6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2020-0109; FRL-10008-99-Region 9]

Partial Approval and Partial Disapproval of Air Quality Implementation Plans; Arizona; Nonattainment Plan for the Hayden SO_2 Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to partially approve and partially disapprove an Arizona state implementation plan (SIP) revision for attaining the 2010 1-hour primary sulfur dioxide (SO_2) national ambient air quality standard (NAAQS or "standard") for the Hayden SO_2 nonattainment area (NAA). This SIP revision (hereinafter called the "Hayden SO_2 Plan" or "Plan") includes Arizona's attainment demonstration and other elements required under the Clean Air Act (CAA or "Act"). The EPA is proposing to approve the base year and projected emissions inventories and to affirm that the new source review requirements for the area have been met. We are proposing to disapprove the attainment demonstration, as well as other elements of the plan tied to this demonstration, namely, the requirement for meeting reasonable further progress (RFP) toward attainment of the NAAQS, reasonably available control measures and reasonably available control technology (RACM/RACT), enforceable emission limitations and control measures, and contingency measures. We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments on this proposal must be received by **[Insert date 30 days after date of publication in the *FEDERAL REGISTER*]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2020–

0109, at *https://www.regulations.gov*, or via email to Ashley Graham, Air Planning Office at graham.ashleyr@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 (e.g., audio or video) 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*.

FOR FURTHER INFORMATION CONTACT: Ashley Graham, EPA Region IX, Air Division, Air Planning Office, (415) 972-3877, graham.ashleyr@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, the words "we," "us," or "our" refer to the EPA.

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I. Why was Arizona Required to Submit a Plan for the Hayden SO_2 Nonattainment Area?

On June 22, 2010, the EPA promulgated a new 1-hour primary SO_2 NAAQS of 75 parts per billion (ppb). This standard is met at an ambient air quality monitoring site when the 3-year average of the annual 99th percentile of daily maximum 1-hour average concentrations does not exceed 75 ppb, as determined in accordance with appendix T of 40 CFR part 50.[1] On August 5, 2013, the EPA designated a first set of 29 areas of the country as nonattainment for the 2010 SO_2 NAAQS, including the Hayden SO_2 NAA within Arizona.[2] These area designations became effective on October 4, 2013. Section 191(a) of the CAA directs states to submit SIPs for areas designated as nonattainment for the SO_2 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 (hereinafter called "plans" or "nonattainment plans"). Under CAA section 192(a), these plans are required to have measures that will provide for attainment of the NAAQS as expeditiously as practicable, but no later than five years from the effective date of designation, i.e., October 4, 2018, for the Hayden SO_2 NAA.

For a number of areas, including the Hayden SO_2 NAA, the EPA published a document on March 18, 2016, finding that Arizona and other pertinent states had failed to submit the

[1] 75 FR 35520, codified at 40 CFR 50.17(a)-(b).
[2] 78 FR 47191, codified at 40 CFR part 81, subpart C.

required SO_2 nonattainment plan by the submittal deadline.[3] The finding became effective on April 18, 2016, and initiated a deadline under CAA section 179(a) for the potential imposition of new source review offset and highway funding sanctions. Additionally, under CAA section 110(c), the finding triggered a requirement that the EPA promulgate a federal implementation plan within two years of the effective date of the finding unless by that time the state had made the necessary complete submittal and the EPA had approved the submittal as meeting applicable requirements.

In response to the requirement for SO_2 nonattainment plan submittals, the Arizona Department of Environmental Quality (ADEQ) submitted the Hayden SO_2 Plan on March 9, 2017, and submitted associated final rules on April 6, 2017.[4] The EPA issued letters dated July 17, 2017, and September 26, 2017, finding the submittals complete and halting the sanctions clock under CAA section 179(a).[5]

The remainder of this preamble describes the requirements that nonattainment plans must meet in order to obtain EPA approval, provides a review of the Hayden SO_2 Plan with respect to these requirements, and describes the EPA's proposed action on the Plan.

