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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2014-0812; FRL-9956-11-Region 9]

Approval of Air Quality State Implementation Plans; Nevada; Infrastructure Requirements to Address Interstate Transport for the 2008 Ozone NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the Nevada Division of Environmental Protection on April 10, 2013, and supplemented on March 25, 2016. The SIP revision and supplement address the interstate transport requirements of Clean Air Act (CAA or "Act") section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone (O_3) national ambient air quality standard (NAAQS). The EPA's rationale for proposing to approve Nevada's April 10, 2013 SIP revision and March 25, 2016 supplement is described in this notice.

DATES: Written comments must be received on or before [Insert date 30 days from the date of publication in the Federal Register].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-OAR-2014-0812 at http://www.regulations.gov, or via email to kelly.thomasp@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other

information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the "FOR FURTHER INFORMATION CONTACT" section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit http://www2.epa.gov/dockets/commenting-epa-dockets.

FOR FURTHER INFORMATION CONTACT: Tom Kelly, EPA Region IX, (415) 972-3856, kelly.thomasp@epa.gov.

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

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I. Background

CAA sections 110(a)(1) and (2) require states to address structural SIP requirements to implement, maintain and enforce the NAAQS no later than three years after the promulgation of a new or revised standard. Section 110(a)(2) outlines the specific requirements that each state is required to address in this SIP submission that collectively constitute the "infrastructure" of a state's air quality management program. SIP submittals that address these requirements are referred to as "infrastructure SIPs" (I-SIP). In particular, CAA section 110(a)(2)(D)(i)(I) requires that each SIP for a new or revised NAAQS contain adequate provisions to prohibit any source or other type of emissions activity within the state from emitting air pollutants that will "contribute significantly to nonattainment" (prong 1) or "interfere with maintenance" (prong 2) of the applicable air quality standard in any other state. This action addresses the section 110(a)(2)(D)(i)(I) requirements of prongs 1 and 2 for Nevada's I-SIP submissions.

On March 27, 2008, the EPA issued a revised NAAQS for ozone.[1] This action triggered a requirement for states to submit an I-SIP to address the applicable requirements of section 110(a)(2) within three years of issuance of the revised NAAQS.

On September 13, 2013, the EPA issued "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)," which provides "advice on the development of infrastructure SIPs for the 2008 ozone NAAQS . . . as well as infrastructure SIPs for new or revised NAAQS promulgated in the future."[2] The EPA followed that guidance with an additional memo specific to 110(a)(2)(D)(i)(I) (prongs 1 and 2) requirements for the 2008 O_3 standard on January 22, 2015 entitled, "Information on the Interstate Transport "Good Neighbor" Provision for the 2008 Ozone NAAQS Under CAA

[1] National Ambient Air Quality Standards for Ozone; Final Rule, 73 FR 16436 (March 27, 2008).
[2] Memorandum from Stephen D. Page, Director, Office of Air Quality Planning and Standards, to Regional Air Division Directors, Regions 1-10 (September 13, 2013).

Section 110(a)(2)(D)(i)(I)" (2015 Transport Memo).[3] While this memo did not provide specific guidance to western states regarding how to address the interstate transport requirements of section 110(a)(2)(D)(i)(I), it did contain preliminary modeling information for western states. This 2015 Transport Memo, following the approach used in the EPA's prior Cross-State Air Pollution Rule (CSAPR)[4], provided data identifying ozone monitoring sites that were projected to be in nonattainment or have maintenance problems for the 2008 ozone NAAQS in 2018. Also, the EPA provided the projected contribution estimates from 2018 anthropogenic oxides of nitrogen (NO_x) and volatile organic compound (VOC) emissions in each state to ozone concentrations at each of the projected sites.

On August 4, 2015, the EPA published a Federal Register Notice entitled, "Notice of Availability of the Environmental Protection Agency's Updated Ozone Transport Modeling Data for the 2008 Ozone NAAQS."[5] This Notice of Data Availability (NODA) was an update of the preliminary air quality modeling data that was released January 22, 2015, and was also used to support the proposed Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS ("CSAPR Update"), which proposed to address interstate transport obligations in the eastern United States.[6] The EPA's modeling was updated a second time with the release of the final Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS ("CSAPR Update").[7] The CSAPR Update addresses CAA section 110(a)(2)(D)(i)(I) requirements with respect to the 2008 ozone NAAQS in the eastern United States.

