

Dated: August 26, 2020.

**John Busterud,**

*Regional Administrator, Region IX.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R05–OAR–2016–0321; FRL–10014–55–Region 5]

#### Air Plan Approval; Michigan; Partial Approval and Partial Disapproval of the Detroit SO<sub>2</sub> Nonattainment Area Plan

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to partially approve and partially disapprove a revision to the Michigan State Implementation Plan (SIP) for attaining the 2010 1-hour primary sulfur dioxide (SO<sub>2</sub>) national ambient air quality standard (NAAQS or “standard”) for the Detroit SO<sub>2</sub> nonattainment area (NAA). This SIP revision (hereinafter called the “Detroit SO<sub>2</sub> plan” or “plan”) includes Michigan’s attainment demonstration and other elements required under the Clean Air Act (CAA). EPA is proposing to approve the base year emissions inventory, and to affirm that the nonattainment new source review (NNSR) requirements for the area have been met. EPA is proposing to disapprove the attainment demonstration, as well as the requirements for meeting reasonable further progress (RFP) toward attainment of the NAAQS, reasonably available control measures and reasonably available control technology (RACT/RACT), and contingency measures. Finally, EPA is proposing to disapprove the plan’s control measures for two facilities as not demonstrating attainment, and is proposing to approve the enforceable control measures for two facilities as SIP strengthening.

**DATES:** Comments must be received on or before October 19, 2020.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R05–OAR–2016–0321 at <http://www.regulations.gov>, or via email to [Aburano.Douglas@epa.gov](mailto:Aburano.Douglas@epa.gov). For comments submitted at [Regulations.gov](http://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://www.regulations.gov). For either manner of submission, 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. 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 <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Sarah Arra, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–9401, [Arra.Sarah@epa.gov](mailto:Arra.Sarah@epa.gov). The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID 19.

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

#### I. Why was Michigan required to submit a plan for the Detroit SO<sub>2</sub> nonattainment area?

On June 22, 2010, EPA promulgated a new 1-hour primary SO<sub>2</sub> NAAQS of 75 parts per billion (ppb). This standard is met at an ambient air quality monitoring site when the 3-year average of the annual 99th percentile of daily maximum 1-hour average concentrations does not exceed 75 ppb, as determined in accordance with appendix T of 40 CFR part 50.<sup>1</sup> On August 5, 2013, EPA designated a first set of 29 areas of the country as nonattainment for the 2010 SO<sub>2</sub> NAAQS, including the Detroit SO<sub>2</sub> NAA within Michigan.<sup>2</sup> These area designations became effective on October 4, 2013. Section 191(a) of the CAA directs states to submit SIPs for areas designated as nonattainment for the SO<sub>2</sub> NAAQS (hereinafter called

“plans” or “nonattainment plans”) to EPA within 18 months of the effective date of the designation, *i.e.*, by no later than April 4, 2015 in this case. Under CAA section 192(a), these plans are required to have measures that will provide for attainment of the NAAQS as expeditiously as practicable, but no later than five years from the effective date of designation, *i.e.*, October 4, 2018, for the Detroit SO<sub>2</sub> NAA.

In response to the requirement for SO<sub>2</sub> nonattainment plan submittals, Michigan submitted the Detroit SO<sub>2</sub> plan on May 31, 2016 and submitted associated final enforceable measures on June 30, 2016.

For a number of NAAs, including the Detroit area, EPA published an action on March 18, 2016, effective April 18, 2016, finding that Michigan and other pertinent states had failed to submit the required SO<sub>2</sub> nonattainment plan by the submittal deadline. *See* 81 FR 14736. This finding initiated a deadline under CAA section 179(a) for the potential imposition of new source review offset and highway funding sanctions. Additionally, under CAA section 110(c), the finding triggered a requirement that the EPA promulgate a Federal Implementation Plan (FIP) within two years of the finding unless, by that time (a) the state had made the necessary complete submittal and (b) EPA had approved the submittal as meeting applicable requirements. Michigan’s May 31, 2016 submittal was deemed administratively complete six months after its submission to EPA, which stopped the sanctions clock per EPA’s sanctions regulations at 40 CFR 52.31 but did not stop the FIP clock.

