

postpone the effectiveness of such rule or action. This action to approve SIP revisions consisting of the Allegheny County PM<sub>2.5</sub> Plan 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, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: April 30, 2021.

**Diana Esher,**

*Acting Regional Administrator, Region III.*

For the reasons stated in the preamble, the 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.*

#### Subpart NN—Pennsylvania

- 2. In § 52.2020, the table in paragraph (e)(1) is amended by adding the entry

“2012 PM<sub>2.5</sub> NAAQS Attainment Demonstration (including 2011 Base Year Emissions Inventory, Particulate Matter Precursor Contribution Demonstration, Reasonable Further Progress Demonstration, Demonstration of Interim Quantitative Milestones to Ensure Timely Attainment, and Motor Vehicle Emission Budgets for 2021) (excluding Section 8, Contingency Measures)” at the end of the table to read as follows:

#### § 52.2020 Identification of plan.

\* \* \* \* \*

(e) \* \* \*

(1) \* \* \*

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* * *	* * *	* * *	* * *	* * *
2012 PM <sub>2.5</sub> NAAQS Attainment Demonstration (including 2011 Base Year Emissions Inventory, Particulate Matter Precursor Contribution Demonstration, Reasonable Further Progress Demonstration, Demonstration of Interim Quantitative Milestones to Ensure Timely Attainment, and Motor Vehicle Emission Budgets for 2021) (excluding Section 8, Contingency Measures).	Allegheny County ..	09/30/19 10/02/20	5/14/21, [INSERT <b>FEDERAL REGISTER</b> CITATION].	Contingency Measures (Section 9) portion of the plan is Conditionally Approved, until 5/16/22. See 40 CFR 52.2023(n).
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\* \* \* \* \*

- 3. Section 52.2023 is amended by adding paragraph (n) to read as follows:

#### § 52.2023 Approval status.

\* \* \* \* \*

(n) EPA conditionally approves the Contingency Measures element (Section 8) of the Attainment Plan (dated September 12, 2019) for the Allegheny County Area for the 2012 PM<sub>2.5</sub> NAAQS, as submitted to EPA as a SIP revision by Pennsylvania on September 30, 2019. Pennsylvania shall submit a SIP revision within one year of EPA's final conditional approval to remedy this condition, which satisfies all related requirements for contingency measures under CAA section 172(c)(9) and the PM<sub>2.5</sub> Implementation Rule (specifically, 40 CFR 51.1003 and 40 CFR 51.1014). Pursuant to CAA section 110(k)(4), this conditional approval is based upon April 20, 2020 and April 7, 2020 letters from Pennsylvania and Allegheny County committing to submit a SIP to EPA to remedy the deficiencies of this conditional approval within 12

months of EPA's conditional approval action.

[FR Doc. 2021–09565 Filed 5–13–21; 8:45 am]

**BILLING CODE 6560–50–P**

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[EPA–R06–OAR–2020–0434; FRL–10023–51–Region 6]

#### Air Plan Approval; Texas; Clean Data Determination for the 2010 1-Hour Primary Sulfur Dioxide National Ambient Air Quality Standard; Anderson and Freestone Counties and Titus County Nonattainment Areas

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

**ACTION:** Final rule.

**SUMMARY:** Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is approving a clean data determination for the Anderson and Freestone Counties and the Titus County nonattainment areas, concluding that

each area is currently in attainment of the 2010 1-hour Primary Sulfur Dioxide National Ambient Air Quality Standard (SO<sub>2</sub> NAAQS) per the EPA's Clean Data Policy. The primary sources of Sulfur Dioxide emissions in these counties have permanently shut down and air quality in these areas is now attaining the SO<sub>2</sub> NAAQS. This final action is supported by EPA's evaluation of available monitoring data, emissions data, and air quality modeling. This action suspends the requirements for these areas to submit an attainment demonstration, a reasonable further progress plan, contingency measures, and other planning State Implementation Plan (SIP) revisions related to attainment of the 2010 SO<sub>2</sub> NAAQS until the area is formally redesignated, or a violation of the NAAQS occurs. This action is being taken in accordance with the Clean Air Act.

