Turnig basin; then along the shoreline approximately the northwestern end of Specially Commissioned Washington Authority Washington Peace Officer, or are security zones: States, or by a State or political means those waters defined as such in laws of the United States. involve the enforcement of criminal warrants and whose duties United States government who has the means any employee or agent of the Washington Law Enforcement Officer may enforce the pursuant to 33 CFR 6.04–11. Such means of enforcement by the Captain of the Port may be assisted by other Federal Law Enforcement Officer or Washington Law Enforcement Officer may enforce the rules contained in this section pursuant to 33 CFR 6.04–11. Vessels and persons within these zones shall obey all lawful orders or directions of the Captain of the Port or his designated representatives. All vessels shall operate at the minimum speed necessary to maintain a safe course.

(2) Sitcum Waterway Security Zone: The Security Zone in the Sitcum waterway, Commencement Bay, WA, includes all waters enclosed by a line connecting the following points: 47°16′42″ N, 122°25′04″ W, which is approximately the northwestern end of Pier No. 5; then northwesterly to 47°16′33″ N, 122°25′18″ W, which is the approximate location of a private buoy on the end of the sewage outfall; then southeasterly to 47°16′23″ N, 122°25′36″ W; then southeasterly to 47°16′10″ N, 122°25′27″ W, which is the northwestern corner of Pier No. 2; then extending northwesterly to 47°16′13″ N, 122°25′13″ W; then extending southeasterly along the shoreline of the Sitcum Waterway; then northwesterly along the shoreline at the terminus of the Sitcum Waterway and then northwesterly along the shoreline of the Sitcum Waterway; then northwesterly along the shoreline of Pier No. 5 to the point of origin. [Datum: NAD 1983].

(4) Obtaining permission to enter, move within, or exit the security zones: All vessels must obtain permission from the COTP or a Designated Representative to enter, move within, or exit the security zones established in this section when these security zones are enforced. Vessels 20 meters or greater in length should seek permission from the COTP or a Designated Representative at least 4 hours in advance. Vessels less than 20 meters in length should seek permission at least 1 hour in advance. VTS Puget Sound may be reached on VHF channel 14.

(e) Compliance. Upon notice of enforcement by the Captain of the Port Puget Sound, the Coast Guard will enforce these security zones in accordance with rules set out in this section. Upon notice of suspension of enforcement by the Captain of the Port Puget Sound, all persons and vessels are authorized to enter, transit, and exit these security zones.

(f) Regulations. Under the general regulations in 33 CFR part 165 subpart D, this section applies to any vessel or person in the navigable waters of the United States to which this section applies. No person or vessel may enter the security zones established in this section unless authorized by the Captain of the Port or his designated representatives. Vessels and persons granted permission to enter the security zone shall obey all lawful orders or directions of the Captain of the Port or his designated representatives. All vessels shall operate at the minimum speed necessary to maintain a safe course.

Action: Proposed rule.

Environmental Protection Agency

40 CFR Part 52

Revisions to the Arizona State Implementation Plan, Arizona Department of Environmental Quality

Agency: Environmental Protection Agency (EPA).

Summary: EPA is proposing a full approval of some revisions to the Arizona Department of Environmental Quality (ADEQ) portion of the Arizona State Implementation Plan (SIP) and a limited approval/limited disapproval of other revisions to the Arizona SIP. These revisions concern sulfur dioxide (SO2) emissions from existing primary copper smelters. We are proposing
action on local rules that regulate this emission source under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.


ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, or e-mail to steckel.andrew@epa.gov, or submit comments at http://www.regulations.gov.

You can inspect copies of the submitted SIP revisions and EPA’s technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations: Arizona Department of Environmental Quality, 1110 West Washington Street, Phoenix, AZ 85007.

A copy of the rules may also be available via the Internet at http://www.sosaz.com/public_services/Title_18/18–02.htm. Please be advised that this is not an EPA website and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4118, petersen.alfred@epa.gov.