II. Requirements for SO_2 Nonattainment Plans

Nonattainment plans for SO_2 must meet the applicable requirements of the CAA, specifically CAA sections 110, 172, 191, and 192. The EPA's regulations governing nonattainment SIP submissions are set forth at 40 CFR part 51, with specific procedural requirements and control strategy requirements residing at subparts F and G, respectively. Soon

[3] 81 FR 14736.
[4] 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 SO_2 Plan was dated March 8, 2017, the Plan was transmitted to the EPA on March 9, 2017.
[5] Letters dated July 17, 2017, and September 26, 2017, from Elizabeth Adams, Director, Air Division, EPA, Region IX to Timothy S. Franquist, Director, Air Quality Division, ADEQ.

after Congress enacted the 1990 Amendments to the CAA, the EPA issued comprehensive guidance on SIP revisions in the "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" ("General Preamble").[6] Among other things, the General Preamble addressed SO_2 SIP submissions and fundamental principles for SIP control strategies.[7] On April 23, 2014, the EPA issued recommended guidance for meeting the statutory requirements in SO_2 SIP submissions, in a document entitled, "Guidance for 1-Hour SO_2 Nonattainment Area SIP Submissions" ("2014 SO_2 Guidance"). In the 2014 SO_2 Guidance, the EPA described the statutory requirements for a complete nonattainment plan, including: an accurate emissions inventory of current emissions for all sources of SO_2 within the NAA; an attainment demonstration; a demonstration of RFP; implementation of RACM (including RACT); new source review; enforceable emission limitations and control measures; and adequate contingency measures for the affected area.

For the EPA to fully approve a SIP revision as meeting the requirements of CAA sections 110, 172, 191, and 192, and the EPA's regulations at 40 CFR part 51, the plan for the affected area needs to demonstrate to the EPA's satisfaction that each of the aforementioned requirements has been met. Under CAA section 110(l), the EPA may not approve a plan that would interfere with any applicable requirement concerning NAAQS attainment and RFP, or any other applicable requirement. Under CAA section 193, no requirement in effect (or required to be adopted by an order, settlement, agreement, or plan in effect before November 15, 1990) in any area that is nonattainment for any air pollutant may be modified in any manner unless it ensures equivalent or greater emission reductions of such air pollutant.

III. Attainment Demonstration and Longer-Term Averaging

[6] 57 FR 13498 (April 16, 1992).
[7] Id. at 13548-13549, 13567-13568.

Sections 172(c)(1) and 172(c)(6) of the CAA direct states with areas designated as nonattainment to demonstrate that the submitted plan provides for attainment of the NAAQS. 40 CFR part 51, subpart G further delineates the control strategy requirements that plans must meet, and the EPA has long required that all SIPs and control strategies reflect four fundamental principles of quantification, enforceability, replicability, and accountability.[8] SO_2 nonattainment plans must consist of two components: (1) emission limits and other control measures that assure implementation of permanent, enforceable, and necessary emission controls, and (2) a modeling analysis that meets the requirements of 40 CFR part 51, appendix W and demonstrates that these emission limits and control measures provide for timely attainment of the primary SO_2 NAAQS as expeditiously as practicable, but no later than the attainment date for the affected area. In cases where the necessary emission limits have not previously been made a part of the state's SIP or have not otherwise become federally enforceable, the plan needs to include the necessary enforceable limits in an adopted form suitable for incorporation into the SIP in order for the plan to be approved by the EPA. In all cases, the emission limits and control measures must be accompanied by appropriate methods and conditions to determine compliance with the respective emission limits and control measures and must be quantifiable (i.e., a specific amount of emission reduction can be ascribed to the measures), fully enforceable (i.e., specifying clear, unambiguous and measurable requirements for which compliance can be practicably determined), replicable (i.e., the procedures for determining compliance are sufficiently specific and non-subjective so that two independent entities applying the procedures would obtain the same result), and accountable (i.e., source specific limits must be permanent and must reflect the assumptions used in the SIP demonstrations).

