



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2014-0812; FRL-10011-07-Region 9]

**Air Quality State Implementation Plan Approval; Nevada; Infrastructure Requirements
for the 2010 Sulfur Dioxide National Ambient Air Quality Standard**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the remaining portion of a state implementation plan (SIP) revision submitted by the State of Nevada. This revision addresses the interstate transport requirements of the Clean Air Act (CAA) with respect to the 2010 1-hour sulfur dioxide (SO₂) primary national ambient air quality standard (NAAQS). In this action, the EPA has determined that Nevada will not contribute significantly to nonattainment or interfere with maintenance of the 2010 1-hour SO₂ NAAQS in any other state.

DATES: This rule will be effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R09-OAR-2014-0812. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will

be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR**

FURTHER INFORMATION CONTACT section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Tom Kelly, Air Planning Office (AIR-2), EPA Region IX, (415) 947-4151, or by email at kelly.thomasp@epa.gov.

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I. Summary of the Proposed Action

On June 22, 2010, the EPA promulgated a revised primary NAAQS for SO₂ at a level of 75 parts per billion (ppb), based on a 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations.¹ Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or a shorter period as the EPA may prescribe. These SIPs, which the EPA has historically referred to as “infrastructure SIPs,” are to provide for the “implementation, maintenance, and enforcement” of such NAAQS, and the requirements are designed to ensure that the structural components of each state’s air quality management program are adequate to meet the state’s responsibility under the CAA. Section 110(a) of the CAA imposes the obligation upon states to make a SIP submission to the EPA for a new or revised NAAQS, but the contents of individual state submissions may vary depending upon the

¹ 75 FR 35520 (June 22, 2010).

facts and circumstances. The content of the revisions proposed in SIP submissions may also vary depending upon what provisions are already contained in the state's approved SIP. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements, and legal authority that are designed to assure attainment and maintenance of the NAAQS.

Section 110(a)(2)(D)(i)(I) of the CAA requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from emitting any air pollutant in amounts that will contribute significantly to nonattainment, or interfere with maintenance, of the NAAQS in another state. The two clauses of this section are referred to as prong 1 (significant contribution to nonattainment) and prong 2 (interference with maintenance of the NAAQS).

On June 3, 2013, the Nevada Department of Environmental Protection (NDEP) submitted a SIP revision addressing the requirements of section 110(a)(2) of the CAA with respect to the 2010 SO₂ NAAQS ("2013 Nevada SIP revision"). On November 3, 2015, the EPA partially approved and partially disapproved portions of the 2013 Nevada SIP revision for the 2010 SO₂ NAAQS.² However, in that rulemaking, the EPA did not take action on the section 110(a)(2)(D)(i)(I), interstate transport portion of the 2013 Nevada SIP revision.³ On March 31, 2020, the EPA proposed to approve the portion of Nevada's infrastructure submittal for the 2010 SO₂ NAAQS pertaining to section 110(a)(2)(D)(i)(I) of the CAA.⁴

² The EPA's final rule (80 FR 67652) addressed most elements of three separate SIP submittals for the 2008 ozone NAAQS, the 2010 nitrogen dioxide (NO₂) NAAQS, and the 2010 SO₂ NAAQS.

³ In addition to section 110(a)(2)(D)(i)(I) provisions for SO₂, the EPA did not act on the section 110(a)(2)(D)(i)(I) provisions of Nevada's SIP submittal for the 2008 ozone NAAQS. The EPA approved the section 110(a)(2)(D)(i)(I) portion of Nevada's submittal for the 2008 ozone NAAQS in a subsequent rulemaking on February 3, 2017 (82 FR 9164).

⁴ 85 FR 17810.