[3] Memorandum from Stephen D. Page, Director, Office of Air Quality Planning and Standards, to Regional Air Division Directors, Regions 1-10 (January 22, 2015).
[4] Cross-State Air Pollution Rule, 76 FR 48208 (Aug. 8, 2011).
[5] Notice of Availability of the Environmental Protection Agency's Updated Ozone Transport Modeling Data for the 2008 Ozone National Ambient Air Quality Standard (NAAQS), 80 FR 46271 (August 4, 2015).
[6] Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS, Proposed Rule, 80 FR 75706 (December 3, 2015).
[7] Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS, Final Rule, 81 FR 74504 (October 25, 2016)

The CSAPR Update modeling provided data used to identify ozone monitoring sites that are projected to be nonattainment or have maintenance problems (following the CSAPR approach) for the 2008 ozone NAAQS in 2017.[8]The modeling further provided the projected ozone contribution estimates from 2017 anthropogenic NO_x and VOC emissions in each state to ozone concentrations at each of the projected monitoring sites. While the CSAPR Update did not finalize any determinations regarding upwind state contributions to air quality problems in the 11 western states,[9] the supportive modeling included data on potential interstate transport impacts among 11 western states, including Nevada. In this action, we are utilizing these data to evaluate the state's submittals and any interstate transport obligations under section 110(a)(2)(D)(i)(I).

The EPA is obligated, pursuant to a judgment by the District of Nevada in *Nevada vs.* McCarthy, to take final action by February 13, 2017 on section 110(a)(2)(D)(i)(I) prongs 1 and 2 of Nevada's April 2013 SIP revision and March 25, 2016 supplement.[10] We previously took action on the other I-SIP elements covered by Nevada's submittals for the 2008 ozone NAAQS on November 3, 2015.[11]

II. State Submittals

On April 10, 2013, the Nevada Division of Environmental Protection (NDEP) submitted its 2008 ozone NAAQS I-SIP (2013 submittal). Nevada's 2013 Submittal quoted the decision from the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) in *EME Homer City Generation, L.P. v. EPA*, 696 F.3d 7 (2012), which instructed the EPA to quantify each state's significant contribution to air quality problems in other states before

[8] The EPA adopted 2017 as the analytic year for the updated ozone modeling information. See 80 FR 46273.
[9] For purposes of the CSAPR Update, the western U.S. (or the West) consists of the 11 western contiguous states of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.
[10] See Judgment, Nevada v. McCarthy, Case 3:15-cv-00396-HDM-WGC (D. Nev. June 22, 2016).
[11] Partial Approval and Partial Disapproval of Air Quality State Implementation Plans; Nevada; Infrastructure Requirements for Ozone, NO2 and SO2, 80 FR 67652.

requiring states to submit SIPs addressing the interstate transport requirements with respect to such pollution. Nevada's submittal also cited an EPA memorandum that explained, in light of the D.C. Circuit decision, "EPA cannot deem a SIP deficient for failing to meet the good neighbor provision, if the EPA has not quantified the state's obligation."[12] The state concluded that, "Because US EPA has not informed Nevada of its contribution to any ozone NAAQS attainment problem in downwind states, the NDEP concludes that it is not obligated to address this requirement at this time." Subsequent to Nevada's submission, however, the U.S. Supreme Court reversed the D.C. Circuit with respect to states' obligations to submit a SIP addressing these requirements. *See EPA v. EME Homer City Generation*, 134 S. Ct. 1584 (2014).

Despite the NDEP's conclusion with respect to the state's obligation to submit a SIP addressing the interstate transport requirements, the 2013 Submittal also included information intended to demonstrate that emissions from the state do not contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in other states. In particular, the 2013 Submittal referenced the EPA's proposed CAIR rule and modeling, which excluded Western States, including Nevada, from its analysis. Finally, the 2013 Submittal discussed prevailing wind directions and nearby nonattainment areas in Phoenix, Arizona, and throughout California, concluding "NDEP finds it reasonable to conclude that the Phoenix nonattainment area is not significantly influenced by winds from Nevada."

