



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

#### [EPA-R01-OAR-2019-0353; FRL-10001-80-Region 1]

#### **Air Plan Approval; Massachusetts; Transport Element for the 2010 Sulfur Dioxide National Ambient Air Quality Standard**

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This revision addresses the interstate transport requirements of the Clean Air Act (CAA), referred to as the good neighbor provision, for the 2010 1-hour sulfur dioxide (SO<sub>2</sub>) national ambient air quality standards (NAAQS). This action approves Massachusetts's certification that air emissions in the Commonwealth will not significantly contribute to nonattainment or interfere with maintenance of the 2010 SO<sub>2</sub> NAAQS in any other state.

**DATES:** This rule is effective on **[Insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R01-OAR-2019-0353. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, i.e., 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 at <https://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square - Suite 100, Boston, MA.

EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Townsend, Air Quality Branch, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square – Suite 100, (Mail code 05-2), Boston, MA 02109-3912, tel. (617) 918-1614, email [hubbard.elizabeth@epa.gov](mailto:hubbard.elizabeth@epa.gov)

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

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### **I. Background and Purpose**

On August 8, 2019 (84 FR 38898), the EPA published a notice of proposed rulemaking (NPRM) to approve the February 9, 2018 submittal from the Commonwealth of Massachusetts as meeting the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) for the 2010 1-hour SO<sub>2</sub> NAAQS, commonly referred to as the good neighbor provision. Other specific requirements and the rationale for the EPA's proposed action are explained in the NPRM and will not be restated here. Comments on the proposed rulemaking were due on or before September 9, 2019.

### **II. Response to Comments**

The EPA received one adverse comment from an anonymous commenter. This comment is included in the docket for this final action. The EPA has summarized the comment and provided a response below.

*Comment:* The commenter stated that the EPA should evaluate all sources of SO<sub>2</sub> emissions in Massachusetts located near the border of the SO<sub>2</sub> nonattainment area in New Hampshire, rather than focus our analysis on large SO<sub>2</sub> sources located farther from the nonattainment area in New Hampshire. The commenter expressed concern about the 100 tons per year (tpy) SO<sub>2</sub> emissions threshold by stating that the EPA arbitrarily picked 100 tpy as a threshold, and that smaller sources of annual emissions can violate a 1-hour standard. The commenter asserted that “EPA must perform modeling to affirmatively rule out any stationary source of SO<sub>2</sub> emissions don’t contribute to the SO<sub>2</sub> non-attainment area in the neighboring state of New Hampshire,” not just those emitting over 100 tpy of SO<sub>2</sub>.

*Response:* The EPA disagrees with the commenter’s assertion that modeling must be performed to rule out significant contribution to SO<sub>2</sub> nonattainment in New Hampshire from any stationary source of SO<sub>2</sub> emissions and that the use of a 100 tpy threshold was inappropriate. The EPA continues to believe that a weight of evidence (WOE) approach is sufficient to determine if a state has satisfied the good neighbor provision for the 2010 1-hour SO<sub>2</sub> NAAQS, and there is no legal requirement in the CAA suggesting that dispersion modeling must be used to evaluate good neighbor SIPs.

Regarding the statement about modeling, EPA notes that it did not independently model any sources as part of its evaluation of Massachusetts’s good neighbor SIP submission, including sources emitting more than 100 tpy of SO<sub>2</sub> within 50 km from the Massachusetts border. However, when reliable and relevant modeling information is available, the EPA may utilize this information to inform its determination of whether a state has satisfied the good neighbor

provision. As further discussed in the NPRM, Massachusetts reviewed potential SO<sub>2</sub> impacts on the Central New Hampshire nonattainment area. New Hampshire submitted an attainment plan for the Central New Hampshire nonattainment area on January 31, 2017, which relied mainly on the emissions limits and other conditions established for the Merrimack Generating Station, and the EPA approved that plan on June 5, 2018.<sup>1</sup> New Hampshire's attainment plan and demonstration for the central New Hampshire nonattainment area relied on air dispersion modeling of the 1-hour critical emission value shown to be equivalent to the federally-enforceable 7-boiler operating day allowable emissions limit for the Merrimack Generating Station. This modeling analysis included the addition of monitored background SO<sub>2</sub> concentrations. These measured background concentrations account for potential contributions from all Massachusetts sources, not just those emitting greater than 100 tpy. The New Hampshire modeling analysis demonstrated that allowable emissions from Merrimack Generating Station, in addition to the background levels, will not cause a violation of the 1-hour SO<sub>2</sub> NAAQS. The attainment plan did not require any reductions from Massachusetts sources, and relied solely on controls and limits at Merrimack Generating Station to address the nonattainment. On September 20, 2019, the EPA took final action to approve New Hampshire's maintenance plan, submitted to ensure the area will continue to maintain the 2010 SO<sub>2</sub> NAAQS, for the Central New Hampshire area.<sup>2</sup> This final action also formally redesignated the Central New Hampshire SO<sub>2</sub> Nonattainment Area to Attainment for the 2010 SO<sub>2</sub> NAAQS. Therefore, the EPA still concludes that sources in Massachusetts do not contribute significantly to SO<sub>2</sub> nonattainment or interfere with maintenance in the Central New Hampshire area.