For reasons described in the following sections, EPA is proposing to disapprove portions of the Detroit attainment plan. Finalization of this action will start a new sanctions clock which can be stopped only if the conditions of EPA’s regulations at 40 CFR 52.31 are met. Only a full SIP approval or EPA’s promulgation of a FIP can stop FIP clocks, so this action does not have any effect on the FIP clock that started April 18, 2016.

The remainder of this preamble describes the requirements that nonattainment plans must meet in order to obtain EPA approval, provides a review of the Detroit SO<sub>2</sub> plan with respect to these requirements, and describes EPA’s proposed action on the plan.

#### II. Requirements for Nonattainment Plans

Nonattainment plans for SO<sub>2</sub> must meet the applicable requirements of the CAA, specifically CAA sections 110,

<sup>1</sup> 75 FR 35520, codified at 40 CFR 50.17(a)–(b).

<sup>2</sup> 78 FR 47191, codified at 40 CFR part 81, subpart C.

172, 191, and 192. EPA's regulations governing nonattainment SIP submissions are set forth at 40 CFR part 51, with specific procedural requirements and control strategy requirements codified at subparts F and G, respectively. Soon after Congress enacted the 1990 Amendments to the CAA, EPA issued comprehensive guidance on SIP revisions in the "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" ("General Preamble").<sup>3</sup> Among other things, the General Preamble addressed SO<sub>2</sub> SIP submissions and fundamental principles for SIP control strategies.<sup>4</sup> On April 23, 2014, EPA issued recommended guidance for meeting the statutory requirements in SO<sub>2</sub> SIP submissions, in a document entitled, "Guidance for 1-Hour SO<sub>2</sub> Nonattainment Area SIP Submissions" ("2014 SO<sub>2</sub> Guidance"). In the 2014 SO<sub>2</sub> Guidance, EPA described the statutory requirements of CAA section 172(c) for a complete nonattainment plan, including: An accurate emissions inventory of current emissions for all sources of SO<sub>2</sub> within the NAA; an attainment demonstration; a demonstration of RFP; implementation of RACM (including RACT); new source review; enforceable emission limitations and control measures; and adequate contingency measures for the affected area.

For EPA to fully approve a SIP revision as meeting the requirements of CAA sections 110, 172, 191, and 192, and EPA's regulations at 40 CFR part 51, the plan for an affected area must demonstrate to EPA's satisfaction that each of the aforementioned requirements has been met. Under CAA section 110(l), EPA may not approve a plan that would interfere with any applicable requirement concerning NAAQS attainment and RFP, or any other applicable requirement. Under CAA section 193, no requirement in effect (or required to be adopted by an order, settlement, agreement, or plan in effect before November 15, 1990) in any area that is nonattainment for any air pollutant may be modified in any manner unless it ensures equivalent or greater emission reductions of such air pollutant.

Sections 172(c)(1) and 172(c)(6) of the CAA direct states with areas designated as nonattainment to demonstrate that the submitted plan and the emissions limitations and control measures in it provide for attainment of the NAAQS. 40 CFR part 51, subpart G further

delineates the control strategy requirements that plans must meet, and EPA has long required that all SIPs and control strategies reflect four fundamental principles of quantification, enforceability, replicability, and accountability.<sup>5</sup> SO<sub>2</sub> nonattainment plans must consist of two components: (1) Emission limits and other control measures that ensure implementation of permanent, enforceable, and necessary emission controls, and (2) a modeling analysis that meets the requirements of 40 CFR part 51, appendix W and demonstrates that these emission limits and control measures provide for timely attainment of the primary SO<sub>2</sub> NAAQS as expeditiously as practicable, but no later than the attainment date for the affected area. In cases where the necessary emission limits have not previously been made a part of the state's SIP or have not otherwise become federally enforceable, the plan needs to include the necessary enforceable limits in an adopted form suitable for incorporation into the SIP in order for the plan to be approved by EPA. In all cases, the emission limits and control measures must be accompanied by appropriate methods and conditions to determine compliance with the respective emission limits and control measures and must be quantifiable (*i.e.*, a specific amount of emission reduction can be ascribed to the measures), fully enforceable (*i.e.*, specifying clear, unambiguous and measurable requirements for which compliance can be practicably determined), replicable (*i.e.*, the procedures for determining compliance are sufficiently specific and objective so that two independent entities applying the procedures would obtain the same result), and accountable (*i.e.*, source specific limits must be permanent and must reflect the assumptions used in the SIP demonstrations).

