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[FR Doc. 2015–27918 Filed 11–2–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R09–OAR–2014–0812; FRL–9935–82–Region 9]

Partial Approval and Partial Disapproval of Air Quality State Implementation Plans; Nevada; Infrastructure Requirements for Ozone, NO_2 and SO_2

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Environmental Protection Agency (EPA) is approving in part and disapproving in part State Implementation Plan (SIP) revisions submitted by the State of Nevada pursuant to the requirements of the Clean Air Act (CAA) for the 2008 ozone national ambient air quality standards (NAAQS), the 2010 nitrogen dioxide (NO_2) NAAQS and the 2010 sulfur dioxide (SO_2) NAAQS. The CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by the EPA, and that EPA act on such SIPs. Nevada has met most of the applicable requirements. Where EPA is disapproving, in part, Nevada's SIP revisions, the deficiencies have already been addressed by a federal implementation plan (FIP).

DATES: This final rule is effective on December 3, 2015.

ADDRESSES: EPA has established a docket for this action, identified by Docket ID Number EPA–R09–OAR–2014–0812. The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all 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), and some may not be publicly available in either location (*e.g.,* confidential business information (CBI)). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed directly below.

FOR FURTHER INFORMATION CONTACT: Tom Kelly, Air Planning Office (AIR–2), U.S. Environmental Protection Agency, Region IX, (415) 972–3856, *kelly.thomasp@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, the terms ''we,'' ''us,'' and ''our'' refer to EPA.

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I. Background

Section 110(a)(1) of the CAA requires each state to submit to EPA, within three years (or such shorter period as the Administrator may prescribe) after the promulgation of a primary or secondary NAAQS or any revision thereof, a SIP that provides for the ''implementation, maintenance, and enforcement'' of such NAAQS. EPA refers to these specific submissions as ''infrastructure'' SIPs because they are intended to address basic structural SIP requirements for new or revised NAAQS.

EPA issued a revised NAAQS for ozone on March 28, 2010, for NO_2 on February 9, 2010, and for SO_2 on June 22, 2010.[1] [2] [3] These NAAQS revisions triggered requirements for states to submit an infrastructure SIP to address the applicable requirements of section 110(a)(2) within three years. The Nevada Department of Environmental Protection (NDEP) has submitted several infrastructure SIP submittals in response to EPA's promulgation of these NAAQS, including:

Ozone

- The Nevada Division of Environmental Protection Portion of the Nevada State Implementation Plan for the 2008 Ozone NAAQS: Demonstration of Adequacy April 10, 2013;
- State Implementation Plan Revision to Meet the Ozone Infrastructure SIP Requirements of the Clean Air Act § 110(a)(2), Clark County, Nevada, February, 2013;
- The Washoe County Portion of the Nevada State Implementation Plan for the 2008 Ozone NAAQS: Demonstration of Adequacy, February 28, 2013.

NO_2

- NDEP letter to EPA, dated May 9, 2013 and Washoe County letter, dated April 26, 2013, containing the Approved Minutes of the February 28, 2013 public hearing and the Certificate of Adoption;
- The Nevada Division of Environmental Protection Portion of the Nevada State Implementation Plan for the 2010 Nitrogen Dioxide Primary NAAQS: Demonstration of Adequacy and appendices, January 18, 2013;
- State Implementation Plan Revision to Meet the Nitrogen Dioxide Infrastructure SIP Requirements of the Clean Air Act § 110(a)(2), and attachments Clark County, Nevada, December, 2012;
- The Washoe County Portion of the Nevada State Implementation Plan to Meet the Nitrogen Dioxide Primary NAAQS; Final Submittal, March 15, 2013.

SO_2

- The Nevada Division of Environmental Protection Portion of the Nevada State Implementation Plan for the 2010 Sulfur Dioxide Primary NAAQS, and appendices, June 3, 2013;
- State Implementation Plan Revision to Meet the Sulfur Dioxide Infrastructure SIP Requirements of the Clean Air Act § 110(a)(2), and attachments Clark County, Nevada, May, 2013;
- The Washoe County Portion of the Nevada State Implementation Plan to Meet the Sulfur Dioxide Infrastructure SIP Requirements of Clean Air Act § 110(a)(2), and attachments, March 28, 2013.

We refer to these submittals collectively as ''Nevada's Infrastructure Submittals.''

On May 20, 2015 (80 FR 28893), EPA proposed to approve in part, and disapprove in part, these SIP revisions addressing the infrastructure requirements of CAA section 110(a)(1) and (2) for the 2008 ozone, the 2010 NO_2, and the 2010 SO_2 NAAQS. Except for the interstate transport elements of 110(a)(2)(D)(i)(I) for the 2008 ozone and 2010 SO_2 NAAQS, we are taking final action on all the Nevada Infrastructure Submittals since they collectively address the applicable infrastructure SIP requirements.

Nevada's submittals also requested that EPA reclassify the Nevada Intrastate Air Quality Control Region from priority IA to priority III for SO_2 emergency episodes and remove historic, outdated language at 40 CFR 52.1475 from the state's approved SIP. Our Notice of

[1] 73 FR 16436. This final rule reduced the ozone NAAQS from 0.08 parts per million (ppm) to 0.075 ppm.

[2] 75 FR 6474. This final rule revised the primary NO_2 NAAQS from an annual arithmetic average to a one-hour NO_2 NAAQS of 100 parts per billion (ppb) and left unchanged EPA's secondary annual NO_2 NAAQS. The form of the 1-hour standard is the 3-year average of the 98th percentile of the yearly distribution of 1-hour daily maximum NO_2 concentrations.

[3] This final rule revoked EPA's annual and 24-hour SO_2 NAAQS and a 1-hour NAAQS of 75 ppb. The form of the 1-hour standard is the 3-year average of the 99th percentile of the yearly distribution of 1-hour daily maximum SO_2 concentrations.

Proposed Rulemaking included these proposed changes. We also proposed to define the term Nevada Intrastate Air Quality Control Region and proposed to reclassify the Las Vegas Intrastate Air Quality Control Region from priority IA to priority III for SO_2 emergency episodes.

The rationale supporting EPA's actions is explained in our May 20, 2015 Notice of Proposed Rulemaking (proposed rule) and the associated technical support documents (TSDs) and will not be restated here.[4] [5] The proposed rule and TSD are available online at *http://www.regulations.gov,* Docket ID number EPA–R09–OAR–2015–0812.

II. EPA's Response to Comments

The public comment period on EPA's proposed rule opened on May 20, 2015, the date of its publication in the **Federal Register**, and closed on June 19, 2015. During this period, EPA received comments from an unidentified commenter, NDEP, and a single comment letter from the Sierra Club and Earthjustice. The comments are summarized below; full text of these comments is available in the docket to this final rule.[6]

A. Unidentified Commenter

Comment: The commenter supported the partial disapproval of the Nevada SIP and discussed the health benefits of minimizing criteria pollutants and maintaining low levels of nitrogen dioxide, sulfur dioxide and ozone. The commenter asserted that with stricter standards, clean renewable energy may become more popular.

Response: EPA acknowledges the support for our action. We do wish to clarify that EPA's partial approval and partial disapproval of elements of the Nevada SIP will not result in changes to air quality regulation in Nevada, as the specific deficiencies have already been addressed by the delegation of EPA's prevention of significant deterioration of air quality (PSD) program to NDEP and Washoe County. The need for this action, however, did result from EPA's lowering of its NAAQS for ozone (in 2008), nitrogen dioxide (in 2010) and sulfur dioxide (in 2010).

B. NDEP Comments

NDEP Comment 1: NDEP suggested that EPA revise and approve all proposed disapprovals in the proposed rulemaking. The commenter contended that the proposed disapproval of two elements, CAA section 110(a)(2)(C) and (D), were based on NDEP and Washoe County having a delegated PSD programs. The commenter further claimed that the proposed disapprovals stem from EPA's interpretation that a delegated PSD program is not considered part of the applicable Nevada SIP. Next, NDEP cited **Federal Register** language from EPA's approval and disapproval of a recent Nevada Infrastructure SIP, ''the SIP, viewed broadly, thus includes both portions of the plan submitted by the State and approved by EPA as well as any FIP promulgated by EPA to substitute for a State plan disapproved by EPA or not submitted by a State.'' [7] Then the commenter stated ''the NDEP suggests that this broad interpretation of what constitutes Nevada's applicable SIP is the appropriate interpretation . . . delegation is an acceptable method for implementing a PSD program and no penalties to the state apply if they choose that option.''