Subsequent to the Supreme Court's vacatur of the D.C. Circuit's *EME Homer City* decision, on March 25, 2016, Nevada supplemented the Interstate Transport portions of its 2013 I-SIP submittal for the 2008 ozone NAAQS (2016 Supplement). The 2016 Supplement acknowledges and addresses the EPA modeling released in the 2015 Transport Memo which was

[12] Memorandum from Gina McCarthy, Assistant Administrator of the EPA, to Regional Air Division Directors, Regions 1-10 (November 19, 2012)

updated by the August 2015 NODA. The 2016 Supplement acknowledges that the EPA's modeling showed that emissions from Nevada impact air quality in California and provides multiple reasons to support its conclusion that Nevada nonetheless does not significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in any downwind states.[13] For example, the 2016 Supplement states that Nevada contributes slightly more than 1% of 2008 Ozone NAAQS at monitors in Madera and Fresno, but notes that this contribution is less than 1% of the projected 2017 design values for those monitors. It notes that even if the interstate transport contribution were eliminated, these monitors would not attain the 2008 ozone standard. The monitors are located within an extreme nonattainment area that has until 2031 to attain the 2008 Ozone NAAQS. The 2016 Supplement contends that the one percent screening threshold used in CSAPR to identify upwind states linked to downwind ozone problems is not appropriate in cases where the total contribution of upwind states to a downwind air quality problem are minimal and where the downwind design values are significantly higher than the NAAQS, particularly in light of high background concentrations.

The 2016 Supplement discusses current emissions of ozone precursors, controls in place for current sources, and the planned shutdown of several coal-fired electrical generating units. It briefly discusses VOC emissions, explaining that these are overwhelmingly from biogenic sources, which are uncontrollable; from mobile sources, which are federally regulated; and from fires, which are also uncontrollable. For NOx emissions sources, the 2016 Supplement relies on the 2011 National Emissions Inventory, and notes that on-road and off-road mobile sources comprise 90% of mobile source NOx emissions, which in turn comprise 75% of state-wide NOx emissions. As mentioned for VOC emissions, on-road and off-road mobile sources are primarily

[13] We have summarized the primary concerns raised in Nevada's 2016 Supplement. The complete details of Nevada's analysis can be found in the 2016 Supplement, which is contained in the docket for this action.

regulated at the federal level, though Nevada has several programs that control mobile source emissions, including the Nevada Department of Motor Vehicle annual Inspection and Maintenance program. According to the 2016 Supplement, fuel combustion is the second largest source of NOx in Nevada, and nearly half of that source sector is comprised of the electric generation sub-sector, mostly from facilities using coal for fuel. For Nevada's three coal-fired energy generation units (EGU), the 2016 Supplement explains that the last remaining boiler at the Reid Gardner Generating Station will shut down by December 2017 while the two units at the North Valmy Generating Station are planned to shut down in 2021 and 2025. Furthermore, NOx emissions controls at the remaining EGU facility, the TS Power Plant, include selective catalytic reduction system and low NOx coal burners.[14] The 2016 Supplement concludes by reaffirming the 2013 submittal's conclusion that "ozone and ozone precursor emissions from Nevada do not contribute to nonattainment or interfere with maintenance of the 2008 8-hour ozone standard in any other state."

III. The EPA's Assessment

110(a)(2)(D)(i)(I) Prong 1 and Prong 2

The EPA proposes to approve Nevada's SIP submissions pertaining to CAA section 110(a)(2)(D)(i)(I), prongs 1 and 2, with respect to the 2008 ozone NAAQS. As explained below, the EPA's proposal is based on the state's submission and the EPA's analysis of several factors and available data.

To determine whether the CAA section 110(a)(2)(D)(i)(I), prongs 1 and 2 requirement is satisfied, the EPA first must determine whether a state's emissions will contribute significantly to nonattainment or interfere with maintenance of a NAAQS in other states. If a state is determined

[14] Emission limits for the TS Power Plant are contained in Class I Air Quality Operation Permit AP4911-2502 in the docket for this action.

not to make such contribution or interfere with maintenance of the NAAQS, then the EPA can conclude that the state's SIP complies with the requirements of section 110(a)(2)(D)(i)(I). In several prior federal rulemakings interpreting section 110(a)(2)(D)(i)(I), The EPA has evaluated whether a state will significantly contribute to nonattainment or interfere with maintenance of a NAAQS by first identifying downwind receptors that are expected to have problems attaining or maintaining the NAAQS.[15] The EPA has then determined which upwind states contribute to these identified air quality problems in amounts sufficient to warrant further evaluation to determine if the state can make emission reductions to reduce its contribution. CSAPR and the CSAPR Update used a screening threshold (1% of the NAAQS) to identify such contributing upwind states warranting further review and analysis. The EPA believes contribution from an individual state equal to or above 1% of the NAAQS could be considered significant where the collective contribution of emissions from one or more upwind states is responsible for a considerable portion of the downwind air quality problem regardless of where the receptor is geographically located.[16] The EPA's air quality modeling supporting the CSAPR Update evaluated contributions from upwind states to downward receptors. The modeling information indicates that emissions from Nevada contribute amounts exceeding the 1% threshold at receptors in two projected downwind nonattainment areas, Madera County and Fresno County, California.[17]

