

rule will not have federalism implications.

B. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this rule under Executive Order 13211. The agency has determined it is not a “significant energy action” under the executive order and will not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

C. Executive Order 13609, Promoting International Regulatory Cooperation

Executive Order 13609 promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609 and has determined that this action will have no effect on international regulatory cooperation.

IX. Additional Information

A. Electronic Access

Except for classified material, all documents the FAA considered in developing this rule, including economic analyses and technical reports, may be accessed from the internet through the docket for this rulemaking.

Those documents may be viewed online at <https://www.regulations.gov> using the docket number listed above. A copy of this rule will be placed in the docket. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded from the Office of the Federal Register’s website at <https://www.federalregister.gov> and the Government Publishing Office’s website at <https://www.govinfo.gov>. A copy may also be found at the FAA’s Regulations and Policies website at https://www.faa.gov/regulations_policies.

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267–9677. Commenters must identify the docket or notice number of this rulemaking.

B. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996

(SBREFA) (Pub. L. 104–121) (set forth as a note to 5 U.S.C. 601) requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document may contact its local FAA official, or the persons listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. To find out more about SBREFA on the internet, visit https://www.faa.gov/regulations_policies/rulemaking/sbre_act/.

List of Subjects in 14 CFR Part 91

Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Freight, Yemen.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations, as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

- 1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40101, 40103, 40105, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, 47534, Pub. L. 114–190, 130 Stat. 615 (49 U.S.C. 44703 note); articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180), (126 Stat. 11).

- 2. Amend § 91.1611 by revising paragraph (e) to read as follows:

§ 91.1611 Special Federal Aviation Regulation No. 115—Prohibition Against Certain Flights in Specified Areas of the Sanaa Flight Information Region (FIR) (OYSC).

* * * * *

(e) *Expiration.* This SFAR will remain in effect until January 7, 2025. The FAA may amend, rescind, or extend this SFAR, as necessary.

Issued in Washington, DC, under the authority of 49 U.S.C. 106(f) and (g), 40101(d)(1), 40105(b)(1)(A), and 44701(a)(5), on or about December 1, 2021.

Steve Dickson,
Administrator.

[FR Doc. 2021–26521 Filed 12–6–21; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2020–0385; FRL–8826–02–R5]

Air Plan Approval; Michigan; Sulfur Dioxide Clean Data Determination for St. Clair

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is making a determination that the St. Clair sulfur dioxide (SO₂) nonattainment area has attained the 2010 primary SO₂ National Ambient Air Quality Standard (2010 SO₂ NAAQS). This determination suspends certain planning requirements and sanctions for the nonattainment area for as long as the area continues to attain the 2010 SO₂ NAAQS. EPA proposed this action on August 17, 2021, and received four supportive comments and one set of adverse comments.

DATES: This final rule is effective on December 7, 2021.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2020–0385. All documents in the docket are listed on the www.regulations.gov website. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) 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 through www.regulations.gov or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility 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. We recommend that you telephone Mary Portanova, Environmental Engineer, at (312) 353–5954 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Mary Portanova, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–5954, portanova.mary@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever

“we,” “us,” or “our” is used, we mean EPA.

I. Background Information

On August 17, 2021 (86 FR 45947), EPA proposed to determine that the St. Clair SO₂ nonattainment area (St. Clair area) has attained the 2010 SO₂ NAAQS. This determination, also known as a Clean Data Determination (CDD), would suspend certain planning requirements for the nonattainment area for as long as the area continues to attain the 2010 SO₂ NAAQS. EPA also proposed to require the Michigan Department of Environment, Great Lakes, and Energy (EGLE) to submit annual statements to address whether the St. Clair area has continued to attain the 2010 SO₂ NAAQS. A detailed analysis of EPA’s proposed decision was provided in the August 17, 2021, notice of proposed rulemaking (NPRM) and will not be restated here. The public comment period for this NPRM ended on September 16, 2021. EPA received five comment submittals on the proposed action.