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

### Table 1.—Submitted Rules

<table>
<thead>
<tr>
<th>Local agency</th>
<th>Rule #</th>
<th>Rule title</th>
<th>Amended</th>
<th>Submitted</th>
</tr>
</thead>
<tbody>
<tr>
<td>ADEQ ..........</td>
<td>R18–2–715 (sections F, G, and H)</td>
<td>Standards of Performance for Existing Primary Copper Smelters, Site-specific Requirements.</td>
<td>08/09/02</td>
<td>09/12/03</td>
</tr>
<tr>
<td>ADEQ ..........</td>
<td>R18–2–715.01</td>
<td>Standards of Performance for Existing Primary Copper Smelters, Compliance and Monitoring.</td>
<td>08/09/02</td>
<td>09/12/03</td>
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<tr>
<td>ADEQ ..........</td>
<td>R18–2–715.02</td>
<td>Standards of Performance for Existing Primary Copper Smelters, Fugitive Emissions.</td>
<td>11/15/93</td>
<td>07/15/98</td>
</tr>
</tbody>
</table>

On November 14, 2003, the submittal of Rules R18–2–715 (sections F, G, and H) and R18–2–715.01 was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review. On December 18, 1998, the submittal of Rules R18–2–715.02 and R18–2-appendix 8 was found to meet the completeness criteria.

### B. Are There Other Versions of These Rules?

We approved versions of Rules R18–2–715, R18–2–715.01, and R18–2–715.02 into the SIP as Rule R9–3–515 at various times. Specifically, we approved a version of Rule R18–2–715 (sections F, G, and H) into the SIP as Rule 9–3–515 (sections A and C.1 (a through g)), portions of which were submitted on September 20, 1979, July 17, 1980, and February 2, 1983, on January 14, 1983 (48 FR 1717) and October 19, 1984 (49 FR 41026). Part was submitted on September 20, 1979; part submitted on July 17, 1980; part submitted on July 13, 1981 and approved at 48 FR 1717 (January 14, 1983), part submitted on June 3, 1982 and approved at 47 FR 42572 (September 28, 1982), and part submitted on February 3, 1984 and approved at 49 FR 41026 (October 19, 1984).

We approved a version of Rule R18–2–715.01 into the SIP as Rule R9–3–515 (sections C.1(h and i), C.2, C.3, C.4, C.5, and C.6), portions of which were submitted on September 20, 1979, July 13, 1981, June 3, 1982, and February 3, 1984, on January 14, 1983 (48 FR 1717) and October 19, 1984 (49 FR 41026).

We approved a version of Rule R18–2–715.02 into the SIP as Rule R9–3–515 (sections C.8 and C.9), portions of which were submitted on September 20, 1979 and June 3, 1982, on January 14, 1983 (48 FR 1717).

We approved a version of Rule R18–2–appendix 8 into the SIP as Rule R9–3–appendix 8 (sections 8A.3.1 and 8A.3.2), submitted on June 3, 1982, on September 28, 1982 (47 FR 42572).

### C. What Is the Purpose of the Submitted Rule Revisions?

Sulfur dioxide is formed by the combustion of fuels and by certain industrial processes, including those at smelters. High concentrations of SO2 affect breathing and may aggravate existing respiratory and cardiovascular disease. Section 110(a) of the CAA requires states to submit regulations that control SO2 emissions. The submitted rules regulate SO2 emissions from existing primary copper smelters. The TSD has more information about these rules.

### II. EPA’s Evaluation and Action

#### A. How Is EPA Evaluating the Rules?

Pursuant to the CAA as amended in 1977, EPA designated six areas in Arizona as nonattainment for the SO2 National Ambient Air Quality Standards (NAAQS). See 43 FR 8962 (March 3, 1978), 44 FR 21261 (April 10, 1979), and 44 FR 53081 (September 12, 1979).

