



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R07-OAR-2017-0416; FRL-10011-19-Region 7]

**Air Plan Approval; Iowa; Air Quality Implementation Plan-
Muscatine Sulfur Dioxide Nonattainment Area and Start-up,
Shutdown, Malfunction SIP Call Withdrawal**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Environmental Protection Agency's (EPA) Region 7 Office is publishing a second supplemental notice of proposed rulemaking (SNPRM) to propose approval of Iowa's State Implementation Plan (SIP) for the 2010 1-hour Sulfur Dioxide (SO₂) National Ambient Air Quality Standard (NAAQS) for the Muscatine nonattainment area, including the attainment plan control strategy. In this action, Region 7 is including additional technical information in the docket. Region 7 is also considering adoption of an alternative policy regarding startup, shutdown, and malfunction (SSM) exemption provisions in the Iowa SIP that departs from the policy detailed in EPA's 2015 SSM SIP Action, as well as proposing to withdraw the SIP call issued to Iowa as part of the 2015 SSM SIP Action and to approve the attainment plan control strategy.

DATES: Comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: You may send comments, identified by Docket ID No. EPA-R07-OAR-2017-0416 to <https://www.regulations.gov>. Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received will be posted without change to <https://www.regulations.gov/>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the "Written Comments" section of this document.

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SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," and "our" refer to EPA.

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I. Written Comments

Submit your comments regarding the supplemental modeling information discussed in this document or the EPA's proposal to remove Iowa from the SSM SIP Call, identified by Docket ID No. EPA-R07-OAR-2017-0416 at <https://www.regulations.gov>. Modeling files are provided in the docket to this rulemaking but can also be requested from the EPA by contacting the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document.

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, 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>.

II. Executive Summary

On August 24, 2017, the EPA's Region 7 published a notice of proposed rulemaking (NPRM) to propose approval of the Iowa SIP revision for attaining the 2010 1-hour SO₂ primary NAAQS for the Muscatine nonattainment area.¹ As a result of comments received on the NPRM, Region 7 published an SNPRM on January 9, 2018 to clarify the August 24, 2017 NPRM and to provide additional technical information in the docket.² As a result of comments received on the NPRM and SNPRM, Region 7 is issuing a second SNPRM to provide additional detail regarding technical support for approving the attainment demonstration contained in Iowa's submitted SIP revision. In addition, Region 7 is considering in this document adoption of an alternative policy regarding SSM exemption provisions in the Iowa SIP that departs from the

¹ 82 FR 40086

² 83 FR 997

policy detailed in EPA's 2015 SSM SIP Action.³ Simultaneously, Region 7 is also proposing to withdraw the SIP call issued to Iowa as part of the 2015 SSM SIP Action and proposing to approve the attainment plan control strategy.

III. Background

Clean Air Act (CAA or Act) section 110 provides a framework for how states must adopt and periodically revise their SIPs with a goal of attaining and maintaining the NAAQS.⁴ State regulatory or statutory requirements are submitted by the state to the EPA for approval into the SIP. The CAA establishes the framework for EPA action on submitted SIP revisions, and the EPA must approve submitted SIP revisions that it determines meet the applicable requirements of the Act. Once approved by the EPA, the SIP provisions become federally enforceable.

There are times when a state will update or revise its SIP on its own initiative due to revisions to state law or the need to update its regulations. Additionally, certain events trigger requirements that a state revise or update its SIP. Examples of mandatory SIP revisions triggered by specific events include "infrastructure" SIP (iSIP) revisions, which are required 3 years after the promulgation of a new or revised NAAQS, and "attainment plan" SIP revisions, which are required after an

³ 80 FR 33840

⁴ See 40 CFR part 50.

area is designated or redesignated nonattainment for a NAAQS. A state may also be required to revise its SIP after the EPA revises its regulations to clarify certain requirements of the CAA.

Another event that can result in a required SIP revision is if the EPA determines at any time that a state's SIP is substantially inadequate to meet certain requirements of the Act, including attaining or maintaining the relevant NAAQS or mitigating interstate pollutant transport. In such cases, the EPA will issue a "SIP call" pursuant to CAA section 110(k) (5) requiring the state to revise the SIP to address the inadequacy.

A. The EPA's SIP Policy for Treatment of Excess Emissions

During Periods of Startup, Shutdown, or Malfunction (SSM)

On June 30, 2011, Sierra Club (Petitioner) filed a petition for rulemaking (petition) asking the EPA to consider how air agency rules in the EPA-approved SIPs treated excess emissions during periods of startup, shutdown, or malfunction of industrial process or emission control equipment. On July 12, 2015, the EPA responded to the petition, restated and updated its national policy regarding SSM provisions in SIPs, and issued a SIP call pursuant to CAA section 110(k) (5) to certain states to amend those provisions. This action is referred to as the 2015 SSM SIP Action.