II. Response to Comments

EPA received two anonymous comments and two comments from citizens, all in support of EPA’s action. EPA acknowledges these supportive comments. EPA also received a detailed comment document from the Sierra Club (“the commenter”), which includes adverse comments on EPA’s proposed action. EPA is addressing these comments below. EPA notes that the commenter frequently refers to information given in an EGLE document which was not part of EGLE’s July 24, 2020, CDD submittal. The document is entitled “Proposed Sulfur Dioxide One-Hour National Ambient Air Quality Standard State Implementation Plan (SIP) for St. Clair County Nonattainment Area,” dated October 7, 2019. EPA will refer to this document as the “2019 draft.” The commenter claimed that this document was submitted to EPA in 2019 for approval and has requested that if there is a final version of the document, that it be added to the docket for this action, but in fact, neither the “2019 draft” nor any final version of the “2019 draft” document was submitted to EPA as a SIP revision or as part of EGLE’s CDD request. EPA considers the “2019 draft” document and its contents to be a draft State product which predated and has limited relevance to EGLE’s July 24, 2020, CDD request. EPA has no final version of the “2019 draft” to docket, but will retain the “2019 draft” in Docket ID No. EPA–R05–OAR–2020–0385 as an exhibit attached to Sierra Club’s comment.

Comment A: At several places in the Sierra Club comment document, the commenter suggests that certain emission reductions which have been discussed or imposed in the time since the St. Clair area was designated nonattainment should be evaluated for adequacy to provide for full attainment or imposed quickly under a State or Federal plan to provide for healthy air. The commenter additionally requests that EGLE should perform various new modeling analyses either before the CDD is finalized, or during the time that the CDD is in place. These requested analyses would be used to show whether further State regulations are needed to bring healthy air into the St. Clair area. The commenter also states that EPA should not allow delays in achieving healthy air in the St. Clair area.

Response A: In its August 17, 2021, NPRM, EPA presented evidence and proposed to find that the St. Clair area has attained the 1-hour SO₂ NAAQS as of 2017–2020. To the extent that the commenter is asserting that additional measures must be adopted in order for the area to attain the NAAQS, we do not agree. The CDD would cause no delays, as the St. Clair area and surrounding communities have already demonstrated air quality values that meet the health-based NAAQS. Therefore, Clean Air Act (CAA) planning requirements for nonattainment areas can be suspended under a CDD, and no further analyses or emission reduction actions are required of EGLE at this time. As stated in the proposal, EGLE will be required to provide demonstrations on an annual basis that the area continues to attain the NAAQS, and if EPA determines in the future that the area is no longer attaining the NAAQS, the CDD would be rescinded.

Comment B: The commenter asserted that EGLE’s request for a CDD relied on the assumption that the St. Clair plant’s expected closure will allow the State to formally demonstrate attainment, despite the emissions from the Belle River plant and a new gas power plant. The commenter stated that this assumption has not been tested and should be tested before moving ahead with the CDD. The commenter stated that nothing in the CAA allows EPA to suspend immediate action in anticipation of emission reductions accompanying a plant retirement that is still more than a year away.

Response B: The plan to close the St. Clair plant in 2022 was not a factor which EGLE or EPA relied upon to justify the determination of attainment. EGLE’s CDD request relied on actual emissions and monitoring data, and a

finding that the area is attaining the NAAQS based on those emissions and monitoring data. In finalizing a CDD, EPA is suspending the CAA obligation to submit attainment planning requirements because the area is currently attaining the standard, regardless of any anticipated future emission reductions, including the planned plant retirement. EPA does not agree that additional modeling analyses are required at this time for EPA to find that this area is currently attaining and to finalize the CDD. Such analyses that the commenter is requesting might instead be expected in a future redesignation request or nonattainment SIP. It is worth noting that although the St. Clair CDD is already fully supported by air quality data, if a coal power plant were to permanently and enforceably close in the St. Clair area, any actual SO₂ emission decreases that occur would only help the area stay in attainment under the CDD and help provide a path forward to eventual redesignation of the area to attainment.

