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6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2025-2270; FRL-13190-01-R6]

Air Plan Approval; Oklahoma; Interstate Transport Requirements for the 2010 SO_2 NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is proposing to approve the portion of the State Implementation Plan (SIP) submittal from the state of Oklahoma demonstrating that the State satisfies the interstate transport requirements of section 110, also known as the "good neighbor" provision of the Clean Air Act (CAA or Act), for the 2010 1-hour sulfur dioxide (SO_2) primary National Ambient Air Quality Standard (NAAQS). The good neighbor provision requires each State's implementation plan to contain adequate provisions prohibiting the interstate transport of air pollution in amounts that will contribute significantly to nonattainment, or interfere with maintenance, of a NAAQS in any other State.

DATES: Written comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].**

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R06-OAR-2025-2270, at *http://www.regulations.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is

restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the "**FOR FURTHER INFORMATION CONTACT**" section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets*.

Docket: The index to the docket for this action is available electronically at *www.regulations.gov*. While all documents in the docket are listed in the index, some information may not be publicly available due to docket file size restrictions or content (e.g., CBI).

FOR FURTHER INFORMATION CONTACT: Ms. Nevine Salem, EPA Region 6 Office, Air and Radiation Division, Infrastructure and Ozone Section, (214) 665-7222, *salem.nevine@epa.gov.* We encourage the public to submit comments via *https://www.regulations.gov*. Please call or e-mail the contact listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," or "our" is used, we mean the EPA.

I. Background

A. Infrastructure SIPs

On June 2, 2010, the EPA established a revised primary 1-hour SO_2 NAAQS with a level of 75 parts per billion (ppb), based on a three-year average of the annual 99th

percentile of daily maximum 1-hour average concentrations.[1] CAA section 110(a)(1) requires all states to submit, within three years after promulgation of a new or revised NAAQS, SIP submissions to provide for the implementation, maintenance, and enforcement of the NAAQS.[2] The EPA has historically referred to these SIPs as "infrastructure SIPs." Specifically, section 110(a)(1) provides the procedural and timing requirements for SIP submissions. Section 110(a)(2) lists specific elements that all states must meet related to a newly established or revised NAAQS, 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 a state's SIP to include provisions prohibiting any source or other type of emissions activity in the state from emitting any air pollutant in amounts that will contribute significantly to nonattainment, or interfere with maintenance, of the NAAQS in any other state. The EPA has long interpreted this language to enact a "functional prohibition" on certain emissions from upwind states, necessitating the EPA's independent assessment of whether those emissions will occur or have been adequately controlled in the state where they originate.[3] The EPA often refers to these requirements as Prong 1 (significant contribution to nonattainment of the NAAQS) and Prong 2 (interference with maintenance of the NAAQS). We are addressing Prongs 1 and 2 in this action. All other applicable infrastructure SIP requirements of the Oklahoma SIP submission are addressed in separate rulemakings.

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[1] *See* 75 FR 35520 (June 22, 2010).

[2] In 2012, the EPA retained the current secondary NAAQS for SO_2. Thus, the CAA section 110(a)(1) requirement to submit an infrastructure SIP for this secondary standard was not triggered. The secondary SO_2 standard is 500 ppb averaged over three hours, not to be exceeded more than once per year. *See* 77 FR 20218 (April 3, 2012).

[3] S*ee Genon Rema LLC v. EPA*, 722 F.3d 513, 520-24 (3d Cir. 2013); *Appalachian Power Co. v. EPA*, 249 F.2d 1032, 1045-47 (D.C. Cir. 2001); *see also* 71 FR 25328, 25335 (April 28, 2006) (explaining that the SIP/FIP process under section 110 and the petitioning process for direct federal regulation under section 126 provide independent means of effectuating the same "functional prohibition" found in CAA section 110(a)(2)(D)(i)(I)).

B. 2010 1-Hour SO_2 NAAQS Designations Background

In this proposed action, the EPA has considered information from the 2010 1-hour SO_2 NAAQS designations process which is discussed in more detail in section III.C of this notice. For this reason, a brief summary of the EPA's designations process for the 2010 1-hour SO_2 NAAQS is included here.[4]

After the promulgation of a new or revised NAAQS, the EPA is required to designate areas as "nonattainment," "attainment," or "unclassifiable" pursuant to section 107(d)(1)-(2) of the CAA. The process for designating areas following promulgation of a new or revised NAAQS is contained in section 107(d) of the CAA. The CAA requires the EPA to complete the initial designations process within two years of promulgating a new or revised standard. If the Administrator has insufficient information to make these designations by that deadline, the EPA has the authority to extend the deadline for completing designations by up to one year.