In the 2015 SSM SIP Action, among other things, the EPA defined the following terms:

Automatic exemption:

A generally applicable provision in a SIP that would provide that if certain conditions existed during a period of excess emissions, then those exceedances would not be considered violations of the applicable emission limitations.⁵

Emission limitation:

In the context of a SIP, a legally binding restriction on emissions from a source or source category, such as a numerical emission limitation, a numerical emission limitation with higher or lower levels applicable during specific modes of source operation, a specific technological control measure requirement, a work practice standard, or a combination of these things as components of a comprehensive and continuous emission limitation in a SIP provision. In this respect, the term emission limitation is defined as in section 302(k) of the CAA. By definition, an emission limitation can take various forms or a combination of forms, but in order to be permissible in a SIP it must be applicable to the source continuously, i.e., cannot

⁵ See 80 FR 33839, page 33842

include periods during which emissions from the source are legally or functionally exempt from regulation. Regardless of its form, a fully approvable SIP emission limitation must also meet all substantive requirements of the CAA applicable to such a SIP provision, e.g., the statutory requirement of section 172(c)(1) for imposition of reasonably available control measures and reasonably available control technology (RACM and RACT) on sources located in designated nonattainment areas.⁶

The EPA used the D.C. Circuit's decision in *Sierra Club v. Johnson*, 551 F.3d 1019 (D.C. Cir. 2008) (*Sierra Club*), to further support its position in the 2015 SSM SIP Action that SIPs may not contain SSM exemption provisions. In *Sierra Club*, the D.C. Circuit reviewed an EPA rule promulgated pursuant to CAA section 112 that contained an automatic SSM exemption and found that "the SSM exemption violates the CAA's requirement that some section 112 standard apply continuously."⁷ In the 2015 SSM SIP Action, the EPA applied the *Sierra Club* court's interpretation of CAA section 302(k) definition of "emission limitation" in the CAA section 112 context to the requirements of CAA section 110. CAA section 110(a)(2)(A) provides that SIPs shall include "enforceable *emission limitations* and other

⁶ See 80 FR 33839, page 33842

⁷ 551 F.3d at 1027-1028

control measures, means, or techniques . . . as may be necessary or appropriate to meet the applicable requirements of this chapter.” The EPA’s application of the *Sierra Club* decision to CAA section 110 SIP requirements rested on the Agency’s premise that the D.C. Circuit’s interpretation of the definition of “emission limitation” in CAA section 302(k) applied generally to the Act. The EPA thus determined that *Sierra Club* was consistent with the EPA’s national policy, expressed through previously issued guidance documents and regulatory actions prohibiting exemption provisions for otherwise applicable emission limits in SIPs (such as automatic exemptions granted for startup, shutdown, and malfunction events). Based on this premise, the EPA interpreted the lack of continuous control as creating a substantial risk that exemptions could permit excess emissions that could ultimately result in a NAAQS violation.

B. The SSM SIP Call for Iowa

As part of the Agency’s response to the 2011 petition from Sierra Club, the EPA evaluated dozens of existing SIP provisions in 36 state SIPs - including the Iowa SIP -- related to automatic excess emission exemptions for consistency with EPA’s policy. As a result, the EPA issued findings in its 2015 SSM SIP Action that certain SIP provisions for 36 states (including Iowa) were substantially inadequate to meet CAA requirements. In the 2015 SSM SIP Action, the EPA granted the Sierra Club’s

petition with respect to Iowa Administrative Code (IAC) subrule 567-24.1(1), finding that the provision was substantially inadequate and issuing a SIP call for that provision, and the EPA denied the petition with respect to IAC 567- 24.1(4).^{8,9}

In the 2015 SSM SIP Action, the EPA found IAC 567-24.1(1) to be substantially inadequate to meet the requirements of the Act on the basis that this provision automatically allows for exemptions from the otherwise applicable SIP emission limitations as required by CAA sections 110(a)(2)(A), 110(a)(2)(C), and 302(k).¹⁰ Specifically, IAC 567-24.1(1) explicitly states that excess emissions during periods of startup, shutdown, and cleaning of control equipment are not violations of the emission standard. Iowa has not submitted a SIP revision addressing IAC 567.24.1(1).