Comment C: The commenter stated that EPA should ensure it is not delaying action that may be needed to demonstrate that the area is meeting the NAAQS based not only on actual emissions, which can increase, but on allowable emissions. The commenter stated that EPA should determine if further action will be needed following St. Clair’s retirement, and if so, EGLE should be developing additional measures now, rather than waiting until a monitoring violation occurs and the CDD must be rescinded. Waiting to restart the process of developing needed measures until after rescission of the CDD would cause delays.

Response C: The St. Clair area is currently meeting the 2010 SO₂ NAAQS and therefore, EPA may finalize this CDD. Enforceable allowable emission limits would be expected in a subsequent redesignation request. Again, however, EPA does not require additional action from EGLE for the St. Clair area while the CDD is in place and the area continues to attain the standards.

Comment D: The commenter stated that EPA’s NPRM does not explicitly address whether the DTE monitors meet the criteria in 40 CFR part 58, appendices A, C, and E; whether EGLE submitted relevant information for EPA to make this assessment, and whether relying on this data is consistent with other treatment of third-party monitoring.

Response D: As stated in the NPRM, EPA reviewed monitoring data and evidence that quality assurance activities had been performed. EPA

monitoring experts found that the third-party monitoring network and the data quality at the St. Clair area monitors are consistent with EPA requirements and are acceptable to rely upon to characterize air quality in the St. Clair area. The NPRM inadvertently omitted specific reference to a letter EGLE submitted to EPA on October 28, 2020, which provides EGLE's confirmation that the two industrial SO₂ monitoring sites operated by DTE meet the quality assurance and siting requirements in 40 CFR part 58, appendix A and D, respectively. This letter has been added to Docket ID No. EPA-R05-OAR-2020-0385. Additionally, the SO₂ monitoring methods used at these two monitoring sites are reference or equivalent methods as defined in 40 CFR part 50.

Comment E: The commenter expressed concern that the two DTE monitors could be missing maximum concentrations of the SO₂ plume. The commenter cited diagrams from modeling results shown in the "2019 draft." The commenter stated that diagrams in this document appear to indicate an additional area of high modeled concentrations in the St. Clair area which does not currently contain a monitor. The commenter asked EPA to consider how to obtain monitoring results from that third location.

Response E: As previously stated, EPA relied on the modeling analysis in EGLE's July 24, 2020 CDD submittal, which used actual facility SO₂ emissions and an updated meteorological data set from Pontiac, Michigan, 2017–2019. This meteorology was determined to be more complete and more representative of the St. Clair area than other available meteorological datasets which EGLE had considered or used earlier in its other work for the St. Clair area. The CDD modeling of 2017–2019 actual emissions which EGLE submitted indicated that the highest modeled concentrations tended to occur most frequently near the Remer monitor location. EPA's "SO₂ NAAQS Designations Source-Oriented Monitoring Technical Assistance Document" (SO₂ Monitoring TAD) considers both high relative magnitude of modeled results, and the frequency of a location experiencing maximum values, in helping to choose appropriate monitoring sites. The third location in the St. Clair area northwest of the plants, which the commenter appears to refer to, does not appear as a location of higher concentrations than the monitored locations in EGLE's CDD modeling analysis. The CDD's modeled values in the northwest location are similar to but lower than the CDD's modeled values in the area of maximum

concentration near the Remer monitor's location. EPA is satisfied that the two DTE monitors provide a reasonable representation of the maximum impacts from the two St. Clair sources and that the imposition of a third monitor is not justified by current information.

Comment F: The commenter noted that the Belle River plant had a 7-month outage in 2019 and stated that EPA does not address how this outage affects its assessment that the 2017–2019 monitoring data represents three full years, particularly in the warmer months, or whether the outage skewed the results of the modeling so that it is not representative of maximum SO₂ emissions observed during typical operations.