Local copper smelters were the principal sources of SO2 emissions in these areas. Under the CAA as amended in 1977, States were required to revise their SIPs to include air quality plans that set forth a strategy to bring nonattainment areas into attainment. As part of the attainment strategy, ADEQ initially submitted R9–3–515, the predecessor regulation to the submitted rules evaluated herein, to EPA on September 20, 1979. As noted above, EPA approved various provisions of R9–3–515 into the Arizona SIP at different times. See the proposed rule at 46 FR 58098 (November 30, 1981), and related final rules at 47 FR 42572 (September 28, 1982), 48 FR 1717 (January 14, 1983), and 49 FR 41026 (October 19, 1984).
Rule R9–3–515 provides SO₂ stack emission limits for seven individual copper smelters in the six nonattainment areas: Magma Copper Company (San Manuel); ARSACO, Inc. (Hayden); Kennecott Copper Company, Ray Mines Division (Hayden); Inspiration Consolidated Copper Company (Miami); Phelps Dodge Corp., New Cornelia Branch (Ajo); Phelps Dodge Corp., Douglas Reduction Works (Douglas); and Phelps Dodge Corp., Morenci Branch (Morenci). While EPA took action to fully approve R9–3–515, EPA also concluded that the control strategy for SO₂ in these six areas was incomplete due to the failure to address the fugitive emissions problems at the copper smelters. See 48 FR 1717 (January 14, 1983) and 40 CFR 52.125(a)(1).

Under the CAA as amended in 1990, areas designated nonattainment prior to enactment of the amendments retained their nonattainment designations by operation of law. See section 107(d)(1)(C) of the CAA. Thus, the six areas covered by R9–3–515 remained nonattainment for the SO₂ NAAQS following enactment of the 1990 CAA Amendments. Under subpart 1 of part D of title I of the CAA, as amended in 1990, States that contained areas designated nonattainment with respect to the NAAQS for SO₂ by operation of law but lacking a fully approved implementation plan complying with the requirements of the CAA as in effect immediately before enactment of the CAA Amendments of 1990 were required to prepare and submit a SIP revision meeting the requirements of subpart 1 of part D. See section 191(b) of the CAA. Section 191(b) of the CAA applies to the six SO₂ nonattainment areas in Arizona because, as noted above, the pre-1990 implementation plan for those areas failed to address the fugitive emissions problems at the copper smelters.

The subpart 1 (of part D) requirement that is applicable to the submitted rules is section 172(c)(1): Such plan provisions shall provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT)) and shall provide for attainment of the NAAQS. The submitted rules are evaluated herein to ensure they comply with RACT and that they contain the provisions necessary to ensure that the rules are enforceable. In addition, we evaluate the submitted rules for approvalability under sections 110(l) and 193 of the CAA.

Guidance and policy documents that we used to help evaluate specific enforceability requirements consistently include the following:

- Alushin, Michael S., Associate Enforcement Counsel for Air Enforcement, Alan W. Eckert, Associate General Counsel, Air and Radiation Division, and John S. Seitz, Director, Stationary Source Compliance Division, Office of Air Quality Planning and Standards, memorandum, Review of State Implementation Plans and Revisions for Enforcement and Legal Sufficiency, (September 23, 1987).

B. Do the Rules Meet the Evaluation Criteria?

The submitted rules constitute source-specific SO₂ SIP rules for three of the seven primary copper smelters covered by the corresponding existing SIP rules: BHP Copper (formerly Magma Copper Company) (San Manuel); ARSACO, Inc. (Hayden); and Inspiration Consolidated Copper Company (Miami). The other four smelters have been completely dismantled or are no longer operational. See the TSD for additional information on these smelters. For those smelters that remain in operation, the submitted rules improve the SIP by establishing more stringent SO₂ stack emission limits, by establishing SO₂ emissions limits for fugitive emissions, by adding compliance and monitoring provisions related to fugitive SO₂ emissions, and by revising the record retention period from two to five years.