The EPA promulgated the 2010 1-hour SO_2 NAAQS on June 2, 2010. *See* 75 FR 35520 (June 22, 2010). The EPA Administrator signed the first round[5] of designations; "Round 1"[6] for the 2010 1-hour SO_2 NAAQS on July 25, 2013, designating 29 areas in 16 States as nonattainment for the 2010 1-hour SO_2 NAAQS. *See* 78 FR 47191 (August 5, 2013). The EPA Administrator signed ***Federal Register*** notices for Round 2

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[4] While designations may provide useful information for purposes of analyzing transport, particularly for a more source-specific pollutant such as SO_2, EPA notes that designations themselves are not dispositive of whether upwind emissions are impacting areas in downwind states. EPA has consistently taken the position that CAA section 110(a)(2)(D)(i)(I) requires elimination of significant contribution and interference with maintenance in other states, and this analysis is not limited to designated nonattainment areas. Nor must designations for nonattainment areas have first occurred before states or the EPA can act under section 110(a)(2)(D)(i)(I). *See, e.g.,* Clean Air Interstate Rule, 70 FR 25162, 25265 (May 12, 2005); Cross State Air Pollution Rule, 76 FR 48208, 48211 (Aug. 8, 2011); Final Response to Petition from New Jersey Regarding SO_2 Emissions From the Portland Generating Station, 76 FR 69052 (Nov. 7, 2011) (finding facility in violation of the prohibitions of CAA section 110(a)(2)(D)(i)(I) with respect to the 2010 1-hour SO_2 NAAQS prior to issuance of designations for that standard).

[5] The term "round" in this instance refers to which "round of designations."

[6] The EPA and state documents and public comments related to the Round 1 final designations are in the docket at *regulations.gov* with Docket ID No. EPA-HQ-OAR-2012-0233 and at EPA's website for SO_2 designations at *https://www.epa.gov/sulfur-dioxide-designations.*

designations[7] on June 30, 2016 (81 FR 45039 (July 12, 2016)) and on November 29, 2016 (81 FR 89870 (December 13, 2016)). Round 3 designations[8] were signed on December 21, 2017 (83 FR 1098 (January 9, 2018)) and March 28, 2018 (83 FR 14597 (April 5, 2018)). Round 4 designations[9] were signed on December 21, 2020 (86 FR 16055 (March 26, 2021))[10] and April 8, 2021 (86 FR 19576 (April 14, 2021)).[11]

For Oklahoma, the EPA designated Choctaw County, as unclassifiable/attainment in round 2, based on modeling submitted by Oklahoma Department of Environmental Quality (ODEQ). On January 9, 2018 (83 FR 1098), the EPA designated Kay, Le Flore, and Rogers Counites as attainment/unclassifiable based on modeling submitted by ODEQ. In the EPA's multiple rounds of SO_2 designations, all Oklahoma's counties were designated attainment/unclassifiable. At the time of this action, there are no designated nonattainment areas in Oklahoma or in any other states within 50 km of the Oklahoma border.

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[7] The EPA and state documents and public comments related to the Round 2 final designations are in the docket at *regulations.gov* with Docket ID No. EPA-HQ-OAR-2014-0464 and at EPA's website for SO_2 designations at *https://www.epa.gov/sulfur-dioxide-designations.*

[8] The EPA and state documents and public comments related to Round 3 final designations are in the docket at *regulations.gov* with Docket ID No. EPA-HQ-OAR-2017-0003 and at EPA's website for SO_2 designations at *https://www.epa.gov/sulfur-dioxide-designations.*

[9] The EPA and state documents and public comments related to Round 4 final designations are in the docket at *regulations.gov* with Docket ID No. EPA-HQ-OAR-2020-0037 and at EPA's website for SO_2 designations at *https://www.epa.gov/sulfur-dioxide-designations.*

[10] The Round 4 2010 1-hour SO_2 NAAQS designations action was signed by former EPA Administrator Andrew Wheeler on December 21, 2020, pursuant to a court-ordered deadline of December 31, 2020. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, former Acting Administrator Jane Nishida re-signed the same action on March 10, 2021, for publication in the ***Federal Register***.

[11] On August 21, 2015 (80 FR 51052), EPA separately promulgated air quality characterization requirements for the 2010 1-hour SO_2 NAAQS in the Data Requirements Rule (DRR). The DRR requires state air agencies to characterize air quality, through air dispersion modeling or monitoring, in areas associated with sources that emitted in 2014 2,000 tons per year (tpy) or more of SO_2, 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 SO_2 emissions to less than 2,000 tpy, or provide documentation that the sources have been shut down. EPA used the information generated by implementation of the DRR to help inform Round 4 designations for the 2010 1-hour SO_2 NAAQS.