Response F: The Belle River plant did have outages at Unit 1 from February 2019 to June 2019; from November 2019 to December 2019, and from January 2020 to February 2020, which led to an overall emission reduction of over 6,000 tons of SO₂. These outages would not affect most of the warmer months in the St. Clair area, so presumably the ambient air concentrations measured at the DTE monitors during the summer and early fall of 2019 would represent normal expected conditions for that year.

The monitoring data used to support the CDD represents actual ambient air quality during 2017–2019. Air quality monitoring data can reflect fluctuations in source operating conditions, meteorology, and other factors. The Belle River plant Unit 1 outage does not invalidate the monitoring data. The use of three years of data to calculate a monitor's design value also helps balance variations in emissions and other factors. In addition, the CDD is supported by modeling of actual current facility emissions (in this case, 2017–2019), in order to demonstrate that the NAAQS are attained. The analysis is not intended to evaluate only maximum typical emissions. EPA believes it is appropriate to model the true actual emissions for the modeling period, which encompassed the most recent three years of data available when the CDD was requested.

Comment G: The commenter noted that EGLE had used a single background value in its modeling for the initial nonattainment designation recommendation for the St. Clair area, but later revised the background concentration to a set of lower values for the "2019 draft" and another set of background values in the CDD submittal. The commenter questioned EGLE's claim that approximately 90 hours of data were considered in each season and asked that EPA explain the

appropriateness of the final background values EGLE used. The commenter asked that EGLE's background spreadsheet be added to the CDD action's docket record and inquired whether EPA limits the number of hours or wind sectors that can be excluded from a background data set.

Response G: Dispersion modeling analysis can be an iterative process, in which initial conservative input data is later evaluated to better reflect actual ambient air conditions within the modeling domain, or more accurate emissions and facility configuration data at the modeled sources. Such adjustments can provide for more appropriate and accurate results. In its initial nonattainment recommendation analysis of the St. Clair area's 2012–2014 SO₂ emissions submitted on September 18, 2015, Michigan chose a conservative Tier I background value. Based in part on the results of the modeling analysis, the State recommended to EPA that the St. Clair area be designated nonattainment. These modeling results were also used to help suggest boundaries for the St. Clair nonattainment area. Having made its nonattainment recommendation, Michigan did not decide to further refine its 2015 modeling or the background value it used.

However, EPA concurs with EGLE that additional refinement of input data such as background concentrations can be part of an acceptable approach to support future planning, or to characterize an area's air quality. The background analysis EGLE submitted with its July 24, 2020, CDD submittal used monitored ambient air quality data from 2017–2019 at the Port Huron monitor, selected by season and hour of day with wind direction exclusions to avoid double-counting of the St. Clair plants' impacts and to avoid overestimating SO₂ impacts from facilities closer to the background monitor which would not be expected to actually impact the St. Clair area when winds came from their locations. EPA accepted this approach, which is a commonly used method of addressing background in SO₂ modeling analyses, fully supported by EPA's modeling guidance. The background values used in the CDD submittal work come from a newer set of air quality data than the background values in the "2019 draft," which may help explain the difference between the data sets cited by the commenter. The actual number of acceptable background exclusions depends on the wind patterns experienced at the Port Huron monitor, and is not specifically limited by EPA guidance as long as the monitor meets

EPA's data completeness requirements, which Port Huron's monitor does. EGLE may not have had 90 hours in every season due to exclusions, but EPA finds that EGLE's background calculations are generally conservative and acceptable in the modeled evaluation submitted with EGLE's CDD request. EPA has added EGLE's background spreadsheet to Docket ID No. EPA-R05-OAR-2020-0385.

Additionally, EPA calculated a much more conservative Tier I background calculation which used the first high concentration to determine one background value for each year 2017–2019. This resulted in the values 7.5 parts per billion (ppb), 6.5 ppb, and 14.4 ppb for 2017, 2018, and 2019, respectively, for a three-year averaged background value of 9.5 ppb. Adding this Tier 1 background value of 9.5 ppb to the CDD modeled design concentration of 64.4 ppb (which already included the season by hour of day values, embedded in the final modeled result) gives a total, very conservative design value of 73.9 ppb, which double counts background but is still below the NAAQS. EPA does not intend to impose this Tier I background value upon EGLE's submitted analysis, but only finds that EGLE's analysis would still show attainment, even if the submitted background values were rejected.

