



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R04-OAR-2018-0510; FRL- 10005-23-Region 4]

Air Plan Approval and Designation of Areas; FL; Source-Specific SO₂ Permit Limits & Redesignation of the Hillsborough-Polk 2010 1-Hr SO₂ Nonattainment Area to Attainment & Mulberry Unclassifiable Area to Attainment/Unclassifiable

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve state implementation plan (SIP) revisions and two redesignation requests provided by the State of Florida, through the Florida Department of Environmental Protection (FDEP), related to the 2010 1-hour sulfur dioxide (SO₂) primary national ambient air quality standard (NAAQS or standard). Specifically, EPA is approving a December 1, 2017, SIP revision (as supplemented through an October 9, 2019, SIP revision discussed below) that includes SO₂ multi-unit permit limits and associated compliance and monitoring parameters for Mosaic Fertilizer LLC's New Wales facility (Mosaic New Wales) and Bartow facility (Mosaic Bartow), both located in Polk County, Florida. The December 1, 2017, SIP revision also includes a modeling analysis to demonstrate that the Hillsborough-Polk SO₂ nonattainment area (hereinafter referred to as the "Hillsborough-Polk Area") attains the SO₂ NAAQS with these permit limits. EPA is also approving an October 9, 2019, request to redesignate the Hillsborough-Polk Area to attainment for the 1-hour SO₂ NAAQS and associated SIP revision containing the State's plan for

maintaining attainment of the standard in the Hillsborough-Polk Area. The October 9, 2019, SIP submittal also revises the modeling analysis and some permit conditions in the 2017 SIP revision, contains a base-year emissions inventory for the Hillsborough-Polk Area, and certifies that the Hillsborough-Polk Area meets nonattainment new source review (NNSR) requirements. In addition, EPA is approving an October 9, 2019, request to redesignate the Mulberry Unclassifiable Area (hereinafter referred to as the “Mulberry Area”) to attainment/unclassifiable for the 2010 1-hour SO₂ NAAQS. FDEP submitted a draft version of the October 9, 2019, redesignation requests and SIP revisions on February 15, 2019, and EPA proposed to approve those requests and revisions through parallel processing at the State’s request.

DATES: This rule will be effective **[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-R04-OAR-2018-0510. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information may not be publicly available, i.e., confidential business information 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 either electronically through www.regulations.gov or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person 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 Federal holidays.

FOR FURTHER INFORMATION CONTACT: Madolyn Sanchez, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Ms. Sanchez may be reached by phone at (404) 562-9644 or via electronic mail at sanchez.madolyn@epa.gov.

SUPPLEMENTARY INFORMATION:

I. What is the Background for the Actions?

On June 2, 2010, EPA revised the primary SO₂ NAAQS, establishing a new 1-hour SO₂ standard of 75 parts per billion (ppb). *See* 75 FR 35520 (June 22, 2010). Under EPA's regulations at 40 CFR part 50, the 2010 1-hour SO₂ NAAQS is met at a monitoring site when the 3-year average of the annual 99th percentile of daily maximum 1-hour average concentrations is less than or equal to 75 ppb (based on the rounding convention in 40 CFR part 50, appendix T). *See* 40 CFR 50.17. Ambient air quality monitoring data for the 3-year period must meet a data completeness requirement. A year meets data completeness requirements when all four quarters are complete, and a quarter is complete when at least 75 percent of the sampling days for each quarter have complete data. A sampling day has complete data if 75 percent of the hourly concentration values, including state-flagged data affected by exceptional events which have been approved for exclusion by the Administrator, are reported.¹

¹ *See* 40 CFR part 50, appendix T, section 3(b).

Upon promulgation of a new or revised NAAQS, the Clean Air Act (CAA) requires EPA to designate as nonattainment any area that does not meet (or that contributes to ambient air quality in a nearby area that does not meet) the NAAQS. Effective on April 9, 2018, EPA designated the Hillsborough-Polk Area as nonattainment based on air dispersion modeling and designated the Mulberry Area as unclassifiable for the 2010 1-hour SO₂ NAAQS.² *See* 83 FR 1098 (January 9, 2018). Under the CAA, SO₂ nonattainment areas must attain the NAAQS as expeditiously as practicable but not later than five years after the April 9, 2018, effective date of the designation. *See* CAA section 192(a). Therefore, the Hillsborough-Polk Area's applicable attainment date is no later than April 9, 2023.