As noted above, the San Manuel, Hayden, and Miami areas are designated as nonattainment for the SO₂ NAAQS. As required under the CAA as amended in 1990, ADEQ prepared SIP revisions involving the development of air quality plans that provide for attainment of the SO₂ NAAQS in these areas. ADEQ drafted these plans to provide for maintenance of the SO₂ NAAQS as well as attainment and has requested that the areas be redesignated from nonattainment to attainment under section 107(d) of the CAA. These plans rely primarily on the stack and fugitive SO₂ emission limits and related compliance and monitoring provisions in the submitted rules to attain and maintain the SO₂ NAAQS in the three nonattainment areas. SO₂ NAAQS violations have not been recorded in these areas for at least the past five years. See ADEQ’s San Manuel Sulfur Dioxide Nonattainment Area State Implementation and Maintenance Plan (June 2002), submitted to EPA on June 20, 2002; Miami Sulfur Dioxide Nonattainment Area State Implementation and Maintenance Plan (June 2002), submitted to EPA on June 26, 2002; Hayden Sulfur Dioxide Nonattainment Area State Implementation and Maintenance Plan (June 2002), submitted to EPA on June 27, 2002.

Since the submitted rules are consistent with the control strategy that provides for attainment of the SO₂ NAAQS in the applicable nonattainment areas, they would fully satisfy the requirements for implementation of RACT under sections 172(c) and 191(b) and would be fully approvable by EPA under section 110(l) of the CAA but for the deficiencies in Rule R18–2 appendix 8, which are summarized below and discussed further in the TSD. In addition, the submitted rules contain more stringent emissions limits than the corresponding pre-1990 SIP requirements, they are approvable by EPA under section 193 of the CAA.

C. What Are the Rule Deficiencies?

These provisions of Rule R18–2 appendix 8 conflict with section 110 and part D of the CAA and prevent full approval of the SIP revision.

- Sections A.8.1.2 and A.8.2 contain excessive Director’s discretion by allowing the Director to approve an equivalent method to calculate the sulfur content without providing the criteria that will be used to determine approvability. The Guidance Document for Correcting Common Volatile Organic Compounds (VOC) & Other Rule Deficiencies, EPA Region IX (August 2, 2001), provides guidance on correcting instances of Director’s discretion. Also for greater clarity, the term “equivalent method” should be replaced with “alternative method” in paragraph A.8.1.2, as these phrases have distinct meanings. See 40 CFR 60.2. Excessive director’s discretion in essence allows for a variance from SIP requirements, and variances are not allowed under section 110(l) of the CAA unless they are submitted as individual SIP revisions by a State and then approved by EPA.
...disapproval. Section 179(b) provides two sanctions available to the Administrator: Highway funding and offsets. The 18-month period referred to in section 179(a) will begin on the effective date of EPA’s final limited disapproval. Moreover, the final disapproval triggers the Federal implementation plan (FIP) requirement under section 110(c). It should be noted that the rules covered by this document have been adopted and are currently in effect. EPA’s final limited disapproval action will not prevent ADEQ or EPA from enforcing these rules. Also, if we finalize this action as proposed, the submitted rules will supersede the corresponding existing SIP rule in the Arizona SIP.

We will accept comments from the public on the proposed action for the next 30 days.

### III. Statutory and Executive Order Reviews

#### A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled “Regulatory Planning and Review.”

#### B. Paperwork Reduction Act

This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

#### C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.


### D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (“Unfunded Mandates Act”), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to approve pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

#### E. Executive Order 13132, Federalism

Executive Order 13132, Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). 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.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that 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.” Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not
required by statute, unless the Federal
government provides the funds
necessary to pay the direct compliance
costs incurred by State and local
governments, or EPA consults with
State and local officials early in the
process of developing the proposed
regulation. EPA also may not issue a
regulation that has federalism
implications and that preempts State
law unless the Agency consults with
State and local officials early in the
process of developing the proposed
regulation. This proposed 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 approve a state rule
implementing a federal standard, 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.” This proposed rule does not
have tribal implications, as specified in
Executive Order 13175. It will not
have substantial direct effects on tribal
governments, on the relationship
between the Federal government and
Indian tribes, or on the distribution of
power and responsibilities between the
Federal government and Indian tribes.
Thus, Executive Order 13175 does not
apply to this proposed rule.

