

State Implementation Plan Certification to Address the Requirements of Clean Air Act Section 110(a)(2)(D)(i)(I) for the 2010 Nitrogen Dioxide National Ambient Air Quality Standard

Background

The Clean Air Act (CAA) requires the U.S. Environmental Protection Agency (EPA) to set National Ambient Air Quality Standards (NAAQS) for specific pollutants known as criteria pollutants. The CAA also requires EPA to periodically review and update the NAAQS, as necessary, to ensure the standards provide adequate health and environmental protection. On January 22, 2010, EPA promulgated a revision to the nitrogen dioxide (NO₂) NAAQS by establishing a new primary 1-hour standard of 100 parts per billion (ppb).¹ This NAAQS revision was published in the Federal Register on February 9, 2010 ([75 FR 6473](#)).

When EPA establishes a new NAAQS or revises an existing one, each state is required to adopt and submit a plan which provides for implementation, maintenance, and enforcement of the NAAQS. The SIP must demonstrate that the state meets the requirement of each applicable element of Section 110(a)(2) of the CAA. Since many of these elements pertain to the basic infrastructure of air quality management programs, such as having the necessary legal authority and adequate resources, this SIP is often referred to as an “Infrastructure SIP.” The Infrastructure SIP is required by Section 110(a)(1) of the CAA and is due three years after any NAAQS is established or revised.

On March 12, 2014, the New Mexico Environment Department (NMED) submitted its Infrastructure SIP to EPA for the new 1-hour NO₂ standard. At that time, NMED was unable to address the interstate transport requirement of the CAA section 110(a)(2)(D)(i)(I) for the 1-hour NO₂ NAAQS due to ongoing litigation and associated regulatory uncertainty. Now that the litigation and regulatory uncertainty has been resolved,² NMED is submitting an Infrastructure SIP certification to fulfill New Mexico’s CAA Section 110(a)(2)(D)(i)(I) obligations for the 1-hour NO₂ NAAQS. Section 110(a)(2)(D)(i)(I) of the CAA requires that a state’s SIP:

(D) contain adequate provisions-

(i) prohibiting, consistent with the provisions of this title, any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will—

(I) contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard.

On February 17, 2012 EPA published air quality designations for the 2010 1-hour primary NO₂ NAAQS ([77 FR 9532](#)). In that action, EPA designated all areas in the country as “unclassifiable/attainment,” and

¹ EPA also retained the existing 53 ppb annual standard. In a separate action on the secondary NO₂ NAAQS (77 FR 20217, April 3, 2012) EPA retained the 53 ppb annual standard and did not include the 1 hour standard as a secondary standard.

² In general this refers to: (1) Supreme Court case No. 12–1182 (Environmental Protection Agency et al. v. EME Homer City Generation, L. P., et al.) decided on April 29, 2014, and remanded to the D.C. Circuit Court; and (2) the subsequent D.C. Circuit Court decision on July 28, 2015, in case No. 11-1302.

no areas have subsequently been designated nonattainment or identified as maintenance areas for the 2010 1-hour NO₂ NAAQS, meaning that no state is significantly contributing to nonattainment or interfering with maintenance of the NO₂ NAAQS in another state. Therefore, New Mexico's SIP adequately prohibits New Mexico sources from significantly contributing to nonattainment or interfering with maintenance of the primary 2010 1-hour NO₂ NAAQS in any other state.

Administrative Materials

The submittal of this SIP certification complies with the procedural elements of Subpart F of 40 CFR 51 and the applicable criteria in Appendix V or 40 CFR 51.

Legal Authority

Legislative authority for New Mexico's air quality program is codified in Chapter 74 (Environmental Improvement), Article 2 (Air Pollution) of the New Mexico Statutes Annotated, which authorizes the State Environmental Improvement Board and the Environment Department to implement the requirements of the CAA in New Mexico. The regulatory authority to implement CAA programs is contained in the New Mexico Administrative Code (NMAC), specifically Chapter 2 of Title 20 for Air Quality. These regulations are part of the approved New Mexico SIP and cited in 40 CFR 52.1620(c) unless otherwise stated.

Evidence of Public Notice and Public Hearing Certification

The public comment period commenced on April 15, 2021, with the publication of the notice in both the printed and online versions of the Albuquerque Journal. The public notice provided an opportunity for the public and other interested parties to request a hearing. NMED did not receive any public comments or requests for a hearing.