[8] Id. at 13567-13568.

The EPA's 2014 SO_2 Guidance recommends that the emission limits be expressed as short-term average limits not to exceed the averaging time for the applicable NAAQS that the limit is intended to help maintain (e.g., addressing emissions averaged over one or three hours), but it also describes the option to utilize emission limits with longer averaging times of up to 30 days as long as the state meets various suggested criteria.[9] The 2014 SO_2 Guidance recommends that, should states and sources utilize longer averaging times (such as 30 days), the longer-term average limit should be set at an adjusted level that reflects a stringency comparable to the 1-hour average limit at the critical emission value shown to provide for attainment.

The 2014 SO_2 Guidance provides an extensive discussion of the EPA's rationale for concluding that appropriately set, comparable stringent limitations based on averaging times as long as 30 days can be found to provide for attainment of the 2010 SO_2 NAAQS. In evaluating this option, the EPA considered the nature of the standard, conducted detailed analyses of the impact of use of 30-day average limits on the prospects for attaining the standard, and carefully reviewed how best to achieve an appropriate balance among the various factors that warrant consideration in judging whether a state's plan provides for attainment.[10]

Preferred air quality models for use in regulatory applications are described in appendix A of the EPA's "Guideline on Air Quality Models" (40 CFR part 51, appendix W ("appendix W")).[11] In general, nonattainment SIP submissions must demonstrate the adequacy of the selected control strategy using the applicable air quality model designated in appendix W.[12] However, where an air quality model specified in appendix W is inappropriate for the particular application, the model may be modified or another model substituted, if the EPA approves the

[9] 2014 SO_2 Guidance, 22-39.
[10] Id. at 22-39, appendices B and D.
[11] The EPA published revisions to appendix W on January 17, 2017, 82 FR 5182.
[12] 40 CFR 51.112(a)(1).

modification or substitution.[13] In 2005, the EPA promulgated the American Meteorological Society/Environmental Protection Agency Regulatory Model (AERMOD) as the Agency's preferred near-field dispersion model for a wide range of regulatory applications addressing stationary sources (e.g., in estimating SO_2 concentrations) in all types of terrain based on an extensive developmental and performance evaluation. Supplemental guidance on modeling for purposes of demonstrating attainment of the SO_2 standard is provided in appendix A of the 2014 SO_2 Guidance. Appendix A provides extensive guidance on the modeling domain, the source inputs, assorted types of meteorological data, and background concentrations. Consistency with the recommendations in the 2014 SO_2 Guidance is generally necessary for the attainment demonstration to offer adequately reliable assurance that the plan provides for attainment.

As stated previously, attainment demonstrations for the 2010 1-hour primary SO_2 NAAQS must demonstrate future attainment and maintenance of the NAAQS in the entire area designated as nonattainment (i.e., not just at the violating monitor) by using air quality dispersion modeling (see appendix W) to show that the mix of sources and enforceable control measures and emission rates in an identified area will not lead to a violation of the SO_2 NAAQS. For the short-term (i.e., 1-hour) standard, the EPA believes that dispersion modeling, using allowable emissions and addressing stationary sources in the affected area (and in some cases those sources located outside the NAA that may affect attainment in the area) is technically appropriate. This approach is also efficient and effective in demonstrating attainment in NAAs because it takes into consideration combinations of meteorological and source operating conditions that may contribute to peak ground-level concentrations of SO_2.