C. The Muscatine Attainment Plan

On May 26, 2016, the State of Iowa submitted a SIP revision for the purpose of attaining the 2010 1-hour sulfur dioxide (SO₂) primary National Ambient Air Quality Standard (NAAQS) for the

⁸ IAC 567-24.1(1) states that excess emissions during a period of startup, shutdown, or cleaning of control equipment is not a violation of the emission standard if the startup, shutdown or cleaning is accomplished expeditiously and in a way that is consistent with good practice for minimizing emissions.

⁹ IAC 567-24.1(4) states that incidents of excess emissions (other than an incident during start-up, shutdown or cleaning of control equipment) are violations. If the source believes that the excess emissions are due to a malfunction the source must meet the burden of proof that the incident was not preventable by reasonable maintenance and control measures. Meeting the burden of proof does not guarantee that the excess emissions will not be enforced; the rule states that enforcement will be considered after review of the source's report.

¹⁰ See 80 FR 33969

Muscatine nonattainment area (herein called an "attainment plan"). As detailed in EPA's 2014 SO₂ nonattainment area guidance, such attainment plans are to contain six CAA-required elements: an emissions inventory of current emissions for all sources of SO₂ within the nonattainment area; a New Source Review (NSR) permit program; an attainment demonstration using an EPA-approved air dispersion model; contingency measures; Reasonable Further Progress; and implementation of a control strategy.¹¹ The state noted that as part of its control strategy, 58 construction permits in the attainment plan relied on the SIP-called IAC 567-24.1(1) ("Condition 6" of each permit). As such, the State's nonattainment area plan SIP submission requested that the EPA not act on Condition 6 of the included permits.

On August 24, 2017, the EPA published a notice of proposed rulemaking to approve the attainment plan.¹² In that action, the EPA agreed with the State that it would not be appropriate to approve Condition 6 of each permit into the SIP and proposed to approve the permitted limits into the SIP without the condition. During the 30-day public comment period, the EPA received a comment that (1) because Condition 6 provides for an exemption for excess emissions during periods of SSM, and because Condition 6 refers to and implements IAC 567-24.1(1), the

¹¹ Guidance for 1-Hour SO₂ Nonattainment Area SIP Submissions; April 23, 2014.

¹² See 82 FR 40086

construction permits do not ensure continuous compliance with the "emission limitations" therein; and (2) even if the EPA does not approve Condition 6 into the SIP, the continued existence of IAC 567-24.1(1) in Iowa's SIP means that Iowa cannot ensure continuous compliance with those "emission limitations."¹³ Therefore, according to the comment, the EPA should not approve the attainment plan considering the policy and SIP call issued by the EPA in 2015 and the requirements of section 110(a)(2)(A) and 172(c)(6) of the CAA.¹⁴

On January 9, 2018, the EPA published a supplemental proposal document that: (1) provided additional information in the docket and clarified that all information, including files that were too large to be provided in the docket, was available upon request; (2) provided an 2018 projected emissions inventory that had been excluded from the Notice of Proposed Rulemaking; and, (3) re-opened the public comment period only on those specific aspects.¹⁵

IV. What is Being Addressed in this Proposal?

In this second supplemental notice of proposed rulemaking related to Iowa's 2016 submission, EPA Region 7 is considering adopting an alternative policy to the national policy as stated

¹³ As that term is defined in section 302(k) of the CAA.

¹⁴ The requirements of CAA section 172(c)(6) parallel those in section 110(a)(2)(A), so Region 7 does not address them separately here.

¹⁵ See 83 FR 997

in the 2015 SSM SIP Action specifically regarding exemptions for excess emissions in the State of Iowa, and is simultaneously proposing to withdraw the SIP call for Iowa if the alternative SSM policy for the State is adopted (see Section V).¹⁶

Additionally, after considering comments received to date on the Agency's proposed approval of all elements of the attainment plan for the Muscatine 2010 SO₂ nonattainment area, EPA Region 7 is proposing to approve additional modeling that demonstrates attainment throughout the nonattainment area and at receptors on adjacent properties (see Section VI).

Region 7 is considering adopting an alternative policy for Iowa regarding the continuous application of emission limits in section 110 SIPs. Specifically, although the Iowa SIP contains an exemption for SSM, the SIP is comprised of numerous overlapping planning requirements. Those overlapping planning requirements consist of an array of Federal and state requirements in the SIP that arise from the relationship between states and the Federal Government that underlies implementation of the CAA. Congress's primary goal in creating the SIP adoption and approval process was to ensure the NAAQS are attained and maintained.¹⁷ Region 7 is evaluating the overlapping requirements

¹⁶ If the proposed policy is finalized and the SIP call withdrawn and Iowa requests that EPA act on Condition 6 of the 58 construction permits submitted to the EPA as part of the control strategy for the attainment plan, EPA could propose to approve those provisions based on the rationale set forth in this document.