EPA's nonattainment designation for the Hillsborough-Polk Area triggered an obligation for Florida to develop a nonattainment area SIP revision addressing certain requirements under CAA title I, part D, subpart 1 (hereinafter "Subpart 1"), and to submit that SIP revision to EPA in accordance with the deadlines in title I, part D, subpart 5 (hereinafter "Subpart 5").³ Subpart 1 contains the general requirements for nonattainment areas for criteria pollutants, including requirements to develop a SIP that: provides for the implementation of reasonably available control measures (RACM); requires reasonable further progress (RFP); includes base-year and attainment-year emissions inventories, a SIP-approved NNSR permitting program that accounts for growth in the area, enforceable emission limitations and other such control measures; and provides for the implementation of contingency measures. This SIP revision was due within 18

² EPA designated the Mulberry Area as unclassifiable due to the uncertainty regarding possible contribution from Mosaic Bartow to the modeled violations in the Hillsborough-Polk Area. *See* Chapter 9 of the Technical Support Document for the Round 3 Designations for the 2010 1-Hour SO₂ NAAQS located in the docket for the designation at Docket ID No. EPA-HQ-OAR-2017-0003-0635.

³ No requirements were triggered as a result of the unclassifiable designation for the Mulberry Area.

months following the April 9, 2018, effective date of designation (i.e., October 9, 2019). *See* CAA section 191(a).⁴

The State submitted its first SIP revision for the Hillsborough-Polk Area to EPA in December 2017. That SIP revision included SO₂ multi-unit permit limits and associated compliance and monitoring parameters for Mosaic New Wales and Bartow and a modeling analysis to demonstrate that the Hillsborough-Polk Area attains the SO₂ NAAQS with these permit limits. Then, on February 15, 2019, Florida submitted a draft request to EPA to redesignate the Hillsborough-Polk Area to attainment for the 2010 1-hour SO₂ NAAQS and a related draft SIP revision containing a maintenance plan for the Hillsborough-Polk Area.⁵ The February 15, 2019, draft submittal also included a request to redesignate the Mulberry Area to attainment/unclassifiable for the 2010 1-hour SO₂ NAAQS,⁶ contained a base-year emissions inventory for the Hillsborough-Polk Area, certified that the Hillsborough-Polk Area meets NNSR requirements, revised the modeling analysis in the December 2017 SIP revision, and included administrative amendments to certain permit conditions in the December 2017 SIP

⁴ CAA section 172 requires states with nonattainment areas to submit plans providing for timely attainment and meeting other requirements. EPA's interpretation of the attainment-related nonattainment planning requirements of section 172 is that once an area is attaining the NAAQS, those requirements are not applicable for purposes of CAA section 107(d)(3)(E)(ii) and (v) and therefore need not be approved into the SIP before EPA can redesignate an area. Those requirements are not applicable for purposes of evaluating Florida's redesignation request for the Hillsborough-Polk Area because EPA is taking final action to incorporate the permitted SO₂ limits and associated compliance and monitoring parameters into the SIP since becoming effective August 31, 2019, and air quality modeling demonstrates that the Hillsborough-Polk Area attains the 1-hour SO₂ NAAQS as a result of compliance with these limits.

⁵ CAA section 107(d)(3)(E) identifies the criteria for redesignating a nonattainment area to attainment. One of these criteria, 107(d)(3)(E)(iv), requires a fully approved maintenance plan for the area that meets the requirements of CAA section 175A.

⁶ When approving or denying a request to redesignate an unclassifiable area to attainment/unclassifiable, EPA bases its decision on the air quality data for the area as well as the considerations provided under CAA section 107(d)(3)(A). For the 1-hour SO₂ NAAQS, EPA may also base its decision on relevant modeling analyses. The requirements of section 107(d)(3)(E) are not applicable to such a redesignation because that section of the CAA only applies to redesignation of nonattainment areas to attainment. Areas that are redesignated to attainment/unclassifiable must meet the requirements for attainment areas and thus must meet the relevant NAAQS and not contribute to ambient air quality in a nearby area that does not meet the NAAQS.

revision. Florida requested that EPA parallel process the draft requests and SIP submittals while the State waited for the multi-unit permit limits for Mosaic New Wales and Bartow to become state-enforceable on August 31, 2019. In a March 22, 2019 letter, FDEP clarified that it is asking EPA to incorporate the following conditions from Permit Nos. 10500046-106-AC and 1050046-050-AC:⁷ (1) Section III, Subsection A, Specific Condition 3 (as corrected by Permit Nos. 1050059-114-AC and Permit No. 1050046-063-AC) – establishing the five-unit permit limit of 1,090 lb/hr for Mosaic New Wales and the three-unit permit limit of 1,100 lb/hr for Mosaic Bartow, each based on 24-hour block average, and applicable during all periods of operation;⁸ (2) Section III, Subsection A Specific Condition 4 – requiring the facilities to use certified SO₂ continuous emissions monitoring system (CEMS) data to demonstrate initial compliance with the new SO₂ permit limit; and (3) Section III, Subsection A, Specific Condition 5 – requiring the facilities to keep records of the initial compliance demonstration that include the SO₂ CEMS data and sulfuric acid production rate (in tons per hour) during the demonstration.