Response: We disagree with NDEP's suggestion that Nevada's I–SIP Submittals should be approved for PSD-related infrastructure SIP requirements for the NDEP and Washoe County jurisdictions. We note that NDEP and Washoe County submitted similar comments in 2012 and 2013 with respect to EPA's proposed rulemaking on infrastructure SIPs for the 1997 ozone, 1997 fine particulate matter ($PM_{2.5}$), and 2006 $PM_{2.5}$ NAAQS; and proposed rulemaking on infrastructure SIPs for the 2008 Pb NAAQS. Our response to NDEP's comment largely reiterates our response to NDEP and Washoe County's comments on delegated PSD FIP programs during our 2012 and 2014 rulemakings on Nevada's infrastructure SIPs.[8]

The CAA requires each state to adopt and submit a plan which provides for implementation, maintenance, and enforcement of the NAAQS. *See* CAA section 110(a)(1). Section 110(a)(2) sets forth the content requirements for such plans, including the requirement for a permit program as required in part C (''Prevention of Significant Deterioration of Air Quality,'' or ''PSD'') of title I of the CAA. Such plans are referred to as state implementation plans or SIPs.

EPA's authority to promulgate a FIP derives from EPA's determination that a state has failed to submit a complete, required SIP submission or from EPA's disapproval of a state submission of a SIP or SIP revision. *See* CAA section 110(c)(1). The SIP, viewed broadly, thus includes both portions of the plan submitted by the state and approved by EPA as well as any FIP promulgated by EPA to substitute for a state plan disapproved by EPA or not submitted by a state.[9]

In 1974, EPA disapproved each state's SIP with respect to PSD and promulgated a FIP as a substitute for the SIP deficiency (''PSD FIP'').[10] In 1975, EPA codified the PSD FIP in each state's subpart in 40 CFR part 52.[11] In 1978 and 1980, EPA amended the PSD regulations following the Clean Air Act Amendments of 1977 and related court decisions and amended the codification of the PSD FIP in each state's subpart, including 40 CFR 52.1485, accordingly.[12]

Since then, EPA has approved the PSD SIP for the sources and geographic area that lie within the jurisdiction of Clark County Department of Air Quality (DAQ), and has delegated responsibility for conducting PSD review, as per the PSD FIP, to NDEP and Washoe County. Notwithstanding the delegation, however, the Nevada SIP remains deficient with respect to PSD for the geographic areas and stationary sources that lie within NDEP's and Washoe County's jurisdictions. As such, EPA's disapproval of the infrastructure SIP submittals for those elements that require states to have a SIP that includes a PSD permit program, including CAA sections 110(a)(2)(C), (D)(i)(II), (D)(ii), and (J), is appropriate because EPA disapproved the state's submitted plan as not adequately addressing PSD program requirements. To conclude otherwise would be inconsistent with the long-standing and current disapproval of the SIP for PSD for the applicable areas, with the statutory foundation upon which the PSD FIP is authorized, and with the obligation under section 110(a) for each state to

[4] 80 FR 28893, May 20, 2015.

[5] ''Technical Support Document Evaluation of the Nevada Infrastructure SIP for 2008 Ozone, 2010 NO_2 and 2010 SO_2'' May 2015; ''Nevada Pb Infrastructure SIP Technical Support Document, September 13, 2012; Technical Support Document: EPA Evaluation of Nevada Provisions for 1997 Ozone, 1997 $PM_{2.5}$, and 2006 $PM_{2.5}$ NAAQS for Section 110(a)(2)(A) through (C), D((i)(II) and (D)(ii), E(i) and (E(iii), (F) through (M), July 2012; and Technical Support Document: EPA Evaluation of NV Provisions for Section 110 (a)(2)(E)(ii)/Section 128 Conflict of Interest Requirements, July 2012.

[6] *See* document number EPA–R09–OAR–2015–0812–0074, 0076 and 0077 at *http://www.regulations.gov* under docket ID number EPA–R09–OAR–2014–0812.

[7] 77 FR 64737 (October 23, 2012) Partial Approval and Partial Disapproval of Air Quality State Implementation Plans; Nevada; Infrastructure Requirements for Ozone and Fine Particulate Matter.

[8] 77 FR 64737, October 23, 2012; 79 FR 15697, March 21, 2014.

[9] 40 CFR 52.02(b).

[10] 39 FR 42510, December 5, 1974.

[11] 40 FR 25004, June 12, 1975, adding 40 CFR 52.1485 to Subpart DD—Nevada.

[12] 43 FR 26380, June 19, 1978 and 45 FR 52676, August 7, 1980.

adopt and submit a plan for implementation, maintenance, and enforcement of the NAAQS that includes a PSD program. EPA's delegation of the PSD FIP is not the same as state adoption and submittal of state or district rules meeting PSD requirements and EPA's approval thereof.

NDEP Comment 2: NDEP requested clarification regarding EPA's ''proposed partial disapproval,'' at 80 FR 28898, column 3, ''of the interstate pollution transport portion'' of section 110(a)(2)(D)(i)(II) *i.e.* prongs 1 and 2. The commenter noted that EPA has proposed approval of the transport analysis submitted for nitrogen dioxide, yet proposed no action on the transport analysis for ozone and sulfur dioxide.

Response: In section IV.A. *Proposed Approvals and Partial Approvals* of our proposal notice we accidentally identified prongs 1–2 as being under section 110(a)(2)(D)(i)(II), when in fact prongs 1–2 are sub-elements of section 110(a)(2)(D)(i)(I). However, a proposed partial approval, partial disapproval for section 110(a)(2)(D)(i)(II) is correct as this sub-element relates to prongs 3 and 4 of section 110(a)(2)(D)(i). As our analysis makes clear in the TSD on pp. 21–22, EPA proposed a partial approval, partial disapproval for prong 3 under section 110(a)(2)(D)(i)(II) because NDEP and Washoe County do not have SIP approved PSD programs. However, we acknowledge NDEP's point that we proposed approval for prongs 1–2 for NO_2, and proposed no action on 2008 ozone or 2010 SO_2 under section 110(a)(2)(D)(i)(I). We thank NDEP for identifying this typographical error, and we have clarified it in the final rulemaking.

C. Sierra Club/Earthjustice Comments

Sierra Club/Earthjustice Comment 1: Sierra Club/Earthjustice asserted that the plain language of section 110(a)(2)(A) of the CAA, and EPA regulations, at 40 CFR 51.112, requires that SIPs contain emissions limits adequate to prohibit NAAQS exceedances in areas not designated nonattainment. The legislative history of the CAA, case law, EPA regulations such as 40 CFR 51.112(a), and EPA interpretations in rulemakings require the inclusion of enforceable emission limits in an infrastructure SIP to prevent NAAQS exceedances in areas not designated nonattainment. The commenter argued that the Nevada 2008 ozone infrastructure SIP submittal did not revise the existing ozone emission limits in response to the 2008 ozone NAAQS and failed to comport with asserted CAA requirements for SIPs to establish enforceable emission limits that are adequate to prohibit NAAQS exceedances in areas not designated nonattainment.

The commenter believed that the main objective of the infrastructure SIP process ''is to ensure that all areas of the country meet the NAAQS,'' and that nonattainment areas are addressed through nonattainment SIPs. The commenter maintained the NAAQS are the foundation for specific emission limitations for most large stationary sources, such as coal-fired power plants. The commenter stated its belief that, pursuant to section 107(a), the states have primary responsibility to maintain air quality through the controls and programs contained in the state's infrastructure SIPs as required by section 110(a)(2). The commenter also argued that, on its face, the CAA requires infrastructure SIPs ''to be adequate to prevent exceedances of the NAAQS,'' as provided in section 110(a)(1), which requires states to adopt a plan for implementation, maintenance, and enforcement of the NAAQS, and the language in section 110(a)(2)(A), which requires SIPs to include enforceable emissions limitations necessary to meet the requirements of the CAA and which the commenter claimed also should include the maintenance plan requirement. The commenter maintained the CAA definition of emission limit, when combined with the provisions stated above, requires ''enforceable emission limits on source emissions sufficient to ensure maintenance of the NAAQS.''