EPA's 2014 SO<sub>2</sub> Guidance recommends that the emission limits be expressed as short-term average limits not to exceed the averaging time for the applicable NAAQS that the limit is intended to help maintain (*e.g.*, addressing emissions averaged over one or three hours), but it also describes the option to utilize emission limits with longer averaging times of up to 30 days as long as the state meets various suggested criteria.<sup>6</sup> The 2014 SO<sub>2</sub> Guidance recommends that, should states and sources utilize longer averaging times (such as 30 days), the longer-term average limit should be set

at an adjusted level that reflects a stringency comparable to the 1-hour average limit at the critical emission value shown to provide for attainment. Additional discussion of EPA's rationale for approving longer term average limits in selected cases has been provided in several notices of proposed rulemaking, for example for the Pekin, Illinois area (see 82 FR 46434, Oct. 5, 2017), for the Steubenville, Ohio-West Virginia area (see 84 FR 29456, June 24, 2019), and for the Central New Hampshire area (see 82 FR 45242, Sep. 28, 2017)).

Preferred air quality models for use in regulatory applications are described in appendix A of EPA's "Guideline on Air Quality Models" (40 CFR part 51, appendix W ("appendix W")).<sup>7</sup> In general, nonattainment SIP submissions must demonstrate the adequacy of the selected control strategy using the applicable air quality model designated in appendix W.<sup>8</sup> However, where an air quality model specified in appendix W is inappropriate for the particular application, the model may be modified or another model substituted, if EPA approves the modification or substitution.<sup>9</sup> In 2005, EPA promulgated the American Meteorological Society/ Environmental Protection Agency Regulatory Model (AERMOD) as the Agency's preferred near-field dispersion model for a wide range of regulatory applications addressing stationary sources (*e.g.*, in estimating SO<sub>2</sub> concentrations) in all types of terrain based on an extensive developmental and performance evaluation. Supplemental guidance on modeling for purposes of demonstrating attainment of the SO<sub>2</sub> standard is provided in appendix A of the 2014 SO<sub>2</sub> Guidance. Appendix A provides extensive guidance on the modeling domain, the source inputs, assorted types of meteorological data, and background concentrations. Consistency with the recommendations in the 2014 SO<sub>2</sub> Guidance is generally necessary for the attainment demonstration to offer adequately reliable assurance that the plan provides for attainment.

As stated previously, attainment demonstrations for the 2010 1-hour primary SO<sub>2</sub> NAAQS must demonstrate future attainment and maintenance of the NAAQS in the entire area designated as nonattainment (*i.e.*, not just at the violating monitor) by using air quality dispersion modeling (see appendix W) to show that the mix of sources and enforceable control

<sup>3</sup> 57 FR 13498 (April 16, 1992).

<sup>4</sup> Id. at 13548–13549, 13567–13568.

<sup>5</sup> Id. at 13567–13568.

<sup>6</sup> 2014 SO<sub>2</sub> Guidance, 22–39.

<sup>7</sup> EPA published revisions to appendix W on January 17, 2017, 82 FR 5182.

<sup>8</sup> 40 CFR 51.112(a)(1).