The meteorological data used in the analysis should generally be processed with the most

[13] 40 CFR 51.112(a)(2); appendix W, section 3.2.

recent version of AERMET, which is the meteorological data preprocessor for AERMOD. Estimated concentrations should include ambient background concentrations, follow the form of the standard, and be calculated as described in the EPA's August 23, 2010 clarification memorandum.[14]

IV. Review of Modeled Attainment Demonstration

A. Air Quality Modeling

ADEQ's attainment demonstration used AERMOD version 15181, the regulatory version at the time it conducted its nonattainment planning. As input to AERMOD, ADEQ used one year of on-site surface meteorological data collected by ASARCO[15] LLC ("Asarco") between August 16, 2013, through August 15, 2014, at a 10-meter tower located approximately 0.35 kilometers south of the smelter building. After submittal, ADEQ discovered an error in the processing of the on-site surface meteorological data. Correcting this error changed predicted SO_2 concentrations such that the modeling no longer shows attainment of the 2010 SO_2 NAAQS. ADEQ has been working with Asarco and the EPA on revised modeling and intends to submit a new attainment demonstration and revised emission limits at a future date.[16]

B. Emission Limits

An important prerequisite for approval of a nonattainment plan is the inclusion of "enforceable emission limitations . . . as may be necessary or appropriate to provide for attainment of such standard in such area by the applicable attainment date . . .".[17] The emission limits that were intended to provide for attainment of the 2010 SO_2 NAAQS for the

[14] "Applicability of Appendix W Modeling Guidance for the 1-hr SO_2 National Ambient Air Quality Standard" (August 23, 2010).
[15] ASARCO was organized in 1899 as the American Smelting And Refining COmpany.
[16] Email dated March 25, 2020, from Farah Esmaeili, ADEQ to Rynda Kay, EPA Region IX.
[17] CAA section 172(c)(6). See also 57 FR 13498, 13567-13568 (emission limits that provide for attainment be quantifiable, fully enforceable, replicable, and accountable).

Hayden area are codified in the Arizona Administrative Code (AAC), Title 18, Chapter 2, Article 13, Section R18–2–B1302 ("Rule B1302"). ADEQ submitted Rule B1302 to the EPA on March 3, 2017. In a separate action, the EPA is proposing a limited approval and limited disapproval of Rule B1302. We are proposing a limited approval because the rule includes a more stringent SO_2 emission limit for the main stack at the Hayden Smelter compared to the existing SIP-approved limit, as well as operational standards and monitoring, recordkeeping and reporting requirements that strengthen the SIP. At the same time, we are proposing a limited disapproval because of deficiencies in the rule's enforceability. Of particular relevance to the Hayden SO_2 Plan, Rule B1302 does not contain any numeric fugitive emission limits or ongoing monitoring requirements corresponding to the levels of fugitive emissions that were modeled in the Plan. Instead, the rule relies on requirements in an operations and maintenance plan and two year-long fugitive emissions studies to verify compliance with the modeled fugitive emissions. While the fugitive emissions studies will provide useful information to verify the nature and extent of fugitive emissions from the facility, this approach does not satisfy the requirements for enforceable limits that provide for attainment of the SO_2 NAAQS under CAA section 172(c)(6).

In addition, Rule B1302 has several other deficiencies that undermine its enforceability in certain circumstances:

- 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.
- Rule subsection (E)(6) allows for nearly 10 percent of total facility SO_2 emissions annually to be exempt from continuous emissions monitoring systems; this deficiency could compromise the enforceability of the main stack emission limit.

- The rule lacks a method for measuring or calculating emissions from a shutdown ventilation flue; this omission could compromise the enforceability of the main stack emission limit.
- The rule lacks a method for calculating hourly SO_2 emissions; this omission makes it is unclear what constitutes a "valid hour" for purposes of allowing data substitution.[18]

In light of these deficiencies, we propose to find that the Hayden SO_2 Plan does not include emissions limits necessary to provide for attainment of the SO_2 NAAQS.

Finally, we note that the main stack emission limit in Rule B1302 takes the form of a "dual limit", under which "[e]missions from the Main Stack shall not exceed 1069.1 pounds per hour on a 14-operating day average unless 1,518 pounds or less is emitted during each hour of the 14-operating day period."[19] This dual limit is intended to provide a level of stringency comparable to a one-hour limit of 1,518 pounds per hour. Because we are proposing to find (1) that ADEQ has not demonstrated the emission limits in Rule B1302 are sufficient to provide for attainment and (2) that the stack emission limit is not fully enforceable due to various deficiencies in Rule B1302, we have not evaluated whether the dual limit is of comparable stringency to a simple one-hour limit of 1,518 pounds per hour.