EPA specifically solicits additional
comment on this proposed rule from
tribal officials.

H. Executive Order 13045, Protection of
Children From Environmental Health
Risks and Safety Risks

Protection of Children from
Environmental Health Risks and Safety
Risks (62 FR 19885, April 23, 1997),
applies to any rule that: (1) is
determined to be “economically
significant” as defined under Executive
Order 12866, and (2) concerns an
environmental health or safety risk that
EPA has reason to believe may have a
disproportionate effect on children. If
the regulatory action meets both criteria,
the Agency must evaluate the
environmental health or safety effects of
the planned rule on children, and
explain why the planned regulation is
preferable to other potentially effective
and reasonably feasible alternatives
considered by the Agency.

This proposed rule is not subject to
Executive Order 13045 because it does not
involve decisions intended to
mitigate environmental health or safety
risks.

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

This proposed 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.

J. 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. To comply with NTTAA,
EPA must consider and use “voluntary
consensus standards” (VCS) if available
and applicable when developing
programs and policies unless doing so
would be inconsistent with applicable
law or otherwise impractical.

The EPA believes that VCS are
inapplicable to this proposed action.
Today’s action does not require the
public to perform activities conducive
to the use of VCS.

List of Subjects in 40 CFR Part 52

Environmental protection, Air
pollution control, Intergovernmental
relations, Reporting and recordkeeping
requirements, Sulfur oxides.

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

Deborah Jordan,
Acting Regional Administrator, Region IX.

[FR Doc. 04–10940 Filed 5–13–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS
COMMISSION

47 CFR Part 15

[ET Docket No. 04–151; ET Docket No. 02–
380; and ET Docket No. 98–237; FCC 04–
100]

Unlicensed Operation of the 3650–3700
Band

AGENCY: Federal Communications
Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes to
amend the Commission’s rules to
maximize the efficient use of the 3650–
3700 MHz band. The proposal would
allow unlicensed devices to operate in
either all, or portions of, this
radiofrequency (RF) band under flexible
technical limitations with smart/
cognitive features that should prevent
interference to licensed satellite
services. This proposal fosters the
introduction of new and advanced
services to the American public,
especially in rural areas.

DATES: Comments must be filed on or
before July 28, 2004, and reply
comments must be filed on or before

FOR FURTHER INFORMATION CONTACT:
Neal McNeil at (202) 418–2408,
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(202) 418–2290, Gary.Thayer@fcc.gov,
or Ahmed Lahjouji, (202) 418–2061,
Ahmed.Lahjouji@fcc.gov—Office of
Engineering and Technology; or Eli
Johnson at (202) 418–1395,
Eli.Johnson@fcc.gov, or Marty Liebman
at (202) 418–0633,
Martin.Liebman@fcc.gov—Wireless
Telecommunications Bureau, TTY (202)
418–2989.

SUPPLEMENTARY INFORMATION: This is a
summary of the Commission’s Notice of
04–151, ET Docket No. 02–380 and ET
Docket No. 98–237, FCC 04–100,
adopted April 15, 2004, and released
April 23, 2004. The full text of this
document is available for inspection
and copying during normal business
hours in the FCC Reference Center
(Room CY–A257), 445 12th Street, SW.,
Washington, DC 20554. The complete
text of this document also may be
purchased from the Commission’s copy
contractor, Qualex International, 445
12th Street, SW., Room, CY–B402,
Washington, DC 20554. The full text
may also be downloaded at: http://
www.fcc.gov. Alternate formats are
available to persons with disabilities by
contacting Brian Millin at (202) 418–
7426 or TTY (202) 418–7365.