<sup>9</sup> 40 CFR 51.112(a)(2); appendix W, section 3.2.

measures and emission rates in an identified area will not lead to a violation of the SO<sub>2</sub> NAAQS. For the short-term (*i.e.*, 1-hour) standard, EPA believes that dispersion modeling, using allowable emissions and addressing stationary sources in the affected area (and in some cases those sources located outside the NAA that may affect attainment in the area) is technically appropriate. This approach is also efficient and effective in demonstrating attainment in NAAs because it takes into consideration combinations of meteorological and source operating conditions that may contribute to peak ground-level concentrations of SO<sub>2</sub>.

The meteorological data used in the analysis should generally be processed with the most recent version of AERMET, which is the meteorological data preprocessor for AERMOD. Estimated concentrations should include ambient background concentrations, follow the form of the standard, and be calculated as described in EPA's August 23, 2010 clarification memorandum.<sup>10</sup>

### III. Review of Modeled Attainment Demonstration

The majority of Michigan's submittal is a robust modeling demonstration that includes an assessment of the air quality impacts Michigan expected to result from emissions limitations governing the following sources: U.S. Steel Ecorse, U.S. Steel Zug Island, EES Coke, DTE Energy (DTE) River Rouge, DTE Trenton Channel, Carmeuse Lime, DTE Monroe, Severstal Steel, Dearborn Industrial Generation (DIG), and Marathon Refinery. From the base case modeling scenario, Michigan determined that Carmeuse Lime was causing an isolated violation in the model, and that U.S. Steel, DTE River Rouge, and DTE Trenton Channel were all contributing to overlapping violations in locations separate from the Carmeuse Lime violation. No other modeled sources were found to be significantly contributing to the modeled violations. EPA found the modeling to generally follow the modeling guidance and adhere to the requirements in appendix W.

Michigan ran a variety of control scenarios to determine a reduction strategy for the area and submitted emission limitations for Carmeuse Lime, DTE Trenton Channel, DTE River Rouge, and U.S. Steel. Michigan submitted revised construction permits for Carmeuse Lime, DTE Trenton

Channel, and DTE River Rouge, each of which had been agreed to by the source.

#### A. U.S. Steel Emission Limits

Michigan was unsuccessful, however, in its efforts to implement more stringent SO<sub>2</sub> emission limits through a construction permit with U.S. Steel. Ultimately, Michigan imposed the emission limits it had concluded were necessary at U.S. Steel to bring the Detroit area into attainment by passing Michigan Administrative Code (MAC) 336.1430 ("Rule 430"). Michigan submitted Rule 430 to EPA as an enforceable limitation element of its SO<sub>2</sub> plan.

Subsequently, U.S. Steel challenged the legality of Rule 430 in the Michigan Court of Claims, which invalidated Rule 430 on October 4, 2017. *United States Steel Corp. v. Dept. of Environmental Quality*, No. 16-000202-MZ, 2017 WL 5974195 (Mich. Ct. Cl. Oct. 4, 2017).

To date, Michigan has not submitted a substitute enforceable emission limitation for the U.S. Steel facility. Because the State's attainment demonstration relies on such a limitation, EPA must disapprove the Detroit SO<sub>2</sub> plan.

#### B. SIP Strengthening Additional Emission Limits

As noted above, Michigan submitted revised permits with more stringent emission limitations for three other facilities. Although EPA is not able to approve any of these limitations as part of the state's Detroit SO<sub>2</sub> plan, EPA is proposing to approve two of these three permits as SIP strengthening, which is appropriate for limits that improve air quality but do not meet a specific CAA requirement.

For Carmeuse Lime, on March 18, 2016, the State issued Permit to Install 193-14A, which requires the construction of and venting of emissions through a new stack. The permit also establishes a more stringent, permanent, and enforceable SO<sub>2</sub> limit. The State's modeling indicates that the violation caused by Carmeuse is resolved by this modification, which is well within EPA's regulatory definition of "good engineering practice (GEP)" per 40 CFR 51.100(ii)(1). Because this enforceable emissions limitation will lessen ground-level impacts, EPA is proposing to approve it as SIP strengthening.

