



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2019-0008; FRL-10007-99-Region 4]

Air Plan Approval; Florida; 2010 1-Hour SO₂ NAAQS Transport Infrastructure

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving Florida's September 18, 2018, State Implementation Plan (SIP) submission pertaining to the "good neighbor" provision of the Clean Air Act (CAA or Act) for the 2010 1-hour sulfur dioxide (SO₂) National Ambient Air Quality Standard (NAAQS). The good neighbor provision requires each state's implementation plan to address the interstate transport of air pollution in amounts that contribute significantly to nonattainment, or interfere with maintenance, of a NAAQS in any other state. In this action, EPA has determined that Florida will not contribute significantly to nonattainment or interfere with maintenance of the 2010 1-hour SO₂ NAAQS in any other state. Therefore, EPA is approving the September 18, 2018, SIP revision as meeting the requirements of the good neighbor provision for the 2010 1-hour SO₂ NAAQS.

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-2019-0008. 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.

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SUPPLEMENTARY INFORMATION:

I. Background

On June 2, 2010, EPA promulgated a revised primary SO₂ NAAQS with a level of 75 parts per billion (ppb), based on a 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations. *See* 75 FR 35520 (June 22, 2010). Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. These SIPs, which EPA has historically referred to as “infrastructure SIPs,” are to provide for the “implementation, maintenance, and enforcement” of

such NAAQS, and the requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibility under the CAA. Section 110(a) of the CAA requires states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of individual state submissions may vary depending upon the facts and circumstances. The content of the changes in such SIP submissions may also vary depending upon what provisions the state's approved SIP already contains. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements, and legal authority that are designed to assure attainment and maintenance of the NAAQS.

Section 110(a)(2)(D)(i)(I) of the CAA requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from emitting any air pollutant in amounts that will contribute significantly to nonattainment, or interfere with maintenance, of the NAAQS in another state. The two clauses of this section are referred to as prong 1 (significant contribution to nonattainment) and prong 2 (interference with maintenance of the NAAQS).

On September 18, 2018, the Florida Department of Environmental Protection (FDEP) submitted a revision to the Florida SIP addressing prongs 1 and 2 of CAA section 110(a)(2)(D)(i)(I) for the 2010 1-hour SO₂ NAAQS. EPA is approving FDEP's September 18, 2018, SIP submission because the State demonstrated that Florida will not contribute significantly to nonattainment, or interfere with maintenance, of the 2010 1-hour SO₂ NAAQS in any other state. All other elements related to the infrastructure requirements of section 110(a)(2) for the 2010 1-hour SO₂ NAAQS for Florida are addressed in separate rulemakings.¹

¹ EPA acted on the other elements of Florida's June 3, 2013, infrastructure SIP submission, as supplemented on January 8, 2014, for the 2010 1-hour SO₂ NAAQS on September 30, 2016 (81 FR 67179).

In a notice of proposed rulemaking (NPRM) published on February 10, 2020 (85 FR 7480), EPA proposed to approve Florida's September 18, 2018, SIP revision for the 2010 1-hour SO₂ NAAQS ("Florida NPRM"). The details of the SIP revision and the rationale for EPA's action is explained in the Florida NPRM. Comments on the proposed rulemaking were due on or before March 11, 2020.

II. Response to Comments

EPA received five sets of adverse comments from anonymous commenters (collectively referred to as the "Commenter"). These comments are included in the docket for this final action. EPA has summarized the comments and provided responses below.

Comment 1: The Commenter states that EPA has not demonstrated that Florida will not contribute significantly to nonattainment or interfere with maintenance of the 2010 1-hour SO₂ NAAQS in any other state. The Commenter claims this is "best evidenced" in Escambia County, Alabama, which borders the Florida panhandle counties of Escambia² and Santa Rosa. As summarized below, the Commenter raises specific concerns regarding several aspects of EPA's analysis of Florida's SIP revision as it relates to interstate transport of SO₂ emissions into Alabama.