Although The EPA's modeling indicates that emissions from Nevada contribute above the 1% threshold to two projected downwind air quality problems, the EPA examined several

[15] NO_x SIP Call, Final Rule, 63 FR 57371 (October 27, 1998); Clean Air Interstate Rule (CAIR), Final Rule, 70 FR 25172 (May 12, 2005); Cross-State Air Pollution Rule (CSAPR), Final Rule, 76 FR 48208 (August 8, 2011); CSAPR Update Rule, Proposed Rule, 80 FR 75706 (Dec. 3, 2015).
[16] The EPA notes that there may be additional criteria to evaluate regarding collective contribution of transported air pollution at certain locations in the West.
[17] Data file with 2017 Ozone Contributions included in docket for this action.

factors to determine whether emissions from Nevada should be considered to significantly contribute to nonattainment or interfere with maintenance of the NAAQS at those sites, including the air quality and contribution modeling, receptor data, and the statewide measures reducing emissions of VOCs and NO_x. The EPA notes that no single piece of information is by itself dispositive of the issue for purposes of this analysis. Instead, the EPA has considered the total weight of all the evidence taken together to evaluate whether Nevada significantly contributes to nonattainment or interferes with maintenance of the 2008 ozone NAAQS in those areas.

One such factor that the EPA considers relevant to determining the nature of a projected receptor's interstate transport problem is the magnitude of ozone attributable to transport from all upwind states collectively contributing to the air quality problem. In CSAPR and the CSAPR Update Rule, the EPA used the 1% air quality threshold to identify linkages between upwind states and downwind maintenance receptors. States whose contributions to a specific receptor meet or exceed the threshold were considered to be linked to that receptor. The linked states' emissions (and available emission reductions) were then analyzed further as a second step to the EPA's contribution analysis. States whose contributions to all receptors that were below the 1% threshold did not require further evaluation to address interstate transport and we therefore determined that those states made insignificant contributions to downwind air quality. Therefore, the EPA determined that the states below the threshold do not significantly contribute to nonattainment or interfere with maintenance of the NAAQS in other states. The EPA used the 1% threshold in the East because prior analysis showed that, in general, nonattainment problems result from a combined impact of relatively small individual contributions from upwind states, along with contributions from in-state sources. The EPA has observed that a relatively large

portion of the air quality problem at most ozone nonattainment and maintenance receptors in the East is the result of the collective contribution from a number of upwind states.

Specifically, the EPA found the total upwind states' contribution to ozone concentration (from linked and unlinked states) based on modeling for 2017 ranges from 17% to 68% to identified downwind air quality problems in the East, with between 4 and 11 states each contributing above 1% to the downwind air quality problem.[18,19] Thus, irrespective of the 1% air quality threshold in the East, the EPA has found that the collective contributions from upwind states represent a large portion of the ozone concentrations at projected air quality problems. Further, in the East, the EPA found that the 1% threshold is appropriate to capture a high percentage of the total pollution transport affecting downwind receptors. By comparison, the CSAPR Update modeling information indicates the total upwind (linked or unlinked) states' contribution to ozone concentration at the projected nonattainment site in Fresno, California (Monitor ID 60190242) and Madera, California (Monitor ID 60390004), is comparatively small, with only one state contributing above 1% to the downwind air quality problem.

Nevada is the only state that contributes greater than the 1% threshold to the projected 2017 levels of the 2008 ozone NAAQS to the receptor in Fresno. The total contribution from all states to the Fresno receptor is less than 2.6% of the ozone concentration at this receptor. Nevada is also the only state that contributes greater than 1% to the projected 2017 levels of the 2008 ozone NAAQS to a receptor in Madera, and the total contribution from all states is less than 2.2% of the ozone concentration at this receptor. The EPA believes that a 2.6% and 2.2%

[18] The stated range is based on the highest nonattainment or maintenance receptor in each area. All nonattainment and maintenance receptors had upwind contributions of well over 17%, except for some receptors in Dallas and Houston.