**DATES:** This final rule is effective on June 14, 2021.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2020–0434. All documents in the docket are listed on

the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet. Publicly available docket materials are available electronically through <https://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:**

Robert Imhoff, EPA Region 6 Office, SO<sub>2</sub> and Regional Haze Branch, (214) 665-7262, or by email at [Imhoff.Robert@epa.gov](mailto:Imhoff.Robert@epa.gov). Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office will be closed to the public to reduce the risk of transmitting COVID-19. Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

**SUPPLEMENTARY INFORMATION:**

Throughout this document “we,” “us,” and “our” means the EPA.

## I. Background

The background for this action is discussed in detail in our September 24, 2020 proposal (85 FR 60407). There, we proposed to determine that the Anderson and Freestone Counties and the Titus County nonattainment areas in Texas have attained the 2010 SO<sub>2</sub> NAAQS per the EPA’s Clean Data Policy. A Clean Data Determination (CDD) suspends the requirements for an area to submit an attainment demonstration, a reasonable further progress plan, contingency measures, and other planning SIP revisions related to attainment of the 2010 SO<sub>2</sub> NAAQS until the area is formally redesignated or a violation of the NAAQS occurs.

The public comment period for this final action ended on September 24, 2020 and the EPA is responding to all relevant comments submitted in this final action.

The EPA received three comment letters on the proposal. The comments are included in the publicly posted docket associated with this action at <https://www.regulations.gov>. The EPA did not respond to one comment which failed to raise an issue relevant to this final action. We address the remaining relevant comments below. After careful consideration of all comments, we have determined that we should finalize this action with no changes from the proposed action.

## II. Response to Comments

*Comment:* One commenter expressed support of EPA’s determination that the Anderson and Freestone Counties and

Titus County areas have attained the 2010 SO<sub>2</sub> NAAQS.

*EPA Response:* The EPA acknowledges the commenter’s support of this final action.

*Comment:* Sierra Club commented that issuance of this CDD would prevent attainment of the NAAQS as “expeditiously as practicable” in accordance with CAA “Sections 7409(b)(1) and 7502(c)(1).”

*EPA Response:* The EPA disagrees that issuance of this CDD prevents expeditious attainment of the SO<sub>2</sub> NAAQS.<sup>1</sup> A CDD is the EPA’s formal determination that the air quality in a nonattainment area is currently in attainment of the NAAQS. Therefore, by its own terms, a determination that an area is in attainment does not delay or prevent attainment, rather it acknowledges that attainment has already been achieved. We do not agree that not issuing this final CDD would expedite attainment in any way since the areas have already attained the NAAQS.

*Comment:* Sierra Club asserts that the EPA should not issue a CDD in this case because doing so would thwart permanent attainment of the SO<sub>2</sub> NAAQS in these areas and would jeopardize maintenance. Sierra Club states that the EPA is not authorized to redesignate the two areas to unclassifiable or attainment and should make clear that EPA is not doing so in this action. Sierra Club claims that issuing this CDD would short circuit needed additional air quality planning requirements and delay permanent attainment.

*EPA Response:* The EPA disagrees that issuing a CDD for these areas would delay permanent attainment or jeopardize maintenance of the SO<sub>2</sub> NAAQS. We also clarify that we are not in this notice redesignating these areas to either unclassifiable or attainment, as is clearly stated in our proposal.<sup>2</sup> While it is sometimes the case that an area’s attainment and monitored clean data results from temporary conditions, this is not true for these areas. As noted in the proposal, the EPA’s determination of attainment for these areas is due in large part to the fact that the primary sources

of SO<sub>2</sub> impacting these areas have permanently shut down. We therefore do not agree that the CDD’s suspension of attainment planning requirements for these areas delays permanent attainment or jeopardizes maintenance. We do agree that the CAA’s requirements for a redesignation to attainment have not been met; in particular, the state has not submitted a SIP revision under CAA section 107(d)(3)(E)(iv) that meets the requirements of CAA section 175A.