Comment 1.a: The Commenter quotes the following statement from the Florida NPRM: "Regarding three out-of-state DRR³ sources within 50 km⁴ of the Florida border which are located in Alabama, the information available to the Agency does not indicate there are violations of the 2010 1-hour SO₂ NAAQS in Alabama to which Florida sources could

² All subsequent references to "Escambia County" in this notice are to Escambia County, Alabama.

³ On August 21, 2015 (80 FR 51052), EPA separately promulgated air quality characterization requirements for the 2010 1-hour SO₂ NAAQS in the Data Requirements Rule (DRR).

⁴ The Commenter's use of "km" in this instance refers to kilometers (km).

contribute.” The Commenter then asserts that the opposite is also true – that the available information does not indicate that there are no violations of the NAAQS.

Comment 1.b: The Commenter notes that Escambia County is currently designated unclassifiable for the 2010 1-hour SO₂ NAAQS and claims that EPA has not provided information to change this designation, and therefore should not approve the September 18, 2018, Florida SIP submission because the State may be contributing to a NAAQS violation in that county. The Commenter states that the absence of evidence of a violation does not mean that there is no violation of the NAAQS, which is why EPA designated the county as unclassifiable, and that the SIP revision should not be approved until EPA or Florida demonstrates that there is no violation. The Commenter then asserts that without evidence that there is not a NAAQS violation in Escambia County, EPA cannot say that Florida is not contributing to a downwind NAAQS violation or is not interfering with maintenance in Escambia County and further asserts that EPA cannot approve Florida’s SIP revision until the “NAAQS status” of that county is resolved.

Comment 1.c: The Commenter notes that, contrary to EPA’s statement in the notice, Table 5 in the Florida NPRM does not show a decline in SO₂ emissions from 2012 to 2017/2018 for the Alabama sources listed therein. The Commenter points out that if the reference is to Table 6, there is a decrease in emissions relative to 2012 and an increase in emissions relative to 2017. The Commenter states that EPA should explain why there is an upward trend and include 2019 emissions to be more complete.

Comment 1.d: The Commenter references “similar concerns” that it raised regarding EPA’s December 31, 2019, NPRM (84 FR 72278) (“Alabama NPRM”) proposing to approve Alabama’s good neighbor SIP revision for the 2010 1-hour SO₂ NAAQS and asks that EPA

consider those comments in evaluating the Florida NPRM.⁵ The Commenter then broadly restates some of these comments as summarized below.⁶

The Commenter refers to its comments on the Alabama NPRM regarding the unmodeled flare emissions at the Escambia Operating Company - Big Escambia Creek Plant (Big Escambia) facility in Alabama.⁷ With respect to the Florida SIP submission, the Commenter urges EPA or the state to correct the modeling for Big Escambia to account for missing emissions from a flare at the facility.

The Commenter also refers to its comments on the Alabama NPRM regarding the need for additional modeling receptors in the unmodeled area in Florida between a Florida source, Breitburn Operating, L.P. (Breitburn), and Big Escambia.⁸ With respect to the Florida NPRM, the Commenter urges EPA or the state to include more receptors in the modeling for Big Escambia and references Breitburn in its discussion noting that EPA is proposing to approve Florida's SIP revision but does not have evidence that there is not a NAAQS violation in Escambia County.

Comment 1.e: The Commenter believes that, in the absence of air quality monitors, the best way to assess air quality is through modeling. The Commenter predicts that EPA will not model in response to the comments but will offer some rationale for why omitting the flare emissions at Big Escambia and leaving a gap in the receptor grid between Breitburn and Big

⁵ The docket for EPA's action on Alabama's August 20, 2018, SIP submission is located at www.regulations.gov with Docket ID: EPA-R04-OAR-2018-0792.

⁶ On March 10, 2020 (85 FR 13755), EPA responded to adverse comments received and finalized approval of Alabama's August 20, 2018, SIP submission.

⁷ Regarding Big Escambia, the Alabama Department of Environmental Management (ADEM) provided supplemental information in September and December of 2019 to address the issues with the original modeling for this source performed under the DRR for the purposes of evaluating interstate transport of SO₂ from Alabama into Florida.

