

Good Neighbor Provision/SO₂ National Ambient Air Quality Standard: U.S. Environmental Protection Agency Proposal to Approve Arkansas State Implementation Plan



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

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The United States Environmental Protection Agency (“EPA”) published an August 8th Federal Register Notice proposing to approve an Arkansas State Implementation Plan (“SIP”) submittal. See 84 Fed. Reg. 38895.

The Arkansas submittal addresses the Clean Air Act requirements pertaining to the “good neighbor” provision of the Clean Air Act for the 2010 sulfur dioxide (“SO₂”) National Ambient Air Quality Standard (“NAAQS”).

The states are primarily responsible for ensuring attainment and maintenance of the NAAQS once the EPA has established them. Each state is therefore required to formulate, subject to EPA approval, an implementation plan (i.e., SIP) designed to achieve each NAAQS. The SIPs will contain the measures and actions the state proposes to undertake each NAAQS. These measures or actions must be enforceable through state regulations and may include emission limits applicable to certain types of stationary sources.

The states are generally free to make their own choices as to how they will attain the NAAQS through their SIPs. Further, the SIPs are in theory dynamic documents which the state can choose to change as it continues to determine the appropriate means of attaining or maintaining the various NAAQS. The SIP and subsequent revisions must be reviewed and approved by EPA to determine if the criteria set forth in Section 110 are met.

The good neighbor provision of the Clean Air Act requires that each state’s SIP contain adequate provisions prohibiting emissions which will contribute significantly to nonattainment or interfere with the maintenance of the 2010 SO₂ NAAQS in other states.

The referenced NAAQS was established by EPA on June 2, 2010. It constituted a new primary 1-hour SO₂ NAAQS of 75 parts per billion based on a three-year average of the annual 99th percentile of 1-hour daily maximum concentrations. As a result of this promulgation, the Clean Air Act required each state to submit, within three years of promulgation of the NAAQS, an SIP meeting the applicable “infrastructure” elements of sections 110(a)(1) and (2).

The Arkansas Department of Environmental Quality submitted on March 24, 2017, an infrastructure SIP addressing how the state's SIP provides for the implementation, maintenance, and enforcement of the 2010 1-hour SO₂ NAAQS. EPA states that on February 14, 2018, it approved most elements of Arkansas's infrastructure SIP submittal. However, it deferred action regarding the interstate transport provisions of section 110(a)(2)(D)(i)(I) pertaining to nonattainment (prong 1) and interference with maintenance (prong 2) of the NAAQS in other states.

The August 8th proposal states that EPA has determined that Arkansas's SIP contains adequate provisions to ensure that air emissions in Arkansas will not contribute significantly to nonattainment or interfere with maintenance of the 2010 SO₂ in any other state.

A copy of the Federal Register Notice can be downloaded [here](#).