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<sup>1</sup> See the EPA's final action on the Central New Hampshire Nonattainment Area Plan for the 2010 SO<sub>2</sub> NAAQS at 83 FR 25922 (June 5, 2018).

<sup>2</sup> See 84 FR 49467 (September 20, 2019).

The EPA continues to believe that the WOE analysis provided in the NPRM is adequate to determine the potential downwind impact from Massachusetts to neighboring states. The EPA's analysis includes the following factors: (1) ambient air quality data for active SO<sub>2</sub> monitors in Massachusetts or in a neighboring or downwind state within 50 km of the Massachusetts border, (2) emissions information for SO<sub>2</sub> sources in Massachusetts emitting greater than 100 tpy and located within 50 km of the Massachusetts border, (3) emissions information for SO<sub>2</sub> sources in neighboring or downwind states emitting more than 100 tpy and located within 50 km of the Massachusetts border, (4) available modeling and monitoring information for any area within 50 km of the Massachusetts border, including for Portsmouth, New Hampshire, and (5) SO<sub>2</sub> emissions trends in Massachusetts and neighboring and downwind states.

Regarding the commenter's concern with the focus on individual facilities which emitted above 100 tpy (using the most recent year for which point source emission data was available, i.e., 2017); the EPA disagrees that this focus on such sources is arbitrary. The EPA noted in the NPRM to this final action that Massachusetts limited its analysis to sources emitting greater than 100 tpy of SO<sub>2</sub>. These emissions account for 96 percent of Massachusetts's statewide SO<sub>2</sub> emissions from point sources, and thus are appropriate to evaluate for purposes of determining whether there is any emissions activity within the state that is in violation of the good neighbor provision. The EPA independently assessed which sources emitting over 100 tpy could have the most potential impact on downwind and neighboring states. Based on the assessment contained in the NPRM, the EPA stated "we agree with Massachusetts's choice to limit its analysis in this way, because in the absence of special factors, for example the presence of a nearby larger source or unusual factors, Massachusetts sources emitting less than 100 tpy can appropriately be assumed to not be causing or contributing to SO<sub>2</sub> concentrations above the NAAQS. The EPA recognizes that in 2017 Ardagh Glass Inc. emitted 92 tpy SO<sub>2</sub>, with the next highest source

(Wheelabrator Saugus Inc) emitting 54 tpy SO<sub>2</sub>. Ardagh Glass Inc. has permanently ceased operations as of September 26, 2018. Given these facts, the EPA finds Massachusetts's analysis of SO<sub>2</sub> sources above 100 tpy adequate for analysis of SO<sub>2</sub> transport impacts to neighboring and downwind states.”<sup>3</sup> The EPA continues to find this statement accurate.

The EPA notes that the commenter did not provide a technical analysis or additional information indicating that sources emitting 100 tpy or less within 50 km of the border may have downwind impacts that violate the good neighbor provision. For these reasons, the EPA finds that our analysis of the Massachusetts sources in the proposal, considered alongside other WOE factors described in that document, support the EPA's conclusion that Massachusetts has satisfied the good neighbor provision for the 2010 1-hour SO<sub>2</sub> NAAQS.

### **III. Final Action**

The EPA is approving Massachusetts's February 9, 2018 interstate transport SIP for the 2010 SO<sub>2</sub> 1-hour NAAQS as a revision to the Massachusetts SIP.

### **IV. Statutory and Executive Order Reviews**

Under the Clean Air Act, 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, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does 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);

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<sup>3</sup> See 84 FR 38898 (August 8, 2019).

- Is not an Executive Order 13771 regulatory action because this action is not significant 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, as 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 Clean Air Act; and
- Does not provide 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, the SIP is 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. 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, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: November 1, 2019.

Dennis Deziel  
Regional Administrator,  
EPA Region 1.

Part 52 of chapter I, title 40 of the Code of Federal Regulations 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 W - Massachusetts**

2. In § 52.1120(e), amend the table by adding the entry “Certification of Adequacy of Massachusetts 2010 Sulfur Dioxide NAAQS Infrastructure SIP to Address the Good Neighbor Requirements of Clean Air Act 110(a)(2)(D)(i)(I)” to the end of the table to read as follows:

**§ 52.1120 Identification of plan.**

(e) \* \* \*

**Massachusetts Non Regulatory**

Name of non regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approved date <sup>3</sup>	Explanations
**	*	*	*	**
Certification of Adequacy of Massachusetts 2010 Sulfur Dioxide NAAQS Infrastructure SIP to Address the Good Neighbor Requirements of Clean Air Act 110(a)(2)(D)(i)(I)	Statewide	2/9/2018	[Insert date of publication in the <u>Federal Register</u> ]  [Insert <u>Federal Register</u> citation]	

<sup>3</sup> To determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provision.