In a notice of proposed rulemaking (NPRM) published on September 9, 2019 (84 FR 47216), EPA proposed to approve the draft February 15, 2019, SIP submittal and redesignation requests through parallel processing and to approve the December 2017 SIP revision (as supplemented through the February 15, 2019, draft revision). Specifically, EPA proposed to (1) approve and incorporate the SO₂ permit limits and associated compliance and monitoring parameters for Mosaic New Wales and Bartow into the SIP; (2) approve the base-year emissions

⁷ The permit condition numbers are the same for each permit.

⁸ Permit condition Section III, Subsection A, Specific Condition 3 requires compliance with the emissions caps within the same 24-hour block averaging period (6:00 a.m. to 6:00 a.m.) and in scenarios when any combination of any number of the SAPs are not in operation and when any number of the SAPs are in operation. *See* Appendices B, C, G, and H of Florida's October 9, 2019, final SIP submission in the docket for this rulemaking.

inventory for the Hillsborough-Polk Area and incorporate it into the SIP; (3) concur with Florida's certification that its existing NNSR requirements apply to the Hillsborough-Polk Area;⁹ (4) determine that the air quality modeling submitted by the State demonstrates that the Hillsborough-Polk Area will have attained the 2010 SO₂ NAAQS as a result of compliance with the multi-unit permit limits at Mosaic New Wales and Bartow; (5) approve Florida's plan for maintaining the 2010 1-hour SO₂ NAAQS in the Hillsborough-Polk Area through 2032 and incorporate it into the SIP pursuant to section 175A of the CAA; (6) redesignate the Hillsborough-Polk Area to attainment for the 2010 1-hour SO₂ NAAQS; and (7) redesignate the Mulberry Area from unclassifiable to attainment/unclassifiable for the 2010 1-hour SO₂ NAAQS based on air quality modeling.

Florida's October 9, 2019, final SIP submission demonstrates compliance with the SO₂ emissions limits for Mosaic New Wales and Bartow based on SO₂ hourly emissions data from August 1, 2019 through September 24, 2019.¹⁰ EPA proposed to determine that the modeling analysis provided in the SIP revisions demonstrates that the Hillsborough-Polk and Mulberry Areas will attain the 2010 1-hour standard as a result of compliance with the 24-hour SO₂ emissions limits at Mosaic New Wales and Bartow.¹¹ The modeling resulted in a highest predicted 99th percentile daily maximum 1-hour concentration of 74.4 ppb with no modeled violations of the 1-hour SO₂ NAAQS in ambient air locations in the Hillsborough-Polk or Mulberry Areas. Because there are no air quality monitors in these areas, EPA's proposed

⁹ As discussed in the NPRM, EPA has a longstanding interpretation that because NNSR is replaced by Prevention of Significant Deterioration (PSD) permitting upon redesignation, nonattainment areas seeking redesignation to attainment need not have a fully approved part D NNSR program in order to be redesignated. Nonetheless, EPA proposed to concur with the State's certification and is approving the SIP revision containing that certification.

¹⁰ See Appendix N of Florida's final October 9, 2019, SIP submission in the docket for this rulemaking.

¹¹ A detailed discussion of FDEP's modeling can be found in Section VII.C of the NPRM and the associated Air Modeling TSD.

approval of the redesignation request and maintenance plan SIP for the Hillsborough-Polk Area and the redesignation request for the Mulberry Area was based, in part, on these modeling results.¹² Because Mosaic New Wales and Bartow are required to comply with the permit limits that air quality modeling shows will maintain the standard, this modeling shows that the areas will continue to maintain the 2010 1-hour SO₂ standard through 2032, the final year of the submitted 10-year maintenance plan for the Hillsborough-Polk Area. The details of Florida's submittal and the rationale for EPA's actions are further explained in the NPRM, including the modeled attainment demonstration to determine attainment with the 2010 1-hour SO₂ NAAQS.

On October 9, 2019, Florida submitted final redesignation requests for the Hillsborough Polk and Mulberry Areas and a final SIP submission. EPA reviewed the final submission and it contains no substantive changes to Florida's February 15, 2019, draft SIP submission that EPA proposed for parallel processing in the NPRM. The only changes are minor clarifications, typographical corrections, a demonstration that Mosaic New Wales and Bartow are meeting their respective 24-hour block average permitted SO₂ emissions limits¹³ that EPA is incorporating into Florida's SIP as part of this final rulemaking,¹⁴ and a demonstration that Mosaic New Wales has completed the ambient air boundary improvements¹⁵ discussed in the NPRM. Based on the information and analysis in the NPRM and on Florida's compliance demonstration, the final

¹² See Section VII.C of the NPRM for a discussion regarding the nature of an attainment determination for SO₂.

¹³ As discussed in the NPRM, the 24-hour SO₂ emissions limits of 1,090 lb/hr and 1,100 lb/hr for Mosaic New Wales and Bartow, respectively, provide an appropriate alternative to establishing a 1-hour average emission limit for each unit at these facilities. See Section VI of the NPRM and EPA's Longer Term Averaging SO₂ Technical Support Document entitled U.S. *Environmental Protection Agency Technical Support Document (TSD) for the Longer Term Average Sulfur Dioxide (SO₂) Permit Limits for the Mosaic New Wales and Bartow Fertilizer Facilities*.

