period, only the ADEQ Globe Highway monitor, located near the ASARCO Hayden copper smelter, measured violations of the Pb NAAQS. The design values for the remaining monitors, which are located outside the Hayden area, are well below the standard.

Emissions and Emissions-Related Data

Sources of Pb emissions located in areas surrounding the violating monitor were evaluated to determine whether a nearby area is contributing to monitored violations. Because of the significant distance, and in most cases, relatively low levels of emissions, we do not believe sources outside the Hayden area boundary are causing or contributing to Pb NAAQS violations in Hayden.

Topography

This factor takes into account the physical features of the land that might have an effect on the air shed, and therefore on the distribution of Pb in the Hayden area. The ASARCO Hayden copper smelter is located in very complex terrain, which forms natural boundaries. Mountainsides limit the extent of the area exceeding the Pb standard to a relatively small area around the

smelter, which is the main source of Pb emissions. For the same reason, locations outside the area do not contribute to NAAQS exceedances within it.[21] The topography of the area supports retention of the existing area boundary.

Based on our technical analysis and currently available information, EPA concurs with the State's recommendation that the area's existing boundary remain unchanged. For a more detailed discussion, see the TSD for this action, which is included in the docket.

Conclusion

EPA has considered the information provided by ADEQ and agrees that preliminary data suggest that the installation of pollution control equipment on the anode furnaces at the ASARCO facility might have resulted in a reduction of ambient Pb concentrations, as measured at ADEQ's Globe Highway monitor. However, because three years without a violation are required to attain the Pb standard, the ADEQ Globe Highway monitor continues to have a design value that violates the standard and we concur with ADEQ's conclusion that ongoing monitoring will be needed to determine if the improvement in air quality as measured at the Globe Highway monitor will persist. Further, the more extensive

[21] Because of the constraints imposed by the terrain, meteorology does not play a significant role in determining the boundary for this area.

monitoring network now in place provides preliminary data that show ambient concentrations above the standard are occurring even after ASARCO installed controls in June of 2012. Therefore, based on our review of ADEQ's Globe Highway monitoring data and our analysis of additional relevant, available information, including data collected by ASARCO's ambient air quality Pb monitors, EPA concludes it is appropriate to redesignate the Hayden area to nonattainment for the 2008 Pb NAAQS. Consistent with Arizona's recommendation, we are not proposing any changes to the area's existing boundaries.

Under CAA section 107(d)(3)(C), EPA must notify the State whenever EPA intends to modify State recommendations concerning areas to be redesignated, at least 60 days prior to EPA promulgation of final redesignations. While EPA and Arizona are in agreement with respect to the boundaries of the Hayden area, the Governor recommended against redesignating the area to nonattainment unless additional violations of the Pb NAAQS were to occur. As noted above, based on our review of available air quality data, we have determined that redesignating the Hayden area to nonattainment for the Pb NAAQS is appropriate. EPA intends to notify the State of Arizona of our proposed action when this notice is signed.

IV. Proposed Action and Request for Public Comment

Pursuant to section 107(d)(3) of the Clean Air Act and based on our evaluation of air quality data, our review of the Governor's recommendation, and our consideration of additional relevant information, EPA is proposing to redesignate from "unclassifiable" to "nonattainment" the Hayden area, located in southern Gila County and eastern Pinal County, Arizona, for the 2008 Pb NAAQS. EPA's proposal to redesignate the Hayden area is based on recorded violations of the Pb standard at ADEQ's Globe Highway monitor, and on additional air quality considerations as set forth in this document and in the TSD.

Areas redesignated to nonattainment, as proposed herein, are subject to the applicable requirements of part D, title I of the Act (see section 191 of the Act). Within 18 months of the redesignation, the State is required to submit to EPA an implementation plan for the area containing, among other things: (1) provisions to assure that reasonably available control measures (including reasonably available control technology) are implemented; (2) a demonstration, including modeling, that the plan will provide for attainment of the Pb NAAQS as expeditiously as practicable, but no later than five years after the area's designation as nonattainment; (3) provisions that result in reasonable further progress toward timely attainment by adherence to an ambitious compliance schedule; (4)

contingency measures that are to be implemented if the area fails to achieve and maintain reasonable further progress or fails to attain the NAAQS by the applicable attainment date; and (5) a permit program meeting the requirements of section 173 governing the construction and operation of new and modified major stationary sources of Pb.[22] Any Pb nonattainment area would also be subject to EPA's general conformity regulations (40 CFR part 93, subpart B) upon the effective date of redesignation. See section 176(c) of the Act.

We will accept comments from the public on this proposal for thirty days from the date of publication of this notice, and will consider any relevant comments in taking final action on today's proposal.

V. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA has determined that the redesignation to nonattainment proposed today, as well as the establishment of SIP submittal schedules, would result in none of the effects identified in

[22] EPA has issued guidance on the statutory requirements applicable to Pb nonattainment areas. See 57 FR 13498 (April 16, 1992), 58 FR 67752 (December 22, 1993), 73 FR 66964 (November 12, 2008), and the memorandum signed by Scott Mathias, Interim Director, Air Quality Policy Division, Office of Air Quality Planning and Standards, U.S. EPA, entitled "2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS) Implementation Questions and Answers" dated July 8, 2011.

Executive Order 12866, section 3(f). Under section 107(d)(3) of the Act, redesignations to nonattainment are based upon air quality considerations. The proposed redesignation, based upon air quality data showing that the Hayden area is not attaining the Pb standard and upon other air-quality-related considerations, does not, in and of itself, impose any new requirements on any sectors of the economy. Similarly, the establishment of new SIP submittal schedules would merely establish the dates by which SIPs must be submitted, and would not adversely affect entities.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq*. Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et. seq.*, a redesignation to nonattainment under section 107(d)(3), and the establishment of a SIP submittal schedule for a redesignated area, do not, in and of themselves, directly impose any new requirements on small entities. See *Mid-Tex Electric Cooperative, Inc. v. FERC*, 773 F.2d 327 (D.C. Cir. 1985)(agency's certification need only consider the rule's impact on entities subject to the requirements of the rule).

Instead, this rulemaking simply proposes to make a factual determination and to establish a schedule to require the State to submit SIP revisions, and does not propose to directly regulate any entities. Therefore, pursuant to 5 U.S.C. 605(b), EPA certifies that today's proposed action does not have a significant impact on a substantial number of small entities within the meaning of those terms for RFA purposes.

D. Unfunded Mandates Reform Act

Under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, EPA has concluded that this proposed rule is not likely to result in the promulgation of any Federal mandate that may result in expenditures of $100 million or more for State, local or tribal governments in the aggregate, or for the private sector, in any one year. It is questionable whether a redesignation would constitute a federal mandate in any case. The obligation for the state to revise its State Implementation Plan that arises out of a redesignation is not legally enforceable and at most is a condition for continued receipt of federal highway funds. Therefore, it does not appear that such an action creates any enforceable duty within the meaning of section 421(5)(a)(i) of UMRA (2 U.S.C. 658(5)(a)(i)), and if it does the duty would appear to fall within the exception for a condition of Federal assistance under section 421(5)(a)(i)(I) of

UMRA (2 U.S.C. 658(5)(a)(i)(I).

Even if a redesignation were considered a Federal mandate, the anticipated costs resulting from the mandate would not exceed $100 million to either the private sector or state, local and tribal governments. Redesignation of an area to nonattainment does not, in itself, impose any mandates or costs on the private sector, and thus, there is no private sector mandate within the meaning of section 421(7) of UMRA (2 U.S.C. 658(7)). The only cost resulting from the redesignation itself is the cost to the State of Arizona of developing, adopting, and submitting any necessary SIP revision. Because that cost will not exceed $100 million, this proposal (if it is a federal mandate at all) is not subject to the requirements of sections 202 and 205 of UMRA (2 U.S.C. 1532 and 1535). EPA has also determined that this proposal would not result in regulatory requirements that might significantly or uniquely affect small governments because only the State would take any action as result of today's rule, and thus the requirements of section 203 (2 U.S.C. 1533) do not apply.

E. Executive Order 13132, Federalism

Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory

policies that have federalism implications." This rule 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, as specified in Executive Order 13132, because it merely proposes to redesignate an area for Clean Air Act planning purposes and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination with Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." The area proposed for redesignation does not include any tribal lands, but is adjacent to the San Carlos Apache Tribe's reservation. EPA has been communicating with and plans to continue to consult with representatives of the San Carlos Apache Tribe, as provided in Executive Order 13175. Accordingly, EPA has addressed Executive Order 13175 to the

extent that it applies to this action.

G. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks

This proposed rule is not subject to Executive Order 13045 ("Protection of Children from Environmental Health Risks") (62 FR 19885, April 23, 1997), because it is not an economically significant regulatory action based on health or safety risks.

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

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. The EPA believes that the requirements of NTTAA are inapplicable to this action because they would be inconsistent with the Clean Air Act.

J. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Today's action proposes to redesignate an area to nonattainment for an ambient air quality standard. It will not have disproportionately high and adverse effects on any communities in the area, including minority and low-income communities.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Intergovernmental relations, Lead.

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

Dated: April 21, 2014.

Jared Blumenfeld,
Regional Administrator,
Region IX.

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