

justifying the waiver no longer exist. In this case, the permittee will furnish the information in respect to the previously waived items, as provided in § 20.56(a)(2).

**Par. 7.** Revise the second sentence of § 20.58 to read as follows:

**§ 20.58 Adoption of documents by a fiduciary.**

\* \* \* The fiduciary may adopt the formulas and statements of process of the predecessor. \* \* \*

**§ 20.59 [Amended]**

**Par. 8.** Amend § 20.59 as follows:

- a. Remove paragraph (b);
- b. Redesignate paragraph (c) as paragraph (b); and
- c. Redesignate paragraph (d) as paragraph (c).

**§ 20.61 [Amended]**

**Par. 9.** Amend § 20.61 by removing the last sentence of the text.

**§ 20.62 [Amended]**

**Par. 10.** Amend § 20.62 as follows:

- a. Remove the paragraph letter and title designation “(a) Permit”; and
- b. Remove paragraph (b).

**§ 20.68 [Amended]**

**Par. 11.** Amend § 20.68 as follows:

- a. Remove paragraph (b); and
- b. Redesignate paragraph (c) as paragraph (b).

**Subpart E—[Removed]**

**Par. 12.** Remove and reserve Subpart E—Bonds and Consents of Surety.

**Par. 13.** Revise paragraph (c) of § 20.175 to read as follows:

**§ 20.175 Shipment for account of another dealer.**

\* \* \* \* \*

(a) The dealer who ordered the shipment shall be liable for the tax while the specially denatured spirits are in transit and the person actually shipping the specially denatured spirits shall not be liable.

**§ 20.177 [Amended]**

**Par. 14.** Amend paragraph (b) of § 20.177 by removing the word “bonded” in the first sentence.

**§ 20.232 [Amended]**

**Par. 15.** Amend § 20.232 as follows:

- a. Remove paragraph (b); and
- b. Redesignate paragraph (c) as paragraph (b).

**§ 20.241 [Amended]**

**Par. 16.** Amend § 20.241 by removing the words “and filing of a bond are” and add, in their place, the word “is.”

Signed: February 11, 2002.

**Bradley A. Buckles,**  
*Director.*

Approved: March 11, 2002.

**Timothy E. Skud,**

*Acting Deputy Assistant Secretary  
(Regulatory, Tariff and Trade Enforcement).*

[FR Doc. 02-8523 Filed 4-11-02; 8:45 am]

BILLING CODE 4810-31-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 52 and 81**

[NV 021-0049a; FRL-7167-3]

**Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Nevada**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving the maintenance plan for the Steptoe Valley Central area in Nevada and granting the request submitted by the State to redesignate this area from nonattainment to attainment for the National Ambient Air Quality Standards (NAAQS) for sulfur dioxide (SO<sub>2</sub>). Elsewhere in this **Federal Register**, we are proposing approval and soliciting written comment on this action; if adverse written comments are received, we will withdraw the direct final rule and address the comments received in a new final rule; otherwise no further rulemaking will occur on this approval action.

**DATES:** This direct final rule is effective June 11, 2002, without further notice, unless we receive adverse comments by May 13, 2002. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

**ADDRESSES:** Please address your comments to the EPA contact below. You may inspect and copy the rulemaking docket for this notice at the following location during normal business hours: Environmental Protection Agency, Region 9, Air Division, Air Planning Office (AIR-2), 75 Hawthorne Street, San Francisco, CA 94105-3901.

Copies of the SIP materials are also available for inspection at the Nevada Division of Environmental Protection, 333 W. Nye Lane, Carson City, NV 89710.

**FOR FURTHER INFORMATION CONTACT:**

Valerie Cooper, Grants and Program Integration Office (AIR-8), Air Division, U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, CA 94105-3901. Telephone: (415) 947-4103. E-mail: [Cooper.Valerie@epa.gov](mailto:Cooper.Valerie@epa.gov)

**SUPPLEMENTARY INFORMATION:**

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

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**I. Summary of Action**

We are approving the maintenance plan for the Steptoe Valley—Central SO<sub>2</sub> nonattainment area (“Steptoe Valley”).<sup>1</sup> We are also approving the State of Nevada’s request to redesignate the Steptoe Valley area from nonattainment to attainment for the primary SO<sub>2</sub> NAAQS.