¹⁴ Florida's October 9, 2019, final SIP submission demonstrates compliance with the SO₂ emissions limits for Mosaic New Wales and Bartow based on SO₂ emissions data from August 1, 2019 through September 24, 2019. See Appendix N of Florida's final October 9, 2019, SIP submission in the docket for this rulemaking.

¹⁵ See Appendix M of Florida's final October 9, 2019, SIP submission in the docket for this rulemaking.

multi-unit SO₂ emissions limits at Mosaic New Wales and Bartow provide for modeled attainment of the 1-hour SO₂ NAAQS in ambient air locations in the Hillsborough-Polk and Mulberry Areas. Comments on EPA's September 9, 2019, proposed rulemaking were due on or before October 9, 2019.

II. Response to Comments

EPA received three sets of comments on the proposed rulemaking – one set that generally supports the proposed rulemaking and two sets that are adverse. These comments are available in the docket for this action. Summaries of the comments and EPA's responses are provided below.

Comment 1: The Commenter asserts that the adjustment factors used in the development of the 24-hour SO₂ emission limits for Mosaic New Wales and Bartow are on the order of 0.99 to 1.0, indicating in the Commenter's view that, historically, the emission units operate consistently without much if any variability and are much higher than default values discussed in EPA's guidance. The Commenter then questions the need for flexibility allowed by the 24-hour emissions limits, claiming that if the emissions are not fluctuating there is no need to establish a limit other than a 1-hour limit. The Commenter contends that the 24-hour limits allow for increases in hourly emissions well above historical hourly emissions and that these greater hourly emissions by way of 24-hour averaging does not demonstrate compliance with the 1-hour NAAQS.

Response 1: Prior to the issuance of the 1-hour SO₂ NAAQS in 2010, EPA's guidance recommended that the averaging time of emission limits should not exceed the averaging time of the applicable NAAQS. However, after the creation of 1-hour SO₂ standard, EPA received many

comments expressing concern for extending this approach (i.e., not allowing averaging of emission limits to show compliance with the 1-hour standard) as overly conservative and potentially burdensome for a facility with variable emissions and/or operations. After consideration of these comments, EPA issued guidance recommending a method to derive a comparably stringent emission limit with a longer averaging time (up to 30 days). As expressed on page 24 of the EPA's April 23, 2014 "Guidance for 1-hour SO₂ Nonattainment Area SIP Submissions" (SO₂ Guidance), "[t]he EPA believes that making this option available to states could reflect an appropriate balance between providing a strong assurance that the NAAQS will be attained and maintained, while still acknowledging the necessary variability in source operations and the impairment to source operations that would occur under what could be in some cases an unnecessarily restrictive approach to constraining that variability."

The process used by Florida to develop adjustment factors for the limits included at Mosaic New Wales and Bartow was described in Florida's SIP submission and evaluated in EPA's Hillsborough-Polk Longer Term Averaging TSD document, which was part of the NPRM docket (see page 6 of the TSD). This process generally followed the guidance laid out in the SO₂ Guidance, which can be used by permitting authorities to establish longer-term SO₂ emission limits in lieu of shorter-term (1-hour or 3-hour) limits at facilities they believe would benefit from the added flexibility. Although Mosaic's operations do not have a high level of variability, there are still some emission peaks that occasionally occur. Recent emissions data indicate that up to 1.5 percent of the time, emissions exceed the critical emissions value (CEV) while still maintaining permitted emissions limits (1.5 percent for New Wales and less than 1 percent for Bartow). If the Mosaic facilities were required to comply with a 1-hour emission limit all the

time (i.e., no averaging), the operation of the facility would have to be restricted to ensure those occasional periods of higher emissions never exceeded the 1-hour permit limit. At sulfuric acid plants (SAPs), SO₂ is a process material rather than a byproduct, where SO₂ is converted to sulfuric acid. Residual SO₂ emissions from SAPs are controlled by the process itself rather than with an add-on pollution control device. Considering the increased effectiveness of the new catalysts at Mosaic New Wales and Bartow, and the integration of the sulfur recovery catalyst beds into the process, EPA believes that attempting to change the operations of the Mosaic facilities to comply with a 1-hour permit limit would be unnecessarily restrictive in this case.