Comment H: EGLE does not state what years the Port Huron data is from on page 4 of its CDD submittal.

Response H: EGLE's table on page 4 of its CDD submittal indicates that the Port Huron background data was from 2017–2019.

Comment I: The commenter noted that the NPRM appeared to reverse the 2017–2019 monitor values which EPA cited as indicating that the modeling and monitoring results matched well near the monitor locations.

Response I: EPA acknowledges that there is an error in the narrative on page 45949 of the NPRM. The values in Table 1 and the comparison of modeled to monitored design values at each monitor are correct as given in the NPRM. The correct wording on page 45949 of the NPRM should be “The model's predicted design value at the Mills monitor location was 47.7 ppb, compared to the monitored design value of 45 ppb, and the model's predicted design value at the Remer monitor location was 52.7 ppb, compared to the monitored design value of 54 ppb.”

Comment J: The commenter stated that if EPA finds that the area is not meeting the NAAQS after reviewing these comments, it should move

forward with a Federal Implementation Plan.

Response J: EPA believes that EGLE has adequately demonstrated that the St. Clair area is currently meeting the 2010 SO₂ NAAQS. If it is necessary to rescind the CDD in future, EPA will follow the requirements of the CAA.

Comment K: The commenter said that EPA should bolster its plan for oversight of the area's continued compliance with the NAAQS with requirements for data submittals on a more frequent basis than an annual report, such as monthly or bimonthly. The commenter also requested that EPA require the DTE monitors to run at least until the area is redesignated, not just until the St. Clair plant closes.

Response K: Areas may verify continued attainment of the NAAQS using air quality monitoring data, which is certified on an annual basis. EPA's inclusion of a requirement that EGLE submit an annual report demonstrating the area's continued attainment permits the State to provide relevant information to support such a finding, including monitoring data, emissions data, or other information. This approach is reasonable given the combination of monitoring and modeling data supporting this final CDD. Moreover, the annual basis for the required demonstration mirrors the certification schedule for air quality monitoring data. We therefore think it represents a reasonable interval for EGLE's reporting requirement. The NPRM (page 45948) proposed to require EGLE to submit an annual statement to EPA addressing whether the St. Clair area is continuing to attain the 2010 SO₂ NAAQS. This is a new requirement intended to bolster and formalize the continuing verification of the area's air quality. EPA does not believe that it is necessary to further modify its proposed schedule for more frequent formal reports from EGLE. EGLE uploads new monitoring data to EPA's Air Quality System (AQS) database frequently. Nothing in the CDD precludes EGLE from routinely reviewing its available air quality information on a short-term basis.

EPA will work with EGLE to ensure that the Mills and Remer monitors continue to operate at least until a full redesignation of the St. Clair area occurs.

After careful consideration of public comments, EPA is finalizing the August 17, 2021, proposed finding that the St. Clair area is attaining the 2010 SO₂ NAAQS. EPA is therefore also finalizing the CDD for the St. Clair nonattainment area.

III. Final Action

EPA is approving EGLE's request for a CDD for the St. Clair nonattainment area in St. Clair County, Michigan. The nonattainment area consists of a portion of southeastern St. Clair County, Michigan, located northeast of Detroit. The nonattainment area shares a border with Ontario, Canada along the St. Clair River. The area's complete boundary description can be found at 40 CFR 81.323. EPA's final determination suspends the requirements for EGLE to submit an attainment demonstration and other associated nonattainment planning requirements for the St. Clair nonattainment area so long as the St. Clair area continues to attain the 2010 SO₂ NAAQS. Finalizing this action does not constitute a redesignation of the St. Clair area to attainment of the 2010 SO₂ NAAQS under section 107(d)(3) of the CAA. The St. Clair area will remain designated nonattainment for the 2010 SO₂ NAAQS until such time as EPA determines that the area meets the CAA requirements for redesignation to attainment and takes action to redesignate the area.