**II. Introduction**

*A. What National Ambient Air Quality Standards Are Considered in Today’s Rulemaking?*

Sulfur dioxide is the pollutant that is the subject of this action. The NAAQS are safety thresholds for certain ambient air pollutants set to protect public health and welfare. SO<sub>2</sub> is among the ambient air pollutants for which we have established a health-based standard.

SO<sub>2</sub> causes adverse health effects by reducing lung function, increasing respiratory illness, altering the lung’s defenses, and aggravating existing cardiovascular disease. Children, the elderly, and people with asthma are the most vulnerable. SO<sub>2</sub> has a variety of

<sup>1</sup> For the definition of the Steptoe Valley—Central nonattainment area, see 40 CFR 81.329. The Northern and Southern areas of Steptoe Valley hydrographic area 179 are not nonattainment for the SO<sub>2</sub> NAAQS. These areas are designated as “cannot be classified.” Steptoe Valley is a sparsely populated area in White Pine County in the northeastern portion of Nevada.

additional impacts, including acidic deposition, damage to crops and vegetation, and corrosion of natural and man-made materials.

There are both short- and long-term primary NAAQS for SO<sub>2</sub>. The short-term (24-hour) standard of 0.14 parts per million (ppm) or 365 micrograms per cubic meter (µg/m<sup>3</sup>) is not to be exceeded more than once per year. The long-term standard specifies an annual arithmetic mean not to exceed 0.030 ppm (80 µg/m<sup>3</sup>).<sup>2</sup> The primary standards were established in 1972. (See 40 CFR 50.4 and 40 CFR part 50, Appendix A).

#### B. What Is a State Implementation Plan?

The Clean Air Act requires states to attain and maintain ambient air quality equal to or better than the NAAQS. The state's commitments for attaining and maintaining the NAAQS are outlined in the State Implementation Plan (or SIP) for that state. The SIP is a planning document that, when implemented, is designed to ensure the achievement of the NAAQS. Each state currently has a SIP in place, and the Act requires that SIP revisions be made periodically as necessary to provide continued compliance with the standards.

SIPs include, among other things, the following: (1) An inventory of emission sources; (2) statutes and regulations adopted by the state legislature and executive agencies; (3) air quality analyses that include demonstrations that adequate controls are in place to meet the NAAQS; and (4) contingency measures to be undertaken if an area fails to attain the standard or make reasonable progress toward attainment by the required date.

The state must make the SIP available for public review and comment through a public hearing, it must be adopted by the state, and submitted to us by the Governor or his designee. We take federal action on the SIP submittal thus rendering the rules and regulations federally enforceable. The approved SIP serves as the state's commitment to take actions that will reduce or eliminate air quality problems. Any subsequent revisions to the SIP must go through the formal SIP revision process specified in the Act.

<sup>2</sup> The secondary SO<sub>2</sub> NAAQS (3-hour) of 0.50 ppm (1,300 µg/m<sup>3</sup>) is not to be exceeded more than once per year. Secondary NAAQS are promulgated to protect welfare. The Steptoe Valley is not classified nonattainment for the secondary standard, and this action relates only to the primary NAAQS.

#### C. What Is the Background for This Action?

##### 1. When Was the Nonattainment Area Established?

In 1906, a copper smelter was built in the town of McGill, Nevada by the Nevada Copper Company. This company later became the Nevada Mines Division of the Kennecott Minerals Company (Kennecott). The smelter was the largest, and only significant source, of sulfur dioxide (SO<sub>2</sub>) in the Steptoe Valley. Steptoe Valley is a discrete hydrologic unit (Hydrographic Basin 179) in northeastern Nevada and is divided into three subareas: the central area, the southern area, and the northern area.

On March 3, 1978, at 43 FR 8962, we designated Steptoe Valley as a primary SO<sub>2</sub> nonattainment area based on monitored violations of the primary SO<sub>2</sub> NAAQS in the area between 1975 and 1977. Prior to this date, we disapproved the SIP for the Nevada Intrastate Region (the original name of the area) because the plan did not adequately provide for attainment and maintenance of the SO<sub>2</sub> NAAQS.