⁸ EPA notes that Big Escambia is located 8 km from the Florida border and 21 km northwest from Breitburn, the nearest SO₂ source in Florida. Breitburn is located less than 5 km from the Alabama-Florida border.

Escambia are a sufficient and conservative substitute for modeling. The Commenter conducted simple modeling runs via AERSCREEN⁹ and claims that the results show that SO₂ emissions are being transported across state lines from Alabama into Florida and Florida into Alabama based on simulations from Big Escambia and Breitburn. The Commenter acknowledges that AERSCREEN is a “simple screening model” which is “not capable or sophisticated enough to unequivocally answer the question of whether there are NAAQS violations around Breitburn (particularly in the unmodeled receptor gap) in Florida, or at the unclassifiable receptors in Escambia County, Alabama, or whether the prong 1 and prong 2 requirements of both Alabama and Florida have been satisfied.” The Commenter explains that it did not submit the modeling results due to only being able to estimate the hourly emissions and release characteristics of the flare at Big Escambia, which the Commenter believes EPA would use to discredit the results as invalid. The Commenter asks why EPA does not “run the modeling properly instead of making unsubstantiated technical assumptions that run counter to why modeling is used in the first place?” The Commenter notes that EPA could provide AERSCREEN runs to supplement the Agency’s weight of evidence (WOE) and to evaluate the potential for transport issues “rather than speculating on what the concentrations might look like in the absence of adequate modeling.”

Response 1: EPA disagrees with the Commenter’s claim that EPA has not demonstrated that Florida will not contribute significantly to nonattainment or interfere with maintenance of

⁹ AERSCREEN is EPA’s recommended screening model based on AERMOD, a steady-state plume model that incorporates air dispersion based on planetary boundary layer turbulence structure and scaling concepts, including treatment of both surface and elevated sources, and both simple and complex terrain. AERSCREEN will produce estimates of “worst-case” 1-hour concentrations for a single source, without the need for hourly meteorological data, and also includes conversion factors to estimate “worst-case” 3-hour, 8-hour, 24-hour, and annual concentrations. AERSCREEN is intended to produce concentration estimates that are equal to or greater than the estimates produced by AERMOD with a fully developed set of meteorological and terrain data, but the degree of conservatism will vary depending on the application. EPA recommends AERSCREEN and AERMOD for certain applications. See <https://www.epa.gov/scram/air-quality-dispersion-modeling-screening-models>.

the 2010 1-hour SO₂ NAAQS in any other state. EPA continues to believe that the WOE approach applied in the NPRM provides a sufficient technical justification for approving Florida's transport SIP. EPA's WOE analysis evaluated the following factors: 1) potential ambient air quality impacts of SO₂ emissions from certain facilities in Florida on neighboring states based on available air dispersion modeling results; 2) SO₂ emissions from Florida sources; 3) SO₂ ambient air quality for Florida and neighboring states; 4) SIP-approved Florida regulations that address SO₂ emissions; and 5) federal regulations that reduce SO₂ emissions at Florida sources. EPA's response to the Commenter's specific concerns are outlined below.

Response 1.a: EPA disagrees with the Commenter's statement that the available information "does not indicate that there are no violations of the NAAQS." EPA's statement regarding the three out-of-state DRR sources within 50 km of Florida (Akzo Nobel Functional Chemicals - LeMoyne Site (AkzoNobel); Alabama Power Company - James M. Barry Electric Generating Plant (Plant Barry); and Big Escambia) cited by the Commenter, and EPA's determination that Florida will not contribute significantly to nonattainment or interfere with maintenance of the 2010 1-hour SO₂ NAAQS in another state, is based on EPA's WOE analysis of Florida's SIP revision.

EPA's WOE evaluation described in Response 1 includes the information summarized in Sections III.C.1.b (Big Escambia) and III.C.2.b (Plant Barry and AkzoNobel) of the Florida NPRM. Although Plant Barry and AkzoNobel are not located in Escambia County, Alabama, EPA addresses these facilities in this response.