Response: EPA disagrees that section 110 is clear ''on its face'' and must be interpreted in the manner suggested by Sierra Club/Earthjustice. As we have previously explained in response to the commenter's similar comments on Virginia's SO_2 infrastructure SIP, section 110 is only one provision that is part of a complex structure governing implementation of the NAAQS program under the CAA, and it must be interpreted in the context of not only that structure, but in the context of the historical evolution of the Act.[13]

EPA interprets infrastructure SIPs as more general planning SIPs, consistent with the CAA as understood in light of its history and structure. When Congress enacted the CAA in 1970, it did not include provisions requiring states and the EPA to label areas as attainment or nonattainment. Rather, states were required to include all areas of the state in ''air quality control regions'' (AQCRs) and section 110 set forth the core substantive planning provisions for these AQCRs. At that time, Congress anticipated that states would be able to address air pollution quickly pursuant to the very general planning provisions in section 110 and could bring all areas into compliance with a new NAAQS within five years. Section 110(a)(2)(A)(i) specified that the section 110 plan provide for ''attainment'' of the NAAQS and section 110(a)(2)(B) specified that the plan must include ''emission limitations, schedules, and timetables for compliance with such limitations, and such other measures as may be necessary to insure attainment and maintenance [of the NAAQS].''

In 1977, Congress recognized that the existing structure was not sufficient and many areas were still violating the NAAQS. At that time, Congress for the first time added provisions requiring states and EPA to identify whether areas of a state were violating the NAAQS (*i.e.,* were nonattainment) or were meeting the NAAQS (*i.e.,* were attainment) and established specific planning requirements in section 172 for areas not meeting the NAAQS. In 1990, many areas still had air quality not meeting the NAAQS and Congress again amended the CAA and added yet another layer of more prescriptive planning requirements for each of the NAAQS. At that same time, Congress modified section 110 to remove references to the section 110 SIP providing for attainment, including removing pre-existing section 110(a)(2)(A) in its entirety and renumbering subparagraph (B) as section 110(a)(2)(A). Additionally, Congress replaced the clause ''as may be necessary to insure attainment and maintenance [of the NAAQS]'' with ''as may be necessary or appropriate to meet the applicable requirements of this chapter.'' Thus, the CAA has significantly evolved in the more than 40 years since it was originally enacted. While at one time section 110 of the CAA did provide the only detailed SIP planning provisions for states and specified that such plans must provide for attainment of the NAAQS, under the structure of the current CAA, section 110 is only the initial stepping-stone in the planning process for a specific NAAQS. More detailed, later-enacted provisions govern the substantive

[13] See Air Quality State Implementation Plans; Approvals and Promulgations: Virginia; Infrastructure Requirements for the 2010 Sulfur Dioxide National Ambient Air Quality Standards, 79 FR 17043 (March 27, 2014); Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Infrastructure Requirements for the 2010 Sulfur Dioxide National Ambient Air Quality Standards, 79 FR 62022 (October 16, 2014); and Final Approval of Illinois Infrastructure SIP Requirements for the 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS, 79 FR 62042 (October 16, 2014).

planning process, including planning for attainment of the NAAQS.

Thus, EPA asserts that section 110 of the CAA is only one provision that is part of the complicated structure governing implementation of the NAAQS program under the CAA, as amended in 1990, and it must be interpreted in the context of that structure and the historical evolution of that structure. In light of the revisions to section 110 since 1970 and the later-promulgated and more specific planning requirements of the CAA, EPA reasonably interprets the requirement in section 110(a)(2)(A) of the CAA that the plan provide for ''implementation, maintenance and enforcement'' to mean that the SIP must contain enforceable emission limits that will aid in attaining and/or maintaining the NAAQS. EPA has interpreted the requirement for emission limitations in section 110 to mean that the state may rely on measures already in place to address the pollutant at issue or any new control measures that the state may choose to submit. Finally, as EPA stated in the Infrastructure SIP Guidance which specifically provides guidance to states in addressing the 2010 SO_2 NAAQS, ''[t]he conceptual purpose of an infrastructure SIP submission is to assure that the air agency's SIP contains the necessary structural requirements for the new or revised NAAQS, whether by establishing that the SIP already contains the necessary provisions, by making a substantive SIP revision to update the SIP, or both.'' [14] [15]

EPA addressed the adequacy of Nevada's infrastructure SIP for section 110(a)(2)(A) purposes in the TSD accompanying the May 20, 2014 Notice of Proposed Rulemaking and explained that the SIP includes enforceable emission limitations and other control measures ''necessary or appropriate to meet the requirements of this chapter.'' [16] These include permit requirements for major sources in attainment and nonattainment areas and general permits for minor stationary sources.[17] As discussed in the TSD for this rulemaking, EPA finds the provisions for ozone emission limitations and measures adequately address section 110(a)(2)(A) to aid in attaining and/or maintaining the NAAQS and finds that the Clark County portion of the Nevada SIP has demonstrated it has the necessary tools to implement and enforce the NAAQS.

Sierra Club/Earthjustice Comment 2: The commenter claimed that two excerpts from the legislative history of the 1970 CAA support an interpretation that SIP revisions under CAA section 110 must include emissions limitations sufficient to show maintenance of the NAAQS in all areas of Nevada. The commenter also claimed that the legislative history of the CAA supports the interpretation that infrastructure SIPs under section 110(a)(2) must include enforceable emission limitations, citing the Senate Committee Report and the subsequent Senate Conference Report accompanying the 1970 CAA.

Response: EPA disagrees with the commenters claim. As provided in the previous response (Section C, response to *Sierra Club/Earthjustice Comment 1*), the CAA, as enacted in 1970, including its legislative history, cannot be interpreted in isolation from the later amendments that refined that structure and deleted relevant language from section 110 concerning demonstrating attainment. In any event, the two excerpts of legislative history the commenter cites provide that states should include enforceable emission limits in their SIPs. As provided in the response to *Sierra Club/Earthjustice Comment 6* below, the TSD for the proposed rule explains why the Nevada SIP includes enforceable emissions limitations for ozone for the relevant area.

Sierra Club/Earthjustice Comment 3: The commenter referenced two prior EPA rulemaking actions where EPA disapproved or proposed to disapprove SIPs and claimed they were actions in which EPA relied on section 110(a)(2)(A) and 40 CFR 51.112 to reject infrastructure SIPs. The commenter directed attention to a 2006 partial approval and partial disapproval of revisions to Missouri's existing plan addressing the SO_2 NAAQS. In that action, EPA relied on section 110(a)(2)(A) for disapproving an emission limit revision on the basis that the State failed to demonstrate the SIP revision was sufficient to ensure maintenance of the SO_2 NAAQS; EPA cited to 40 CFR 51.112 as requiring that a plan demonstrates the rules in a SIP are adequate to attain the NAAQS. Second, the commenter cited a 2013 disapproval of a revision to the SO_2 SIP for Indiana, where the revision removed an emission limit that applied to a specific emissions source at a facility in the State. See 78 FR 17157, 17158, (March 20, 2013) (proposed rule on Indiana SO_2 SIP) and 78 FR 78720, 78721 (December 27, 2013) (final rule on Indiana SO_2 SIP). The commenter believed that in the proposed disapproval, EPA relied on 40 CFR 51.112(a) in proposing to reject the revision, stating that the State had not demonstrated that the emission limit was ''redundant, unnecessary, or that its removal would not result in or allow an increase in actual SO_2 emissions.'' The commenter contended that EPA stated in that proposed disapproval that the State had not demonstrated that removal of the limit would not ''affect the validity of the emission rates used in the existing attainment demonstration'' and asserted that outside of startup, shutdown, and malfunction requirements, EPA's 2013 I–SIP guidance did not discuss postponement of any I–SIP requirements.

Response: EPA does not agree that the two prior actions referenced by Sierra Club/Earthjustice establish how EPA reviews infrastructure SIPs. It is clear from both the final Missouri rule and the proposed and final Indiana rule that EPA was not reviewing initial infrastructure SIP submissions under section 110 of the CAA, but rather reviewing revisions that would make an already approved SIP designed to demonstrate attainment of the NAAQS less stringent. EPA's partial approval and partial disapproval of revisions to restrictions on emissions of sulfur compounds for the Missouri SIP in 71 FR 12623 addressed a control strategy SIP and not an infrastructure SIP. The Indiana action provides even less support for the commenter's position. 78 FR 78720. The review in that rule was of a completely different requirement than the section 110(a)(2)(A) SIP. Rather, in that case, the State had an approved SO_2 attainment plan and was seeking to remove provisions from the SIP that it relied on as part of the modeled attainment demonstration. EPA proposed that the State had failed to demonstrate under

[14] See pages 1 and 2 of Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2), September 2013.