Based on dispersion modeling prepared for the State, we proposed to redesignate the northern and southern portions of the Steptoe Valley on March 10, 1982 (47 FR 10243) and published the final redesignation on May 14, 1982 (47 FR 20773). This process formally changed the southern and northern areas to "cannot be classified" or attainment for SO<sub>2</sub>.

On the date of enactment of the 1990 Clean Air Act Amendments, SO<sub>2</sub> areas, including the pre-existing SO<sub>2</sub> nonattainment areas, meeting the conditions of section 107(d) of the Act were designated nonattainment for the SO<sub>2</sub> NAAQS by operation of law. Thus, the Steptoe Valley-Central area remained nonattainment for the primary SO<sub>2</sub> NAAQS following enactment of the 1990 CAA Amendments on November 15, 1990.

##### 2. How Has the SIP Addressed CAA Provisions?

In 1975, we promulgated controls for the Kennecott Copper Company smelter, the source whose emissions caused the SO<sub>2</sub> violations monitored in the area. See 40 CFR 52.1475, promulgated at 40 FR 5511, February 6, 1975, as amended at 51 FR 40676, November 7, 1986. The smelter was subject to these requirements and to nonferrous smelter orders issued by the State.

##### 3. What is the Current Status of the Area?

On June 16, 1983, the smelter ceased all operation. On July 10, 1987, Kennecott allowed all air quality permits to expire. Subsequently all copper smelting equipment was removed from the McGill facility in November of 1990, and the building that housed the smelter operation was dismantled in May of 1990. Finally, on September 6, 1993, Kennecott demolished the 750 foot stack which was the last remaining vestige of copper smelting operation. The smelter tailings piles have been re-vegetated and pose no threat of emissions. The area remains sparsely settled, and there are no industrial or commercial activities in or near the nonattainment area.

Ambient air quality monitoring from 1979 to 1983 indicates there were no violations during the last years of the smelter operation. The monitor was removed when the smelter shut down.

#### D. What Are the Applicable CAA Provisions for SO<sub>2</sub> Nonattainment Area Plans?

The air quality planning requirements for SO<sub>2</sub> nonattainment areas are set out in subparts 1 and 5 of title I of the Act. We have issued guidance in a General Preamble describing our views on how we will review SIPs and SIP revisions submitted under title I of the Act, including those containing SO<sub>2</sub> nonattainment area and maintenance area SIP provisions. 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992). The General Preamble discusses our interpretation of the title I requirements, and lists SO<sub>2</sub> policy and guidance documents.

##### 1. What Statutory Provisions Apply?

CAA Sections 191 and 192 address requirements for SO<sub>2</sub> nonattainment areas designated subsequent to enactment of the 1990 CAA Amendments and areas lacking fully approved SIPs immediately before enactment of the 1990 Clean Air Act Amendments. Steptoe Valley falls into neither of these categories and is therefore subject to the requirements of subpart 1 of title I of the CAA (Sections 171–179B).<sup>3</sup> Section 172 of this subpart contains provisions for nonattainment plans in general; these provisions were not significantly changed by the 1990

<sup>3</sup> In 1975, we disapproved Nevada's Article 8.1.3 and the control strategy for the Nevada Intrastate Region and promulgated regulations for the smelter (40 CFR 51.1475). Later, Nevada issued a nonferrous smelter order pursuant to Section 119 of the CAA as amended in 1977, and the smelter was permanently closed shortly after the State issued a second order.

CAA Amendments. Among other requirements, CAA Section 172 provides that SIPs must assure that reasonably available control measures (RACT) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT)) shall be implemented as expeditiously as practicable and shall provide for attainment.

*E. What Are the Applicable Provisions for SO<sub>2</sub> Maintenance Plans and Redesignation Requests?*

1. What Are the Statutory Provisions?

a. CAA Section 107(d)(3)(E).