II. Relevant Factors Used to Evaluate 2010 1-Hour SO_2 Interstate Transport SIPs

Although SO_2 is emitted from a similar universe of point and nonpoint sources as directly emitted fine particulate matter ($PM_{2.5}$) and the precursors to ozone and $PM_{2.5}$, interstate transport of SO_2 is unlike the transport of $PM_{2.5}$ or ozone, which disperse over a wide area and can contribute to nonattainment or maintenance issues hundreds of miles from precursor-emitting sources or activities. SO_2 emissions usually do not undergo long-range transport in the atmosphere. The transport of SO_2 relative to the 2010 1-hour SO_2 NAAQS is more analogous to the transport of lead (Pb) relative to the Pb NAAQS in that emissions of SO_2 typically result in 1-hour pollutant impacts of greatest concern near the emissions source. However, ambient 1-hour concentrations of SO_2 do not decrease as quickly with distance from the source as do 3-month average concentrations of Pb, because SO_2 gas is not removed by deposition as rapidly as are Pb particles. Emitted SO_2 has wider-ranging impacts than emitted Pb, but it does not have such wide-ranging (far downwind) impacts that treatment in a manner similar to ozone or $PM_{2.5}$ would be appropriate. Accordingly, the approaches that EPA has adopted for ozone or $PM_{2.5}$ transport are too regionally focused, and the approach for Pb transport is too tightly circumscribed to the source, to be appropriate for assessing SO_2 transport. SO_2 transport is therefore a unique case and necessitates an analytical approach that examines potential impacts that are further from the source than would be examined for Pb transport but less regional in scope than ozone or PM transport.

In this proposed rulemaking, and consistent with prior SO_2 transport analyses, the EPA focused on a 50 kilometer (km)-wide zone around sources of interest because the physical properties of SO_2 result in relatively localized pollutant impacts near an emissions source that drop off with distance. Given the properties of SO_2, the EPA believes that significant impacts in a downwind state are unlikely at distances greater than 50 km from a source and thus, we are focusing our review on areas within 50 km of

the state lines. This scale of analysis is consistent with the "urban scale" which is the largest appropriate spatial scale for SO_2 monitors and is useful for assessing SO_2 transport and trends in area-wide air quality.[12]

Oklahoma certified that its 2010 SO_2 SIP meets the transport Prong 1 and 2 infrastructure obligation for the 2010 Primary SO_2 NAAQS and has no sources or activities within Oklahoma contribute significantly to nonattainment or interfere with maintenance, in any other state. The EPA elected to review and assess other available information regarding SO_2 emissions and air quality in Oklahoma to assist in our own evaluation. We independently analyzed such information to determine whether Oklahoma meets the interstate transport requirements described in the CAA.[13]

Consistent with our prior evaluations of other states' SO_2 transport obligations, we conducted a weight of evidence (WOE) analysis evaluating several sources of information, including current air quality data from monitors as well as available emissions and/or source modeling for sources in Oklahoma and in neighboring states within 50 km of the Oklahoma border. A WOE approach can be appropriate in instances, such as this case, to determine whether SO_2 emissions from Oklahoma contribute to nonattainment or maintenance issues in adjoining states. A WOE analysis that is based solely on available data may not be sufficient in all instances for evaluating interstate SO_2 transport, and additional analysis may be necessary. Further, the term "WOE" does not establish the legal or technical meaning for what constitutes significant contribution to

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[12] For the definition of spatial scales for SO_2, see 40 CFR part 58, Appendix D, section 4.4 ("Sulfur Dioxide (SO_2) Design Criteria"). For further discussion on how the EPA applies these definitions with respect to interstate transport of SO_2, see the EPA's proposed rulemaking on Connecticut's SO_2 transport SIP. *See* 82 FR 21351, 21352, 21354 (May 8, 2017).

[13] This proposed approval of Oklahoma SIP submission under CAA section 110(a)(2)(D)(i)(I) is based on the information contained in the administrative record for this action and does not prejudge any other future EPA action that may make other determinations regarding Oklahoma's air quality status and downwind states. Any such future actions, such as area designations under any NAAQS or action on petitions submitted under CAA section 126(b), will be based on their own administrative records and EPA's analyses of information that becomes available at those times. Future available information may include, and is not limited to, monitoring data and modeling analyses conducted pursuant to EPA's Data Requirements Rule (80 FR 51052, August 21, 2015) and information submitted to EPA by states, air agencies, and third-party stakeholders such as citizen groups and industry representatives.

nonattainment or interference with maintenance for the 2010 SO_2 NAAQS. Rather, the term refers to the gathering and consideration of a wide range of information, on a case-by-case basis, to make a determination regarding whether a statutory or regulatory requirements met.