¹⁷ See, e.g., H.R. Rep. 91-1783 at 193-95 (1970).

in the Iowa SIP to assess whether exemptions during SSM periods are allowable. On the basis of that evaluation, Region 7 is proposing to find that Iowa's SSM provision is allowable, because of the proposed finding that the SIP as a whole is protective of the NAAQS, accomplishing the task Congress set out for states and the EPA. If such an alternative policy is finalized, EPA would withdraw the SSM SIP call for Iowa because, under such circumstances, the SIP-called provision would not be substantially inadequate.

As discussed above, the 2015 SSM SIP Action reiterated the EPA's policy that SIPs containing SSM exemptions were not allowable because they would create risk that excess emissions during SSM events could cause a state to fail to attain or maintain the NAAQS for one or more criteria pollutants. Region 7 is proposing to find that the inherent flexibilities in the SIP development process and the general requirements in CAA section 110 mean that a state like Iowa could ensure attainment and maintenance despite one or more SSM exemptions in the SIP.

Although the *Sierra Club* decision did not allow sources to be exempt from complying with CAA section 112 emission limitations during periods of SSM, that finding is not binding on Region 7's consideration of SIPs under CAA section 110. In the *Sierra Club* decision, the court explained, "[i]n requiring that sources regulated under section 112 meet the strictest

standards, Congress gave no indication that it intended the application of MACT standards to vary based on different time periods.”¹⁸ That is, the court found that when the EPA promulgates standards pursuant to CAA section 112, CAA section 112-compliant standards must apply continuously, but the court did not make any statement explicitly applying its finding beyond CAA section 112. The decision itself did not address whether the rationale articulated with respect to SSM exemptions in CAA section 112 rules applies to SIPs approved under CAA section 110.

The EPA took the position in the 2015 SSM SIP Action that the legal reasoning in *Sierra Club* applied equally to CAA section 112 rules and section 110 approved SIPs, but further consideration of the Iowa SIP has shown that an alternative reading of the relevant statutory sections is possible and appropriate.¹⁹ More specifically, in the 2015 SSM SIP Action the EPA interpreted CAA section 302(k)’s definition of “continuous” applied broadly to both sections 112 and 110.²⁰ However, Region 7 believes that, given Iowa’s particular factual situation, an alternative interpretation, that the court’s reasoning in *Sierra Club* does not extend to CAA section 110, is warranted.

¹⁸ *Sierra Club*, 551 F. 3d at 1028.

¹⁹ See 80 FR at 33839.

²⁰ See 80 FR at 33874.

Fundamentally, CAA sections 112 and 110 have different goals and establish different approaches for implementation by the state and the EPA. That is to say, the court in *Sierra Club* recognized that Congress intended “that sources regulated under section 112 meet the strictest standards,” a requirement without a similar analog in CAA section 110.²¹ CAA section 112 sets forth specific standards for specific source categories once they are listed for regulation pursuant to CAA section 112(c). Once listed, the statute directs the EPA to use a specific and exacting process to establish nationally applicable, category-wide, technology-based emissions standards under section 112(d), requiring the EPA to establish emission standards (known as “maximum achievable control technology” or “MACT” standards) for major sources that “require the maximum degree of reduction in emissions of the hazardous air pollutants subject to this section” that EPA determines is achievable considering certain statutory factors.²²

In contrast, the CAA sets out a different expectation for section 110 SIPs, reflecting that SIP development and implementation rely on a federal-state partnership and are designed to be flexible for each state’s circumstances. The CAA sets the minimum requirements to attain, maintain, and enforce

²¹ *Sierra Club* at 1028.

²² EPA can also set work practice standards under CAA section 112(h).

ambient air quality standards, while allowing each state to customize its own approach for the sources and air quality challenges specific to each state. It is important to note that the EPA sets the NAAQS for each criteria pollutant to provide the requisite degree of protection for public health and welfare, but does not direct the states on how to achieve the NAAQS.²³ The NAAQS, then, are fundamentally different in nature than the source-specific standards the EPA issues under section 112. As such, the D.C. Circuit's concern that 112 standards must apply "continuously" to regulate emissions from a particular source are not necessarily applicable in the context of section 110, where a state's plan may contain a broad range of measures, including limits on the emissions of multiple pollutants from multiple sources of various source categories—all targeted towards Congress's broad goal of attainment and maintenance of an air quality standard measured against emissions contributions from a variety of sources over a specific geographic area.