Additionally, the Commenter notes that there are default adjustment factors in our guidance that are lower than those used for Mosaic. This characterization of EPA's guidance is not correct. Appendix D of the guidance provides illustrations of historical typical adjustment factors observed for electric generating units under different emissions control scenarios. These are intended as a reference for states and sources when developing appropriate adjustment factors following the process in EPA's guidance, especially in circumstances where the source in question does not have historical or other adequate emissions data to fully evaluate potential emissions variability. For the Mosaic facilities, historical data for the specific operations being permitted were available and fully evaluated, resulting in the adjustment factors used to develop source-specific permit limits. Table 1 in Appendix D of EPA's guidance does include a 24-hour adjustment factor of 0.93 for "[s]ources with no control equipment." This factor was developed based on historical data for electric generating units without wet or dry scrubbers, whose operations fluctuate based on electricity demand and SO₂ content of the fuel. Mosaic New Wales and Bartow are sulfuric acid plants, not electric generating units, where the catalyst bed

used to capture SO₂ emissions is part of the process and not an add-on control device, as would potentially be used to control SO₂ emissions from other types of facilities. As EPA described in the TSD (*see* page 6), “SO₂ emissions from SAPs are controlled by the process itself rather than with an add-on pollution control device, as the catalyst bed cannot be turned off, disabled, or bypassed. [...] The catalyst degrades over time and will need to be replaced every few years; however; there is little fluctuation in emissions over any given 24-hour period. A consequence of this stability over a 24-hour period is the relatively high (close to 1.0) adjustment factors for the individual units (*see* Table 3).” The relative stability of the sulfuric acid plant operations explains why the adjustment factors are relatively close to one. The SO₂ Guidance describes a process for a permitting authority to develop a longer-term emission limit that is protective of the NAAQS. In the case of the sulfuric acid plants at Mosaic New Wales and Bartow facilities, EPA believes that Florida has followed the SO₂ Guidance to develop adjustment factors that are appropriate for the sulfuric acid plant operation based on an analysis of facility data and to establish 24-hour emission limits that are protective of the NAAQS.

EPA disagrees with the Commenter’s contention that the 24-hour limits will result in hourly emissions increases that will not provide for compliance with the 1-hour NAAQS. EPA acknowledges the concern that occasional spikes of emissions above the CEV can occur when a longer-term limit is established. This concern has been addressed in the NPRM and TSD for this action (*see* pages 2-4 of the Longer Term Averaging TSD). Additionally, as discussed in the NPRM and the associated technical support documents, Florida provided a modeling analysis demonstrating that compliance with the 24-hour emissions limits provides for attainment of the 1-hour SO₂ NAAQS. EPA’s April 23, 2014 “Guidance for 1-hour SO₂ Nonattainment Area SIP

Submissions” allows States to establish permitted emissions limits with averaging times up to 30 days provided that the limits meet certain recommended criteria. After careful review of these limits, Florida’s compliance demonstration, and the criteria recommended in the guidance document, EPA believes that the 24-hour emissions limits selected by the State require average emissions to be lower than the level that would otherwise have been required by 1-hour average limits and provide for attainment of the NAAQS. EPA also notes that the comment lacks information indicating that the 24-hour emissions limits would not result in compliance with the NAAQS.

Comment 2: The Commenter questions EPA’s preliminary determination that the combination of fencing and natural barriers (e.g., wetlands, canals, industrial ponds) are adequate to preclude public access to the area where receptors were excluded from the air quality modeling performed by Florida. The Commenter does not understand how EPA equates wetlands with a physical barrier and thus qualifies those areas to be exempted from the modeling. The Commenter mentions that Florida’s tourism industry involves airboat tours, that the boats used in those tours travel over marshes and swamps, and that EPA did not identify wetlands as a physical barrier in its draft “Revised Policy On Exclusions from ‘Ambient Air.’” The Commenter concludes by asserting that EPA should not approve this action until all ambient air areas are properly modeled.

Response 2: EPA disagrees with the Commenter’s assertion that adequate barriers do not exist to preclude public access within the ambient air boundary used in the modeling. Florida’s February 15, 2019, draft SIP submittal contains information supporting its finding that the combination of fencing and natural barriers are adequate to preclude public access to areas

within the Mosaic New Wales property that were excluded from the modeling (i.e., the property area within the ambient air boundary), and EPA summarized this information in Section 1.4 of EPA's Technical Support Document for the Air Quality Modeling Analysis (Modeling TSD) associated with the proposed rulemaking. When Florida submitted the draft SIP revision, Mosaic was in the process of installing additional fencing along the perimeter of the newly acquired land. In its October 9, 2019, final SIP submittal, Florida documents the completion of Mosaic's fencing construction and provides 22 pages of additional information supporting the State's conclusion that the combination of fencing and natural barriers in this specific instance is adequate to preclude public access to these areas of the source's property. The submittal describes the natural barriers as densely vegetated ditches and canals with steep banks, forested and herbaceous wetlands with dense vegetation and standing water, deep water industrial ponds, and densely vegetated uplands. Numerous photographs of the fencing and natural barriers were provided by Florida in the submittal. It should also be noted that the entire ambient air boundary lies wholly within a larger Mosaic Holdings Boundary which is private property owned by Mosaic and is not open to activities that would invite tourism or other public access via airboats or other similar means of transport.