[15] Thus, EPA disagrees with Sierra Club's general assertion that the main objective of infrastructure SIPs is to ensure all areas of the country meet the NAAQS, as we believe the infrastructure SIP process is the opportunity to review the structural requirements of a state's air program. EPA, however, does agree with Sierra Club that the NAAQS are the foundation upon which emission limitations are set, but we believe, as explained in responses to other comments, that these emission limitations are generally set in the attainment planning process envisioned by part D of title I of the CAA, including, but not limited to, CAA sections 172 and 191–192.

[16] The TSD for this action (''Technical Support Document Evaluation of the Nevada Infrastructure SIP for 2008 Ozone, 2010 NO_2 and 2010 SO_2'' May 2015) is available online at *www.regulations.gov,* Docket ID Number EPA–R09–OAR–2014–0812–0038.

[17] See Table 3 of ''Technical Support Document Evaluation of the Nevada Infrastructure SIP for 2008 Ozone, 2010 NO_2 and 2010 SO_2'' May 2015.

section 110(l) of the CAA why the SIP revision would not result in increased SO_2 emissions and thus interfere with attainment of the NAAQS. See 78 FR 17157. Nothing in that proposed or final rulemaking addresses the necessary content of the initial infrastructure SIP for a new or revised NAAQS. Rather, it is simply applying the clear statutory requirement that a state must demonstrate why a revision to an approved attainment plan will not interfere with attainment of the NAAQS. The commenter includes a footnote explaining that EPA's infrastructure SIP guidance inappropriately postpones start-up, shutdown, and malfunction (SSM) requirements, offering no support for departing from the plain text of EPA's regulations and past practices.

The guidance states, ''two elements that could not be governed by the 3-year submission deadline of section 110(a)(1) . . . the following elements are considered by the EPA to be outside the scope of infrastructure SIP actions: (1) Section 110(a)(2)(C) to the extent that it refers to permit programs (known as ''nonattainment new source review'') under part D; and (2) section 110(a)(2)(I) in its entirety, which addresses SIP revisions for nonattainment areas. Both these elements pertain to SIP revisions that collectively are referred to as a nonattainment SIP or an attainment plan, which would be due by the dates statutorily prescribed under subparts 2 through 5 under part D, extending as far as 10 years following area designations for some elements. Because the CAA directs states to submit these plan elements on a separate schedule, the EPA does not believe it is necessary for states to include these elements in the infrastructure SIP submission due 3 years after adoption or revision of a NAAQS.''

As discussed in detail in the TSD and NPR, EPA finds the Nevada SIP meets the appropriate and relevant structural requirements of section 110(a)(2) of the CAA that will aid in attaining and/or maintaining the NAAQS and that the State demonstrated that it has the necessary tools to implement and enforce a NAAQS.[18]

Sierra Club/Earthjustice Comment 4: The commenter discussed several cases applying the CAA which they claimed support their contention that courts have been clear that section 110(a)(2)(A) requires enforceable emissions limits in infrastructure SIPs to prevent exceedances of the NAAQS. The commenter cited to language in *Train* v. *NRDC,* 421 U.S. 60, 78 (1975), addressing the requirement for ''emission limitations'' and stating that emission limitations ''are specific rules to which operators of pollution sources are subject, and which, if enforced, should result in ambient air which meet the national standards.'' The commenter also cited to *Pennsylvania Dept. of Envtl. Resources* v. *EPA,* 932 F.2d 269, 272 (3d Cir. 1991) for the proposition that the CAA directs EPA to withhold approval of a SIP where it does not ensure maintenance of the NAAQS, and to *Mision Industrial, Inc.* v. *EPA,* 547 F.2d 123, 129 (1st Cir. 1976), which quoted section 110(a)(2)(B) of the CAA of 1970. The commenter contends that the 1990 Amendments do not alter how courts have interpreted the requirements of section 110, quoting *Alaska Dept. of Envtl. Conservation* v. *EPA,* 540 U.S. 461, 470 (2004), which in turn quoted section 110(a)(2)(A) of the CAA and also stated that ''SIPs must include certain measures Congress specified'' to ensure attainment of the NAAQS. The commenter also quotes several additional opinions that purportedly stand for similar propositions: *Mont. Sulphur & Chem. Co.* v. *EPA,* 666 F.3d 1174, 1180 (9th Cir. 2012) (''The Clean Air Act directs states to develop implementation plans—SIPs—that 'assure' attainment and maintenance of [NAAQS] through enforceable emissions limitations''); *Hall* v. *EPA,* 273 F.3d 1146, 1153 (9th Cir. 2001) (''Each State must submit a [SIP] that specif[ies] the manner in which [NAAQS] will be achieved and maintained within each air quality control region in the State''*); Conn. Fund for Env't, Inc.* v. *EPA,* 696 F.2d 169, 172 (D.C. Cir. 1982) (CAA requires SIPs to contain ''measures necessary to ensure attainment and maintenance of NAAQS''); *Mich. Dept. of Envtl. Quality* v. *Browner,* 230 F.3d 181 (6th Cir. 2000) (EPA may not approve a SIP revision that does not demonstrate how the rules would not interfere with attainment and maintenance of the NAAQS). The commenter also cites *Comm. For a Better Arvin* v. *EPA,* No.11–73924, at*3–4 (9th Cir. May 20, 2015) as supporting their contention that the plain language of section 110(a)(2)(A) requires infrastructure SIPs to include enforceable emissions limits on sources sufficient to ensure maintenance of the NAAQS.

Response: The EPA disagrees with this comment. None of the cited cases hold that section 110(a)(2)(A) unambiguously requires infrastructure SIPs to include detailed plans providing for attainment and maintenance of the NAAQS in all areas of the state, nor do they shed light on how section 110(a)(2)(A) may reasonably be interpreted. With the exception of *Train,* none of the cases the commenter cites concerned the interpretation of CAA section 110(a)(2)(A) (or section 110(a)(2)(B) of the pre-1990 Act). Rather, the courts reference section 110(a)(2)(A) (or section 110(a)(2)(B) of the pre-1990 CAA) in the background sections of decisions in the context of either (1) a challenge to an EPA action on *revisions* to a SIP that were required and approved as meeting other provisions of the CAA, or (2) an enforcement action.

In *Train,* 421 U.S. 60, the Court was addressing a state revision to an attainment plan submission made pursuant to section 110 of the CAA, the sole statutory provision at that time regulating such submissions. The issue in that case concerned whether changes to requirements occurring before attainment deadlines were variances (which would be addressed pursuant to the provision governing SIP revisions) or ''postponements'' (which would have to meet the prescriptive criteria of section 110(f) of the CAA of 1970). The Court concluded that EPA reasonably interpreted section 110(f) not to restrict a state's choice of the mix of control measures needed to attain the NAAQS and that revisions to SIPs that would not impact attainment of the NAAQS by the attainment date were not subject to the limits of section 110(f). The issue was not whether a section 110 SIP must provide for attainment or whether emissions limits are needed as part of the SIP; rather the issue was which statutory provision governed when the state wanted to revise the emission limits in its SIP if such revision would not impact attainment or maintenance of the NAAQS. To the extent the holding in the case has any bearing on how section 110(a)(2)(A) might be interpreted, it is important to realize that in 1975, when the opinion was issued, section 110(a)(2)(B) (the predecessor to section 110(a)(2)(A)) expressly referenced the requirement to attain the NAAQS, a reference that was removed in 1990.

The decision in *Pennsylvania Dept. of Envtl. Resources* was also decided based on the pre-1990 provision of the CAA. At issue was whether EPA properly rejected a revision to an approved plan where the inventories relied on by the state for the updated submission had gaps. The Court quoted section 110(a)(2)(B) of the pre-1990 CAA in support of EPA's disapproval, but did not provide any interpretation of that provision. Yet, even if the Court had interpreted that provision, EPA notes

[18] EPA will take a separate action on CAA (a)(2)(D)(i)(I) Nevada ozone infrastructure SIP (*i.e.* the Good Neighbor SIP provisions).

that it was modified by Congress in 1990; thus, this decision has little bearing on the issue here.