C. Summary of Results

The EPA has reviewed ADEQ's submitted modeling supporting the attainment demonstration for the Hayden SO_2 NAA and has preliminarily determined that this modeling is inconsistent with CAA requirements, appendix W, and the 2014 SO_2 Guidance due to an error in

[18] Rule B1302, subsection (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.
[19] Rule B1302, subsection (C)(1).

the meteorological fields used. Without accurate modeling we are unable to determine that the emission limits are sufficient for the Hayden SO_2 NAA to attain the 2010 SO_2 NAAQS. Furthermore, Rule B1302 does not include a numeric fugitive emissions limit and has other deficiencies related to the enforceability of the main stack emission limit. Therefore, we are proposing to disapprove the attainment demonstration in the Hayden SO_2 Plan pursuant to 172(c) and 192(a).

V. Review of Other Plan Requirements

A. Emissions Inventory

The emissions inventory and source emission rate data for an area serve as the foundation for air quality modeling and other analyses that enable states to estimate the degree to which different sources within a NAA contribute to violations within the affected area and assess the expected improvement in air quality within the NAA due to the adoption and implementation of control measures. The state must develop and submit to the EPA a comprehensive, accurate, and current inventory of actual emissions from all sources of SO_2 emissions in each NAA, as well as any sources located outside the NAA that may affect attainment in the area.[20]

The base year inventory establishes a baseline that is used to evaluate emission reductions achieved by the control strategy and to assess RFP requirements. ADEQ used 2011 as the base year for emissions inventory preparation. At the time of preparation of the Plan, 2011 reflected the most recent triennial National Emission Inventory, supported the requirement for timeliness of data, and was also representative of a year with violations of the primary SO_2 NAAQS. ADEQ reviewed and compiled actual emissions of all sources of SO_2 in the NAA in the 2011 base year emissions inventory. In addition to developing an emissions inventory of SO_2

[20] CAA section 172(c)(3).

emission sources within the NAA, ADEQ also provided an SO_2 emissions inventory for those emission sources within a 50 kilometer buffer zone of the NAA. Table 1 summarizes 2011 base year SO_2 emissions inventory data for the NAA, categorized by emission source type (rounded to the nearest whole number).

Table 1 – Base Year SO_2 Emissions Inventory for the Hayden SO_2 NAA (tons per year)

Year	Point	Nonpoint	On-road Mobile	Non-road Mobile	Total
2011	21,771	6	<1	2	21,779

Source: Hayden SO_2 Plan, Table 3-10.

As shown in Table 1, the majority of SO_2 emissions in the 2011 base year inventory can be attributed to the point source category. Emissions for this category are provided in further detail in Table 2.

Table 2 – Base Year Point Source SO_2 Emissions Inventory

Point source	Emissions (tons per year)
Asarco LLC Hayden Smelter	21,747
Asarco Ray Mine Complex	24
Total	21,771

Source: Hayden SO_2 Plan, Table 3-3.

A projected attainment year emissions inventory should also be included in the SIP submission according to the 2014 SO_2 Guidance. This emissions inventory should include, in a manner consistent with the attainment demonstration, estimated emissions for all SO_2 emission sources that were determined to have an impact on the affected NAA for the projected attainment year. Table 3 summarizes Arizona's projected 2018 SO_2 emissions inventory data for the NAA, categorized by source type. The 2011 base year emissions, as well as the projected change between base year and projected year emissions, are also summarized (rounded to the nearest whole number).

Table 3 – Projected 2018 Emissions Inventory for the Hayden SO_2 NAA (tons per year)

Year	Point	Nonpoint	On-road Mobile	Non-road Mobile	Total
2011	21,771	6	<1	2	21,779
2018	7,968	6	<1	<1	7,973
Change	–13,803	0	0	–2	–13,806

Source: Hayden SO_2 Plan, Table 3-16.