*Comment:* The commenter states that the EPA has not issued CDD regulations under the SO<sub>2</sub> NAAQS. The commenter claims that the only authority EPA points to for this action are CDD regulations and policy statements governing CDDs for PM and Ozone. The commenter continues that EPA cannot rely on regulations governing other NAAQS, especially where the Clean Air Act contains additional, wholly separate safeguards and mechanisms for monitoring, reporting, complying with, and enforcing those standards.

*EPA Response:* The EPA disagrees with Sierra Club’s comment that the Agency was required to issue implementing regulations providing for a CDD for the SO<sub>2</sub> NAAQS. The EPA’s authority to promulgate CDDs arises from our interpretation of the CAA’s nonattainment planning provisions, and in this action, we are relying on that statutory interpretation, not regulations implementing other NAAQS. The fact that the Agency has elected to codify that interpretation in some NAAQS implementation rules is irrelevant to our statutory authority for this action. As noted in our proposed rulemaking, “the legal bases set forth in the various guidance documents and regulations establishing the Clean Data Policy for other pollutants are equally pertinent to all NAAQS.” The EPA cites the PM-2.5, 1997 8-hour Ozone, and the 2008 8-hour Ozone regulations as additional evidence of its longstanding, judicially upheld interpretation of the CAA’s general NAAQS requirements.

EPA’s interpretation of the statutory provisions governing “attainment planning” requirements throughout Part D of the CAA is that those requirements have no meaning for an area that is already attaining the NAAQS. Specifically, EPA’s Clean Data Policy is that, where the Agency has made a determination that an area is attaining the standard, states are not obligated to submit: An air quality modeling demonstration showing how an area will achieve attainment of the NAAQS (including reasonably available control measures needed to achieve attainment), a demonstration that the area is making reasonable further progress towards

<sup>1</sup> We note that the commenter cited to incorrect CAA provisions for the attainment date associated with these areas so we make note of that correction here. The correct provision is found in CAA Part D, Subpart 5, Section 7514(a) which states that Texas shall submit a nonattainment area planning SIP which shall provide for attainment “as expeditiously as practicable but no later than 5 years from the date of the nonattainment designation.”

<sup>2</sup> 85 FR 60412 (“[T]his proposed action, if finalized, would not constitute a redesignation to attainment under Section 107(d)(3) of the CAA.”).

attainment, and contingency measures to be triggered for areas that fail to timely attain. The Agency's interpretation of the Act is that the requirement to submit those attainment planning elements is suspended as long as an area continues to attain the standard. If the Agency makes a subsequent finding rescinding the CDD, the state's obligation to submit those requirements immediately springs back.

EPA has long applied its Clean Data Policy interpretation without codifying it in regulation, and courts have consistently acknowledged and upheld that application. See *Sierra Club v. U.S. EPA*, 99 F.3d 1551, 1555 (10th Cir. 1996) (upholding application of Clean Data Policy to ozone areas prior to such policy being codified into regulation); *Latino Issues Forum v. U.S. EPA*, 315 Fed. Appx. 651, 652 (9th Cir. 2009) (unpublished) (upholding application of Clean Data Policy for PM-10 area despite lack of regulation). In *Latino Issues Forum*, the court stated, "The Clean Data Policy expressly applies to areas currently attaining ozone and PM-2.5 standards, but there is no similar written regulation governing areas attaining PM-10 standards. It was not unreasonable, however, for the EPA to apply the policy to an area that was currently attaining the PM-10 standards. As the EPA rationally explained, if an area is in compliance with PM-10 standards, then further progress for the purpose of ensuring attainment is not necessary." 315 Fed. Appx. at 652. The commenter's opinion that implementing the NAAQS in binding regulations is preferable to implementation via guidance does not diminish the EPA's judicially upheld CAA authority to promulgate a CDD for these areas.

The Agency agrees that mechanisms and safeguards for assessing an area's continued attainment of the NAAQS are a key component to the Clean Data Policy because the Agency must be able to determine whether an area continues to attain a NAAQS and whether the CDD's suspension of requirements continues to apply. However, such mechanisms may be reasonably tailored to the area in question. In the case of these two areas, the primary sources of SO<sub>2</sub> which caused the area to be in nonattainment have permanently shut down, and there are no other significant sources of SO<sub>2</sub> in the area. These factual circumstances do not warrant the Agency's requirement of a complex or comprehensive ongoing reporting or monitoring mechanism.