Regarding AkzoNobel and Plant Barry, these sources are both located in Mobile County, Alabama, approximately 41 km and 36 km from the Florida border, respectively. For these sources, EPA evaluated 2017 SO₂ emissions data along with the distances to the closest

neighboring state's non-DRR sources emitting over 100 tons per year (tpy) of SO₂. Table 5 in the Florida NPRM shows that the distances between each facility and the nearest state's source to each facility which emits over 100 tpy of SO₂ exceed 50 km, the distance threshold Florida used to reflect the transport properties of SO₂.¹⁰ Further, the closest sources in another state to AkzoNobel and Plant Barry are located in Mississippi. Due to the magnitude of their SO₂ emissions and the distance to the facilities in Alabama, EPA believes that there are no Florida sources which emit SO₂ within 50 km of AkzoNobel and Plant Barry which could interact with SO₂ emissions from these Alabama sources in such a way as to contribute significantly to nonattainment in Alabama. In addition, EPA evaluated SO₂ emissions trends for AkzoNobel and Plant Barry in the Florida NPRM and assessed more recent SO₂ emissions data that has become available for Plant Barry for 2019. See Response 1.c. for additional information on the emissions data for these sources.

EPA also evaluated data from the Agency's Air Quality System (AQS)¹¹ from the SO₂ monitors in the surrounding areas of AkzoNobel and Plant Barry. The only monitor within 50 km of these sources is located in Mobile County, Alabama (AQS ID: 01-097-0003), and is approximately 23 km from AkzoNobel. The 2018 design value (DV)¹² for this monitor is 11 ppb. As stated in the Florida NPRM, EPA believes that the information evaluated for AkzoNobel and Plant Barry, as part of the Agency's WOE analysis, support the Agency's

¹⁰ In the Florida NPRM, EPA concurred with Florida's application of the 50-km threshold as a reasonable distance to evaluate emission source impacts into neighboring states and to assess air quality monitors within 50 km of the State's border. See 85 FR 7482 (February 10, 2020). The Commenter did not raise concerns with this determination.

¹¹ EPA's AQS contains ambient air pollution data collected by EPA, state, local, and tribal air pollution control agencies. This data is available at <https://www.epa.gov/air-trends/air-quality-design-values>.

¹² A "Design Value" is a statistic that describes the air quality status of a given location relative to the level of the NAAQS. The DV for the primary 2010 1-hour SO₂ NAAQS is the 3-year average of annual 99th percentile daily maximum 1-hour values for a monitoring site. For example, the 2017 DV is calculated based on the three-year average from 2015-2017. The interpretation of the primary 2010 1-hour SO₂ NAAQS including the data handling conventions and calculations necessary for determining compliance with the NAAQS can be found in Appendix T to 40 CFR Part 50.

conclusion that sources in Florida will not contribute significantly to nonattainment of the 2010 1-hour SO₂ NAAQS in a nearby state.

Regarding Big Escambia, which is located approximately 8 km from the Florida border, EPA considered the supplemental information and modeling results provided by ADEM.¹³ The modeling included Breitburn, the nearest SO₂ source in Florida to Big Escambia, which is located less than 5 km from the Alabama-Florida border. As noted in the Florida NPRM and Response 1.d, Florida's submittal indicates that Breitburn's 2017 SO₂ emissions are 1,491 tons. Due to its proximity to Big Escambia, Alabama's modeling analysis included Breitburn as a modeled nearby source using a conservative maximum potential-to-emit emissions rate of 2,181 pounds per hour (lb/hr) (9,553 tpy).¹⁴ This modeling indicates that the impact of SO₂ emissions from Breitburn do not result in Alabama's air quality exceeding the 2010 1-hour SO₂ NAAQS. EPA believes that the modeling provides a conservative estimate of Breitburn's SO₂ impacts at locations in Alabama near the Alabama-Florida border because the Big Escambia modeling used allowable emissions of SO₂ for Breitburn, which are approximately 6.4 times higher than Breitburn's actual annual SO₂ emissions for 2017 (1,491 tpy). In addition, as shown in the Florida NPRM, Breitburn's 2014-2018 emissions profile demonstrates that Breitburn has consistently operated well below its permitted allowable emission rate. Thus, EPA continues to believe that Breitburn's actual contribution to SO₂ concentrations in Alabama would likely be much less than the predicted concentrations in the Big Escambia modeling, which provides

¹³ See footnote 7.