As shown in Table 3, both the majority of SO_2 emissions in the projected 2018 emission inventory, as well as the majority of projected SO_2 emission reductions, can be attributed to point sources. Emissions for this category were determined based on a potential to emit at 100 percent load capacity or federally enforceable permit limits and are provided in further detail in Table 4. The single largest decrease in emissions is attributed to the Hayden Smelter.

Table 4 – Projected 2018 Point Source Emissions Inventory

Point source	2011 Base year emissions (tons per year)	2018 Projected year emissions (tons per year)	Change
Asarco LLC Hayden Smelter	21,747	7,852[a]	–13,895
Asarco Ray Mine Complex	24	116	92
Total	21,771	7,968	–13,803

Source: Hayden SO_2 Plan, Table 3-11.

[a] Because Asarco was required to shut down five existing converters by May 2018, the 2018-projected emissions reflect a partial year of controls. Controls were required be fully implemented prior to 2019, during which emissions were projected to be 2,320 tons.

The EPA has evaluated ADEQ's 2011 base year inventory and projected 2018 emissions inventory for the Hayden SO_2 NAA and finds these inventories and the methodologies used for their development to be consistent with EPA guidance. As a result, the EPA is proposing to determine that the Hayden SO_2 Plan meets the requirements of CAA section 172(c)(3) and (4) for the Hayden SO_2 NAA.

B. Reasonably Available Control Measures and Reasonably Available Control Technology

ADEQ's Plan for attaining the 1-hour SO_2 NAAQS in the Hayden SO_2 NAA is based on implementation of controls at the Hayden Smelter. These controls include the replacement of the existing five converter units with three larger units, installation of more extensive, efficient, and effective fugitive gas control ducting around the converters, and the installation of additional process gas controls before venting to the main stack. These controls are collectively referred to as the "Converter Retrofit Project." ADEQ conducted a RACM/RACT analysis in the Hayden SO_2 Plan, comparing the requirements at the Hayden Smelter with controls in use at other large sources of SO_2 to identify potentially available control measures and eliminating any measures that were not feasible at the Hayden Smelter or not more stringent than those measures already being implemented. ADEQ then compared the proposed control measures for the Hayden Smelter with the measures not eliminated in the first step of the RACM/RACT analysis and concluded that the proposed control measures would be more stringent. Our assessment of ADEQ's RACM/RACT analysis follows.

The State's RACM/RACT analysis can be found in section 4.4.3 of the Hayden SO_2 Plan. ADEQ compared SO_2 controls at eight different facilities and found that all these units use an acid plant to recover or reduce SO_2 emissions. Some of these facilities also use acid absorption equipment (wet and dry scrubbers) to further control emissions of SO_2.

ADEQ concluded that the Hayden Smelter's use of an acid plant, the Converter Retrofit Project, and dry lime scrubbing are comparable to SO_2 control measures employed by similar sources. ADEQ reviewed the EPA's RACT/BACT/LAER Clearinghouse and air permits for facilities likely to have analogous processes as provided by the Air & Waste Management Association and determined that the Converter Retrofit Project controls for the Hayden Smelter are representative of RACM/RACT level of control.

As explained in section IV of this document, we find that ADEQ has not demonstrated that implementation of the control measures required under the Plan is sufficient to provide for attainment of the NAAQS in the Hayden SO_2 NAA because the modeling submitted with the attainment plan is flawed. As explained in the General Preamble, "control technology which failed to achieve the SO_2 NAAQS would, by definition, fail to be SO_2 RACT."[21] Given that RACT is a necessary component of RACM under CAA section 172(c)(1), we propose to conclude that the State has not satisfied the requirement in CAA section 172(c)(1) to adopt and submit all RACM/RACT as needed to attain the standard as expeditiously as practicable.

