



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2018-0109; FRL-9982-81-Region 8]

Interstate Transport Prongs 1 and 2 for the 2010 Sulfur Dioxide (SO₂) Standard for Colorado, Montana, North Dakota, South Dakota and Wyoming

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving portions of State Implementation Plan (SIP) submissions from Colorado, Montana, North Dakota, South Dakota and Wyoming addressing the Clean Air Act (CAA or Act) interstate transport SIP requirements for the 2010 sulfur dioxide (SO₂) National Ambient Air Quality Standard (NAAQS). These submissions address the requirement that each SIP contain adequate provisions prohibiting air emissions that will have certain adverse air quality effects in other states. The EPA is approving portions of these infrastructure SIPs for the aforementioned states as containing adequate provisions to ensure that air emissions in the states will not significantly contribute to nonattainment or interfere with maintenance of the 2010 SO₂ NAAQS in any other state.

DATES: This rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID Number EPA-EPA-R08-OAR-2018-0109. All documents in the docket are listed on the <http://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not

placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <http://www.regulations.gov>, or please contact the person identified in the “For Further Information Contact” section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Adam Clark, Air Program, U.S. EPA Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-7104, or clark.adam@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document “we,” “us” and “our” means the EPA.

I. Background

On June 4, 2018, the EPA proposed to approve submissions from Colorado, Montana, North Dakota, South Dakota and Wyoming as meeting the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) for the 2010 SO₂ NAAQS (83 FR 25617). An explanation of the CAA requirements, a detailed analysis of the states’ submissions, and the EPA’s rationale for approval of each submission were all provided in the notice of proposed rulemaking, and will not be restated here. The public comment period for this proposed rule ended on July 5, 2018. The EPA received one comment letter from the North Dakota Department of Health (NDDH), one comment letter from the Wyoming Department of Environmental Quality (WDEQ) and six anonymous comments on the proposal. The six anonymous comments lacked the required specificity to the Colorado, Montana, North Dakota, South Dakota or Wyoming SIP submissions and the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I). NDDH and

WDEQ's comments are addressed below, while the anonymous comments are not addressed because they fall outside the scope of our proposed action.

II. Response to Comments

Comment: NDDH stated that the 2010 and 2016 SO₂ emissions levels for their state listed in the proposal rule's "Table 1 - SO₂ Emission Trends" (83 FR 25618) appeared too high, and that the 2000-2016 SO₂ reduction in the table for North Dakota should be 79% rather than the 44% listed in this Table 1. In addition to this recommended correction, NDDH agreed with the EPA's proposed approval of CAA section 110(a)(2)(D)(i)(I) for the 2010 SO₂ NAAQS for the state of North Dakota, asserting that "sources in North Dakota do not significantly contribute to SO₂ concentrations in nonattainment or maintenance areas in other states." NDDH stated that SO₂ emissions in North Dakota continue to decrease, specifically noting the shutdown of the coal-fired electric generating unit Stanton Station in 2017, the forthcoming conversion of the University of North Dakota heating plant from coal to natural gas (permit currently under review), and the continued replacement of coal-fired electrical generation by wind electrical generation as a portion of total electrical generation in the state between 2012 and 2017. NDDH also provided 2017 SO₂ monitoring design values, showing that these levels continue to be below the 2010 SO₂ NAAQS.

Response: The EPA agrees with the state that the 2010 and 2016 SO₂ emission levels for North Dakota listed in "Table 1 – SO₂ Emission Trends" require correction. With regard to the 2016 SO₂ emissions, we derived these emissions data from the EPA's "Air Pollutant Emissions

Trends” webpage which was updated on March 28, 2018,¹ after the values for Table 1 had been calculated. For this reason, the 2016 SO₂ emissions levels and the 2000-2016 SO₂ emissions reduction for each state listed in Table 1 of the proposed rule are not consistent with those currently presented on the EPA’s “Air Pollutant Emissions Trends” webpage. Therefore, the EPA has recreated “Table 1 – SO₂ Emission Trends” below.