Regarding the Commenter's reference to EPA's November 2018 draft "Revised Policy On Exclusions from 'Ambient Air'"¹⁶ and the claim that the document does not expressly mention wetlands, it first should be noted that natural barriers are physical barriers. The focus of the guidance was to communicate that, in addition to physical barriers addressed by the existing policy, non-physical barriers may be sufficient (by themselves or in combination with physical

¹⁶ The final revised ambient air guidance was signed by the Administrator on December 2, 2019.

barriers) to preclude public access in some circumstances. EPA did not attempt to list in the guidance every type of acceptable barrier (whether a physical barrier or otherwise). Instead, the guidance provided examples of “non-physical” measures that may be effective in some circumstances to preclude public access to source property, other than by “fences and other physical barriers.” Moreover, the effectiveness of any natural physical obstruction in precluding public access, so that it may serve as an ambient air boundary, should be evaluated on a case-by-case basis due to the variability in circumstances among stationary sources.

EPA believes that Florida has provided sufficient information, including descriptions, maps, and photographs of the measures being relied upon, to support its conclusion that the combination of fencing and natural barriers effectively precludes public access from the areas within the source property that were excluded from the modeling demonstration. The Commenter did not provide any information supporting its position that the natural barriers in combination with fencing at the Mosaic New Wales facility are insufficient or that the affected wetlands are accessible to airboat tours or that other types of public access are allowed by the source or could in fact occur there.

Comment 3: The Commenter generally agrees with EPA’s proposed action, stating that it is encouraging to see Florida’s plan to limit SO₂ emissions at Mosaic New Wales and Bartow. The Commenter then argues that these businesses should face a hefty fine if they exceed the proposed SO₂ emissions limits, and if such exceedances become frequent the sources should have their business licenses suspended until they can show emissions that are consistent with the proposed limits.

Response 3: Actual SO₂ emissions at Mosaic New Wales and Bartow must remain below the permitted emissions limits identified by the Commenter. These limits are state-enforceable and are federally-enforceable through the SIP via this final action and through the title V permits for these facilities. As discussed in the NPRM, FDEP has an active compliance and enforcement program to address any violations of these emissions limits and has committed to verify compliance with these limits and with continued attainment of the SO₂ NAAQS in the Hillsborough-Polk Area using, among other things, emissions data from the mandatory annual operating reports submitted by these facilities.¹⁷ FDEP has also committed to undertake an aggressive follow-up for compliance and enforcement and to implement contingency measures within 18-24 months of non-compliance with the SO₂ emissions limits.¹⁸ EPA believes that these commitments and the enforcement authorities available to the Agency and to Florida are sufficient to address any violation of the SO₂ emissions limits at Mosaic New Wales and Bartow.

III. What Are the Effects of These Actions?

Approval of the redesignation request changes the legal designation of the Hillsborough-Polk Area, found at 40 CFR 81.310, from nonattainment to attainment for the 2010 1-hour SO₂ NAAQS. Approval of Florida's associated SIP revision also incorporates a plan into the SIP for maintaining the 2010 1-hour SO₂ NAAQS in the Hillsborough-Polk Area as described in the NPRM. The CAA section 175A maintenance plan also establishes contingency measures to remedy any future violations of the 2010 1-hour SO₂ NAAQS and procedures for evaluation of potential violations. The Hillsborough-Polk Area is required to implement this maintenance plan and the prevention of significant deterioration program for the 2010 1-hour SO₂ NAAQS. The

¹⁷ See the "Verification of Continued Attainment" section of the NRPM at 84 FR 47227-28.

¹⁸ See the "Contingency Measures in the Maintenance Plan" section of the NRPM at 84 FR 47228-29.

approved maintenance plan can only be revised if the revision meets the requirements of CAA section 110(l) and, if applicable, CAA section 193. Approval of the redesignation request for the Mulberry Area changes the legal designation of this area from unclassifiable to attainment/unclassifiable for the 2010 1-hour SO₂ NAAQS. Finally, approval of the SIP revision incorporates into the SIP certain permitting conditions applicable to Mosaic New Wales and Bartow, making them permanent and federally enforceable.¹⁹

IV. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference into Florida's SIP the following conditions from Air Permit No. 1050046-050-AC issued by FDEP to Mosaic Bartow with an effective date of July 3, 2017, related to an SO₂ permitted limit at the facility and associated compliance monitoring, recordkeeping, and reporting requirements: (1) Section III, Subsection A, Specific Condition 3 (as administratively corrected by Permit No. 1050046-063-AC with an effective date of January 11, 2019);²⁰ (2) Section III, Subsection A, Specific Condition 4;²¹ and (3) Section III, Subsection A, Specific Condition 5.²² In accordance

¹⁹ See Section VI of the NPRM for information regarding these permit conditions.