In other SO_2 transport actions, the EPA has typically been able to use a WOE analysis to reach a conclusion that there are no SO_2 nonattainment or maintenance issues in the relevant areas of other states, or that no sources in the upwind state are contributing to those issues. If the available evidence indicated, however, that an upwind source, sources, or emissions activities were contributing to an out-of-state SO_2 nonattainment or maintenance problem, then further analysis and a regulatory determination would be necessary concerning what amount of those emissions, if any, constituted "significant contribution" under Prong 1 or Prong 2 of the good neighbor provision.

We find that there is sufficient information to support the EPA's proposed determination that, under baseline conditions and likely future emissions scenarios, no Oklahoma sources are contributing or will contribute to any out-of-state SO_2 nonattainment or maintenance concerns, and therefore it is not necessary for the purposes of this action to render a determination concerning what amount of emissions would be "significant" and therefore subject to prohibition under the good neighbor provision.[14]

III. Oklahoma's SIP Submission and EPA's Analysis

A. State Submission

On January 28, 2015, Oklahoma submitted the 2010 SO_2 NAAQS infrastructure SIP (i-SIP) submittal addressing how the existing Oklahoma SIP provides for the implementation, maintenance and enforcement of the 2010 1-hour SO_2 NAAQS.[15] On

[14] *Cf. Genon Rema v. EPA*, 722 F.3d 513 (3d Cir. 2013) (upholding EPA grant of CAA section 126(b) petition and establishment of direct federal emissions control requirements on SO_2 source in Pennsylvania found to be significantly contributing to nonattainment and interfering with maintenance of the 2010 SO_2 NAAQS in New Jersey).

[15] See fn # 13

December 9, 2016 (81 FR 89008), the EPA approved most elements of the Oklahoma SO_2 i-SIP but took no action on elements of Section 110(a)(2)(D)(i)(I), prongs 1 and 2, regarding the contribution to nonattainment and interfere with maintenance of the 2010 SO_2 NAAQS in other states. On a letter dated May 28, 2021, the EPA received Oklahoma's revised certification of Transport Prong 1 & 2 elements for the 2010 Primary 2010 SO_2 NAAQS under CAA Section 110(a)(2).[16]

In its submittal, Oklahoma certified that its 2010 SO_2 SIP meets the transport Prong 1 and 2 infrastructure obligation for the 2010 Primary SO_2 NAAQS and has no sources or activities within Oklahoma contribute significantly to nonattainment or interfere with maintenance, in any other state. Public notice for the Oklahoma submittal was posted on the Oklahoma Department of Environmental Quality (ODEQ) web site on April 21, 2021, to allow the opportunity to provide comments and to request a public hearing scheduled May 24, 2021, at ODEQ's offices. No hearing requests or written comments were received during the 30-day comment period.

EPA elected to review and assess other available information, as described below and in more detail in the TSD for this action, regarding SO_2 emissions and air quality for sources in Oklahoma to assist in our evaluation and to fully assess whether Oklahoma was meeting its CAA good neighbor obligations for the 2010 SO_2 NAAQS.

B. EPA's Evaluation Methodology

For this CAA section 110 (a)(2)(D)(i)(I) evaluation of the 2010 SO_2 NAAQS, the EPA conducted a WOE analysis for Prong 1 and Prong 2 separately,[17] evaluating

[16] On April 2, 2021, the State of Oklahoma submitted the 2010 SO_2 interstate transport SIP without a public notice or an opportunity to request a hearing. ODEQ's revised SO_2 Interstate Transport SIP submittal letter on May 28, 2021, to the EPA, Region 6 serve to withdraw and replace the submittal made by the State of Oklahoma on April 2, 2021.

[17] In North Carolina v. EPA, 531 F.3d at 910–911 (D.C. Cir. 2008), the D.C. Circuit explained that the regulating authority must give Prong 2 ''independent significance'' from Prong 1 by evaluating the impact of upwind state emissions on downwind areas that, while currently in attainment, are at risk of future nonattainment.

available information such as air quality, emission sources, modeling, and emission trends in Oklahoma and the states that border Oklahoma. To identify which sources and emissions activities in Oklahoma could potentially impact downwind air quality in other states with respect to the 2010 1-hour SO_2 NAAQS, the EPA used information in the EPA's National Emissions Inventory (NEI)[18] and Emissions Inventory System (EIS).[19] 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, updated every three years using information provided by the states and other information available to the EPA. For analyses, we largely relied on data from the 2020 NEI, because it is the most recently available, complete, and quality assured dataset. However, in evaluating emissions trends, both state-wide and at the facility level, the EPA also considered data from prior NEI reports and EIS queries, as part of the overall WOE analysis.