Similarly, EPA is proposing to approve as SIP strengthening the DTE Trenton Channel permit (Permit to Install 125-11C).<sup>11</sup> EPA modeling demonstrates that attainment at violating receptors can be achieved

when the emission limits in the DTE Trenton Channel Permit are analyzed together with those contained in a recently issued permit for the DTE River Rouge facility (Permit to Install 40-08I).

With regard to the DTE River Rouge permit, Michigan submitted an earlier version of that permit as part of its Detroit SO<sub>2</sub> Plan.<sup>12</sup> After EPA found an error in the long-term averaging calculation for this permit, DTE corrected the error and, as noted above, was issued a new permit. The 2020 permit has not been submitted as part of the Detroit SO<sub>2</sub> Plan, however, and is not before EPA for consideration.

Therefore, for the reasons explained above, EPA is proposing to disapprove the attainment demonstration in the Detroit SO<sub>2</sub> Plan pursuant to 172(c) and 192(a), specifically those elements of the demonstration that rely on the invalidated Rule 430 and the superseded 2016 DTE River Rouge permit. EPA is proposing to approve the Carmeuse Lime and DTE Trenton Channel construction permits as SIP strengthening.

### IV. Review of Other Plan Requirements

#### A. Emissions Inventory

The emissions inventory and source emission rate data for an area serve as the foundation for air quality modeling and other analyses that enable states to estimate the degree to which different sources within a NAA contribute to violations within the affected area and assess the expected improvement in air quality within the NAA due to the adoption and implementation of control measures. The state must develop and submit to EPA a comprehensive, accurate, and current inventory of actual emissions from all sources of SO<sub>2</sub> emissions in each NAA, as well as any sources located outside the NAA that may affect attainment in the area.<sup>13</sup>

The base year inventory establishes a baseline that is used to evaluate emission reductions achieved by the control strategy and to assess RFP requirements. Michigan used 2012 as the base year for emissions inventory preparation. At the time of preparation of the plan, 2012 reflected the most recent emissions data available to the state through its annual emissions reporting requirements during periods with air quality violations. The emissions inventory includes all sources over a 100 tons per year (tpy) of SO<sub>2</sub> emission within the NAA, as well as a large source, DTE Monroe, outside the nonattainment area. Table 1 summarizes

<sup>10</sup> "Applicability of Appendix W Modeling Guidance for the 1-hr SO<sub>2</sub> National Ambient Air Quality Standard" (August 23, 2010).

<sup>11</sup> Issued April 29, 2016.

<sup>12</sup> Permit to Install 40-08H, issued on May 3, 2016.

<sup>13</sup> CAA section 172(c)(3).

2012 base year SO<sub>2</sub> emissions inventory data for the NAA, categorized by emission source type (rounded to the nearest whole number).

TABLE 1—SUMMARY OF BASE YEAR (2012) SO<sub>2</sub> EMISSIONS INVENTORY FOR THE DETROIT SO<sub>2</sub> NAA

Source	Emissions (tpy)
River Rouge .....	8,203
Trenton Channel .....	22,426
Monroe .....	49,151
Carneuse Lime .....	700
Severstal Steel .....	677
DIG .....	598
Marathon .....	137
U.S. Steel .....	2,874
EES Coke .....	1,901
Total .....	86,666

EPA has evaluated Michigan's 2012 base year inventory and finds this inventory and the methodologies used for their development to be consistent with EPA guidance. As a result, EPA is proposing to determine that the Detroit SO<sub>2</sub> plan meets the requirements of CAA section 172(c)(3) and (4) for the Detroit SO<sub>2</sub> NAA.

#### B. RACM and RACT and Enforceable Emission Limitations and Control Measures

CAA section 172(c)(1) states that nonattainment plans should “provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology) and shall provide for attainment of the national primary ambient air quality standards.” CAA section 172(c)(6) requires plans to “include enforceable emissions limitations, and such other control measures [ . . . ] as may be necessary or appropriate to provide for attainment of [the NAAQS].” Because the Detroit plan is missing enforceable measures for some major sources of SO<sub>2</sub> and is therefore not able to demonstrate attainment, the area does not demonstrate RACM/RACT or meet the requirement for necessary emissions limitations or control measures. EPA is therefore proposing that the State has not satisfied the requirements in CAA sections 172(c)(1) and (6) to adopt and submit all RACM/RACT and emissions limitations or control measures as needed to attain the standard as expeditiously as practicable.