It is important to also note that the list of potential CAA section 110(a)(2)(A) measures that a state must implement are required only "as may be necessary or appropriate to meet the applicable requirements of this chapter." This language suggests

²³ The exemption to this general rule is when EPA promulgates a Federal Implementation Plan (FIP) under CAA section 110(c)(1) because a state or tribe has failed to make a required SIP submission, or such submission does not comply with the NAAQS.

that Congress intended to give states the flexibility to craft a plan that makes the most sense for that state, so long as the set of emissions limitations, control measures, means and techniques, when taken as a whole, meet the requirements of attaining and maintaining the NAAQS under subpart A. As such, Region 7 is considering whether it may be appropriate to approve certain Iowa SIP submissions notwithstanding the existence of an exemption elsewhere in the Iowa SIP, so long as other provisions in the SIP remain in effect that would ensure protection of the NAAQS.

The U.S. Supreme Court has recognized that the CAA gives a state "wide discretion" to formulate its plan pursuant to CAA section 110 and went so far as to say that "the State has virtually absolute power in allocating emission limitations so long as the national standards are met." *See, e.g., Union Elec. Co. v. EPA*, 427 U.S. 246, 250 & 267 (1976). *See also id.* at 269 ("Congress plainly left with the States, so long as the national standards were met, the power to determine which sources would be burdened by regulation and to what extent."). The Court has also explained, "so long as the ultimate effect of a State's choice of emission limitations is compliance with the national standards for ambient air, the State is at liberty to adopt whatever mix of emission limitations it deems best suited to its particular situation." *See Train v. Natural Res. Def. Council*,

Inc., 421 U.S. 60, 79 (1975). States are the best suited to determine how best to implement the NAAQS within their jurisdiction and are given primary responsibility under CAA section 110 to do so.

Because the purposes of CAA sections 110 and 112 are different, it is reasonable to interpret the same term (emission limitation) to have different meanings in those sections; a singular interpretation may not necessarily apply statute-wide. The U.S. Supreme Court has recognized that principles of statutory construction are not so rigid as to necessarily require that the same terminology has the exact same meaning in different parts of the same statute. See *Env'tl. Defense v. Duke Energy Corp.*, 549 U.S. 561, 574 (2007). The Court explained that there is "no effectively irrebuttable presumption that the same defined term in different provisions of the same statute must be interpreted identically." *Id.* at 575-6. "Context counts," stated the Court; terms can have "different shades of meaning" reflecting "different implementation strategies" even in the same statute. *Id.* at 574, 76 (citations omitted). See also *Utility Air Regulatory Group v. EPA*, 573 U.S. 302, 320 (2014) ("a statutory term—even one defined in the statute—may take on distinct characters from association with distinct statutory objects calling for different implementation strategies." (citations omitted)).

The text of CAA section 110(a)(2)(A) reflects the increased flexibility built into section 110 as compared to section 112.²⁴ The requirement that the “emissions standards” the EPA issues under section 112, see, e.g., section 112(c)(2), apply continuously may, as the D.C. Circuit held, prevent the EPA from providing SSM exemptions in those standards. However, at the same time, it is reasonable to interpret the concept of continuous “emission limitations” in a SIP to be focused not on implementation of each individual limit, but rather on whether the various components of the approved SIP operate together in a continuous manner to ensure attainment and maintenance of the NAAQS. Therefore, Region 7 believes it is reasonable to conclude that the *Sierra Club* decision’s disapproval of SSM provisions should not be extended to CAA section 110.

If Region 7 adopts the policy outlined in this section based on the analysis contained in this document, we are proposing to change the finding of the SIP call issued to Iowa as part of the 2015 SSM SIP Action that a SIP provision contained in the Iowa SIP is substantially inadequate to meet CAA requirements. Specifically, if Region 7 adopts this alternative policy, we propose to find that the subject SIP

²⁴ Under CAA section 110(a)(2)(A), each SIP shall include “enforceable emission limitations and control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this chapter.” 42 U.S.C. 7410(a)(2)(A).

provision is consistent with CAA requirements. If so adopted, the alternative SSM policy is a policy statement and would constitute guidance within Region 7 for Iowa. Such a guidance would not bind states, the EPA or other parties; it would only reflect Region 7's interpretation of the CAA requirements as applicable to the Iowa SIP. The evaluation of any SIP provision, and that provision's interaction with the SIP, must be done through a notice-and-comment process.