As shown in Table 1, the majority of SO_2 emissions in Oklahoma originate from point sources. In 2020, total SO_2 emissions from point sources in Oklahoma comprised approximately 79 percent of the total SO_2 emissions in the State. Non-point sources, on road, and non-road emissions sources contribute to a much smaller portion of total SO_2 emissions; these emissions are also more dispersed throughout the State and are therefore unlikely to contribute to high ambient concentrations of SO_2 when compared to point source contributions. Further analysis[20] shows that facilities with reported emissions greater than 100 tons per year (tpy) represent approximately less than 2 percent of the total number of Oklahoma SO_2 point sources but are responsible for 25,889 tons of SO_2 or 94 percent of the total 2020 SO_2 emissions.[21] Based on this analysis, the EPA focused

[18] EPA's NEI is available at *https://www.epa.gov/ air-emissions-inventories/ national-emissions-inventory*.
[19] The EIS Gateway was developed to provide only registered EPA, State, local, and Tribal users with access to emission inventory data for sources in their jurisdiction.
[20] *See* EPA's TSD for a more detailed discussion.
[21] *See* Table 8 in the EPA's TSD.

our WOE analysis on SO_2 emissions from Oklahoma's larger point sources (*i.e.* point sources emitting over 100 tpy of SO_2) that are located within 50 km of one or more state borders.

Table 1 – Summary of SO_2 Data for Oklahoma by Source Category

Category	**2020 Emissions (tpy)**	**Percent of Total SO_2 Emissions**
Point	27,534	79%
Nonpoint	7,281	21%
On road	149	0%
Nonroad	12	0%
SO_2 Emissions Total	34,976	100%

As described in this section, the EPA proposes that an assessment of Oklahoma's satisfaction of the Prong 1 and 2 requirements under CAA section 110(a)(2)(D)(i)(I) for the 2010 1-hour SO_2 NAAQS may be reasonably based upon several factors. These factors include evaluation of the predicted downwind impacts projected in previous relevant modeling studies for the source and nearby areas, assessment of Oklahoma's SO_2 point source emissions of more than 100 tpy of SO_2 per facility that are located within approximately 50 km of another state, assessment of other states' point sources emitting more than 100 tpy of SO_2 located within approximately 50 km of Oklahoma, and assessment of federal regulations and SIP-approved regulations affecting Oklahoma's SO_2 sources. The EPA's evaluation is informed by all available data at the time of this rulemaking.[22]

[22] EPA notes that the evaluation of other states' satisfaction of section 110(a)(2)(D)(i)(I) for the 2010 1-hour SO_2 NAAQS can be informed by similar factors found in this proposed rulemaking but may not be identical to the approach taken in this or any future rulemaking for Oklahoma, depending on available information and state-specific circumstances.

1. EPA's Prong 1 Evaluation— Contribute Significantly to Nonattainment

Prong 1 of the ''good neighbor'' provision requires states' plans to prohibit emissions that will contribute significantly to nonattainment of the NAAQS in another state. The EPA's evaluation[23] of whether Oklahoma has met its Prong 1 transport obligations was accomplished by considering all available information, including the following: SO_2 ambient air quality in Oklahoma and neighboring states; SO_2 emissions trends for Oklahoma and neighboring states; potential ambient impacts of SO_2 emissions from certain facilities[24] in Oklahoma on neighboring states; Oklahoma's SIP-approved regulations specific to SO_2 emissions and permit requirements; and other SIP-approved or federally enforceable regulations which may reduce SO_2 emissions either directly or indirectly.

Based on the EPA's analysis, we propose to determine that there are no SO_2 nonattainment concerns in the relevant areas in other states bordering Oklahoma, and as such the EPA proposes to determine that Oklahoma's SIP satisfies the requirements of Prong 1 of CAA section 110(a)(2)(D)(i)(I). This proposed determination is based on the following considerations:

- There are no monitors within 50 km of the Oklahoma border recording violations of the 2010 SO_2 NAAQS, all these monitors have design values (DV) that are below the 75 ppb standard. Current DVs for Oklahoma's AQS SO_2 monitors within 50 km of another State's border remained below the 2010 1-hour SO_2 NAAQS from 2019-2024, similarly, SO_2 monitors in neighboring states

[23] A detailed review of the EPA's evaluation of emissions, air monitoring data, other technical information, and rationale for proposed approval of this SIP revision as meeting CAA section 110(a)(2)(D)(i)(I) for the 2010 1-hour SO_2 NAAQS may be found in the TSD.

[24] The physical properties of SO_2 result in relatively localized pollutant impacts very near the emissions source. Therefore, the EPA selected a spatial scale with dimensions up to 50 km from point sources.

