



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2019-0329; FRL-10009-69-Region 4]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving Georgia's January 9, 2019, 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 is determining that Georgia 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 January 9, 2019, 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-2019-0329. 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 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: Michele Notarianni, 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. Notarianni can be reached via phone number (404) 562-9031 or via electronic mail at notarianni.michele@epa.gov.

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 January 9, 2019, the Georgia Department of Natural Resources, through the Georgia Environmental Protection Division (GA EPD), submitted a revision to the Georgia SIP addressing only prongs 1 and 2 of CAA section 110(a)(2)(D)(i)(I) for the 2010 1-hour SO₂ NAAQS. EPA is approving GA EPD's January 9, 2019, SIP submission based on both the State's analysis and EPA's supplemental analysis as contained in the notice of proposed rulemaking (NPRM) which together demonstrate Georgia 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 Georgia are addressed in a separate rulemaking.¹

In a NPRM published on December 4, 2019, EPA proposed to approve Georgia's January 9, 2019,² SIP revision for the 2010 1-hour SO₂ NAAQS. *See* 84 FR 66334. The details of the SIP revision and the rationale for EPA's action is explained in the December 4, 2019, NPRM. Comments on the December 4, 2019, NPRM were due on or before January 3, 2020.

II. Response to Comments

EPA received two 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 asks why EPA is using the 2014 National Emissions Inventory (NEI) when the 2017 NEI data from point sources has been available since August of 2019. The Commenter asserts that EPA must use the most recently available data for all point sources.

Response 1: EPA used the 2014 NEI (version 2) inventory to evaluate SO₂ emissions from all source categories in Table 1 of the December 4, 2019, NPRM because it is the most recently available, complete, and quality assured NEI dataset which addresses all source categories.³ Additionally, EPA evaluated statewide data for point sources from 1990 to 2017 provided in Georgia's SIP revision, and as shown in Table 4 of the December 4, 2019, NPRM,

¹ EPA acted on the other elements of Georgia's October 22, 2013, SIP submission, as supplemented on July 25, 2014, for the 2010 1-hour SO₂ NAAQS on April 28, 2016. *See* 81 FR 25355.

² In one instance, EPA erroneously referred to Georgia's January 9, 2019 SIP submission with a date of July 31, 2019, in the NPRM. EPA confirms that the January 9, 2019, date was intended. *See* 84 FR 66335.

³ The NEI is a comprehensive and detailed estimate of air emissions for criteria pollutants, criteria pollutant precursors, and hazardous air pollutants from air emissions sources that is updated every three years using information provided by the states and other information available to EPA. The NEI is available at <https://www.epa.gov/air-emissions-inventories/national-emissions-inventory>.

available 2017 emissions data for point sources not subject to EPA's Data Requirements Rule (DRR) that emitted greater than 100 tons per year (tpy) of SO₂ in 2017 and are located within 50 kilometers (km) of Georgia's border (see Table 4 of the December 4, 2019, NPRM). EPA considered this information as part of its overall "weight of evidence" (WOE) analysis. The comprehensive 2017 NEI for all source categories, including point sources, is expected to be released later this year.

Comment 2: The Commenter asks why EPA is using annual emissions in its WOE notices instead of short-term potential (or allowable) emissions. The Commenter contends that annual emissions are not indicative of past or future SO₂ emissions and that it is especially important to use allowable emissions for areas close to state borders and with relatively elevated ambient or modeled SO₂ levels (even those that are below the level of the NAAQS) because "these levels can become elevated quickly with a 1-hour standard and violate the NAAQS quickly." The Commenter asserts that EPA should model areas close to state borders with allowable emissions, specifically for interstate transport, to confirm no possibilities of violating the NAAQS or "Georgia causing significant contribution above 1% of the NAAQS in Florida or North Carolina."