V. Region 7's Evaluation of the Iowa SIP

In proposing to conclude that the Iowa SIP in its entirety is protective of the NAAQS, Region 7 has identified numerous provisions of the SIP that, when taken as a whole, establish such a basis. First, the Iowa SIP details a series of overlapping requirements that provide for robust testing, reporting, and accountability for sources during periods of excess emissions. Such overlapping requirements enable Iowa Department of Natural Resources (IDNR) to implement the NAAQS, allowing IDNR to maintain oversight, work with sources to maintain compliant operation, and, if necessary, enforce against sources.

Although IAC 567-24.1(1) was SIP called in the EPA's 2015 SSM SIP Action, the provision contains limitations on whether SSM events are considered emission standard violations and requires

that source owners or operators limit the duration and severity of SSM events. IAC 567-24.1(1) states:

24.1(1) Excess emission during a period of startup, shutdown, or cleaning of control equipment is not a violation of the emission standard if the startup, shutdown or cleaning is accomplished expeditiously and in a manner consistent with good practice for minimizing emissions. Cleaning of control equipment which does not require the shutdown of the process equipment shall be limited to one six-minute period per one-hour period.

While the subrule does allow for an exemption for excess emissions, it also provides for two key backstops that protect air quality and ensure attainment and maintenance of the NAAQS: 1) startup, shutdown and cleaning is to be accomplished expeditiously; and, 2) startup, shutdown, and cleaning is to be accomplished in a way that is consistent with good practice for minimizing emissions. IAC 567-24.1(4) clarifies that an "expeditious manner" is the time necessary to determine the cause of the excess emissions and to correct it within a reasonable period of time. IAC 567-24.1(4) also states that a "reasonable period of time" is eight hours plus the period of

time required to shut down the process without damaging the process or control equipment.

As detailed in the EPA's technical support document for Iowa's 2010 SO₂ iSIP approval, the director of the IDNR has the duty to ensure that the NAAQS is attained and maintained in accordance with Federal laws and regulations, and is granted broad oversight, authority, and discretion with which to do so.

²⁵ Iowa has the requisite statutory authority that provides an adequate framework for attaining and maintaining the NAAQS.²⁶

Iowa Code 455B.132 designates IDNR as the Agency to prevent, abate, or control air pollution. The Environmental Protection Commission (EPC) governs the environmental services of IDNR and has the duty to develop emission limits and compliance schedules in order to abate, control, and prevent air pollution.²⁷ The EPC adopts, amends, or repeals rules that are necessary to obtain approval of the State SIP under CAA section 110.²⁸ The EPC is also charged with adopting, amending, or repealing ambient air quality standards necessary to protect public health and welfare.²⁹ Furthermore, 455B.134(9) states that the director shall issue orders consistent with rules to cause the abatement

²⁵ 83 FR 12486

²⁶ 83 FR 12486

²⁷ Iowa Code 455B.133.1 ("Duties"). The EPC is a panel of nine citizens who provide policy oversight over Iowa's environmental protection efforts. The EPC's members are appointed by the Governor and confirmed by vote of the Senate for four-year terms.

²⁸ Iowa Code 455B.133.2

²⁹ Iowa Code 455B.133.4

or control of air pollution, or to secure compliance with permit conditions.

The IDNR director's duty to ensure the NAAQS is attained and maintained is reflected in specific provisions throughout Iowa's SIP, as detailed below. First, in adopting the NAAQS into its State regulations, IAC 567-28.1 requires that IDNR implement the NAAQS "in a time frame and schedule consistent with implementation schedules in federal laws and regulations." For nonattainment areas, CAA section 172(c), among other relevant statutory provisions, requires state plans to provide for attainment as expeditiously as practicable and for the implementation of reasonable available control measures (RACM) as expeditiously as practicable. As mentioned previously, Iowa has a fully approved 2010 SO₂ infrastructure SIP, meaning that EPA has, through notice and comment rulemaking, found that the SIP provides for the implementation, maintenance, and enforcement of the NAAQS. Other than the Muscatine 2010 1-hr SO₂ nonattainment area, previously mentioned, there are no other nonattainment areas, for any criteria pollutant, in the State.³⁰ As can be seen via ambient air quality monitoring data for SO₂, air quality in the Muscatine area is well below the NAAQS of 75

³⁰ The partial Pottawattamie County 2008 Lead NAAQS nonattainment area was redesignated to attainment in October 2018. See 83 FR 50024.

parts per billion (ppb). The current three-year (2016-2018) SO₂ design value for the area is 34 ppb.³¹

Furthermore, the SIP provides for emergency powers comparable to that of the EPA Administrator under CAA section 303, and the State has a fully approved emergency episodes plan that meets the applicable requirements of 40 CFR part 51, subpart H, at IAC 567-26.1-4. IAC 567-28.1, in concert with IAC 567-26.1-4 and the state's statutory provisions detailed further below, lay out IDNR's responsibility and authority for ensuring that air quality is protected, and the NAAQS are attained and maintained in the state of Iowa, notwithstanding an exemption for excess emissions in the SIP. The attainment status of areas in the State as well as monitored air quality demonstrate successful implementation on the part of the State.