#### C. New Source Review

Michigan has a fully approved NNSR Program. The program is set forth in Part 19 of the Michigan SIP (MAC R 336.2901 through R 336.2908). This program was approved by EPA into the SIP on December 16, 2013 (78 FR 76064) and addresses nonattainment permitting requirements for SO<sub>2</sub> and other pollutants. Therefore, EPA is proposing to affirm that the new source review requirements for the area have been met.

#### D. Reasonable Further Progress

EPA's policy, that RFP for SO<sub>2</sub> may be satisfied by “adherence to an ambitious compliance schedule,” is based on the fact that, “for SO<sub>2</sub> there is usually a single ‘step’ between pre-control nonattainment and post-control attainment.”<sup>14</sup> In this instance, however, Michigan has not demonstrated that implementation of the control measures required under the plan is sufficient to provide for attainment of the NAAQS in the Detroit SO<sub>2</sub> NAA. In the absence of a demonstration that the required controls will lead to attainment, a compliance schedule to implement these controls is not sufficient to provide for RFP. Therefore, we propose to conclude that the State has not satisfied the requirement in section 172(c)(2) to provide for RFP toward attainment in the Detroit SO<sub>2</sub> NAA.

#### E. Contingency Measures

In the Detroit SO<sub>2</sub> plan, Michigan explained its rationale for concluding that the plan meets the requirement for contingency measures. Specifically, Michigan relied on the 2014 SO<sub>2</sub> Guidance, which notes the special circumstances that apply to SO<sub>2</sub> and explains on that basis why the contingency requirement in CAA section 172(c)(9) is met for SO<sub>2</sub> by having a comprehensive program to identify sources of violations of the SO<sub>2</sub> NAAQS and to undertake an aggressive follow-up for compliance and enforcement of applicable emission limitations. Michigan stated that it has such an enforcement program pursuant to section 5526 of part 55, Air Pollution Control, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, Michigan Compiled Laws 324.5526. Michigan also stated that its enforcement and compliance authority is furthered by the State's Title V program, which includes a compliance monitoring program, periodic inspections, review of company monitoring records, reporting, and issuance of violation notices for all

violations shown from inspections or data. In addition, Michigan stated that it responds promptly to citizen complaints, reports all high priority violations to EPA, and puts all inspection reports and violation notices on Michigan's website. Michigan concluded that the plan satisfies contingency measure requirements under CAA section 172(c)(9).

Although we agree that the Michigan SIP establishes a comprehensive enforcement program, allowing for the identification of sources of SO<sub>2</sub> NAAQS violations and aggressive compliance and enforcement follow-up, EPA's policy that a comprehensive enforcement program can satisfy the contingency measures requirement is premised on the idea that full compliance with the controls required in the plan will assure attainment. In this case, as explained above, Michigan's plan lacks necessary enforceable measures at major sources of SO<sub>2</sub> and therefore cannot demonstrate attainment with the NAAQS. Therefore, we propose that the State has not satisfied the requirement in section 172(c)(9) to provide for contingency measures to be undertaken if the area fails to make RFP or to attain NAAQS by the attainment date.