The 1990 CAA Amendments revised section 107(d)(3)(E) to provide five specific requirements that an area must meet in order to be redesignated from nonattainment to attainment:

(1) The area must have attained the applicable NAAQS;

(2) The area has met all relevant requirements under section 110 and Part D of the Act;

(3) The area has a fully approved SIP under section 110(k) of the Act;

(4) The air quality improvement must be permanent and enforceable; and,

(5) The area must have a fully approved maintenance plan pursuant to section 175A of the Act.

b. CAA Section 175A.

CAA section 175A provides the general framework for maintenance plans. The maintenance plan must provide for maintenance of the NAAQS for at least 10 years after redesignation, including any additional control measures as may be necessary to ensure such maintenance. In addition, maintenance plans are to contain such contingency provisions as we deem necessary to assure the prompt correction of a violation of the NAAQS that occurs after redesignation. The contingency measures must include, at a minimum, a requirement that the state will implement all control measures contained in the nonattainment SIP prior to redesignation. Beyond these provisions, however, CAA section 175A does not define the content of a maintenance plan.

2. What General EPA Guidance Applies to Maintenance Plans?

Our primary general guidance on maintenance plans and redesignation requests is a September 4, 1992 memo from John Calcagni, entitled "Procedures for Processing Requests to Redesignate Areas to Attainment" ("Calcagni Memo"). Specific guidance on SO<sub>2</sub> redesignations also appears in a

January 26, 1995 memo from Sally L. Shaver, entitled "Attainment Determination Policy for Sulfur Dioxide Nonattainment Areas" ("Shaver Memo").

3. What Are the Requirements for Redesignation of Single-Source SO<sub>2</sub> Nonattainment Areas in the Absence of Monitored Data?

Our historic redesignation policy for SO<sub>2</sub> has called for 8 quarters of clean ambient air quality data as a necessary prerequisite to redesignation of any area to attainment. On October 18, 2000, we issued a policy to provide guidance on SO<sub>2</sub> maintenance plan requirements for an area lacking monitored ambient data, if the area's historic violations were caused by a major point source that is no longer in operation. See memo from John S. Seitz, entitled "Redesignation of Sulfur Dioxide Nonattainment Areas in the Absence of Monitored Data" ("Seitz Memo"). In order to allow for these areas to qualify for redesignation to attainment, this policy requires that the maintenance plan address otherwise applicable provisions, and include:

(1) Emissions inventories representing actual emissions when violations occurred; current emissions; and emissions projected to the 10th year after redesignation;

(2) Dispersion modeling showing that no NAAQS violations will occur over the next 10 years and that the shutdown source was the dominant cause of the high concentrations in the past;

(3) Evidence that if the shutdown source resumes operation it would be considered a new source and be required to obtain a permit under the Prevention of Significant Deterioration provisions of the CAA; and

(4) A commitment to resume monitoring before any major SO<sub>x</sub> source commences operation.

**III. Review of the Nevada State Submittals Addressing these Provisions**

*A. Is the Maintenance Plan Approvable?*

1. Did the State Meet the CAA Procedural Provisions?

On February 14, 1995, the Nevada Division of Environmental Protection (NDEP) submitted to EPA the "Redesignation Request and Maintenance Plan for the National Sulfur Dioxide Standard—Central Steptoe Valley" ("Maintenance Plan"). The State adhered to its SIP adoption procedures. This submittal became complete by operation of law 6 months later. A supplement to the Maintenance Plan was provided in the form of a letter from Allen Biaggi, Administrator, Nevada Division of Environmental

Protection, to Wayne Nastri, Regional Administrator, EPA Region IX, dated February 27, 2002 ("Biaggi letter").

2. Does the Area Qualify for Review under the Seitz Memo?

a. Were the Area's Violations Caused by a Major Point Source of SO<sub>x</sub> Emissions That Is No Longer in Operation?

As discussed above, the only non-negligible source of SO<sub>x</sub> emissions within the Steptoe Valley nonattainment area was the Kennecott McGill copper smelter, which ceased operation in 1983. NDEP removed the SO<sub>2</sub> monitor at that time, the smelter operating permits expired in 1987, the smelting equipment was removed over a period of years, and the smelter stack was demolished in 1993. No new sources of SO<sub>2</sub> have located in the area. Thus, the Steptoe Valley meets this criterion for review under the Seitz Memo.

b. Has the State Met the Requirements of the Seitz Memo?

