

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 November 12, 2024. 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead,

Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 9, 2024.

David Cash,
Regional Administrator, EPA Region 1.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended 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 EE—New Hampshire

■ 2. Section 52.1519 is amended by adding paragraph (a)(12) to read as follows:

§ 52.1519 Identification of plan-conditional approval.

(a) * * *

(12) On December 22, 2022, the New Hampshire Department of Environmental Services (NHDES) submitted a request to amend New Hampshire’s Env-A 300, “Ambient Air Quality Standards” regulation, as a revision to New Hampshire’s State Implementation Plan (SIP). NHDES revised this regulation to incorporate into its SIP revised National Ambient Air Quality Standards (NAAQS). On March 6, 2024, EPA strengthened the fine particulate matter (PM_{2.5}) primary annual NAAQS. On May 16, 2024, New Hampshire submitted a letter to EPA committing to adopt a revised version of Env-A 300 which includes the current EPA PM_{2.5} primary annual NAAQS.

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■ 3. In § 52.1520(c) the table “EPA-Approved New Hampshire Regulations” is amended by revising the existing entry for “Env-A 300” to read as follows:

§ 52.1520 Identification of plan.

* * * * *

(c) *EPA approved regulations.*

EPA-APPROVED NEW HAMPSHIRE REGULATIONS

State citation	Title/subject	State effective date	EPA approval date ¹	Explanations
Env-A 300	Ambient Air Quality Standards	5/24/2022	7/13/2024 [Insert Federal Register citation]	

¹ In order to determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provision.

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[FR Doc. 2024–20721 Filed 9–12–24; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2024–0024; FRL–11529–02–R3]

Air Plan Approval; Pennsylvania; Attainment Plan for the Indiana Nonattainment Area for the 2010 1-Hour Sulfur Dioxide National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision

submitted by the Commonwealth of Pennsylvania (Pennsylvania or PA). The revision pertains to the attainment plan for the Indiana, PA nonattainment area for the 2010 1-hour sulfur dioxide (SO₂) national ambient air quality standard (NAAQS). The EPA is approving these revisions to the Pennsylvania SIP in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on October 15, 2024.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2024–0024. All documents in the docket are listed on the www.regulations.gov website. Although listed in the index, some information is not publicly available, *e.g.*, 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 through www.regulations.gov, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Megan Goold, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1600 John F Kennedy Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2027. Ms. Goold can also be reached via electronic mail at goold.megan@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On June 22, 2010, the EPA published a new 1-hour primary SO₂ NAAQS of 75 parts per billion (ppb) at 40 CFR

50.17(a), which is met at an ambient air quality monitoring site when the 3-year average of the annual 99th percentile of daily maximum 1-hour average concentrations does not exceed 75 ppb, as determined in accordance with 40 Code of Federal Regulations (CFR) part 50 appendix T (75 FR 35520, June 22, 2010). Under CAA section 107(d)(1), the EPA is required to designate areas as “nonattainment,” “attainment,” or “unclassifiable” within two years of establishing a new or revising an existing standard. As part of this process, states must submit recommendations for area designations and boundaries to the EPA within one year of the effective date of the standard. Effective on October 4, 2013,¹ the Indiana, PA Nonattainment Area (hereafter referred to as “the Indiana, PA NAA”) (which encompasses Indiana County, and Plumcreek Township, South Bend Township and Elderton Borough of Armstrong County) was designated as nonattainment for the 2010 SO₂ NAAQS. The area encompasses the primary SO₂ emitting sources: the Keystone Generating Station (Keystone), Conemaugh Generating Station (Conemaugh), Homer City Generating Station (Homer City), and Seward Generating Station (Seward). The October 4, 2013, final designation triggered a requirement for Pennsylvania to submit by April 4, 2015 (within 18 months per CAA section 191(a)), a SIP revision with an attainment plan for how the Indiana, PA NAA would attain the 2010 SO₂ NAAQS as expeditiously as practicable, but no later than October 4, 2018, (five years from the designation per CAA section 192(a)) in accordance with CAA sections 110(a), 172(c) and 191–192.