¹⁴ Breitburn has two sulfur recovery units that each have SO₂ permit limits of approximately 1,000 lb/hr that were both included in the modeling performed by Alabama. However, Breitburn operates only one of the two sulfur recovery units at any given time. Therefore, the maximum allowable emissions rate in reality is approximately half of the 2,181 lb/hr modeled by Alabama. Additionally, based upon Breitburn's actual operations in 2017 and 2018, the maximum hourly SO₂ emissions rate during that time was approximately 396 lb/hr, which is approximately 18% of the emissions rate included in Alabama's modeling.

further assurances that air quality in the portion of Alabama covered in the modeling grid would remain below the level of the 2010 1-hour SO₂ NAAQS.

Response 1.b: EPA disagrees with the Commenter. EPA's determination that Florida will not contribute significantly to nonattainment or interfere with maintenance of the 2010 1-hour SO₂ NAAQS in another state is not reliant on Escambia County's unclassifiable designation. As stated in Response 1.a, this determination is based on a WOE analysis that includes information regarding Florida SO₂ emission sources and surrounding states' sources, including sources in Escambia County, Alabama. EPA continues to believe that the WOE analysis provided in the NPRM, which includes as one of several factors the absence of any information demonstrating a potential violation in Alabama, is adequate to determine the potential downwind impact from Florida to neighboring states.

Response 1.c: EPA acknowledges that the quoted sentence from the Florida NPRM should have referenced Table 6 instead of Table 5. Table 6 provides annual SO₂ emissions for two Alabama sources, AkzoNobel and Plant Barry, for the years 2012-2017 (AkzoNobel) and 2012-2018 (Plant Barry).

Regarding the comment that there is an increase in SO₂ emissions relative to 2017, annual SO₂ emissions increased at Plant Barry from 4,218 tons in 2017 to 5,257 tons in 2018. SO₂ emissions data are now available from Plant Barry for 2019. The data show that SO₂ emissions from Plant Barry decreased by 1,762 tons from 2018 to 2019 (from 5,257 tons in 2018 down to 3,495 tons in 2019). Thus, the 2019 SO₂ emissions data for Plant Barry demonstrates there is not a continued upward trend in emissions at this facility as the commenter suggests.

Emissions of SO₂ at AkzoNobel increased relative to the year 2014 (2,320 tons) in 2015 (3,587 tons) and 2016 (3,646 tons) but decreased in 2017 (2,201 tons) to below 2014 levels.

Emissions data remain unavailable from AkzoNobel for 2018 or 2019. The decrease in emissions for AkzoNobel reported in 2017 demonstrate that there is not a continued upward trend in emissions at this facility as the Commenter suggests.

EPA believes that the data in Table 6 of the NPRM, as supplemented by the 2019 SO₂ emissions data for Plant Barry provided in this response, and the changes in controls or operations at these two sources described in the NPRM, support the Agency's conclusion that sources in Florida will not contribute significantly to nonattainment or interfere with maintenance of the 2010 1-hour SO₂ NAAQS in a nearby state.

Response 1.d: The Commenter's broad request that EPA consider all of its comments on the Alabama NPRM in this action on Florida's SIP revision is not a valid comment. Merely referring to a comment presented elsewhere does not provide EPA with sufficient information to evaluate that comment in the context of this action. Therefore, EPA is only responding to the comments from the Alabama NPRM that are restated by the Commenter in the context of the Florida NPRM.