As noted in the proposal on this action, sanctions clocks were started on October 21, 2019, for the State's failure to submit all components of the SO₂ part D nonattainment area SIP, including the emissions inventory, attainment demonstration, reasonably available control measures (RACM) including reasonably available control technology (RACT), enforceable emission limitations and control measures, reasonable further progress (RFP) plan, nonattainment new source review (NNSR), and contingency measures.

With the approval of this CDD, only the emissions inventory and NNSR—*i.e.*, the non-planning requirements—need to be addressed. EPA found EGLE's June 30, 2021, submittal of the St. Clair area's emissions inventory and NNSR elements complete in a letter dated October 7, 2021. On October 26, 2021, (86 FR 59073), EPA proposed to approve EGLE's June 30, 2021, submittal of the St. Clair area's emissions inventory and NNSR elements. Therefore, a complete submittal has been made by the State addressing the finding of failure to submit and, as a result, both the NNSR 2:1 offset sanctions and highway funding sanctions that were in place are now suspended as long as the area continues to demonstrate it is attaining the NAAQS.

In accordance with 5 U.S.C. 553(d) of the Administrative Procedure Act (APA), EPA finds there is good cause for

these actions to become effective immediately upon publication. The immediate effective date for this action is authorized under both 5 U.S.C. 553(d)(1) and U.S.C. 553(d)(3).

Section 553(d)(1) of the APA provides that final rules shall not become effective until 30 days after publication in the **Federal Register** “except . . . a substantive rule which grants or recognizes an exemption or relieves a restriction.” The purpose of this provision is to “give affected parties a reasonable time to adjust their behavior before the final rule takes effect.” *Omnipoint Corp. v. Fed. Comm’n Comm’n*, 78 F.3d 620, 630 (D.C. Cir. 1996); see also *United States v. Gavrilovic*, 551 F.2d 1099, 1104 (8th Cir. 1977) (quoting legislative history). However, when the agency grants or recognizes an exemption or relieves a restriction, affected parties do not need a reasonable time to adjust because the effect is not adverse. EPA has determined that this rule relieves a restriction because it relieves the State of planning requirements. This action has no effect on the sources in the nonattainment area, as the area will continue to be nonattainment and therefore continue to be subject to NNSR permitting requirements.

Section 553(d)(3) of the APA provides that final rules shall not become effective until 30 days after publication in the **Federal Register** “except . . . as otherwise provided by the agency for good cause.” The purpose of this provision is to “give affected parties a reasonable time to adjust their behavior before the final rule takes effect.” *Omnipoint Corp. v. Fed. Comm’n Comm’n*, 78 F.3d 620, 630 (D.C. Cir. 1996); see also *United States v. Gavrilovic*, 551 F.2d 1099, 1104 (8th Cir. 1977) (quoting legislative history). Thus, in determining whether good cause exists to waive the 30-day delay, an agency should “balance the necessity for immediate implementation against principles of fundamental fairness which require that all affected persons be afforded a reasonable amount of time to prepare for the effective date of its ruling.” *Gavrilovic*, 551 F.2d at 1105. EPA has determined that there is good cause for making this final rule effective immediately because this rule does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. For these reasons, EPA finds good cause under both 5 U.S.C. 553(d)(1) and U.S.C. 553(d)(3) for this action to become effective on the date of publication of this action.

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 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);
- 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).

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 February 7, 2022. 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, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: December 1, 2021.

Debra Shore,
Regional Administrator, Region 5.