[19] Memo to Docket from the EPA, Air Quality Policy Division. "Contribution Analysis of Receptors in the Updated CSAPR Proposal." March 10, 2016.

cumulative ozone contribution from all upwind states is negligible, particularly when compared to the relatively large contributions from upwind states in the East or in certain other areas of the West. For these reasons, the EPA believes the emissions that result in transported ozone from upwind states have limited impacts on the projected air quality problems in Madera County, and Fresno County, California, and therefore these receptors should not be treated as receptors for purposes of determining the interstate transport obligations of upwind states under section 110(a)(2)(D)(i)(I).

This analysis is consistent with Nevada's determination that it would not be appropriate to determine that the state is linked to air quality problems in California. However, the EPA does not agree with the rationale provided by the state in its 2016 Supplement.[20] For example, the EPA does not agree that upwind states should not be required to reduce emissions to downwind air quality problems simply because the downwind design values are significantly higher than the NAAQS. Although upwind reductions might not bring such areas into attainment, such reductions, where otherwise warranted, may still play an important role in improving air quality in downwind states and, therefore, improving public health and welfare. Moreover, the EPA does not agree that high levels of background concentrations at a particular monitor should necessarily excuse an upwind state from reducing emissions where such emissions reductions may nonetheless improve downwind air quality. Nonattainment and/or maintenance receptors in different parts of the Country may experience differing amounts of measured ozone from

[20] To the extent that the 2013 Submittal relies on analysis conducted for CAIR, the EPA notes that the modeling conducted for that rulemaking did not include the western United States. The EPA's more recent modeling does consider western states. Moreover, CAIR only addressed the 1997 ozone NAAQS, and the record for CAIR therefore contains no data evaluating the impact of emissions from Nevada to other states relative to the 2008 ozone NAAQS. Finally, while the EPA suggested that 8-hour ozone nonattainment problems were "likely" not affected by transported pollution in the west, the EPA took no final action determining that western states do not significantly contribute to nonattainment or interfere with maintenance of the NAAQS in other states. Rather, as the 2013 Submittal notes, the EPA did not further analyze those states. 69 FR at 4581.

background sources (that are outside of the U.S.). But in some cases, areas with high background ozone may still have a relatively large amount of ozone from the collective contribution of upwind U.S. emissions. Therefore, regardless of the level of background ozone, emissions reductions from upwind states may be an important component of solving the local nonattainment problem.

In this case, the modeling data conducted to support the CSAPR Update show that Nevada contributes either less than 1% of the NAAQS to projected air quality problems in other states, or where it contributes above 1% of the NAAQS to a projected downwind air quality problem in California, the EPA proposes to find, based on the overall weight of evidence, that these particular receptors are not significantly impacted by transported ozone from upwind states. Emissions reductions from Nevada are not necessary to address interstate transport because the total collective upwind state ozone contribution to these receptors is relatively low compared to the air quality problems typically addressed by the good neighbor provision. Additionally, Nevada has demonstrated that both VOC and NO_x emissions are decreasing and will continue to go down. The EPA therefore believes that Nevada's impact on downwind receptors in California are insignificant and will continue to remain insignificant

IV. Proposed Action

The EPA is proposing to approve Nevada's SIP as meeting the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) prongs 1 and 2 for the 2008 ozone NAAQS. The EPA is proposing this approval based on the overall weight of evidence from information and analysis provided by Nevada, as well as the recent air quality modeling released in the EPA's August 4, 2015 NODA, and other data analysis that confirms that emissions from Nevada will

not contribute significantly to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in California or any other state.

V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at http://www2.epa.gov/laws-regulations/laws-and-executive-orders.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA because this action does not impose additional requirements beyond those imposed by state law.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities beyond those imposed by state law.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, will result from this action.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Coordination with Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not impose additional requirements beyond those imposed by state law.

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

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise

impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

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

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

List of Subjects in 40 CFR Part 52

Air pollution control, Approval and promulgation of implementation plans, Environmental protection, Incorporation by reference, Oxides of nitrogen, Ozone, and Volatile organic compounds.

Dated: November 22, 2016.

Alexis Strauss,
Acting Regional Administrator,
Region IX.

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