Response 2: EPA does not agree that modeling allowable emissions in areas near the border is necessary to demonstrate that sources in Georgia will not significantly contribute to nonattainment or interfere with maintenance of the 2010 1-hour SO₂ NAAQS in another state. When reliable and relevant modeling information is available, EPA may utilize this information to inform its determination of whether a state has satisfied the good neighbor provision; however, EPA has routinely found that such modeling is not required where a WOE approach provides sufficient information to evaluate whether or not a state will adversely impact air

quality in a downwind state under the good neighbor provision.⁴ In this instance, EPA used its long-standing WOE approach to evaluate Georgia's January 9, 2019, SO₂ good neighbor SIP revision, including the evaluation of available modeling information. EPA continues to believe that the WOE analysis provided in the NPRM is adequate to determine the potential downwind impact from Georgia to neighboring states. EPA's WOE analysis in the NPRM included the following factors: (1) potential ambient impacts of SO₂ emissions from certain facilities in Georgia on neighboring states based on available air dispersion modeling results; (2) SO₂ ambient air quality and emissions trends for Georgia and neighboring states; (3) SIP-approved regulations that address SO₂ emissions; and (4) federal regulations that reduce SO₂ emissions.

As described above and in the December 4, 2019, NPRM, EPA evaluated a number of different factors in a WOE analysis⁵ based on available information and found no basis to conclude that Georgia emissions will have an adverse impact on downwind states, and therefore, further concluded that Georgia will not significantly contribute to nonattainment or interfere with maintenance of the NAAQS in neighboring states. Specifically, in Tables 2 and 3 of the December 4, 2019, NPRM, EPA considered available modeling results generated for certain sources subject to EPA's DRR⁶ which were also used during round 3 of EPA's initial area

⁴ See, e.g., Air Quality State Implementation Plans; Approvals and Promulgations: Utah; Interstate Transport of Pollution for the 2006 PM_{2.5} NAAQS, Proposed Rule 78 FR 29314 (May 20, 2013), Final Rule 78 FR 48615 (August 9, 2013); Approval and Promulgation of Implementation Plans; State of California; Interstate Transport of Pollution; Significant Contribution to Nonattainment and Interference With Maintenance Requirements, Proposed Rule 76 FR 146516 (March 17, 2011), Final Rule 76 FR 34872 (June 15, 2011); Approval and Promulgations of State Implementation Plans; State of Colorado; Interstate Transport of Pollution for the 2006 24-Hour PM_{2.5} NAAQS, Proposed Rule, 80 FR 27121 (May 12, 2015), Final Rule 80 FR 47862 (August 10, 2015).

⁵ The Commenter refers to WOE "notices;" however, EPA is responding to this comment only as it relates to the Agency's proposed rulemaking on Georgia's January 9, 2019, SO₂ good neighbor SIP revision. To the extent the Commenter is concerned about other EPA rulemakings that use a WOE analysis, those concerns are outside the scope of this action.

⁶ The DRR required state air agencies to characterize air quality, through air dispersion modeling or monitoring, in areas associated with sources that emitted 2,000 tpy or more of SO₂, or that have otherwise been listed under the DRR by EPA or state air agencies. In lieu of modeling or monitoring, state air agencies, by specified dates, could elect to impose federally-enforceable emissions limitations on those sources restricting their annual SO₂ emissions

designations for the 2010 1-hour SO₂ NAAQS. Some of these sources were modeled using actual emissions data as allowed by the DRR,⁷ while others opted to model using potential or allowable emissions. EPA's preferred dispersion model, American Meteorological Society/Environmental Protection Agency Regulatory Model (AERMOD), which was the model used to yield all the modeling results referenced in the December 4, 2019, NPRM, requires that SO₂ emissions (whether actual or allowable) are based on hourly emissions rates and input into AERMOD in units of grams per second. Typically, these are derived from actual reported hourly emissions or short-term allowable emissions instead of calculated hourly emissions derived from annual emissions. EPA's assessment of these available DRR modeling results are one part of the Agency's WOE approach, and EPA continues to believe that they provide helpful information to assess whether there are any indications of NAAQS violations or relatively high maximum 1-hour SO₂ impacts around a modeled DRR source close to Georgia's border. As noted in the December 4, 2019, NPRM, while such DRR modeling was not designed specifically to address interstate transport, the 50-km distance that is typically used in AERMOD for the DRR modeling aligns with the 50-km zone used for evaluating cross-border impacts, both supported by the concept that there are localized pollutant impacts of SO₂ near an emissions source that decrease with distance.