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

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

■ 2. In § 52.1170, the table in paragraph (e) is amended by adding an entry for “2010 Sulfur Dioxide Clean Data Determination” immediately after the entry for “List of permit applications; list of consent order public notices; notice, opportunity for public comment

and public hearing required for certain permit actions” to read as follows: § 52.1170 Identification of plan. (e) * * *

EPA-APPROVED MICHIGAN NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA Approval date	Comments
2010 Sulfur Dioxide Clean Data Determination.	St. Clair area	7/24/2020	12/7/2021, [INSERT FEDERAL REGISTER CITATION].	EPA’s final determination suspends the requirements for EGLE to submit an attainment demonstration and other associated nonattainment planning requirements for the St. Clair nonattainment area requirements for the nonattainment area for as long as the area continues to attain the 2010 SO ₂ NAAQS.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 211201–0248]

RIN 0648–BK98

Extension of the Authorized Restricted Tow Times in Lieu of Turtle Excluder Devices for an Additional 30 Days by Shrimp Trawlers in Specific Louisiana Waters

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule.

SUMMARY: NMFS issues this temporary rule for a period of 30 days, to allow shrimp fishers to use limited tow times as an alternative to Turtle Excluder Devices (TEDs) in specific Louisiana State waters (from 91°23’ West longitude eastward to the Louisiana/Mississippi border, and seaward out 3 nautical miles (5.6 kilometers)). This action is necessary because environmental conditions resulting from Hurricane Ida are preventing fishers from using TEDs effectively.

DATES: Effective from December 7, 2021, through January 5, 2022.

FOR FURTHER INFORMATION CONTACT: Bob Hoffman, 727–824–5312.

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or

threatened under the Endangered Species Act of 1973 (ESA). The Kemp’s ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) turtles are listed as endangered. The loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) turtles are listed as threatened, except for breeding populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered.

Sea turtles are incidentally taken, and some are killed, as a result of numerous activities, including fishery-related trawling activities in the Gulf of Mexico and along the Atlantic seaboard. Under the ESA and its implementing regulations, the taking of sea turtles is prohibited, with exceptions identified in 50 CFR 223.206(d), or according to the terms and conditions of a biological opinion issued under section 7 of the ESA, or according to an incidental take permit issued under section 10 of the ESA. The incidental taking of turtles during shrimp or summer flounder trawling is exempted from the taking prohibition of section 9 of the ESA, if the conservation measures specified in the sea turtle conservation regulations (50 CFR part 223) are followed. The regulations require most shrimp trawlers and summer flounder trawlers operating in the southeastern United States (Atlantic area, Gulf area, and summer flounder sea turtle protection area, see 50 CFR 223.206) to have a NMFS-approved TED installed in each net that is rigged for fishing to allow sea turtles to escape. TEDs currently approved by NMFS include single-grid hard TEDs and hooped hard TEDs conforming to a generic description, the flounder TED, and one type of soft TED—the Parker soft TED (see 50 CFR 223.207).

TEDs incorporate an escape opening, usually covered by a webbing flap,

which allows sea turtles to escape from trawl nets. To be approved by NMFS, a TED design must be shown to be 97 percent effective in excluding sea turtles during testing based upon specific testing protocols (50 CFR 223.207(e)(1)). Approved hard TEDs are described in the regulations (50 CFR 223.207(a)) according to generic criteria based upon certain parameters of TED design, configuration, and installation, including height and width dimensions of the TED opening through which the turtles escape.

The regulations governing sea turtle take prohibitions and exemptions provide for the use of limited tow times as an alternative to the use of TEDs for vessels with certain specified characteristics or under certain special circumstances. The provisions of 50 CFR 223.206(d)(3)(ii) specify that the NOAA Assistant Administrator for Fisheries (AA) may authorize compliance with tow time restrictions as an alternative to the TED requirement if the AA determines that the presence of algae, seaweed, debris, or other special environmental conditions in a particular area makes trawling with TED-equipped nets impracticable. Namely, TEDs can become clogged with debris, which can prevent target species from passing into the codend of the net and sea turtles from escaping through the TED opening. The provisions of 50 CFR 223.206(d)(3)(i) specify the maximum tow times that may be used when tow time limits are authorized as an alternative to the use of TEDs. Each tow may be no more than 55 minutes from April 1 through October 31 and no more than 75 minutes from November 1 through March 31, as measured from the time that the trawl doors enter the water until they are removed from the water. For a trawl that is not attached to a door, the tow time begins at the time the codend enters the water and ends at the