(Arkansas, Texas, Kansas, and Missouri) within 50 km of Oklahoma have 2023 DVs (2021-2023) below the 2010 1-hour SO_2 NAAQS;

- Downward SO_2 emissions trends in Oklahoma and surrounding States (Arkansas, Texas, Kansas, and Missouri), when considered with other factors discussed as part of EPA's WOE analysis, further support that Oklahoma's sources will not significantly contribute to any State's nonattainment of the 2010 1-hour SO_2 NAAQS.

- Source-specific analyses of every Oklahoma source emitting 100 tpy or more and located within 50 km of the state border indicate that the sources do not contribute to nonattainment in other states. These analyses draw upon available emissions data, monitoring data, air quality modeling, control requirements and/or unit retirement, wind rose data, and other relevant information to assess the likelihood of air quality impacts from these sources to areas in surrounding states. A detailed discussion of each source-specific analysis is contained in Section IV.B.1 of the TSD accompanying this action.

Below, we summarize the principal evidence that provides overall support for the EPA's proposed conclusion that SO_2 emissions from the five Oklahoma sources with annual emissions greater than 100 tpy and located within 50 km of another state are not likely to pose a transport concern.

River Valley Generating Station, Le Flore County

The EPA reviewed SO_2 emissions for River Valley Generating Station (formally, AES Shady Cogeneration Plant), whose emissions have been modeled, for the Round 3 SO_2 designations process, shows compliance with the standard, there are no other sources

within Le Flore County that emit at or above 100 tpy, based on 2014-2020 NEI.[25] Additionally, the EPA confirmed that there were no other sources in Le Flore County or near its borders that were likely to cause or contribute to a violation of the NAAQS within Le Flore County or other states. The absence of nearby SO_2 sources in neighboring states that could interact with the annual SO_2 emissions emitted from River Valley Generating Station, the distance to any SO_2 sources in nearby states, modeling results, and air monitoring values make it very unlikely for this source to be a transport concern for its neighboring states.

Hugo Power Station, Choctaw County

The Hugo Power Plant was included in Oklahoma's 2015 modeling for the Round 2 SO_2 designations process.[26] The EPA found in our referenced TSD that modeling submitted by the State for the Hugo Power Station showed attainment of the NAAQS and no significant impact upon adjacent or surrounding states. Additionally, the EPA has confirmed that there are no other sources in Choctaw County or near its borders that are likely to cause or contribute to a violation of the SO_2 NAAQS in Choctaw County or nearby adjacent states. The absence of violations from monitoring or modeling, the distance between the Hugo Power Plant and SO_2 sources in Arkansas and Texas, and the predominant wind pattern blowing towards Oklahoma from Texas, suggest that Hugo Power Plant source is not causing any air quality concerns for SO_2 transport in any state.

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[25] Most recent (2022-2023) NEI data emissions show no other SO_2 emission sources at or above 100 tpy in Le Flore County.

[26] Summaries of Hugo Power Plant modeling can be found in EPA's "Final Technical Support Document, Oklahoma, Area Designations for the 2010 SO_2 Primary National Ambient Air Quality Standard", located at *https://www.epa.gov/sites/default/files/2016-07/documents/r6_ok_final_designation_tsd_06302016.pdf* and *https://www.regulations.gov/document/EPA-HQ-OAR-2014-0464-0408*. The TSD containing our detailed review of Oklahoma's modeling submission for Choctaw County can be found in the preliminary determination page at *https://www.epa.gov/sulfur-dioxide-designations/so2-designations-round-2-oklahoma-state-recommendation-and-epa-response* as "EPA Response to Oklahoma Round 2 Recommendations – Attachment (pdf)" (downloadable file titled "ok-epa-tsd-r2.pdf"). See p. 25-38 for the Choctaw County review.

Cardinal Glass Plant, Bryan County

The Cardinal Glass Plant manufactures flat glass and is a relatively small SO_2 source that emitted between 100-160 tpy in the most recent four years. Given its low emissions in combination with its 17 km distance to Texas, no nearby sources either in Oklahoma or Texas, and the predominant winds in the direction of Oklahoma, we conclude that the Cardinal Gas Plant source is not causing any air quality concerns for SO_2 transport in any state.

Healdton Gas Plant, Carter County

The Healdton Gas Plant, a small SO_2 source of gas extraction in Carter County, Oklahoma, is located approximately 32 km north of the OK-TX border, reported relatively low emissions of 183 and 176 tpy in 2022 and 2023, respectively. Based on the relatively low emissions of the source, the large distance between the Healdton Gas Plant in Oklahoma and two SO_2 sources in Texas, and the fact that these sources are aligned in directions that are some of the least frequent wind directions (WSW and ENE) such that these emissions would very rarely comingle, the EPA proposes to find that it is very unlikely that emissions from Healdton Gas Plant contributes to SO_2 nonattainment or maintenance concerns in Texas.