C. New Source Review

On November 2, 2015, the EPA published a final limited approval and limited disapproval of revisions to ADEQ's new source review (NSR) rules.[22] On May 4, 2018, the EPA approved additional rule revisions to address many of the deficiencies identified in the 2015 action.[23] Collectively, these rule revisions ensure that ADEQ's rules provide for appropriate NSR for SO_2 sources undergoing construction or major modification in the Hayden SO_2 NAA without need for further modification. Therefore, the EPA has already concluded that the NSR requirement has been met for this area, and we are not reopening that determination in this proposed action. We note that Rule B1302 subsection (I) (Preconstruction review) indicates that the smelter emission limits contained in the rule shall be determined to be SO_2 RACT for purposes of minor NSR requirements. This provision does not interfere with or adversely affect existing nonattainment NSR rules.

D. Reasonable Further Progress

[21] 57 FR 13498, 13547.
[22] 80 FR 67319.
[23] 83 FR 19631.

In the Hayden SO_2 Plan, Arizona explained its rationale for concluding that the Plan meets the requirement for RFP in accordance with EPA guidance. Specifically, ADEQ's rationale is based on EPA guidance interpreting the RFP requirement being satisfied for SO_2 if the Plan requires "adherence to an ambitious compliance schedule" that "implement[s] appropriate control measures as expeditiously as practicable." ADEQ noted that its Plan provides for attainment as expeditiously as practicable, i.e., by October 4, 2018, and finds that the Plan thereby satisfies the requirement for RFP.

ADEQ finds that the Hayden SO_2 Plan requires affected sources to implement appropriate control measures as expeditiously as practicable to ensure attainment of the standard by the applicable attainment date. ADEQ concludes that the Plan provides for RFP in accordance with the approach to RFP described in the 2014 SO_2 Guidance.

We note that the EPA's policy indicating RFP for SO_2 may be satisfied by "adherence to an ambitious compliance schedule" is based on the fact that, "for SO_2 there is usually a single 'step' between pre-control nonattainment and post-control attainment."[24] In this instance, however, ADEQ has not demonstrated that implementation of the control measures required under the Plan is sufficient to provide for attainment of the NAAQS in the Hayden SO_2 NAA. In the absence of a demonstration that the required controls will lead to attainment, a compliance schedule to implement these controls is not sufficient to provide for RFP. Therefore, we propose to conclude that the State has not satisfied the requirement in section 172(c)(2) to provide for RFP toward attainment in the Hayden SO_2 NAA.

E. Contingency Measures

In the Hayden SO_2 Plan, ADEQ explained its rationale for concluding that the Plan meets

[24] 2014 SO_2 Guidance, 40.

the requirement for contingency measures. Specifically, ADEQ relies on the 2014 SO_2 Guidance, which notes the special circumstances that apply to SO_2 and explains on that basis why the contingency requirement in CAA section 172(c)(9) is met for SO_2 by having a comprehensive program to identify sources of violations of the SO_2 NAAQS and to undertake an aggressive follow-up for compliance and enforcement of applicable emission limitations. ADEQ stated that it has such an enforcement program pursuant to state law in Arizona Revised Statutes (ARS) sections 49-461, 49-402, 49-404, and 49-406. ADEQ also describes the process under state law to apply contingency measures for failure to make RFP and/or for failure to attain the SO_2 NAAQS by the attainment date and concludes that ADEQ's Plan satisfies contingency measure requirements.

We note that the EPA has approved ARS 49-402, 49-404, 49-406, and 49-461 into the Arizona SIP.[25] In addition, we have approved ARS 49-422(A) ("Powers and Duties"), which authorizes ADEQ to require sources of air contaminants to "monitor, sample or perform other studies to quantify emissions of air contaminants or levels of air pollution that may reasonably be attributable to that source" for purposes of determining whether the source is in violation of a control requirement. We have also approved ARS 49-460 through 49-463, which authorize ADEQ to request compliance-related information from sources, to issue orders of abatement upon reasonable cause to believe a source has violated or is violating an air pollution control requirement, to establish injunctive relief, to establish civil penalties of up to $10,000 per day per violation, and to conduct criminal enforcement, as appropriate, through the Attorney General.[26] Therefore, we agree that the Arizona SIP establishes a comprehensive enforcement program, allowing for the identification of sources of SO_2 NAAQS violations and aggressive compliance

[25] 40 CFR 52.120(e), Table 3.
[26] 77 FR 66398 (November 5, 2012).

and enforcement follow-up.