The Commenter does not explain the relevance of its comment on the Alabama NPRM concerning flare emissions from Big Escambia to the transport of SO₂ emissions from Florida into Alabama. EPA's evaluation of the flare characteristics in the Alabama NPRM and final rule relate specifically to the transport of SO₂ emissions from Alabama into Florida, and thus, does not directly relate to the evaluation of Florida's SIP revision regarding the transport of SO₂ emissions from Florida into Alabama. Regarding the influence of Big Escambia's flare emissions on Escambia County when impacts from Florida are factored in, EPA has no evidence to suggest that the emissions from Breitburn in Florida, when combined with the SO₂ emissions

at Big Escambia, including the flare emissions, will significantly contribute to nonattainment or interfere with maintenance of the NAAQS in Alabama.

The Commenter does not explain the relevance of its comment on the Alabama NPRM concerning the receptor grid to the transport of SO₂ emissions from Florida into Alabama. Regarding the transport of SO₂ emissions from Florida into Alabama, EPA disagrees with the Commenter's assertion that the receptor grid needs to be expanded to include modeling receptors to cover the unmodeled area between Breitburn¹⁵ and Big Escambia before EPA can approve Florida's SIP submittal. Modeling this area in Florida is not relevant to whether Florida will contribute to nonattainment or interfere with maintenance of the 2010 1-hour SO₂ NAAQS in Alabama. Regarding an assessment of Breitburn's impacts in Alabama, Alabama's modeling analysis includes Breitburn as a modeled source due to its proximity to Big Escambia. This modeling indicates that the impact of SO₂ emissions from Breitburn do not result in Alabama's air quality exceeding the 2010 1-hour SO₂ NAAQS. EPA continues to believe that the modeling provides a conservative estimate of Breitburn's SO₂ impacts at locations in Alabama because the Big Escambia modeling used allowable emissions of SO₂ for Breitburn, which are approximately 6.4 times Breitburn's actual SO₂ emissions for 2017 (9,533 tons/1,491 tons = 6.4). Also as noted in the Florida NPRM, Breitburn's 2014-2018 emissions profile demonstrates that Breitburn has consistently operated well below its permitted allowable emission rate. Thus, Breitburn's actual impact on SO₂ concentrations in Alabama would likely be much less than the predicted concentrations in the Big Escambia modeling.

¹⁵ Breitburn is located 4 km due south of the Alabama-Florida border but is located 21 km Southeast of Big Escambia. Big Escambia is located 8 km due north of the Alabama-Florida border. The Big Escambia modeling grid extends 15 km from Big Escambia in all directions and approximately 7 km into Florida in the direction due south of Big Escambia.

EPA continues to believe that the WOE analysis provided in the Florida NPRM is adequate to determine the potential downwind impact from Florida to neighboring states and that the inclusion of Breitburn (at its allowable emission levels) indicates that air quality at the Alabama-Florida border is likely characterized conservatively. Thus, EPA finds that SO₂ emissions from Breitburn will not contribute significantly to nonattainment or interfere with maintenance of the 2010 1-hour SO₂ NAAQS in Alabama.

Response 1.e: Regarding the Commenter's suggestion that EPA should rely on its own resources and expertise to model whether or not Florida sources significantly contribute to nonattainment or interfere with maintenance in Escambia County, Alabama, EPA does not believe that the issues identified by the Commenter related to the Big Escambia modeling invalidate consideration of the modeling for transport purposes as part of a WOE analysis. EPA does not believe that modeling is required in all cases under CAA section 110(a)(2)(D)(i)(I) to evaluate good neighbor obligations, particularly where other available information can be used to qualitatively and quantitatively assess the potential for downwind impacts from upwind state emission sources. Here, EPA has evaluated a number of different factors in a WOE analysis based on available information, which includes the available modeling of Big Escambia, and found no basis to conclude that Florida emissions will have an adverse impact on downwind states. Therefore, EPA has concluded that Florida emissions will not significantly contribute to nonattainment or interfere with maintenance of the 2010 1-hour SO₂ NAAQS in neighboring states. Therefore, as stated in our response to Comment 1.a, EPA continues to believe that the WOE analysis provided in the Florida NPRM is adequate to evaluate the potential downwind impact from Florida to neighboring states.