Continental Carbon Black Production Facility (Continental Carbon), Kay County

Continental Carbon was identified as a DRR source and chose to comply with DRR via modeling in Round 3 of SO_2 designation. The state of Oklahoma provided through modeling an assessment and characterization of air quality impacts from this facility and other nearby sources[27] that may have a potential impact in the area where the 2010 SO_2 NAAQS may be exceeded.[28] We evaluated the EPA's TSD, which was a

[27] The state included all SO_2 sources within 50 km with emissions greater than 1 tpy.
[28] Detailed modeling information and EPA's assessment for Continental Carbon Black and nearby SO_2 sources in Kay County can be found in the technical support document for the Round 3 SO_2 designation documents: 33_ok_so2_rd3-final.pdf

review of Oklahoma's submittal, noted that the source was modeled at its 2014 SO_2 emissions of 5,893 tpy, and noted that at a distance of 10 km north of the source that the maximum concentration was approximately 80 µg/m^3 (NAAQS level at 196 µg/m^3). We concluded at that time that none of the sources in Kay County or near its borders were likely to cause or contribute to a violation of the NAAQS.

2. EPA's Prong 2 Evaluation—Interference With Maintenance

Prong 2 of the ''good neighbor'' provision requires state plans to prohibit emissions that will interfere with maintenance of a NAAQS in another state. The EPA's evaluation of whether Oklahoma has met its Prong 2 transport obligations was accomplished by considering all available information, with a focus on current air quality data, SO_2 emissions trends for Oklahoma and neighboring states, and how existing and future sources of SO_2 are addressed through existing SIP-approved and federally enforceable regulations. This evaluation builds upon the analysis conducted for significant contribution to nonattainment (Prong 1), which evaluated SO_2 ambient air quality in Oklahoma and neighboring states and potential ambient impacts of SO_2 emissions from certain facilities in Oklahoma on neighboring states.

Based on the EPA's analysis, we propose to find that SO_2 levels near the Oklahoma border in neighboring states do not indicate an inability to maintain the 2010 SO_2 NAAQS that could be attributed in part to sources in Oklahoma, and as such, the EPA proposes to determine that Oklahoma' SIP submittal satisfies the requirements of Prong 2 of CAA section 110(a)(2)(D)(i)(I). This determination is based on the following considerations:

- Current 2021 – 2023 DVs for monitors in Oklahoma within 50 km of another state's border and in neighboring states (Arkansas, Texas, Kansas, Louisiana, and

Missouri) within 50 km of Oklahoma' border are below the standard, indicating that these areas are currently in attainment of the 2010 1-hour SO_2 NAAQS;

- State-wide emissions trends in Oklahoma indicate generally declining SO_2 emissions and consequently declining impacts to the relevant areas;
- Source-specific analyses show that in most cases facility-level emissions are decreasing as a result of emissions unit control technology installation or shut down, indicating that emissions are not anticipated to increase relative to baseline emissions;
- Current Oklahoma statutes, SIP-approved measures, and federal emissions control programs control SO_2 emissions from certain sources with Oklahoma; and
- Oklahoma's SIP-approved PSD, major New Source Review (NSR) regulations and minor source NSR permit programs address future and new modified SO_2 sources above major and minor permitting thresholds with the intent of ensuring that the SO_2 NAAQS will not be exceeded as a result of new facility construction or existing facility modification within the state or surrounding states.

Based on the evaluation outlined in our TSD for this action, the EPA proposes to find that SO_2 emissions from Oklahoma will not interfere with maintenance of the 2010 1-hour SO_2 NAAQS in any other state.

IV. Impact on Areas of Indian Country

Following the U.S. Supreme Court decision in *McGirt v Oklahoma*, 140 S. Ct. 2452 (2020), the Governor of the State of Oklahoma requested approval under Section 10211(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005: A Legacy for Users, Pub. L. 109-59, 119 Stat. 1144, 1937 (August 10, 2005) ("SAFETEA"), to administer in certain areas of Indian country (as defined at 18 U.S.C. § 1151) the State's environmental regulatory programs that were previously approved by

the EPA outside of Indian country. The State's request excluded certain areas of Indian country further described below. In addition, the State only sought approval to the extent that such approval was necessary for the State to administer a program in light of *Oklahoma Dept. of Environmental Quality v. EPA*, 740 F.3d 185 (D.C. Cir. 2014).[29]

The EPA has approved Oklahoma's SAFETEA request to administer all of the State's EPA-approved environmental regulatory programs in the requested areas of Indian country. As requested by Oklahoma, the EPA's approval under SAFETEA does not include Indian country lands, including rights-of-way running through the same, that: (1) qualify as Indian allotments, the Indian titles to which have not been extinguished, under 18 U.S.C. § 1151(c); (2) are held in trust by the United States on behalf of an individual Indian or Tribe; or (3) are owned in fee by a Tribe, if the Tribe (a) acquired that fee title to such land, or an area that included such land, in accordance with a treaty with the United States to which such Tribe was a party, and (b) never allotted the land to a member or citizen of the Tribe (collectively "excluded Indian country lands").