**Comment:** The commenter states that the EPA's Clean Data Policy is in conflict with the CAA. The plain

language of the Act requires the EPA to ensure that the air stays clean and that no mandatory control requirement (requirements of part D) be lifted until a maintenance plan is in place. The commenter claims that the Clean Data Policy itself is arbitrarily inconsistent with the plain language of the CAA.

**EPA Response:** The EPA does not agree with the commenter that the Clean Data Policy contravenes the letter and purpose of the CAA. Multiple U.S. Courts of Appeals have heard and dismissed challenges to the Clean Data Policy that are similar to those raised by the commenter. *NRDC v. EPA*, 571 F.3d 1245, 1260–61 (D.C. Cir. 2009); *Latino Issues Forum v. U.S. EPA*, 315 Fed. Appx. 651, 652 (9th Cir. 2009); *Sierra Club v. U.S. EPA*, 99 F.3d 1551 (10th Cir. 1996).

In *NRDC v. EPA*, petitioners argued that the Clean Data Policy's suspension of attainment planning requirements circumvented the plain language of the Act. While the D.C. Circuit dismissed some of the petitioners' challenges because they were not raised in the comment period, the court rejected the remaining "plain language" claim that was properly preserved. It agreed with the Agency that "[t]he Act is . . . ambiguous as to what reductions are required when no further progress toward attainment is necessary—or for that matter, possible." 571 F.3d at 1260. It held that "EPA reasonably resolved this ambiguity by concluding [reasonable further progress reductions] are simply inapplicable in that circumstance." *Id.*

And, similar to the commenter here, the petitioners in *NRDC* also argued that the Clean Data Policy "violates the mandate that all Part D requirements remain in force until an area has an approved maintenance plan in place," citing CAA section 175A(c). 571 F.3d at 1260. The D.C. Circuit similarly disagreed, holding that "[t]he Clean Data Policy does not effect a redesignation; an area must still comply with the statutory requirements before it can be redesignated to attainment. Furthermore, Part D . . . remains in force insofar as it applies, but, as we have just seen, the EPA has reasonably concluded the provisions of the Act [regarding reasonable further progress] do not apply to an area that has attained the NAAQS." *Id.* at 1260–61.

The EPA has consistently interpreted the Act not to require the submission of planning requirements designed to achieve an area's attainment when the area is factually attaining the NAAQS.

See Seitz Memo,<sup>3</sup> PM<sub>2.5</sub> Memo, 70 FR 71612 (Nov. 29, 2005) (Phase 2 ozone regulations),<sup>4</sup> SO<sub>2</sub> Implementation Guidance from 2014,<sup>5</sup> and PM-2.5 Implementation Rule from 2016.<sup>6</sup> That is, the EPA's position is that the Act's requirements that pertain specifically to achieving attainment remain in force for areas that have not yet been redesignated, but they are inapplicable or suspended while the area continues to attain the NAAQS. The two statutory provisions raised by the commenter—CAA section 172(c)(1) (requirement to submit an attainment demonstration and reasonably available control measures) and 172(c)(2) (requirement to submit provisions that require reasonable further progress)—state as follows: "Such plan provisions shall provide for the implementation of all reasonably available control measures . . . and shall provide for attainment of the national primary ambient air quality standards"; and "Such plan provisions shall require reasonable further progress." These general nonattainment planning provisions found in Subpart 1 are either identical or functionally similar to the provisions at issue in the *NRDC*, *Sierra Club*, and *Latino Issues Forum* cases cited above, and the CAA is ambiguous as to whether a state is still required to submit, for example, a plan that provides for attainment of the NAAQS (*i.e.*, an attainment demonstration) even if the area is already attaining the NAAQS. Because we think the purpose of the attainment demonstration and other attainment planning provisions has been fulfilled for areas that are currently attaining the NAAQS, we interpret the Act as not

<sup>3</sup> (Seitz Memo) Memorandum of May 10, 1995, from John Seitz, Director Office of Air Quality Planning and Standards to Air Division Directors, "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard." Located at [https://www.epa.gov/sites/production/files/2016-03/documents/clean\\_data\\_policy\\_signed\\_05101995.pdf](https://www.epa.gov/sites/production/files/2016-03/documents/clean_data_policy_signed_05101995.pdf).