As discussed below, the State has addressed the requirements in the Seitz Memo for emissions inventories, modeling, permitting of major new sources, and agreement to commence monitoring if a new major source locates in the area. Therefore, the State has met the special criteria in the Seitz Memo for approval of maintenance plans and redesignation requests.

(1) Emissions Inventory. The State provided the 3 emissions inventories specified in the Seitz Memo for the sources in, and within 50 kilometers of, the Steptoe Valley nonattainment area. For a representative year when the copper smelter was in operation (1978), direct SO<sub>x</sub> emissions from smelting operations were 71,754 tons per year (tpy), and fugitive SO<sub>x</sub> emissions were estimated to be 7,000 tpy. NDEP identified no SO<sub>x</sub> emissions in, or within 50 kilometers of, the nonattainment area in 2001, and NDEP projected no SO<sub>x</sub> emissions in, or within 50 kilometers of, Steptoe Valley in the 10th year after redesignation (2012) (Biaggi letter). We conclude that the inventories are complete, accurate, and consistent with applicable CAA provisions and the Seitz Memo.

(2) Modeling. The Maintenance Plan includes modeling prepared by Dames and Moore in 1982 (Appendix Five). The analysis uses the VALLEY model to predict SO<sub>2</sub> annual and 24-hour concentrations in the nonattainment area during peak smelter operation. The modeling predicted violations of both the annual and 24-hour NAAQS when the smelter was fully operating. Because there are no longer any sources of SO<sub>2</sub>

in the nonattainment area or within 50 kilometers of the area, however, the State predicts no current or projected SO<sub>2</sub> concentrations in Steptoe Valley. We find that the modeling in the Maintenance Plan meets CAA requirements and our applicable guidance, including the Seitz Memo.

(3) Permitting of New Sources. The NDEP has confirmed that the State would consider that any source resuming operation at the site of the copper smelter (or at any other location within the nonattainment area) to be a "new" SO<sub>x</sub> source subject to applicable permitting requirements, including the Prevention of Significant Deterioration (PSD) program if the source is a major source (Biaggi letter). We delegated PSD permitting authority to NDEP on May 27, 1983, and the State has been administering the PSD program successfully since that date. The State's commitment to treat any major source at the Kennecott site as "new" under the PSD program satisfies the provisions of the Seitz Memo.

(4) Monitoring. NDEP has confirmed that the State has the authority to ensure that monitoring is required if a major SO<sub>2</sub> source applies for a permit to construct and operate. The State also reaffirmed its intention to resume ambient monitoring before any major source of SO<sub>x</sub> emissions commences operation (Biaggi letter). This addresses the monitoring provision of the Seitz Memo.

#### c. Has the State Met the Remaining Maintenance Plan Provisions?

As discussed above, CAA Section 175A sets forth the statutory requirements for maintenance plans, and the Calcagni and Shaver memos cited above contain specific EPA guidance. The only maintenance plan element not covered by the Seitz Memo is the contingency provision. CAA Section 175A provides that maintenance plans "contain such contingency provisions as the Administrator deems necessary to assure that the State will promptly correct any violation of the standard which occurs after the redesignation of the area as an attainment area."

The Steptoe Valley Maintenance Plan includes the State's commitment to continue to implement and enforce measures necessary to maintain the SO<sub>2</sub> NAAQS. If these measures prove insufficient to protect against violations, the State also committed to adopt and implement additional control measures as necessary.

The Calcagni Memo emphasizes the importance of specific contingency measures, schedules for adoption, and action levels to trigger implementation

of the contingency plan. Since there are no remaining SO<sub>2</sub> sources and no SO<sub>2</sub> monitoring in the Steptoe Valley area, we agree with the State that this level of specificity is not appropriate, and we conclude that the State's commitment satisfactorily addresses the CAA provisions.