Revised Table 1 – SO₂ Emission Trends in Tons per Year

State	2000	2005	2010	2016	SO₂ reduction, 2000-2016 (%)
Arizona	118,528	90,577	73,075	41,415	65
Colorado	115,122	80,468	60,459	25,547	78
Idaho	34,525	35,451	14,774	10,016	71
Iowa	265,005	222,419	142,738	56,139	79
Kansas	148,416	199,006	80,267	18,624	87
Minnesota	148,899	156,468	85,254	35,480	76
Montana	57,517	42,085	26,869	18,338	68
Nebraska	86,894	121,785	77,898	54,934	37
New Mexico	164,631	47,671	23,651	17,959	89
North Dakota	275,138	159,221	119,322	58,058	79
Oklahoma	145,862	169,464	136,348	81,890	44
South Dakota	41,120	28,579	16,202	3,081	92
Utah	58,040	52,998	29,776	15,512	73
Wyoming	141,439	122,453	91,022	51,769	63

The EPA also agrees with NDDH that the 2010 emissions value for North Dakota was incorrect in “Table 1 – SO₂ Emission Trends.” That value has been corrected in this revised

¹ As noted at proposal, these values were derived using the EPA’s webpage <https://www.epa.gov/air-emissions-inventories/air-pollutant-emissions-trends-data>. Specifically, a link on this webpage titled “State Average Annual Emissions Trend” which connected to a spreadsheet. As shown on the “Read Me” page of this spreadsheet, the “draft state trends” were updated on March 28, 2018. This update has caused the 2016 SO₂ emissions levels in the prior iteration of the spreadsheet to change for all states.

version of the table. The 2010 SO₂ emissions levels for all other states, as well as all 2000 and 2005 emissions levels, remain unchanged from those in “Table 1 – SO₂ Emission Trends” in the proposed rulemaking. The corrected values for North Dakota illustrate an even greater decline in emissions of SO₂ than that discussed in the proposed rulemaking. The corrected values in this table are therefore consistent with the EPA’s analysis in its proposed determination that emissions from North Dakota are not in violation of section 110(a)(2)(D)(i)(I).

The EPA notes that North Dakota’s comment refers to “nonattainment or maintenance *areas*” (emphasis added) as part of its reiteration that sources within the state do not have certain downwind impacts on other states. The EPA has routinely interpreted the obligation to prohibit emissions that “significantly contribute to nonattainment” of the NAAQS in downwind states to be independent of formal designations because exceedances can happen in any area. Similarly, the EPA does not interpret the reference to “maintenance” under section 110(a)(2)(D)(i)(I) to be limited to maintenance areas, as this provision requires evaluation of the potential impact of upwind emissions on *all* areas that are currently measuring clean data, but may have issues maintaining that air quality. Nothing in the CAA limits states’ obligations under section 110(a)(2)(D)(i)(I) to downwind areas that have been formally designated.

Regarding the additional information provided by NDDH to support the EPA’s proposed conclusion that the state meets the requirements of 110(a)(2)(D)(i)(I) for the 2010 SO₂ NAAQS, the EPA agrees that this information is supportive of that conclusion.

Comment: WDEQ expressed support of the EPA’s proposed approval of their SIP as meeting the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) for the 2010 SO₂ NAAQS. However, WDEQ disagreed with the EPA’s statement in our proposal that

“Wyoming’s analysis does not independently address whether the SIP contains adequate provisions prohibiting emissions that will interfere with maintenance of the 2010 SO₂ NAAQS in any other state.” 83 FR 25631. WDEQ asserted that its weight of evidence demonstration for prong 1, “significant contribution to nonattainment,” also adequately addresses the requirements for prong 2, “interference with maintenance.” WDEQ also stated that there were no other 2010 SO₂ nonattainment or maintenance areas in neighboring states to address at the time of its submission apart from the Billings, Montana 2010 SO₂ maintenance area, which WDEQ addressed in that submission when the area was still designated as nonattainment.²

Response: The EPA disagrees that WDEQ’s analysis of potential impact on the Billings area represents an independent analysis of 110(a)(2)(D)(i)(I) prong 2. WDEQ’s March 6, 2015 submission analyzed Wyoming’s potential impact on the Billings area and the lack of additional nonattainment areas in surrounding states to determine whether the Wyoming SIP meets the requirements of prong 1 and prong 2. However, the court in *North Carolina v. EPA*, (531 F.3d 896, D.C. Cir. 2008) was specifically concerned with areas not designated nonattainment when it rejected the view that “a state can never ‘interfere with maintenance’ unless the EPA determines that at one point it ‘contribute[d] significantly to nonattainment.’” 531 F.3d at 910. The court pointed out that areas barely attaining the standard due in part to emissions from upwind sources would have “no recourse” pursuant to such an interpretation. *Id.* In accordance with the court’s decision and as noted in our proposal, “the EPA interprets CAA section 110(a)(2)(D)(i)(I) prong 2 to require an evaluation of the potential impact of a state’s emissions on areas that are currently