#### F. Conformity

Generally, as set forth in section 176(c) of the CAA, conformity requires that actions by Federal agencies do not cause new air quality violations, worsen existing violations, or delay timely attainment of the relevant NAAQS. General conformity applies to Federal actions, other than certain highway and transportation projects, if the action takes place in a NAA or maintenance area (*i.e.*, an area which submitted a maintenance plan that meets the requirements of section 175A of the CAA and has been redesignated to attainment) for ozone, particulate matter, nitrogen dioxide, carbon monoxide, lead, or SO<sub>2</sub>. EPA's General Conformity Rule establishes the criteria and procedures for determining if a Federal action conforms to the SIP.<sup>15</sup> With respect to the 2010 SO<sub>2</sub> NAAQS, Federal agencies are expected to continue to estimate emissions for conformity analyses in the same manner as they estimated emissions for conformity analyses under the previous NAAQS for SO<sub>2</sub>. EPA's General Conformity Rule includes the basic requirement that a Federal agency's general conformity analysis be based on the latest and most accurate emission

<sup>14</sup> 2014 SO<sub>2</sub> Guidance, 40.

<sup>15</sup> 40 CFR 93.150 to 93.165.

estimation techniques available.<sup>16</sup> When updated and improved emission estimation techniques become available, EPA expects the Federal agency to use these techniques.

Transportation conformity determinations are not required in SO<sub>2</sub> nonattainment and maintenance areas. EPA concluded in its 1993 transportation conformity rule that highway and transit vehicles are not significant sources of SO<sub>2</sub>. Therefore, transportation plans, transportation improvement programs, and projects are presumed to conform to applicable implementation plans for SO<sub>2</sub>.<sup>17</sup>

#### V. What action is EPA taking?

EPA is proposing to approve the base year inventory and to affirm that the new source review requirements for the area have been met. EPA is also proposing to approve the DTE Trenton Channel and Carmeuse Lime permits as SIP strengthening. EPA is proposing to disapprove the attainment demonstration, as well as the requirement for meeting RFP toward attainment of the NAAQS, RACM/RACT, contingency measures, the invalidated Rule 430 related to U.S. Steel, and the superseded 2016 permit related to DTE River Rouge. Finalizing the proposed disapproval will start new sanctions clocks for this area under CAA section 179(a)–(b).

#### VI. Incorporation by Reference

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference two permits, Permit to Install 193–14A issued March 18, 2016 and Permit to Install 125–11C issued April 29, 2016. EPA has made, and will continue to make, these documents generally available through [www.regulations.gov](http://www.regulations.gov) and at EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

#### VII. 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, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action

merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because it is not a significant regulatory action 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

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by

reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: September 14, 2020.

**Kurt Thiede**,

*Regional Administrator, Region 5.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R04–OAR–2019–0447; FRL–10014–51–Region 4 ]

### Air Plan Approval; MS; BART SIP and Regional Haze Progress Report

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

**ACTION:** Proposed rule; reopening of public comment period.

**SUMMARY:** The Environmental Protection Agency (EPA) is reopening the comment period until October 5, 2020, for a notice of proposed rulemaking (NPRM) published in the **Federal Register** on August 4, 2020. In the August 4, 2020, NPRM, EPA proposed to approve, through parallel processing, a draft Mississippi State Implementation Plan (SIP) revision, submitted through a letter dated April 23, 2020, addressing best available retrofit technology (BART) determinations for 14 electric generating units (“draft BART SIP”). EPA proposed to approve the draft BART SIP and find that it corrects the deficiencies that led to the limited approval and limited disapproval of the State’s regional haze SIP; withdraw the limited disapproval of the regional haze SIP; and replace the prior limited approval with a full approval of the regional haze SIP as meeting all regional haze requirements of the Clean Air Act (CAA) for the first implementation period. In addition, EPA proposed to approve the State’s first periodic report describing progress towards reasonable progress goals (RPGs) established for regional haze and the associated determination that the State’s regional haze SIP is adequate to meet these RPGs for the first implementation period (“Progress Report”). The State submitted the Progress Report as a SIP revision by letter dated October 4, 2018. EPA is reopening the comment period based on Sierra Club’s request for visibility modeling files and for a 30-day extension of the comment period.

**DATES:** The comment period for the NPRM published August 4, 2020 (85 FR 47134), is reopened, and comments

<sup>16</sup> 40 CFR 93.159(b).

<sup>17</sup> 58 FR 3768, 3776 (January 11, 1993).