<sup>4</sup> Memorandum of December 14, 2004, from Steve Page, Director, EPA Office of Air Quality Planning and Standards to the EPA Air Division Directors, "Clean Data Policy for the Fine Particle National Ambient Air Quality Standards." This document is available at: <http://www.epa.gov/pmdesignations/guidance.htm>.

<sup>5</sup> The memorandum of April 23, 2014, from Steve Page, Director, EPA Office of Air Quality Planning and Standards to the EPA Air Division Directors "Guidance for 1-hr SO<sub>2</sub> Nonattainment Area SIP Submissions" provides guidance for the application of the clean data policy to the 2010 1-hour primary SO<sub>2</sub> NAAQS. This document is available at [https://www.epa.gov/sites/production/files/2016-06/documents/20140423guidance\\_nonattainment\\_sip.pdf](https://www.epa.gov/sites/production/files/2016-06/documents/20140423guidance_nonattainment_sip.pdf).

<sup>6</sup> Final Rule Adopting 40 CFR 51.1015 (Clean Data Policy for PM 2.5 NAAQS), Aug. 24, 2016. 81 FR 58009.

requiring submission of those provisions so long as the area continues to attain. The commenter states, without explaining, that “the plain language of the Act requires EPA to ensure the air stays clean and that no mandatory control requirement be lifted until a maintenance plan is in place.” This may be the commenter’s conclusion about the purpose of the CAA’s requirements, but we do not think the commenter has pointed to any plain language of the Act that imposes a requirement for the EPA to “ensure the air stays clean” nor that “no mandatory control requirement be lifted until a maintenance plan is in place;” but in any case, the Clean Data Policy is not inconsistent with those purposes.

*Comment:* The commenter claims that issuance of a CDD for the Freestone and Anderson Counties (Big Brown Power Plant) and Titus County (Monticello power plant) areas is inconsistent with the EPA’s guidance that determination of attainment will be based on monitoring data (when available) and modeling information for the area, and/or a demonstration that the control strategy in the SIP has been fully implemented. The commenter states that there is no modeling or the required three full years of monitoring data as evidence supporting a determination of attainment in the record and that EPA’s only evidence is the relinquishment of permits for the two sources. The commenter also notes that there is no monitor near the Monticello plant. The commenter continues that there is no inventory of other emission sources in the area, or assessment of whether nearby sources, such as the Welsh Power Plant are impairing air quality in the nonattainment areas. The commenter then concludes that the EPA fails to meet the criteria in the CDD policy and does not provide evidence demonstrating that the areas are attaining the NAAQS and will maintain the NAAQS. Additionally, the commenter claims that without monitoring or modeling, the EPA cannot evaluate whether the area remains in attainment or ensure attainment.

*EPA Response:* We agree that EPA guidance suggests that three years of monitoring data and/or modeling over a three-year period is generally needed to determine attainment. This is particularly the case in areas where sources continue to emit SO<sub>2</sub> emissions whose contribution to ambient air quality can be monitored or modeled. However, as explained in our proposal, for areas designated based on air quality modeling alone and where the source determined to be the primary cause of the violation has been permanently shut

down and is no longer emitting, the EPA finds that a streamlined analysis may be more appropriate, rather than requiring three years of monitoring and/or modeling. In this case, the allowable emissions limit for each area’s primary cause of violation has been lowered to zero. The EPA believes that the permanent cessation of SO<sub>2</sub> emissions from these primary sources in conjunction with relevant monitoring, emissions, and modeling data for each area provide sufficient evidence to support the findings of attainment.