At issue in *Mision Industrial,* 547 F.2d 123, was the definition of ''emissions limitation,'' not whether section 110 requires the state to demonstrate how all areas of the state will attain and maintain the NAAQS as part of their infrastructure SIPs. The language from the opinion the commenter quotes does not interpret but rather merely describes section 110(a)(2)(A). Sierra Club/Earthjustice does not raise any concerns about whether the measures relied on by the Commonwealth in the infrastructure SIP are ''emissions limitations'' and the decision in this case has no bearing here.

In *Mont. Sulphur & Chem. Co.,* 666 F.3d 1174, the Court was reviewing a federal implementation plan (FIP) that EPA promulgated after a long history of the state failing to submit an adequate SIP in response to EPA's finding under section 110(k)(5) that the previously approved SIP was substantially inadequate to attain or maintain the NAAQS, which triggered the state's duty to submit a new SIP to show how it would remedy that deficiency and attain the NAAQS. The Court cited generally to sections 107 and 110(a)(2)(A) of the CAA for the proposition that SIPs should assure attainment and maintenance of NAAQS through emission limitations, but this language was not part of the Court's holding in the case, which focused instead on whether EPA's finding of SIP inadequacy, disapproval of the state's responsive attainment demonstration, and adoption of a remedial FIP were lawful. The commenter suggests that *Alaska Dept. of Envtl. Conservation,* 540 U.S. 461, stands for the proposition that the 1990 CAA Amendments do not alter how courts interpret section 110. This claim is inaccurate. Rather, the Court quoted section 110(a)(2)(A), which, as noted previously, differs from the pre-1990 version of that provision and the court makes no mention of the changed language. Furthermore, Sierra Club/Earthjustice also quotes the Court's statement that ''SIPs must include certain measures Congress specified,'' but that statement specifically referenced the requirement in section 110(a)(2)(C), which requires an enforcement program and a program for the regulation of the modification and construction of new sources. Notably, at issue in that case was the state's ''new source'' permitting program, not its infrastructure SIP.

Two of the cases Sierra Club/Earthjustice cites, *Mich. Dept. of Envtl. Quality,* 230 F.3d 181, and *Hall,* 273 F.3d 1146, interpret CAA section 110(l), the provision governing ''revisions'' to plans, and not the initial plan submission requirement under section 110(a)(2) for a new or revised NAAQS, such as the infrastructure SIP at issue in this instance. In those cases, the courts cited to section 110(a)(2)(A) solely for the purpose of providing a brief background of the CAA.

In *Conn. Fund for Env't, Inc.* v. *EPA,* the Second Circuit was reviewing EPA action on a control measure SIP provision that adjusted the percent of sulfur permissible in fuel oil. 696 F.2d 169 (2d. Cir. 1982). The Second Circuit denied a petition for review concerning whether EPA needed to evaluate effects of the SIP revision on one pollutant or effects of changes on all possible pollutants. The Second Circuit did not address required measures for infrastructure SIPs and nothing in the opinion addressed whether infrastructure SIPs needed to contain measures to ensure attainment and maintenance of the NAAQS. The court did note, however, that, ''the need for flexibility in the administration of the [CAA] . . . should not be underestimated,'' and highlighted the court's past practice of being ''careful to defer to EPA's choice of methods to carry out its 'difficult and complex job' as long as that choice is reasonable and consistent with the Act.'' *Id.* at 173–74 (quoting *Conn. Fund for the Env't* v. *EPA,* 672 F.2d 998, 1006 (2d Cir. 1982). Here, section 110(a)(2)(A) is reasonably interpreted to require states to submit SIPs that reflect the first step in their planning for attaining and maintaining a new or revised NAAQS and that they contain enforceable control measures and a demonstration that the state has the available tools and authority to develop and implement plans to attain and maintain the NAAQS.

Finally, in *Comm. for a Better Arvin* v. *EPA,* the Petitioner challenged California's plans to improve air quality in the San Joaquin Valley. At issue was whether EPA erred in approving the state's SIP to comply with the NAAQS under section 109 concerning ozone and fine particulate matter. The court held that by approving the state's plans, even though the plans did not include the state-adopted mobile emissions standards on which those plans rely to achieve their emissions reductions goals, EPA violated the CAA. However, the court found that EPA did not violate the CAA by not requiring inclusion of other state mechanisms in its plans, and that other control measures approved by EPA are enforceable commitments as the CAA requires. While the court cited to section 110(a)(2)(A) for the proposition that SIPs generally should assure attainment and maintenance of NAAQS through emission limitations, such language was not dispositive as to whether or not *infrastructure* SIPs specifically must include enforceable limits on sources sufficient to maintain the NAAQS. To the contrary, the CAA provides states and EPA with other tools to address concerns that arise with respect to purported violations of the NAAQS in a designated attainment area, such as the authority to redesignate areas pursuant to section 107(d)(3), the authority to issue a ''SIP Call'' pursuant to section 110(k)(5), or the general authority to approve SIP revisions that can address violations of the NAAQS through other appropriate measures.

Sierra Club/Earthjustice Comment 5: The commenter cited to 40 CFR 51.112(a), providing that ''[e]ach plan must demonstrate that the measures, rules and regulations contained in it are adequate to provide for the timely attainment and maintenance of the [NAAQS]'' and asserted that this regulation requires all SIPs to include emissions limits necessary to ensure attainment of the NAAQS. The commenter stated their belief that ''[a]lthough these regulations were developed before the Clean Air Act separated infrastructure SIPs from nonattainment SIPs—a process that began with the 1977 amendments and was completed by the 1990 amendments—the regulations apply to I–SIPs.'' Finally, the commenter stated that EPA has not changed the regulation since 1990, and that in the preamble to the final rule promulgating 40 CFR 51.112, EPA expressly identified that its new regulations were not implementing Subpart D. *See* Air Quality Implementation Plans; Restructuring SIP Preparation Regulations, 51 FR 40,656, 40,656 (Nov. 7, 1986) (''It is beyond the scope of th[is] rulemaking to address the provisions of Part D of the Act. . . .''). The commenter thus concludes that 40 CFR 51.112 was intended to apply to infrastructure SIPs.

Response: The commenter's reliance on 40 CFR 51.112 to support its argument that infrastructure SIPs must contain emission limits ''adequate to prohibit NAAQS exceedances'' and adequate or sufficient to ensure the maintenance of the NAAQS is not supported. As an initial matter, EPA notes and the commenter recognizes this regulatory provision was initially promulgated and ''restructured and consolidated'' prior to the CAA Amendments of 1990, in which Congress removed all references to ''attainment'' in section 110(a)(2)(A).

And, it is clear on its face that 40 CFR 51.112 applies to plans specifically designed to attain the NAAQS. EPA interprets these provisions to apply when states are developing ''control strategy'' SIPs such as the detailed attainment and maintenance plans required under other provisions of the CAA, as amended in 1977 and again in 1990, such as sections 175A and 191–192. The commenter suggests that these provisions must apply to section 110 SIPs because in the preamble to EPA's action ''restructuring and consolidating'' provisions in part 51, EPA stated that the new attainment demonstration provisions in the 1977 Amendments to the CAA were ''beyond the scope'' of the rulemaking. It is important to note, however, that EPA's action in 1986 was not to establish new substantive planning requirements, but rather was meant merely to consolidate and restructure provisions that had previously been promulgated. EPA noted that it had already issued guidance addressing the new ''Part D'' attainment planning obligations. Also, as to maintenance regulations, EPA expressly stated that it was not making any revisions other than to re-number those provisions. 51 FR 40657.

Although EPA was explicit that it was not establishing requirements interpreting the provisions of new ''Part D'' of the CAA, it is clear that the regulations being restructured and consolidated were intended to address control strategy plans. In the preamble, EPA clearly stated that 40 CFR 51.112 was replacing 40 CFR 51.13 (''Control strategy: SO_X and PM (portion)''), 51.14 (''Control strategy: CO, HC, O_X and NO_2 (portion)''), 51.80 (''Demonstration of attainment: Pb (portion)''), and 51.82 (''Air quality data (portion)''). Id. at 40660. Thus, the present-day 40 CFR 51.112 contains consolidated provisions that are focused on control strategy SIPs, and the infrastructure SIP is not such a plan.