Third, the Iowa SIP provides IDNR with the specific discretion of whether to issue a construction permit for a source based solely on an analysis of that source's impact on attainment or maintenance of the NAAQS. Specifically, IAC 567-22.3(1) states:

A construction permit shall be issued when the director concludes that (...) the expected emissions from the proposed source or modification in conjunction with all other

³¹ At the time of this document, 2019 ambient air quality data had not been certified in the Air Quality System. Annual data certification is not required until May 1.

emissions will not prevent the attainment or maintenance of the ambient air quality standards specified in 567–Chapter 28.

Additionally, IAC 567-22.3(5) provides IDNR with the discretion to modify “an existing permit for a major stationary source or an emission limit contained in an existing permit for a major stationary source if necessary to attain or maintain an ambient air quality standard.” Accordingly, these provisions provide the State air agency with the authority to limit the issuance of construction permits and modify existing permits to ensure that the NAAQS is attained and maintained. This authority, when considered along with the enforcement, maintenance, and oversight provisions discussed herein, ensures accountability for sources and, when taken as a whole, protects air quality and provides for attainment and maintenance of the NAAQS, even though the Iowa SIP allows exemptions for excess emissions during periods of startup, shutdown, and cleaning. Of note, the State has been implementing its SIP-approved construction program, which includes issuing construction permits with Condition 6, and has not monitored a NAAQS violation resulting in the need to revise a permit due solely on emissions from SSM events.

In addition to specific discretion afforded the IDNR director to ensure attainment and maintenance of the NAAQS, there are a

number of direct requirements on sources in Iowa's approved SIP. IAC 567-24.1(2) details the initial report that a source owner or operator must submit when an emission limit is exceeded. Such incidences are to be reported to the appropriate IDNR regional office within eight hours of the onset of an incident. Reports are to be submitted via email, in person, or over the telephone. At a minimum, initial incident reports are to include the quantity, duration, cause and remedial steps taken for periods of excess emissions. IAC 567-24.1(3) requires that a written report is to be submitted as a follow-up to all required initial reports to the IDNR within seven days of the onset of the event. The written report is, at a minimum, to include the information required for initial reports under 24.1(2). In addition, written reports are to include, if the owner claims that the excess emission was due to malfunction, documentation to support such a claim.

IAC 567-25.1(6), (7), and (8) detail the testing and sampling requirements for owners and operators of pollution control equipment. Specifically, any facility required to install a continuous monitoring system shall provide regular reports to IDNR, including periods of excess emissions. Furthermore, IDNR is granted the authority to require sources to conduct compliance demonstrations, including testing, which "may be required as necessary to determine actual emissions from a

source where that source is believed to have a significant impact on the public health or ambient air quality of an area.” IDNR may also conduct independent emission testing as deemed necessary. These provisions ensure that sources must report periods of excess emissions and could be required to conduct testing during such periods, thus ensuring that the State is aware of any such events and allowing the State to protect air quality and ensure attainment and maintenance of the NAAQS.

Owners or operators of any control equipment are also required to maintain and repair equipment or control equipment in such a way that minimizes and remedies any causes of excess emissions. IAC 567-24.2(1) details the maintenance and repair that owners or operators are required to undertake, including maintaining operations that minimize emissions, undertaking scheduled routine maintenance, and remedying any cause of excess emissions in an expeditious manner (“expeditious manner,” as discussed above, is defined in IAC 567-24.1(4)). Furthermore, IAC 567-24.2(1)(c) states that owners or operators shall:

Minimize the amount and duration of any excess emission to the maximum extent possible during periods of such emissions. These measures may include but not be limited to the use of clean fuels, production cutbacks, or the use of alternate process units or, in the case of utilities, purchase of electrical power until repairs are completed.

IAC 567 24.2(2) provides IDNR with the authority to require owners and operators to develop maintenance plans where, "in the judgement of the executive director a continued pattern of excess emissions indicative of inadequate operation and maintenance is occurring." Such maintenance plans have been required of sources over time as appropriate and are to include numerous maintenance and inspection requirements. Most notably, these plans are to include a contingency plan intended to minimize the frequency, duration, and severity of excess emission events.