#### B. Has the State Met the Redesignation Provisions of CAA Section 107(d)(3)(E)?

##### 1. Has the Area Attained the 24-Hour and Annual SO<sub>2</sub> NAAQS?

As discussed above, the normal prerequisite for redesignation is submittal of quality-assured ambient data with no violations of the SO<sub>2</sub> NAAQS for the last 8 consecutive quarters. However, the Seitz Memo recognizes that states should be provided an opportunity to request redesignation where there is no longer monitoring but where there is no reasonable basis for assuming that SO<sub>2</sub> violations persist after closure of the sources that were the primary or sole cause of these violations. Steptoe Valley is such an area, and the State has submitted convincing evidence that no major or minor stationary sources of SO<sub>x</sub> emissions remain in operation in or within 50 kilometers of the area.

##### 2. Has Each Area Met All Relevant Requirements Under Section 110 and Part D of the Act?

CAA Section 110(a)(2) contains the general requirements for SIPs (enforceable emission limits, ambient monitoring, permitting of new sources, adequate funding, etc.) and Part D contains the general provisions applicable to SIPs for nonattainment areas (emissions inventories, reasonably available control measures, demonstrations of attainment, etc.). Over the years, we have approved Nevada's SIP as meeting the basic requirements of CAA Section 110(a)(2), and the CAA Part D requirements for Steptoe Valley were addressed primarily by the regulations applicable to the Kennecott facility during the period of its operation. The State has thus met the basic SIP requirements of the CAA.

##### 3. Does Each Area Have a Fully Approved SIP Under Section 110(k) of the Act?

The Nevada SIP for this area originally had a single deficiency—the State's regulation for the smelter—which led first to the promulgation of a Federal regulation, and then to the issuance of a nonferrous smelter order (NSO). The FIP and NSO were mooted by the permanent shutdown of the

source, which left no remaining SIP deficiencies.

##### 4. Has the State Shown That the Air Quality Improvement in Each Area Is Permanent and Enforceable?

The Maintenance Plan shows that the exclusive cause of past SO<sub>2</sub> NAAQS violations (the Kennecott copper smelter at McGill) no longer exists. As a result, there would be no reason to expect that SO<sub>2</sub> ambient concentrations would exceed background levels.

##### 5. Does Each Area Have a Fully Approved Maintenance Plan Pursuant to Section 175A of the Act?

As discussed above, we are approving the Steptoe Valley Maintenance Plan in this action.

#### IV. Final Action

We are approving the Maintenance Plan for the Steptoe Valley area under CAA Sections 110 and 175A. We are also approving the State's request to redesignate the Steptoe Valley—Central area to attainment of the primary SO<sub>2</sub> NAAQS.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the State plan and redesignate the area if relevant adverse comments are filed. This rule will be effective June 11, 2002 without further notice unless relevant adverse comments are received by May 13, 2002. If we receive such comments, this action will be withdrawn before the effective date. All public comments received will then be addressed in a subsequent final rule based on the proposed action. We will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective June 11, 2002.

#### V. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves State law as meeting federal requirements and imposes no additional

requirements beyond those imposed by State law.

Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does 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 (64 FR 43255, August 10, 1999). This action merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission

that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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. 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).

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 April 29, 2002. 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, Reporting and recordkeeping requirements, Sulfur dioxide.

##### 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: March 24, 2002.

**Wayne Nastri,**

*Regional Administrator, Region IX.*

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

#### PART 52—[AMENDED]

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

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

#### Subpart DD—Nevada

2. Section 52.1470 is amended by adding paragraphs (c)(39) and (c)(40) to read as follows:

##### § 52.1470 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(39) The following plan was submitted on February 14, 1995, by the Governor's designee.

(i) Incorporation by reference.

(A) Redesignation Request and Maintenance Plan for the National Sulfur Dioxide Standard—Central Steptoe Valley, adopted by Nevada Division of Environmental Protection on February 14, 1995.

(40) The following plan supplement was submitted on February 27, 2002, by the Governor's designee.

(i) Incorporation by reference.