²⁰ This provision states: "SO₂ Emissions Limit: The following emission limit applies to the Sulfuric Acid Plant (SAP) Nos. 4, 5 & 6: a. When all five SAPs are in operation within the same 24-hour block averaging period, a cap of 1,100 lb SO₂/hour, 24-hour block average (6:00 a.m. to 6:00 a.m.) is applicable; and, b. The cap of 1,100 lb SO₂/hour, 24-hour block average (6:00 a.m. to 6:00 a.m.) applies in scenarios when any combination of any number of the SAPs are not in operation and when any number of the SAPs are in operation. [Rules 62-4.030, *General Prohibition*, F.A.C. & Rule 62-4.210, *Construction Permits*, F.A.C.; Application No. 1050046-050-AC; and, Administrative Permit Correction Application No. 1050046-063-AC.]"

²¹ This provision states: "Initial Compliance: These emission units shall use certified SO₂ CEMS data to demonstrate initial compliance with the new SO₂ emission limit. [Rules 62-4.070(1)&(3), *Reasonable Assurance*, F.A.C.; and, Application No. 1050046-050-AC.]"

²² This provision states: "Recordkeeping: The permittee shall keep records of the initial compliance demonstration. The records shall include the SO₂ CEMS data along with the sulfuric acid production rate (TPH, tons per hour) during the demonstration. Any reports shall be prepared in accordance with the applicable requirements specified in

with requirements of 1 CFR 51.5, EPA is also finalizing the incorporation by reference into Florida's SIP the following conditions from Air Permit No. 1050059-106-AC issued by FDEP to Mosaic New Wales with an effective date of October 30, 2017, related to an SO₂ permitted limit at the facility and associated compliance monitoring, recordkeeping, and reporting requirements: (1) Section III, Subsection A, Specific Condition 3 (as administratively corrected by Permit No. 1050059-114-AC with an effective date of January 11, 2019);²³ (2) Section III, Subsection A, Specific Condition 4;²⁴ and (3) Section III, Subsection A, Specific Condition 5.²⁵ Therefore, these materials have been approved by EPA for inclusion in the state implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.²⁶

Appendix D (Common Testing Requirements) of this permit. [Rule 62-297.310(10), F.A.C.; and, Application No. 1050046-050-AC.]”

²³ This provision states: “SO₂ Emissions Limit: The following emission limit applies to the Sulfuric Acid Plant (SAP) Nos. 1, 2, 3, 4 & 5: a. When all five SAPs are in operation within the same 24-hour block averaging period, a cap of 1,090 lb SO₂/hour, 24-hour block average (6:00 a.m. to 6:00 a.m.) is applicable; and, b. The cap of 1,090 lb SO₂/hour, 24-hour block average (6:00 a.m. to 6:00 a.m.) applies in scenarios when any combination of any number of the SAPs are not in operation and when any number of the SAPs are in operation. [Rules 62-4.030, *General Prohibition*, F.A.C. & Rule 62-4.210, *Construction Permits*, F.A.C.; Application No. 1050059-106-AC; and, Administrative Permit Correction Application No. 1050059-114-AC.]”

²⁴ This provision states: “Initial Compliance: These emission units shall use certified SO₂ CEMS data to demonstrate initial compliance with the new SO₂ emission limit. [Rules 62-4.070(1)&(3), *Reasonable Assurance*, F.A.C.; and, Application Nos. 1050059-103-AC & 1050059-106-AC.]”

²⁵ This provision states: “Recordkeeping: The permittee shall keep records of the initial compliance demonstration. The records shall include the SO₂ CEMS data along with the sulfuric acid production rate (TPH, tons per hour) during the demonstration. Any reports shall be prepared in accordance with the applicable requirements specified in Appendix D (Common Testing Requirements) of this permit. [Rule 62-297.310(10), F.A.C.; and, Application Nos. 1050059-103-AC & 1050059-106-AC.]”

²⁶ See 62 FR 27968 (May 22, 1997).

EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Final Actions

EPA is taking final actions regarding Florida's request to redesignate the Hillsborough-Polk Area to attainment for the 2010 1-hour SO₂ NAAQS and associated SIP revisions. EPA is determining that the Hillsborough-Polk Area has attained the 2010 1-hour SO₂ NAAQS. EPA is also approving the SIP revision containing the State's plan for maintaining attainment of the 2010 1-hour SO₂ standard, the base-year emissions inventory for the Hillsborough-Polk Area, and a certification regarding NNSR. EPA is approving Florida's redesignation request regarding the Hillsborough-Polk Area and redesignating the area to attainment for the 2010 1-hour SO₂ NAAQS. EPA is also approving Florida's redesignation request regarding the Mulberry Area and redesignating this area to attainment/unclassifiable for the 2010 1-hour SO₂ NAAQS. Finally, EPA is incorporating the aforementioned permit conditions for Mosaic New Wales and Bartow into the SIP. As mentioned above, approval of the redesignation request changes the official designation of the Hillsborough-Polk Area from nonattainment to attainment and the Mulberry Area from unclassifiable to attainment/unclassifiable, as found in 40 CFR part 81.