However, the EPA's policy that a comprehensive enforcement program can satisfy the contingency measures requirement is premised on the idea that full compliance with the controls required in the plan will assure attainment. In this case, as explained above, ADEQ has not demonstrated that implementation of the control measures required under the Plan is adequate to provide for RFP and attainment of the NAAQS in the Hayden SO_2 NAA. Accordingly, there is no evidence that a program to enforce these controls would be sufficient to bring the area into attainment in the event of NAAQS violations after the attainment date. Furthermore, the enforceability of these control measures is undermined by the deficiencies in Rule B1302 described in section IV.B. Therefore, we propose to conclude that the State has not satisfied the requirement in section 172(c)(9) to provide for contingency measures to be undertaken if the area fails to make RFP or to attain NAAQS by the attainment date.

VI. Conformity

Generally, as set forth in section 176(c) of the CAA, conformity requires that actions by federal agencies do not cause new air quality violations, worsen existing violations, or delay timely attainment of the relevant NAAQS. General conformity applies to federal actions, other than certain highway and transportation projects, if the action takes place in a NAA or maintenance area (i.e., an area which submitted a maintenance plan that meets the requirements of section 175A of the CAA and has been redesignated to attainment) for ozone, particulate matter, nitrogen dioxide, carbon monoxide, lead, or SO_2. The EPA's General Conformity Rule establishes the criteria and procedures for determining if a federal action conforms to the SIP.[27] With respect to the 2010 SO_2 NAAQS, federal agencies are expected to continue to estimate

[27] 40 CFR 93.150 to 93.165.

emissions for conformity analyses in the same manner as they estimated emissions for conformity analyses under the previous NAAQS for SO_2. The EPA's General Conformity Rule includes the basic requirement that a federal agency's general conformity analysis be based on the latest and most accurate emission estimation techniques available.[28] When updated and improved emission estimation techniques become available, the EPA expects the federal agency to use these techniques.

Transportation conformity determinations are not required in SO_2 nonattainment and maintenance areas. The EPA concluded in its 1993 transportation conformity rule that highway and transit vehicles are not significant sources of SO_2. Therefore, transportation plans, transportation improvement programs, and projects are presumed to conform to applicable implementation plans for SO_2.[29]

VII. The EPA's Proposed Action

The EPA is proposing to partially approve and partially disapprove portions of the Hayden SO_2 Plan, which includes ADEQ's attainment demonstration for the Hayden SO_2 NAA and addresses requirements for RFP, RACM/RACT, base year and projected emissions inventories, new source review, and contingency measures. The EPA proposes to determine that the Hayden SO_2 Plan meets the emissions inventory requirements under CAA section 172(c)(3) and (4) and to affirm that the State has met the new source review requirements for the Hayden SO_2 NAA under section 172(c)(5). We propose to determine that the Hayden SO_2 Plan does not meet the attainment demonstration, RACM/RACT, enforceable emission limitations, RFP, or contingency measure requirements of the CAA for the 2010 SO_2 NAAQS. Final partial disapproval of the Hayden SO_2 Plan would trigger sanctions under CAA section 179 and 40 CFR

[28] 40 CFR 93.159(b).
[29] 58 FR 3768, 3776 (January 11, 1993).

52.31 unless the EPA determines that Arizona has corrected the deficiencies within 18 months of the effective date of the final action.

The EPA is taking public comments for 30 days following the publication of this proposed action in the *Federal Register*. We will take all relevant timely comments into consideration in our final action.

VIII. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *http://www2.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, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

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

Dated: May 12, 2020.

John Busterud,
Regional Administrator,
Region IX.

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