We disagree with the commenter’s claims that there is no evidence that the areas are attaining the NAAQS. The EPA’s determination is supported by relevant modeling, emissions, and monitoring data. As discussed in the proposal action, the primary evidence is that the sources of SO<sub>2</sub> emissions in the nonattainment areas have ceased operations and have permanently shut down. Contrary to the commenter’s statements, the EPA did perform an analysis of modeling data to support this clean data determination.<sup>7</sup> While neither the EPA nor Texas performed new modeling, the EPA analyzed the modeling that formed the basis of our initial nonattainment designations. A nonattainment area encompasses the area shown to be in violation of the standard and the principal source or sources that contributes to the violation. Our analysis of the maximum impacts of each area found that Big Brown and Monticello were responsible for almost 100% of the impacts on the maximum ambient concentration and thus, it was appropriate for these sources to be the only sources explicitly modeled. The EPA has no knowledge and Sierra Club provided no evidence of new sources, emissions, or operations that would contribute or cause a violation of the SO<sub>2</sub> NAAQS in either area. Therefore, the EPA determined that rerunning the initial modeling would be redundant since the only change would be to revise the emissions for the modeled sources to zero. Instead, the EPA performed an analysis of that initial modeling to determine how the shutdown of the two power plant sources would impact the modeling results for each area. This analysis zeroed out the power plant emissions in each area leaving only background concentrations which would show each area in attainment of the 2010 SO<sub>2</sub> NAAQS, as discussed at length in the proposed action.

The EPA also analyzed all available monitoring data at the time of the proposal indicating large drops in ambient concentrations due to the

cessation of emission from the power plant sources and supporting the determination that the areas are attaining the standard.<sup>8</sup> With respect to the Freestone-Anderson nonattainment area, EPA noted in the proposal that while insufficient monitoring data for the period from 2017–2019 prevented calculation of a valid design value, the extremely low SO<sub>2</sub> concentrations after the 2018 shutdown of Big Brown indicated that a preliminary design value based on the monitored 99th percentile concentrations in the nonattainment area for that period had dropped to 41 ppb, well below the 75 ppb SO<sub>2</sub> NAAQS. At the time of this final action, we now have a full three years of data at the Big Brown monitor for the period 2018–2020; the Big Brown Power Plant ceased operations and emissions in February 2018 so this data primarily consists of monitored air quality without the major source of SO<sub>2</sub> emissions. While the data for 2020 is not yet certified, the preliminary 3-year design value is 17 ppb and the EPA anticipates that there will be no material changes to that design value when data for 2020 is certified.

Regarding the Titus County nonattainment area, the EPA noted in our proposal that the area did not have an installed monitor. However, in addition to the analysis of modeling data, the EPA determined that the monitoring data from the nearby Welsh Facility Monitor (approximately 12 miles from the Titus County Monticello Power Plant) could serve as an indicator of air quality in the Titus county area to support a CDD. The EPA performed a thorough analysis of the impacts the Monticello facility (Titus County) had on the Welsh Monitor before and after shutdown. The proposal indicated that the Welsh Monitor’s 2017–2019 three-year design value is 28 ppb, in attainment of the standard. The EPA’s analysis showed that there are no other sources in the area between the Monticello and Welsh Facility and that concentrations decrease as you move farther from the Welsh source toward the Titus County nonattainment area which supports the EPA’s determination that concentrations in the Titus County nonattainment area are also in attainment. The Welsh monitor data was also evaluated to demonstrate the significant decrease in monitored concentrations post-shutdown when the monitor was downwind of the Monticello facility. Prior to the shutdown, the maximum concentration captured when wind blew from the direction of Monticello to the monitor

<sup>7</sup> 85 FR 60411.

<sup>8</sup> 85 FR 60411–60412.

was 112.7 ppb. After the shutdown, the maximum concentrations from that direction in 2018 and 2019 were 6.8 ppb and 6 ppb respectively. This significant change in maximum concentrations at the Welsh monitor provides additional evidence to support a CDD.

The commenter is incorrect in their claim that there was no inventory of other sources in the area. In our proposed action we reviewed the available emission inventory and stated that “Review of 2017 National Emission Inventory data shows one additional SO<sub>2</sub> emission source, Freestone Energy Center, within the Freestone/Anderson nonattainment area with total annual SO<sub>2</sub> emissions of only 11.7 tons. There are no other SO<sub>2</sub> emission sources in the Titus County nonattainment area.”<sup>9</sup> We also provided a complete inventory of the primary sources causing nonattainment, demonstrating reported emissions from before and after shutdowns.