VI. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E), as well as the redesignation of an area to attainment/unclassifiable, are actions that affect the status of a geographical area and do not

impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment or to attainment/unclassifiable does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 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 CAA. Accordingly, these actions merely approve state law as meeting Federal requirements and do not impose additional requirements beyond those imposed by state law. For this reason, these actions:

- Are not significant regulatory actions 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);
- Are not Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory actions because they are not significant regulatory actions under Executive Order 12866;
- Do not impose information collection burdens under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are 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.*);
- Do 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);

- Do not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are 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
- Will not have disproportionate human health or environmental effects under Executive Order 12898 (59 FR 7629, February 16, 1994).

These actions 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 as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

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 CAA, 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

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Sulfur dioxide, Reporting and recordkeeping requirements.

40 CFR Part 81

Environmental protection, Air pollution control.

Dated: January 30, 2020.

Mary S. Walker,

Regional Administrator,

Region 4.

40 CFR parts 52 and 81 are 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 K – Florida

2. Section 52.520 is amended:

- a. In paragraph (d) by adding entries for “Mosaic Fertilizer, LLC – Bartow Facility” and “Mosaic Fertilizer, LLC – New Wales Facility” at the end of the table; and
- b. In paragraph (e) by adding an entry for “2010 1-hour SO₂ Maintenance Plan for the Hillsborough-Polk Area” at the end of the table.

The additions read as follows:

§ 52.520 Identification of plan.

* * * * *

(d) * * *

EPA-APPROVED FLORIDA SOURCE-SPECIFIC REQUIREMENTS

Name of source	Permit No.	State effective date	EPA approval date	Explanation
**	**	*	*	*
Mosaic Fertilizer, LLC - Bartow Facility	Air Permit No. 1050046-050-AC	7/3/2017	[Insert date of publication in Federal Register] [Insert citation of publication]	Section III, Subsection A, Specific Condition 3 (as administratively corrected by Permit No. 1050046-063-

				AC with an effective date of January 11, 2019); Condition 4; and Condition 5
Mosaic Fertilizer, LLC – New Wales Facility	Air Permit No. 1050059-106-AC	10/30/2017	[Insert date of publication in Federal Register] [Insert citation of publication]	Section III, Subsection A, Specific Condition 3 (as administratively corrected by Permit No. 1050059-114-AC with an effective date of January 11, 2019); Condition 4; and Condition 5

(e) * * *

EPA-APPROVED FLORIDA NON-REGULATORY PROVISIONS

Provision	State effective date	EPA approval date	FEDERAL REGISTER, notice	Explanation
**	**	**	*	
2010 1-hour SO ₂ Maintenance Plan for the Hillsborough-Polk Area	10/9/2019	[Insert date of Publication in <u>Federal Register</u>]	[Insert citation of publication]	

PART 81-DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

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

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

4. In § 81.310, the table entitled “Florida-2010 Sulfur Dioxide NAAQS [Primary]” is amended

by revising the entries for “Hillsborough-Polk County, FL” and “Mulberry, FL Area” to read as follows:

§ 81.310 Florida.

* * * * *

FLORIDA-2010 SULFUR DIOXIDE NAAQS
[Primary]

Designated area	Designation	
	Date ¹	Type
***	**	**
Hillsborough-Polk County, FL ³	<u>[Insert date 30 days after date of publication in the Federal Register]</u>	Attainment.
Hillsborough County (part)		
Polk County (part)		
That portion of Hillsborough and Polk Counties encompassed by the polygon with the vertices using Universal Traverse Mercator (UTM) coordinates in UTM zone 17 with datum NAD83 as follows: 390,500 E, 3,073,500 N; 390,500 E, 3,083,500 N; 400,500 E, 3,083,500 N; 400,500 E, 3,073,500 N		
***	**	**
Mulberry, FL Area ³	<u>[Insert date 30 days after date of publication in the Federal Register]</u>	Attainment /Unclassifiable.
Hillsborough County (part)		
Polk County (part)		

<p>That portion of Hillsborough and Polk Counties encompassed by the polygon with the vertices using Universal Traverse Mercator (UTM) coordinates in UTM zone 17 with datum NAD83 starting with the Northwest Corner and proceeding to the Northeast as follows: 390,500 E, 3,083,500 N; 410,700 E, 3,091,600 N; 412,900 E, 3,089,800 N; 412,900 E, 3,084,600 N; 400,500 E, 3,073,500 N; 400,500 E, 3,083,500 N</p>		
***	**	**

¹ This date is 4/9/2018, unless otherwise noted.

* * * * *

³ Includes any Indian country in each county or area, unless otherwise specified. The EPA is not determining the boundaries of any area of Indian country in this table, including any area of Indian country located in the larger designation area. The inclusion of any Indian country in the designation area is not a determination that the state has regulatory authority under the Clean Air Act for such Indian country.

* * * * *

[FR Doc. 2020-02606 Filed: 2/19/2020 8:45 am; Publication Date: 2/20/2020]