Sierra Club/Earthjustice Comment 6: Citing section 110(a)(2)(A) of the CAA, the commenter contends that EPA failed to meaningfully evaluate whether the emissions limitations and other control measures are adequate to ensure attainment and maintenance of the NAAQS in EPA's proposed approval of the Clark County Infrastructure SIP. The commenter further contends that ''nearly all of the legal authorities . . . pertain only to new or additional sources . . . (and) would do nothing to reduce existing sources.''

Response: EPA believes that section 110(a)(2)(A) of the CAA is reasonably interpreted to require states to submit infrastructure SIPs that reflect the first step in their planning for attainment and maintenance of a new or revised NAAQS. These SIP revisions should contain a demonstration that the state has the available tools and authority to develop and implement plans to attain and maintain the NAAQS and show that the SIP has enforceable control measures. In light of the structure of the CAA, EPA's long-standing position regarding infrastructure SIPs is that they are general planning SIPs to ensure that the state has adequate resources and authority to implement a NAAQS in general throughout the state and not detailed attainment and maintenance plans for each individual area of the state. As mentioned above, EPA has interpreted this to mean, with regard to the requirement for emission limitations, that states may rely on measures already in place to address the pollutant at issue or any new control measures that the state may choose to submit.

As stated in response to *Sierra Club/Earthjustice's Comment 5,* section 110 of the CAA is merely one provision within the complex, post-1990 regulatory structure governing implementation of the NAAQS, and must be interpreted in the context of that regulatory structure as well as the Act's historical evolution. In light of the revisions to section 110 since 1970 and the later-promulgated and more specific planning requirements of the CAA, EPA reasonably interprets the requirement in section 110(a)(2)(A) of the CAA that the plan provide for ''implementation, maintenance and enforcement'' to mean that the SIP must contain enforceable emission limits that will aid in attaining and/or maintaining the NAAQS, and that the state demonstrate that it has the necessary tools to implement and enforce a NAAQS (*e.g.,* adequate state personnel and an enforcement program). As discussed above, EPA has interpreted the requirement for emission limitations in section 110 to mean that the state may rely on measures already in place to address the pollutant at issue or any new control measures that the state may choose to submit. Finally, as EPA stated in the Infrastructure SIP Guidance which specifically provides guidance to states in addressing the 2010 SO_2 NAAQS, ''[t]he conceptual purpose of an infrastructure SIP submission is to assure that the air agency's SIP contains the necessary structural requirements for the new or revised NAAQS, whether by establishing that the SIP already contains the necessary provisions, by making a substantive SIP revision to update the SIP, or both.'' [19]

EPA believes that the proper inquiry is whether Nevada, including Clark County, has met the basic structural SIP requirements appropriate at the point in time EPA is acting upon the infrastructure submittal. Emissions limitations and other control measures needed to attain the NAAQS in areas designated nonattainment for that NAAQS are due on a different schedule from the section 110 infrastructure elements. A state, like Nevada, may reference pre-existing SIP emission limits or other rules contained in part D plans for previous NAAQS in an infrastructure SIP submission. For example, NDEP and Clark County submitted a list of existing emission reduction measures in the SIP that control emissions of ozone, which are included in the discussion of Element A of the TSD supporting the NPRM. These provisions have the ability to reduce ozone overall. We mention both NDEP and Clark County because they both regulate facilities within Clark County. As mentioned in the TSD supporting the NPRM, NDEP has the sole authority to regulate facilities that generate energy from steam boilers burning fossil fuels. Fuel combustion is the second largest source of NO_X emissions (16%) after (primarily EPA regulated) mobile sources (82%). Some of the largest stationary source emitters of NO_X in Clark County, such as the Reid Gardner Generating Station, are regulated by NDEP.

While NO_X emissions are regulated at the federal, state and local level, the commenter specifically raised concerns with Clark County's legal authorities. EPA disagrees that Clark County legal authorities only pertain to new or additional sources. The County's permitting programs and regulatory controls also apply to existing facilities. We acknowledge that the Clark County portion of the ozone SIP submittal does not propose new regulations for the Nevada SIP that would reduce emissions from existing sources, such as those commonly included in an attainment SIP, but that does not mean that existing sources are not regulated at the state and local level.

EPA believes it is not appropriate to bypass the attainment planning process by imposing separate attainment planning process requirements outside the attainment planning process and into the infrastructure SIP process. Such

[19] Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2), September 2013 at page 2.

actions would be disruptive and premature absent exceptional circumstances and would interfere with a state's planning process. See *In the Matter of EME Homer City Generation LP and First Energy Generation Corp.,* Order on Petitions Numbers III–2012–06, III–2012–07, and III2013–01 (July 30, 2014) (hereafter, *Homer City/Mansfield* Order) at 10–19 (finding that the Pennsylvania SIP did not require imposition of SO_2 emission limits on sources independent of the part D attainment planning process contemplated by the CAA). EPA believes that the history of the CAA, and intent of Congress for the CAA as described above, demonstrate clearly that it is within the section 172 and general part D attainment planning process that Nevada must include additional limits on ozone precursor emissions in order to demonstrate future attainment, where needed, for any areas in Nevada or other states that may be designated nonattainment in the future, in order to reach attainment of the 2008 ozone NAAQS.

EPA does not agree with the commenter's reliance on 40 CFR 51.112 to support its argument that infrastructure SIPs must contain emission limits adequate to provide for timely attainment and maintenance of the standard. As explained previously in response to *Sierra Club/Earthjustice Comment 5,* EPA notes this regulatory provision clearly on its face applies to plans specifically designed to attain the NAAQS and not to infrastructure SIPs which show the states have in place structural requirements necessary to implement the NAAQS. Therefore, EPA finds 40 CFR 51.112 inapplicable to its analysis of the Nevada ozone infrastructure SIP.

Sierra Club/Earthjustice Comment 7: The commenter expressed concern that the design values for the Clark County air quality monitors exceeded the ozone NAAQS, yet the area remained designated attainment/unclassifiable. The commenter also referenced a Sierra Club petition, denied by EPA, to redesignate Clark County and other areas to nonattainment [20] and asserted that ''design values for monitors in Clark County have exceeded the 2008 0.075 ppm standard for every three-year period since 2001–2003 with the lone exception of 2009–2011.''

Response: EPA's decision not to redesignate the areas identified in the Sierra Club's petition involved many factors, which we discuss in the next paragraph, including: the role of the declining national NO_X and VOC emissions, particularly from mobile sources, which are primarily regulated by EPA; the limited planning requirements associated with marginal nonattainment areas; the development of collaborative strategies to bring newly violating areas back into compliance as soon as possible; and the fluctuation of ozone levels with varying weather conditions.[21] We will discuss the factors mentioned in EPA's response to the Sierra Club's redesignation petition (for 57 areas in the U.S.), specifically for Clark County.

Our response to Sierra Club's petition explained, ''emissions of NO_X in the U.S. are expected to decline by 29% from 2011 through 2018, even when accounting for increases in some sectors, such as the oil and gas industry.'' NO_X emissions from on-road mobile sources, locomotives, and non-road engines are expected to comprise more than 90% of the reductions. The air quality of Clark County stands to benefit even more than the rest of the country on a relative basis, because mobile sources represent 82% of NO_X sources within Clark County, but only 58% nationally.[22] Our letter also noted 10% declining VOC emissions from 2011 to 2018, nearly all of which resulted from on-road and off-road engine rules.[23]

For Clark County's remaining sources of NO_X emissions, nearly 18% of the total NO_X emissions for the 2011 Emissions Inventory, more than 33% (3,066 tons) were generated by a single facility, the Reid Gardner Generating Station,[24] though Clark County states this figure had dropped to 1,848 tons by 2013.[25] As we explained in the TSD for our proposed rulemaking, Reid Gardner retired three of four coal-fired boilers at the end of 2014. The fourth unit will be closed in 2017. Senate Bill 123, the Nevada law that required the early retirement of 557 megawatts (MW) of electrical generating capacity at Reid Gardner, allows for the replacement of these units with substantially cleaner burning natural gas-fired boilers (500–550 MW) and renewable generating capacity (150 MW). The cleaner burning facility at Reid Gardner should provide substantial air quality benefits for Clark County.