Lastly, there are a number of Iowa-specific State regulations that help ensure attainment and maintenance of the NAAQS. Iowa Code 455B.139 states that, if the director has evidence that any person is causing air pollution that creates a public health and safety emergency, the director may, without notice, issue an emergency order requiring the immediate discontinuation of emissions. While not SIP-approved, and therefore not federally enforceable, these codes provide supplemental support to the assertion that the State has considerable oversight and discretion to enforce against sources and ensure attainment and maintenance of the NAAQS.

In light of the fact that Region 7 is considering an alternative policy relating to exemptions of excess emissions, and based on the above analysis of Iowa's SIP, Region 7 is

simultaneously proposing to withdraw the SIP call issued as part of the 2015 SSM SIP Action and find that the subject SIP provision is not inconsistent with CAA requirements.

EPA's CAA regulations allow EPA Regions to take actions that are inconsistent with national policy when the Region seeks and obtains concurrence from the relevant EPA Headquarters office. Pursuant to EPA's regional consistency regulations at 40 CFR 56.5(b), the Region 7 Regional Administrator sought and obtained concurrence from the EPA's Office of Air and Radiation to propose an action that outlines an alternative policy that is inconsistent with the national EPA policy, most recently articulated in the 2015 SSM SIP Action, on provisions automatically exempting emissions exceeding otherwise applicable SIP limitations during periods of unit startup, shutdown, and malfunction and propose action consistent with that alternative policy. The concurrence request memorandum is included in the public docket for this action.

VI. Additional Modeling Information

During the public comment period for the SNPRM, the EPA received comment that the modeling for the Muscatine nonattainment area did not include receptors with adjacent property boundaries. The commenter asserted that these areas could be considered "ambient air" and that they therefore should have been included in the attainment demonstration modeling. The

EPA agrees with the commenter that these areas, as noted in the Code of Federal Regulations at 40 CFR part 51, appendix W, Guideline on Air Quality Models (hereafter referred to as "appendix W"), would be considered ambient air and should have model receptors included. To ensure a complete record for both the attainment plan approval action, and adherence to appendix W, the EPA performed modeling that evaluated the impacts on the properties of each of the modeled facilities—Grain Processing Corporation (GPC), Muscatine Power and Water (MPW), Monsanto, and Louisa Generating Station (LGS). The EPA used the same model version (i.e., AERMOD version 14134) and modeling inputs (i.e., source characteristics and emissions rates, meteorological data, background value, etc.) that the State used in its attainment plan modeling demonstration. The only modification the EPA made for its evaluation was adding receptors at 50-meter spacing within each facility's boundary. The EPA modeled scenarios specific to each of the four facilities' property, which included receptors only on the property of the facility in question and has all emissions sources from that facility removed from the analysis. For example, a scenario to evaluate the impacts on GPC's facility property included receptors placed within GPC's facility fence line and with the emission sources from LGS, Monsanto, and MPW operating and GPC not operating.

Table 1 provides the results of EPA's modeling analysis, which showed no violations within each of the four facilities' property when emissions from the other facilities were considered. The greatest impacts occurred within Grain Processing Corporation's property with a modeled highest 4th high of 164 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$).

Table 1. The highest-4th-high predicted impacts on each facility's property (including background)		
Impacted Facility	Model Impacts ($\mu\text{g}/\text{m}^3$)	1-hour SO₂ NAAQS ($\mu\text{g}/\text{m}^3$)
Grain Processing Corporation	164	196
Muscatine Power and Water	110	
Monsanto	97	
Louisa Generating Station	110	

The EPA proposes that the modeling submitted by Iowa with its nonattainment area plan, in addition to the supplemental modeling performed by the EPA and described above, demonstrates that the area is attaining the NAAQS.

VII. What Action is EPA Region 7 Taking?

In this second supplemental notice of proposed rulemaking, the EPA is: (1) considering adoption of an alternative policy regarding exemptions for excess emissions in the State of Iowa from the national policy detailed in the EPA's 2015 SSM SIP Action; (2) proposing simultaneously withdrawal of the SSM SIP call for Iowa if the alternative SSM policy for the State is

adopted; and (3) proposing approval of Iowa's SIP for the 2010 1-hour SO₂ NAAQS for the Muscatine nonattainment area, including the attainment plan control strategy.

VIII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 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 approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of the National Technology Transfer and Advancement Act (NTTA) because this rulemaking does not involve technical standards; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally

permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications 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, SSM policy, Start-up, shutdown and malfunction, Sulfur oxides.

Dated: June 16, 2020.

James Gulliford,
Regional Administrator,
Region 7.

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