(A) Supplement to the Maintenance Plan for the National Sulfur Dioxide Standard—Central Steptoe Valley (Letter from Allen Biaggi, Administrator, Nevada Division of Environmental Protection, to Wayne Nastri, Regional Administrator, EPA Region IX, dated February 27, 2002).

\* \* \* \* \*

#### PART 81—[AMENDED]

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

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

2. In § 81.329 the SO<sub>2</sub> table is amended by revising the entry for the Steptoe Valley—Central area to read as follows:

##### § 81.329 Nevada.

\* \* \* \* \*

NEVADA—SO<sub>2</sub>

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
* * * * *	*	*	*	*
Steptoe Valley (179)(10–29N, 61–67E): Central .....	.....	.....	.....	X
* * * * *	*	*	*	*

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 [FR Doc. 02–8289 Filed 4–11–02; 8:45 am]  
 BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 62**

[RI 044–6991a; FRL–7170–1]

**Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Rhode Island; Negative Declarations**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving the sections 111(d)/129 negative declarations submitted by the Rhode Island Department of Environmental Management (DEM) on January 8, 2002. These negative declarations adequately certify that there are no existing commercial and industrial solid waste incineration units (CISWIs) or small municipal waste combustors (MWCs) located within the boundaries of the state of Rhode Island. EPA publishes regulations under sections 111(d) and 129 of the Clean Air Act requiring states to submit control plans to EPA. These state control plans show how states intend to control the emissions of designated pollutants from designated facilities (e.g., CISWIs). The state of Rhode Island submitted these negative declarations in lieu of a state control plan.

**DATES:** This direct final rule is effective on June 11, 2002 without further notice unless EPA receives significant adverse comment by May 13, 2002. If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** You should address your written comments to: Mr. Steven Rapp, Chief, Air Permit Programs Unit, Office of Ecosystem Protection, U.S. EPA, One

Congress Street, Suite 1100 (CAP), Boston, MA 02114–2023.

Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA.

**FOR FURTHER INFORMATION CONTACT:** John J. Courcier, (617) 918–1659.

**SUPPLEMENTARY INFORMATION:**

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**I. What Action Is EPA Taking Today?**

EPA is approving the negative declarations of air emissions from CISWI and small MWC units submitted by the state of Rhode Island.

EPA is publishing these negative declarations without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve these negative declarations should relevant adverse comments be filed. If EPA receives no significant adverse comment by May 13, 2002 this action will be effective June 11, 2002.

If EPA receives significant adverse comments by the above date, we will withdraw this action before the effective date by publishing a subsequent document in the **Federal Register** that will withdraw this final action. EPA will address all public comments received in a subsequent final rule based on the parallel proposed rule published in today's **Federal Register**. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If EPA

receives no comments, this action will be effective June 11, 2002.

**II. What Is the Origin of the Requirements?**

Under section 111(d) of the Clean Air Act, EPA published regulations at 40 CFR part 60, subpart B which require states to submit plans to control emissions of designated pollutants from designated facilities. In the event that a state does not have a particular designated facility located within its boundaries, EPA requires that a negative declaration be submitted in lieu of a control plan.

**III. When Did the Requirements First Become Known?**

On November 30, 1999 (64 FR 67092) and August 30, 1999 (64 FR 47276), EPA proposed emission guidelines for CISWI units and small MWCs, respectively. These separate actions enabled EPA to list CISWI units and small MWCs as designated facilities. EPA specified particulate matter, opacity, sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxins/furans as designated pollutants for each category by proposing emission guidelines for existing CISWI units and small MWCs. These guidelines were published in final form on December 1, 2000 (65 FR 75362) and December 6, 2000, respectively.

**IV. When Did Rhode Island Submit Its Negative Declarations?**

On January 8, 2002, the Rhode Island Department of Environmental Management (DEM) submitted a letter certifying that there are no existing CISWI units and no small MWCs subject to 40 CFR part 60, subpart B. Section 111(d) and 40 CFR 62.06 provide that when no such designated facilities exist within a state's boundaries, the affected state may submit a letter of "negative declaration" instead of a control plan. EPA is publishing these negative declarations at 40 CFR 62.9970 and 62.9980, respectively.