In our proposed rulemaking, the EPA described Nevada's analysis and provided supplemental information to support the conclusion of the 2013 Nevada SIP Revision that Nevada meets the CAA section 110(a)(2)(D)(i)(I) prohibition against significant contribution to nonattainment in another state and interference with maintenance in another state for the 2010 SO₂ NAAQS. The NDEP considered monitoring data, emissions data, predominant wind direction in Nevada, as well as nonattainment and maintenance areas for the 1971 SO₂ NAAQS and potential nonattainment areas for the 2010 SO₂ NAAQS in contiguous and noncontiguous states, and the distance between Nevada and these areas.⁵

While the EPA relied on many of the same factors as the 2013 Nevada SIP revision, we collected more recent monitoring and emissions data. In addition, the EPA focused on a 50 kilometer (km) wide zone because the physical properties of SO₂ result in relatively localized pollutant impacts near an emissions source. We identified no violating monitors near the Nevada border, and the only violating monitors in neighboring states are well outside the range within which we might expect them to be significantly impacted by interstate transport of SO₂ from Nevada. Furthermore, we identified no SO₂ sources within 50 km of the Nevada border that are likely to be contributing to a violation of the standard in another state, and we concluded that it is unlikely that sources farther from the border are leading to violations. Therefore, the EPA proposed that Nevada was not significantly contributing to nonattainment of the 2010 SO₂ NAAQS in another state.

⁵ Because the EPA had not designated nonattainment areas for the 2010 SO₂ NAAQS prior to submittal of the 2013 Nevada SIP revision, Nevada addressed potential nonattainment areas for the 2010 SO₂ NAAQS. The EPA has subsequently completed designations for Nevada and most other contiguous and noncontiguous states in separate rulemaking actions (78 FR 47191, August 5, 2013; 81 FR 45039, July 12, 2016; 81 FR 89870, December 13, 2016; 83 FR 1098, January 18, 2018). The EPA designated the state of Nevada as Attainment/Unclassifiable for the 2010 SO₂ standard (83 FR 1098, January 9, 2018).

The EPA's evaluation of the State's analysis of whether emissions sources within Nevada interfere with maintenance in other states also considered state-wide and individual facility emissions trends as well as SO₂ emissions control rules from the three air quality agencies in Nevada: the NDEP, the Clark County Department of Air Quality (now part of the Clark County Department of Environment and Sustainability), and the Washoe County Air Quality Management Division. In proposing to conclude that the 2013 Nevada SIP revision demonstrates that SO₂ emissions in the State will not interfere with maintenance of the 2010 SO₂ NAAQS in any other state, we cited the downward trend in SO₂ emissions in Nevada and neighboring states; the SIP-approved State and local measures within Nevada that limit existing and new facility emissions; and the low ambient concentrations of SO₂ in Nevada and neighboring states.

II. Public Comments and EPA Responses

The public comment period for the proposed rule opened on March 31, 2020, the date of its publication in the *Federal Register*, and closed on April 30, 2020. The EPA received no comments on the proposed action during the public comment period.

III. Final Action

Under CAA section 110(k)(3) and based on the evaluation and rationale presented in the proposed rule, the EPA is approving the 2013 Nevada SIP revision as meeting CAA section 110(a)(2)(D)(i)(I). The State has demonstrated that Nevada's SIP has adequate provisions prohibiting any source or other type of emissions activity in the State from emitting any air pollutant in amounts that will contribute significantly to nonattainment or interfere with maintenance of the 2010 1-hour SO₂ NAAQS in any other state.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Approval and promulgation of implementation plans, Environmental protection, Incorporation by reference, and Sulfur oxides.

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

Dated: June 17, 2020.

John Busterud,
Regional Administrator,
Region IX.

For the reasons stated in the preamble, EPA amends Chapter I, title 40 of the Code of Federal Regulations as follows:

PART 52 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for Part 52 continues to read as follows:

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

Subpart DD Nevada

2. Amend § 52.1472 by revising paragraph (j) to read as follows:

§ 52.1472 Approval status.

* * * * *

(j) 2010 1-hour sulfur dioxide NAAQS: The SIPs submitted on June 3, 2013, are disapproved for CAA elements 110(a)(2)(C), (D)(i)(II), (D)(ii), and (J) for the NDEP and Washoe County portions of the Nevada SIP.

[FR Doc. 2020-13561 Filed: 7/9/2020 8:45 am; Publication Date: 7/10/2020]