Regarding AERSCREEN, without the modeling input and output data used and produced by the Commenter, EPA cannot evaluate the modeling results to which the Commenter refers showing that there is transport of SO₂ from Alabama into Florida and Florida into Alabama. Further, as the Commenter acknowledges, AERSCREEN has limitations in terms of making any definitive assessments. AERSCREEN is intended to produce pollutant concentration estimates that are conservative, for screening purposes, relative to refined modeling with AERMOD. AERSCREEN conservatively assumes that every receptor is located along the plume centerline (area of highest concentration across the plume) and worst-case meteorological conditions. Thus, the Commenter's unsupported assertions regarding the results of its AERSCREEN runs do not provide a basis for the EPA to reconsider its WOE analysis of Florida's SIP revision.

As noted earlier, the available information indicates that modeling and emissions data provide a conservative estimate of the predicted SO₂ impacts in Alabama that may be due to transport of SO₂ from Florida sources. EPA continues to believe that the Agency's WOE analysis of Florida's SIP revision, as supplemented with additional data discussed in the Florida NPRM, provides a sufficient basis for the Agency's assessment as to whether sources in Florida will contribute significantly to nonattainment or interfere with maintenance of the 2010 1-hour SO₂ NAAQS in a nearby state.

Comment 2: The Commenter notes that EPA consistently uses the words "will not" when discussing the potential for significant contribution or interference with maintenance of the 2010 1-hour SO₂ NAAQS and asks why EPA is not using the present tense when evaluating the SIP submission from Florida. The Commenter asks whether EPA thinks a particular source is currently contributing to nonattainment or interfering with maintenance of another state's NAAQS, and if so, asserts that EPA must redo its evaluation for the present tense and repropose.

Response 2: EPA disagrees with the Commenter that the Agency must repropose using the present tense. EPA’s use of the phrase “will not” is consistent with the verb tense in the good neighbor provision of the CAA, which requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from emitting any air pollutant in amounts that “will” contribute significantly to nonattainment, or interfere with maintenance, of the NAAQS in another state. *See* CAA section 110(a)(2)(D)(i)(I). Accordingly, EPA’s evaluation and conclusion are consistent with the statutory standard in the good neighbor provision. In the NPRM, EPA evaluated data regarding historic, current, and future source activity and air quality to determine whether emissions from Florida are likely to be impacting downwind air quality, either presently or in the future, and are thus in violation of the good neighbor provision. EPA’s WOE analysis of this information did not find any indication that such an impact was likely occurring currently or would be likely to occur in the future. Accordingly, EPA concluded that emissions from Florida will not contribute significantly to nonattainment or interfere with maintenance of the 2010 1-hour SO₂ NAAQS in any other state.

Comment 3: The Commenter asserts that EPA should disapprove Florida’s SIP submission because the DRR modeling EPA relies on inappropriate receptor grids. Specifically, the Commenter states that “one of those geometries was not appropriate for many regions in Florida, including the Gulf of Mexico.” The Commenter claims that the National Oceanic and Atmospheric Administration (NOAA) utilizes “this same SAU modeling” and that EPA never requested or solicited input from NOAA about how EPA might improve its monitoring and forecasting of SO₂ emissions in Florida. In addition, the Commenter believes that EPA should also disapprove the SIP submission “because the AER uses ‘worst case’ grid cells for SO₂ emissions measurements in Figure 3, which are also the grid cells used by the EPA in its AER

standard.” The Commenter states that EPA should “reassess the grid cells used in the DRR modeling for a more refined receptor grid in areas beyond the state’s borders.”

Response 3: It is unclear how the comment relates to EPA’s proposal. As the comment may broadly relate to the DRR modeling referenced in sections III.C.1.a and III.C.1.b of the Florida NPRM and to the receptor grids used in that modeling, EPA believes that the modeling results support EPA’s WOE determination as discussed in that notice and in Response 1.d, above. EPA is unable to respond any further because the Commenter did not explain, and the Agency does not understand, the meaning of the terms “geometries,” “SAU modeling,” or “AER,” in this context, and despite the Commenter’s reference to “Figure 3,” the Florida NPRM does not contain any figures.