Clark County has joined EPA's voluntary Ozone Advance Program, a collaborative effort between EPA, states, tribes, and local governments. It encourages proactive efforts to improve air quality that could better position areas to stay in attainment. The docket for this rulemaking includes Clark County's 2014 and 2015 submittals for the program.[26] These documents acknowledge, as the comments note, increasing design values of the network monitoring system. The documents also discuss the use of grants from the (federal) Department of Transportation's Congestion, Mitigation and Air Quality Incentive Program, non-regulatory measures to improve air quality, and the previously mentioned reductions at the Reid Gardner Generating Station.

The commenter is correct in stating that Clark County's design value appears to have increased in the years following the county's designation as an attainment area (which had been based on 2009–2011 data forming the 2011 design value). However, as we have noted, NO_2 and VOC estimated emissions are declining within Clark County. Additionally, ozone is not dependent solely on the emission of precursors.[27] Variations in weather

[20] Petition to the Administrator of the U.S. Environmental Protection Agency to Redesignate as Nonattainment 57 Areas with 2012 Design Values Violating the 2008 8-Hour National Ambient Air Quality Standards for Ozone (Docket: EPA–HQ–OAR–2014–0563, and included in the docket for this rulemaking)

[21] In addition to the factors discussed above, EPA's response to the petition, a letter from Gina McCarthy to Seth Johnson, Sierra Club, dated August 14, 2014 (included in the docket for this rulemaking), also states that 22 of the 57 areas were again attaining the ozone NAAQS based on their 2013 design values.

[22] Nevada NO_X emissions by category (*e.g.* mobile sources, point sources) can be found at *http://www.epa.gov/cgi-bin/broker?_service=data&_debug=0&_program=dataprog.state_1.sas&pol=NOX&stfips=32.*

[23] EPA's August 14, 2014 letter to the Sierra Club also discussed increases in NO_X and VOC emissions from the oil and gas sector but did not discuss the impact of biogenic VOC emissions, which are likely to remain constant. (EPA's letter is available in the docket for EPA–HQ–OAR–2014–0563 at *http://www.regulations.gov/.*)

[24] Based on an emissions query of EPA's Air Markets Division Database (for the year 2011) at *http://ampd.epa.gov/ampd/,* accessed on July 15, 2015.

[25] Clark County Ozone Advance Submission, submitted to Ms. Laura Bunte, from Lewis Wallenmeyer, Director, Clark County Department of Air Quality, at pp. 2–4, June 23, 2014, available in the docket for this rulemaking.

[26] (1) Clark County Department of Air Quality, Ozone Advance Program, Path Forward, June 2014 and (2) Clark County Department of Air Quality, Ozone Advance Program, Progress Report, June 2015.

[27] EPA notes that two monitors identified by the commenter (Spring Mountain Youth Camp monitor (AQS ID 32–003–7771) and Las Vegas Paiute Tribal monitor (AQS ID 32–003–8000)) are considered non-regulatory and not comparable to the NAAQS. The Spring Mountain monitor is not operated per FEM specifications and cannot be considered a State/Local Air Monitoring Station and therefore, the collected data, while usable for research purposes, is not comparable to the NAAQS. Similarly, The Las Vegas Paiute Tribal monitor is designated as non-regulatory monitor operated for informational purposes only.

conditions play an important role in determining ozone levels and thus design values can fluctuate from year to year, which EPA also noted in our response to the Sierra Club's petition for redesignation. Recent EPA modeling, which included Clark County, estimated a 2017 Clark County ozone maximum design value of 72.8 parts per billion (or 0.0728 parts per million (ppm)), below the 2008 ozone NAAQS of 0.075 ppm.[28]

III. Final Action

Under CAA section 110(k)(3), and based on the evaluation and rationale presented in the proposed rule, the related TSDs, and this final rule, EPA is approving in part and disapproving in part Nevada's Infrastructure Submittal for the 2008 Ozone, 2010 NO_2 and 2010 SO_2 NAAQS. We are also taking final action on other regulatory changes discussed in our proposed rule. In the following subsections, we list the elements for which we are finalizing Infrastructure SIP approval or disapproval and provide a summary of the basis for those elements that are partially disapproved. We also describe the consequences of our disapprovals and discuss finalizing the other regulatory changes in our proposed rule.

A. Summary of Infrastructure SIP Approvals and Partial Approvals

EPA is approving Nevada's Infrastructure SIP for the 2008 Ozone, 2010 NO_2 and 2010 SO_2 NAAQS with respect to the following requirements:

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C) (in part): Program for enforcement of control measures and regulation of new stationary sources (full approval for Clark County).
- 110(a)(2)(D) (in part, see below): Interstate Pollution Transport.
- 110(a)(2)(D)(i)(I) (in part)—significant contribution to nonattainment, or prongs 1 and 2 (full approval of NDEP, Clark County and Washoe County for the NO_2 NAAQS).
- 110(a)(2)(D)(i)(II) (in part)—interstate transport—prevention of significant deterioration, or prong 3 (full approval for Clark County).
- 110(a)(2)(D)(i)(II) (full approval)—visibility transport, or prong 4.
- 110(a)(2)(D)(ii) (in part)—interstate pollution abatement and international air pollution (full approval for Clark County).
- 110(a)(2)(E): Adequate resources and authority, conflict of interest, and oversight of local governments and regional agencies.
- 110(a)(2)(F): Stationary source monitoring and reporting.
- 110(a)(2)(G): Emergency episodes.
- 110(a)(2)(H): SIP revisions.
- 110(a)(2)(J) (in part): Consultation with government officials, public notification, and prevention of significant deterioration (PSD) and visibility protection (full approval for Clark County).
- 110(a)(2)(K): Air quality modeling and submission of modeling data.
- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

EPA is taking no action on Interstate Transport—significant contribution to nonattainment for NDEP, Clark County and Washoe County on the Ozone and SO_2 NAAQS [Section 110(a)(2)(D)(i)(II)].

B. Summary of Infrastructure SIP Partial Disapprovals

EPA is disapproving Nevada's Infrastructure Submittal with respect to the following infrastructure SIP requirements:

- 110(a)(2)(C) (in part): Program for enforcement of control measures and regulation of new and modified stationary sources (disapproved for all NAAQS addressed by this rule and covered by the NDEP and Washoe County PSD permitting programs).
- 110(a)(2)(D) (in part, see below): Interstate Pollution Transport.
- 110(a)(2)(D)(i)(II) (in part): interstate transport—prevention of significant deterioration, or prong 3 (disapproval for all NAAQS addressed by this rule and covered by the NDEP and Washoe County PSD permitting programs).
- 110(a)(2)(D)(ii) (in part)—interstate pollution abatement and international air pollution (disapproved for all NAAQS addressed by this rule and covered by the NDEP and Washoe County PSD permitting programs).
- 110(a)(2)(J) (in part): Consultation with government officials, public notification, PSD, and visibility protection (disapproval for all NAAQS addressed by this rule and covered by the NDEP and Washoe County PSD permitting programs).

As explained in our proposed rule, TSD, and section II of this final rule, we are disapproving Nevada's Infrastructure Submittal for the NDEP and Washoe County portions of the SIP with respect to the PSD-related requirements of CAA sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), 110(a)(2)(D)(ii), and 110(a)(2)(J) because the Nevada SIP does not fully satisfy the statutory and regulatory requirements for PSD permit programs under part C, title I of the Act. Both NDEP and Washoe County implement the Federal PSD program in 40 CFR 52.21 for all regulated new source review (NSR) pollutants, pursuant to delegation agreements with EPA.[29] Accordingly, although the Nevada SIP remains deficient with respect to PSD requirements in both the NDEP and Washoe County portions of the SIP, these deficiencies are adequately addressed in both areas by the federal PSD program.

C. Consequences of Partial Disapprovals

EPA takes disapproval of a state plan seriously. We believe that it is preferable, and preferred in the provisions of the Clean Air Act, that these requirements be implemented through state plans. A state plan need not contain exactly the same provisions that EPA might require, but EPA must be able to find that the state plan is consistent with the requirements of the Act in accordance with its obligations under section 110(k). Further, EPA's oversight role requires that it assure consistent implementation of Clean Air Act requirements by states across the country, even while acknowledging that individual decisions from source to source or state to state may not have identical outcomes. EPA believes these disapprovals are the only path that is consistent with the Act at this time.