Moreover, in Table 4 of the December 4, 2019, NPRM, EPA evaluated certain sources near the Georgia border for which no modeling information was available. For these sources, EPA considered the available emissions information, proximity to the border and to cross-state

to less than 2,000 tpy, or provide documentation that the sources have been shut down. *See* 80 FR 51052 (August 21, 2015).

⁷ Modeling performed pursuant to the DRR provided the bases for many areas in round 3 of designations for the 2010 1-hour SO₂ NAAQS. *See* 40 CFR 51.1203(d)(2) ("Modeling analyses shall characterize air quality based on either actual SO₂ emissions from the most recent 3 years, or on any federally enforceable allowable emission limit or limits established by the air agency or the EPA and that are effective and require compliance by January 13, 2017").

sources to determine whether any areas warranted further review for potential cross-state impacts. This evaluation did not yield any areas that warranted further review based primarily on the large distances between cross-state sources. In response to the Commenter's concern that actual emissions may increase in the future, EPA also considered as part of the WOE analysis in the December 4, 2019, NPRM: emissions trends for Georgia and neighboring states' sources, SIP-approved regulations that address SO₂ emissions, and federal regulations that reduce SO₂ emissions. These factors taken together provide sufficient information to support EPA's conclusion that sources in Georgia will not adversely impact air quality in a downwind state under the good neighbor provision.

EPA also notes that the Commenter did not provide a technical analysis that contradicts EPA's proposed determination that sources in Georgia will not significantly contribute to nonattainment or interfere with maintenance of the 2010 1-hour SO₂ NAAQS in another state.

Furthermore, the Commenter has provided no basis for the suggestion that the determination of significant contribution from sources in Georgia to Florida and North Carolina should be based on modeled concentrations greater than one percent of the 2010 1-hour SO₂ NAAQS. In the December 4, 2019, NPRM, EPA did not rely on a one percent significance threshold to support the conclusion that Georgia does not significantly contribute to nonattainment or interfere with maintenance of the 2010 1-hour SO₂ NAAQS in any other state, nor has EPA in any other action set an air quality threshold for defining significant contribution or interference with maintenance for the 2010 1-hour SO₂ NAAQS. While EPA has used such a threshold in other contexts to address regional pollutants like ozone and fine particulate matter, that threshold was found to be appropriate in those cases based on data showing that downwind air quality problems were caused by the collective contribution of otherwise small impacts from

hundreds of sources in numerous upwind states. Moreover, the air quality threshold was only one of several steps in defining the “amount” of emissions that would constitute a state’s significant contribution for those NAAQS. EPA has not developed any analyses, nor has the Commenter provided any analyses, demonstrating that a similar threshold would be appropriate for evaluating the good neighbor obligations for the 2010 1-hour SO₂ standard, particularly in light of the more localized nature of SO₂ transport as described in the December 4, 2019, NPRM. Thus, EPA disagrees with the Commenter that it is necessary to evaluate whether Georgia is impacting Florida and North Carolina at a level greater than one percent of the 2010 1-hour SO₂ NAAQS.

For the reasons discussed above, EPA finds that its analysis of the Georgia sources in the December 4, 2019, NPRM, considered alongside other WOE factors described in that document, support the EPA’s conclusion that Georgia has satisfied CAA section 110(a)(2)(D)(i)(I) for the 2010 1-hour SO₂ NAAQS.

III. Final Action

EPA is approving Georgia’s January 9, 2019, SIP submission as demonstrating that emissions from Georgia 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 from 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.

Dated: May 12, 2020.

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 L – Georgia

2. Section 52.570(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:

§52.570 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED GEORGIA NON-REGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanation
* * *	*	*	* *	*
110(a)(1) and (2) Infrastructure Requirements for the 2010 1-hour SO ₂ NAAQS.	Georgia	1/9/2019	[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.

[FR Doc. 2020-10683 Filed: 6/22/2020 8:45 am; Publication Date: 6/23/2020]