Our analysis of the modeling, monitoring, and emissions data all support the determination that the area is attaining the standard. The commenter provides no new information or analysis to suggest otherwise. As a result of the permanent shutdown of the primary sources there are no significant SO<sub>2</sub> emission sources in the areas, and no nearby sources that could cause nonattainment in the areas. While the Agency agrees that monitoring and/or modeling can be important for evaluating whether an area continues to attain, it is not universally required, and the assessment of whether an area continues to attain can be tailored to the facts and area in question. Based on the above information, the Agency does not believe a complex or comprehensive ongoing reporting or monitoring mechanism is necessary. The EPA also notes that these areas remain designated nonattainment and will remain so until the CAA’s redesignation criteria are satisfied. Therefore, any new major sources seeking to operate within the nonattainment area would be required to complete nonattainment new source review (NNSR) permitting that would evaluate any potential NAAQS impacts.<sup>10</sup> Because the two power plants have had their operating permits revoked, any resumption of operations would require the sources to apply for new permits as new sources. This evidence collectively supports the EPA’s determination that the areas are now in attainment and the belief that it is highly unlikely that the areas will

violate the standard in the future. Finally, the requirements for redesignation of a nonattainment area to attainment include a determination that the improvement in air quality is due to permanent and enforceable reductions in emissions and a fully approved maintenance plan for the area.

### III. Final Action

The EPA is taking final action to approve a CDD for the Anderson and Freestone Counties and the Titus County nonattainment areas based on each areas’ current attainment of the 2010 SO<sub>2</sub> NAAQS. Pursuant to the EPA’s longstanding and judicially upheld interpretation of the CAA and our SO<sub>2</sub> “Clean Data” policy provided for in the memorandum of April 23, 2014 from Steve Page, this action suspends certain required planning SIP revisions related to attainment of the 2010 SO<sub>2</sub> NAAQS on the condition that the area continues to attain the 2010 SO<sub>2</sub> NAAQS.<sup>11 12</sup> Specifically, as discussed in the proposal action (85 FR 60407), the obligation for Texas to submit attainment demonstrations and associated reasonably available control measures, reasonable further progress plans, contingency measures for failure to attain or make reasonable progress, and other planning SIPs related to attainment of the 2010 SO<sub>2</sub> NAAQS shall be suspended until such time as: (1) The area is redesignated to attainment for the 2010 1-hour Sulfur Dioxide NAAQS, at which time the requirements no longer apply; or (2) EPA determines that the area has violated the 2010 SO<sub>2</sub> NAAQS, at which time the area is again required to submit such plans.

### V. Statutory and Executive Order Reviews

This action, which makes a determination of attainment based on emissions data, air quality planning information, air quality monitoring data, and air quality modeling data, will result in the suspension of certain Federal requirements, and thus will not

impose any 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, 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, this action does not 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

<sup>11</sup> Memorandum of December 14, 2004, from Steve Page, Director, EPA Office of Air Quality Planning and Standards to the EPA Air Division Directors, “Clean Data Policy for the Fine Particle National Ambient Air Quality Standards.” This document is available at: <http://www.epa.gov/pmdesignations/guidance.htm>.

<sup>12</sup> The memorandum of April 23, 2014, from Steve Page, Director, EPA Office of Air Quality Planning and Standards to the EPA Air Division Directors “Guidance for 1-hr SO<sub>2</sub> Nonattainment Area SIP Submissions” provides guidance for the application of the clean data policy to the 2010 1-hour primary SO<sub>2</sub> NAAQS. This document is available at [https://www.epa.gov/sites/production/files/2016-06/documents/20140423guidance\\_nonattainment\\_sip.pdf](https://www.epa.gov/sites/production/files/2016-06/documents/20140423guidance_nonattainment_sip.pdf).

<sup>9</sup> 85 FR 60411.

<sup>10</sup> 40 CFR 51.165. Permit Requirements.

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 Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 13, 2021. 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, Sulfur Dioxide, Reporting and recordkeeping requirements.

Dated: May 7, 2021.

David Gray,

Acting Regional Administrator, Region 6.