The EPA's approval under SAFETEA expressly provided that to the extent the EPA's prior approvals of Oklahoma's environmental programs excluded Indian country, any such exclusions are superseded for the geographic areas of Indian country covered by the EPA's approval of Oklahoma's SAFETEA request.[30] The approval also provided that future revisions or amendments to Oklahoma's approved environmental regulatory programs would extend to the covered areas of Indian country (without any further need for additional requests under SAFETEA).

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[29] In *ODEQ v. EPA*, the D.C. Circuit held that under the CAA, states have the authority to implement a SIP in non-reservation areas of Indian country in the state, unless there has been a demonstration of tribal jurisdiction. Under the D.C. Circuit's decision, the CAA does not provide authority to states to implement SIPs in Indian reservations.

[30] The EPA's prior approvals relating to Oklahoma's SIP frequently noted that the SIP was not approved to apply in areas of Indian country (except as explained in the D.C. Circuit's decision in *ODEQ v. EPA*) located in the State. *See, e.g.*, 85 Fed. Reg. 20178, 20180 (April 10, 2020). Such prior expressed limitations are superseded by the EPA's approval of Oklahoma's SAFETEA request.

As explained above, the EPA is proposing to approve the portion of the State SIP submittal from the state of Oklahoma demonstrating that the State satisfies the interstate transport requirements of section 110(a)(2)(D)(i)(I), for the 2010 1-hour SO_2 NAAQS which will apply statewide in Oklahoma. Consistent with the D.C. Circuit's decision in *ODEQ v. EPA* and with the EPA's SAFETEA approval, these SIP revisions will apply to areas of Indian country as follows: 1) pursuant to the SAFETEA approval, the SIP revisions will apply to all Indian country in the State of Oklahoma other than the excluded Indian country lands as described above; and 2) pursuant to the D.C. Circuit's decision in *ODEQ v. EPA*, the SIP revisions will also apply to any Indian allotments or dependent Indian communities that are located outside of any Indian reservation over which there has been no demonstration of tribal authority.

V. Proposed Action

The EPA is proposing to approve the prong 1 and prong 2 portions of Oklahoma's May 28, 2021 revised certification submittal addressing interstate transport for the 2010 1-hour SO_2 NAAQS. Based on the EPA's WOE analysis, more thoroughly discussed in the TSD, the EPA proposes to determine that emissions from Oklahoma will not contribute significantly to nonattainment in, or interfere with maintenance of, any other state with respect to the 2010 1-hr SO_2 NAAQS. We therefore propose to find that Oklahoma' SIP contains adequate provisions consistent with CAA section 110(a)(2)(D)(i)(I).

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this

action merely proposes to approve 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);
- Is not subject to Executive Order 14192 (90 FR 9065, February 6, 2025) because State Implementation Plan approvals under the CAA are exempt from review 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 (Pub. L. 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

This proposed approval of the Oklahoma 2010 SO_2 Interstate Transport that requires each state SIP contain adequate provisions prohibiting the interstate transport of air pollution in amounts that will contribute significantly to nonattainment, or interfere with maintenance, of a NAAQS in any other State, will apply, if finalized as proposed, to certain areas of Indian county throughout Oklahoma as discussed in the preamble, and therefore has tribal Implications as specified in as specified in E.O. 13175 (65 FR 67249, November 9, 2000). However, this action will neither impose substantial direct compliance costs on federally recognized Tribal governments, nor preempt tribal law. This action will not impose substantial direct compliance costs on federally recognized Tribal governments because no actions will be required of Tribal governments. This action will also not preempt Tribal law as no Oklahoma tribe implements a regulatory program under the CAA, and thus does not have applicable or related Tribal laws. Consistent with the EPA Policy on Consultation with Indian Tribes (December 7, 2023), the EPA has offered consultation to Tribal governments that may be affected by this action and provided information about this action.

List of Subjects in 40 CFR Part 52

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

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

Dated: February 3, 2026.

Walter Mason,
Regional Administrator, Region 6.

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