² As noted at proposal, the Billings 2010 SO₂ maintenance area was in nonattainment status at the time of Wyoming’s March 6, 2015 submission, and was redesignated to attainment on May 10, 2016.

measuring clean data, but that may have issues maintaining that air quality, rather than only former nonattainment, and thus current maintenance, areas.” 83 FR 25621. For this reason, Wyoming’s analysis of the Billings area alone would not independently address 110(a)(2)(D)(i)(I) prong 2, based on the EPA’s longstanding interpretation of this provision. Because WDEQ did not conduct such an analysis as part of its weight of evidence, the EPA supplemented the state’s analysis (see proposal at 83 FR 25631) and proposed to find that Wyoming does not interfere with maintenance of the 2010 SO₂ NAAQS in any other state.

With respect to the assertions WDEQ makes in its comments regarding maintenance areas, the EPA does not interpret the reference to “maintenance” under section 110(a)(2)(D)(i)(I) to be limited to maintenance areas. As previously described, this provision requires evaluation of the potential impact of upwind emissions on *all* areas that are currently measuring clean data, but may have issues maintaining that air quality. Nothing in the CAA limits states’ obligations under section 110(a)(2)(D)(i)(I) to downwind areas that have been formally designated.

III. Final Action

The EPA is approving the following submission as meeting the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) for the 2010 SO₂ NAAQS: Colorado’s July 17, 2013 and February 16, 2018 submissions; Montana’s July 15, 2013 submission; North Dakota’s March 7, 2013 submission; South Dakota’s December 20, 2013 submission; and Wyoming’s March 6, 2015 submission. This action is being taken under section 110 of the CAA.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR

52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and do not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, these SIPs are 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 as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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 action 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 **[INSERT**

DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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 in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Dated: August 27, 2018.

Debra Thomas,
Acting Regional Administrator,
Region 8.

40 CFR part 52 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 G – Colorado

2. Section 52.352 is amended by adding paragraph (f) to read as follows:

§52.352 Interstate transport.

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(f) Addition to the Colorado State Implementation Plan of the Colorado Interstate Transport SIP regarding 2010 Standards, submitted to EPA on July 17, 2013, and February 16, 2018, for both elements of CAA section 110(a)(2)(D)(i)(I) for the 2010 SO₂ NAAQS.

Subpart BB - Montana

3. Section 52.1393 is amended by adding paragraph (e) to read as follows:

§ 52.1393 Interstate transport requirements.

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(e) EPA is approving the Montana 2010 SO₂ NAAQS Infrastructure Certification, submitted to EPA on July 15, 2013, for both elements of CAA section 110(a)(2)(D)(i)(I) for the 2010 SO₂ NAAQS.

Subpart JJ - North Dakota

4. Section 52.1833 is amended by adding paragraph (h) to read as follows:

§52.1833 Section 110(a)(2) infrastructure requirements.

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(h) EPA is approving the North Dakota 2010 SO₂ NAAQS Infrastructure Certification, submitted to EPA on March 7, 2013, for both elements of CAA section 110(a)(2)(D)(i)(I) for the 2010 SO₂ NAAQS.

Subpart QQ - South Dakota

5. Section 52.2170, paragraph (e), is amended by adding table entry XXII. to read as follows:

§52.2170 Identification of plan.

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(e) * * *

Rule title	State effective date	EPA effective date	Final rule citation, date	Comments
* * * * *				
XXII. Section 110(a)(2)(D)(i)(I) Interstate Transport Requirements for the 2010 SO ₂ NAAQS	Submitted: 12/20/2013	[Insert date 30 days after date of publication in the Federal Register]	[Insert Federal Register citation], [Insert Federal Register date of	

			publication]	
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Subpart ZZ - Wyoming

6. Section 52.2620, paragraph (e), is amended by adding table entry (31) to read as follows:

§52.2620 Identification of plan.

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(e) * * *

Rule No.	Rule title	State effective date	EPA Effective date	Final rule citation, date	Comments
(31) XXXI	Interstate transport SIP for Section 110(a)(2)(D)(i)(I) prongs 1 and 2 for the 2010 SO ₂ NAAQS.	3/6/2015	[Insert date 30 days after date of publication in the Federal Register]	[Insert Federal Register citation], [Insert Federal Register date of publication]	

[FR Doc. 2018-18892 Filed: 8/30/2018 8:45 am; Publication Date: 8/31/2018]