Comment 4: The Commenter states that EPA cannot approve the SIP revision because it is inconsistent with “Florida’s Clean Air Act.” The Commenter claims that EPA’s proposed determination confirms that Florida does not have a “meaningful permitting process for the transportation of SO₂” out of Florida, because the State has not established a procedure for a “subject air-quality permit application to be transferred to the federal permit authority.” The Commenter also claims that the proposal is inconsistent with Florida’s “administrative procedures for approval of the transport of pollutants that are of significant public health concern.”

Response 4: It is unclear how the comment relates to EPA’s proposal. The Commenter has not explained how “Florida’s Clean Air Act” and the State’s administrative procedures are relevant to this rulemaking or provided any basis for its assertion that the State must establish a procedure for a “subject air-quality permit application to be transferred to the federal permit authority” before EPA can approve the SIP revision as meeting the requirements of section

110(a)(2)(D)(i)(I). To the extent that the Commenter may be referring to EPA's discussion of Florida's SIP-approved permitting programs in section III.C.4 of the Florida NPRM, EPA reiterates its position that Florida's major and minor new source review rules are designed to ensure that SO₂ emissions due to major modifications at existing major stationary sources, modifications at minor stationary sources, and the construction of new major and minor sources subject to these rules will not contribute significantly to nonattainment or interfere with maintenance of the 2010 1-hour SO₂ NAAQS in neighboring states.

Comment 5: The Commenter claims that EPA should disapprove Florida's SIP revision because it "will negatively affect the provision of electricity to residential customers in the region." According to the Commenter, the "two most active engines in SO₂ production are burned in utility equipment, and that equipment now accounts for the majority of production" and "EPA argues that reversing the decision would trigger an emergency rulemaking and delay the inevitable phase-out of vehicles that emit emissions." The Commenter believes that it "would also raise costs and delay purchases, ultimately raising the cost of electricity, which would result in higher electric rates for consumers and businesses." The Commenter also claims that EPA should disapprove the SIP revision because of the "large short-term costs of complying with an additional facility and business planning requirements and because of the adverse effect of a lawsuit on the SO₂ manufacturers and the health and welfare of the general public."

Response 5: EPA disagrees that approval of Florida's SIP revision will negatively affect the provision of electricity to residential customers or raise the cost of electricity. EPA's action does not create any new regulatory requirements nor does it revise any regulations or source-specific permits. Therefore, it does not impact the electric utility sector. Regarding the statements concerning a lawsuit and the reversal of an EPA decision that would trigger an

emergency rulemaking, EPA cannot provide a substantive response because it is unclear what decision and lawsuit the Commenter is referencing or how they relate to Florida's good neighbor SIP revision.

III. Final Action

EPA is approving Florida's September 18, 2018, SIP submission as demonstrating that emissions from Florida will not contribute significantly to nonattainment or interfere with maintenance of the 2010 1-hour SO₂ NAAQS in another state.

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. *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. 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);
- 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, 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 CAA; 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).

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 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 OF THIS DOCUMENT 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, Particulate Matter, Reporting and recordkeeping requirements, Sulfur oxides.

Mary Walker,
Regional Administrator,
Region 4.

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(e) is amended by adding a new entry for “110(a)(1) and (2) Infrastructure Requirements for the 2010 1-hour SO₂ NAAQS” at the end of the table to read as follows:

§52.520 Identification of plan.

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(e) * * *

EPA-APPROVED FLORIDA NON-REGULATORY PROVISIONS

Provision	State effective date	EPA approval date	FEDERAL REGISTER, notice	Explanation

110(a)(1) and (2) Infrastructure Requirements for the 2010 1-hour SO ₂ NAAQS.	9/18/2018	[Insert date of publication in <u>Federal Register</u>]	[Insert citation of publication]	Addressing Prongs 1 and 2 of section 110(a)(2)(D)(i) only.

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