Under section 179(a) of the CAA, final disapproval of a submittal that addresses a requirement of part D of title I of the CAA (CAA sections 171–193) or is required in response to a finding of substantial inadequacy as described in CAA section 110(k)(5) (SIP Call) starts a sanctions clock. Nevada's Infrastructure SIP Submittals were not submitted to meet either of these requirements. Therefore, our partial disapproval of Nevada's Infrastructure Submittals does not trigger mandatory sanctions under CAA section 179.

In addition, CAA section 110(c)(1) provides that EPA must promulgate a FIP within two years after finding that a state has failed to make a required submission or disapproving a SIP submission in whole or in part, unless EPA approves a SIP revision correcting the deficiencies within that two-year period. As discussed in section III.B of this final rule and in our TSD, we are finalizing several partial disapprovals. These disapprovals do not result in new FIP obligations, because EPA has already promulgated FIPs to address the identified deficiencies.

[28] 80 FR 46271 (August 4, 2015) also at *http://www.epa.gov/airtransport/ozonetransport NAAQS.html,* Design Values listed in Ozone Design Values_Transport NODA.xlsx.

[29] 40 CFR 52.1485.

D. Summary of Other Regulatory Actions

EPA is finalizing the other regulatory actions discussed in the proposed rule: Defining the term Nevada Intrastate Air Quality Control Region; reclassifying the Nevada Intrastate and Las Vegas Intrastate Air Quality Control Regions from priority IA to priority III for emergency episodes; removing historic language from the Nevada SIP, which refers to a facility no longer in existence.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

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.,* because this partial approval and partial disapproval of SIP revisions under CAA section 110 will not in-and-of itself create any new information collection burdens but simply approves certain State requirements, and disapproves certain other State requirements, for inclusion into the SIP. Burden is defined at 5 CFR 1320.3(b).

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. For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this rule on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. This rule does not impose any requirements or create impacts on small entities. This partial SIP approval and partial SIP disapproval under CAA section 110 will not in-and-of itself create any new requirements but simply approves certain State requirements, and disapproves certain other State requirements, for inclusion into the SIP. Accordingly, it affords no opportunity for EPA to fashion for small entities less burdensome compliance or reporting requirements or timetables or exemptions from all or part of the rule. Therefore, this action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. EPA has determined that the partial approval and partial disapproval action 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 action approves certain pre-existing requirements, and disapproves certain other 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, entitled ''Federalism'' (64 FR 43255, August 10, 1999), 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.''

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, as specified in Executive Order 13132, because it merely approves certain State requirements, and disapproves certain other State requirements, for inclusion into the SIP and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, Executive Order 13132 does not apply to this action.

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 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. In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where 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. Thus, Executive Order 13175 does not apply to this rule.

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

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997). This partial approval and partial disapproval under CAA section 110 will not in-and-of itself create any new regulations but simply approves certain State requirements, and disapproves certain other State requirements, for inclusion into the SIP.

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

This rule is not subject to Executive Order 13211 (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(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

EPA believes that this action is not subject to requirements of Section 12(d) of NTTAA because application of those requirements would be inconsistent with the Clean Air Act.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Population

Executive Order (EO) 12898 (59 FR 7629, Feb. 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this rulemaking.

K. Congressional Review Act

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 rule 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). This rule will be effective on December 3, 2015.

L. Petitions for Judicial Review

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 *January 4, 2016.* Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Nitrogen dioxide, Sulfur dioxide, Reporting and recordkeeping requirements.

40 CFR Part 81

Environmental protection, air pollution control, incorporation by reference, Nevada Intrastate Air Quality Control Region.

Dated: September 30, 2015.

Jared Blumenfeld,

Regional Administrator, Region 9.

Therefore, 40 CFR Chapter I is amended 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. In § 52.1470, paragraph (e), the table is amended by adding four entries after the entry for ''Small Business Stationary Source Technical and Environmental Compliance Assistance Program'' to read as follows:

§ 52.1470 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED NEVADA NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA Approval date	Explanation
Air Quality Implementation Plan for the State of Nevada				
* *	* *	* *	* *	*
Nevada's Clean Air Act § 110(a)(1) and (2) State Implementation Plan for the 2008 ozone NAAQS, excluding appendices A–F for NDEP; excluding the cover letter to NDEP and attachments A and B for Clark County; and excluding the cover letter to NDEP and Attachments A and B for Washoe County.	State-wide	12/20/2012	[Insert **Federal Register** citation] 11/3/2015.	''Infrastructure'' SIP for NDEP, Clark County and Washoe County for the 2008 8-hour ozone standard.

EPA-APPROVED NEVADA NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES—Continued

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA Approval date	Explanation
Nevada's Clean Air Act §110(a)(1) and (2) State Implementation Plan for the 2010 nitrogen dioxide NAAQS, excluding appendices A–G for NDEP; excluding the cover letter to NDEP and attachments A–C for Clark County; and excluding the cover letter to NDEP, Washoe County portion of Nevada's State Implementation Plan for the 2010 nitrogen dioxide NAAQS, and attachments A and B for Washoe County.	NDEP jurisdiction and Clark County.	1/18/2013	[Insert **Federal Register** citation] 11/3/2015.	"Infrastructure" SIP for NDEP and Clark County for the 2010 1-hour nitrogen dioxide standard.
Washoe County Portion of Nevada's Clean Air Act §110(a)(1) and (2) State Implementation Plan for the 2010 nitrogen dioxide NAAQS, excluding cover letter to NDEP and attachments A–B.	Washoe County	3/15/2013	[Insert **Federal Register** citation] 11/3/2015.	"Infrastructure" SIP for Washoe County for the 2010 1-hour nitrogen dioxide standard.
Nevada's Clean Air Act §110(a)(1) and (2) State Implementation Plan for the 2010 sulfur dioxide NAAQS, excluding the cover letter and appendices A–E for NDEP; excluding the cover letter to NDEP and attachments A–C for Clark County; and excluding the cover letter to NDEP, attachments A–C, and public notice information for Washoe County.	State-wide	6/3/2013	[Insert **Federal Register** citation] 11/3/2015.	"Infrastructure" SIP for NDEP, Clark County and Washoe County for the 2010 1-hour sulfur dioxide standard.
*	*	*	*	*	*	*

■ 3. Section 52.1471 is revised to read as follows:

§ 52.1471 Classification of regions.

The Nevada plan is evaluated on the basis of the following classifications:

Air quality control region	Pollutant				
	Particulate matter	Sulfur oxides	Nitrogen dioxide	Carbon monoxide	Ozone
Las Vegas Intrastate	I	III	III	I	I
Northwest Nevada Intrastate	I	III	III	III	III
Nevada Intrastate	IA	III	III	III	III

■ 4. Section 52.1472 is amended by adding paragraphs (h),(i) and (j) to read as follows:

§ 52.1472 Approval status.

* * * * *

(h) *2008 8-hour ozone NAAQS:* The SIPs submitted on December 20, 2012 are partially 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; no action is taken for CAA element 110(a)(2)(D)(i)(I).

(i) *2008 1-hour nitrogen dioxide NAAQS:* The SIPs submitted on January 18, 2013 are partially disapproved for Clean Air Act (CAA) elements 110(a)(2)(C), (D)(i)(II), (D)(ii), and (J) for the Nevada Division of Environmental Quality (NDEP) and Washoe County portions of the Nevada SIP.

(j) *2008 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; no action is taken for CAA element 110(a)(2)(D)(i)(I) .

§ 52.1475 [Removed and Reserved]

■ 5. Section 52.1475 is removed and reserved.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 6. The authority citation for part 81 continues to read as follows:

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

Subpart B—Designation of Air Quality Control Regions

■ 7. Section 81.276 is added to read as follows:

§ 81.276 Nevada Intrastate Air Quality Control Region.

The Nevada Intrastate Air Quality Control Region consists of the territorial area encompassed by the boundaries of the following jurisdictions or described area (including the territorial area of all municipalities (as defined in section 302(f) of the Clean Air Act, 42 U.S.C. 1857h(f)) geographically located within the outermost boundaries of the area so delimited):

In the State of Nevada: Churchill County, Elko County, Esmeralda County, Eureka County, Humboldt County, Lander County, Lincoln County, Mineral County, Nye County, Pershing County, and White Pine County.

[FR Doc. 2015–27029 Filed 11–2–15; 8:45 am]

BILLING CODE 6560–50–P