For the reasons stated in the preamble, the Environmental Protection Agency 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.*

#### Subpart SS—Texas

- 2. Section 52.2277 is added to read as follows

##### § 52.2277 Control strategy and regulations: Sulfur Dioxide.

(a) *Determination of Attainment.* Effective June 14, 2021, based upon EPA’s review of the available monitoring data, emissions data, and air quality modeling, EPA has determined that the Anderson and Freestone Counties and the Titus County nonattainment areas have attained the 2010 Primary 1-hour Sulfur Dioxide National Ambient Air Quality Standard (2010 SO<sub>2</sub> NAAQS). Under the provisions of EPA’s Clean Data Policy, this clean data determination suspends the requirements for these areas to submit an attainment demonstration,

associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning State Implementation Plan revisions related to attainment of the standard for as long as this area continues to meet the 2010 SO<sub>2</sub> NAAQS or until the area is formally redesignated.

(b) [Reserved]

[FR Doc. 2021–10140 Filed 5–13–21; 8:45 am]

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#### ENVIRONMENTAL PROTECTION AGENCY

##### 40 CFR Part 83

[EPA–HQ–OAR–2020–0044; FRL 10024–10–OAR]

RIN 2060–AV18

#### Rescinding the Rule on Increasing Consistency and Transparency in Considering Benefits and Costs in the Clean Air Act Rulemaking Process

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

**ACTION:** Interim final rule; request for comments.

**SUMMARY:** The Environmental Protection Agency (EPA) is rescinding the final rule entitled “Increasing Consistency and Transparency in Considering Benefits and Costs in the Clean Air Act Rulemaking Process.” The EPA is rescinding the rule because the changes advanced by the rule were inadvisable, untethered to the CAA, and not necessary to effectuate the purposes of the Act.

**DATES:** This rule is effective June 14, 2021. The EPA will consider comments on this rule received on or before June 14, 2021.

If a member of the public requests a public hearing by May 21, 2021, the EPA will hold a virtual public hearing on Wednesday, June 9, 2021. Refer to the **SUPPLEMENTARY INFORMATION** section below for additional information.

**ADDRESSES:** You may send comments, identified by Docket ID No. EPA–HQ–OAR–2020–0044, by the following method:

- *Federal eRulemaking Portal:* <https://www.regulations.gov/> (our preferred method). Follow the online instructions for submitting comments.

*Instructions:* All submissions received must include the Docket ID No. EPA–HQ–OAR–2020–0044 for this rulemaking. Comments received may 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 “Public Participation” heading of the **SUPPLEMENTARY INFORMATION** section of this document. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting COVID–19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via <https://www.regulations.gov/> or email, as there may be a delay in processing mail and faxes. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at <https://www.epa.gov/dockets>.

**FOR FURTHER INFORMATION CONTACT:** Leif Hockstad, Office of Air Policy and Program Support, Office of Air and Radiation, U.S. EPA, Mail Code 6103A, 1200 Pennsylvania Avenue NW, Washington, DC 20460; (202) 343–9432; email address: [hockstad.leif@epa.gov](mailto:hockstad.leif@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Acronyms

APA	Administrative Procedure Act
BCA	Benefit-Cost Analysis
CAA	Clean Air Act
CBI	Confidential Business Information
CDC	Centers for Disease Control and Prevention
CFR	Code of Federal Regulations
CRA	Congressional Review Act
CRS	Congressional Research Service
E.O.	Executive Order
EPA	Environmental Protection Agency
FR	Federal Register
GAO	Government Accountability Office
NAAQS	National Ambient Air Quality Standards
NAS	National Academies of Science, Engineering, and Medicine
NESHAP	National Emission Standards for Hazardous Air Pollutants
NRDC	National Resources Defense Council
NTTAA	National Technology Transfer and Advancement Act
OIRA	Office of Information and Regulatory Affairs
OMB	Office of Management and Budget
OSHA	Occupational Safety and Health Administration
RIA	Regulatory Impact Analysis
RFA	Regulatory Flexibility Act
RTC	Response to Comments document
SAB	Science Advisory Board
UMRA	Unfunded Mandates Reform Act
U.S.C.	United States Code

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