For a number of areas, including the Indiana, PA NAA, the EPA published a March 18, 2016 Finding of Failure to Submit, with an effective date of April 18, 2016, finding that Pennsylvania and other pertinent states had failed to submit the required SO₂ attainment plan by this submittal deadline. (See 81 FR 14736, March 18, 2016). This finding initiated a deadline under CAA section 179(a) for the potential imposition of new source review and highway funding sanctions. However, as a result of Pennsylvania’s October 11, 2017 submittal (hereafter referred to as “the 2017 SIP submittal”), and the EPA’s subsequent October 13, 2017 letter to Pennsylvania finding the submittal complete, the CAA section 179(a) sanctions were not imposed. Additionally, under CAA section 110(c), the March 18, 2016, finding triggered a

requirement that the EPA promulgate a Federal implementation plan (FIP) within two years of the effective date of the finding unless, by that time, the state has made the necessary complete submittal, and the EPA has approved the submittal as meeting applicable requirements. The EPA took final action approving this attainment plan on October 19, 2020 (85 FR 66240, October 19, 2020), which removed the FIP obligation.

On December 18, 2020, the Sierra Club, Clean Air Council, and Citizens for Pennsylvania’s Future filed a petition for judicial review with the U.S. Court of Appeals for the Third Circuit, challenging that final approval.² On April 5, 2021, the EPA filed a motion for voluntary remand without vacatur of its approval of the Indiana, PA SO₂ attainment plan.

On August 17, 2021, the U.S. Court of Appeals for the Third Circuit granted the EPA’s request for remand without vacatur of the final approval of Pennsylvania’s SO₂ attainment plan for the Indiana, PA NAA, and required that the EPA take final action in response to the remand no later than one year from the date of the court’s order.

On August 18, 2022, the EPA revised and corrected its prior full approval action (85 FR 66240, October 19, 2020) without further submission from Pennsylvania (effective September 19, 2022) (87 FR 50778, August 18, 2022). Specifically, the EPA retained the approval of the emissions inventory and nonattainment new source review (NNSR) program requirements, and disapproved the attainment demonstration, reasonably available control measures and reasonably available control technology (RACT/RACT) requirements, reasonable further progress (RFP) requirements, and contingency measures (hereafter referred to as the “2022 Partial Approval/Partial Disapproval”) (87 FR 50778, August 18, 2022). The partial disapproval action initiated a sanctions clock under CAA section 179, providing for emission offset sanctions for new sources if the EPA has not fully approved a revised attainment plan within 18 months (March 19, 2024) after final partial disapproval, and providing for highway funding sanctions if the EPA has not fully approved a revised plan within 6 months thereafter (September 19, 2024). The sanctions clock can be stopped only if the conditions of the EPA’s regulations at 40 CFR 52.31 are met. Also, under CAA section 110(c), the partial disapproval

action initiated an obligation for the EPA to promulgate a FIP within two years unless Pennsylvania has submitted, and the EPA has fully approved, a plan addressing the disapproved attainment planning requirements.

On October 12, 2023, Pennsylvania submitted a 2023 SO₂ Attainment Plan SIP Revision for the Indiana, PA NAA (hereafter referred to as the “2023 SIP submittal”). The 2023 SIP submittal addresses the requirements of CAA sections 172(c), 191 and 192 and the disapproved attainment planning requirements in the EPA’s 2022 Partial Approval/Partial Disapproval. Specifically, this SIP revision contains a modified attainment demonstration using dispersion modeling, evaluates sources for RACT/RACM purposes, gives an RFP explanation, provides for contingency measures, and includes revised emissions limitations and control measures.

Nonattainment area SO₂ SIPs must meet the applicable requirements of the CAA, specifically CAA sections 110, 172, 191 and 192. The EPA’s regulations governing nonattainment area SIPs are set forth at 40 CFR part 51, with specific procedural requirements and control strategy requirements residing at subparts F and G, respectively. Soon after Congress enacted the 1990 amendments to the CAA, the EPA issued comprehensive guidance on SIPs in a document entitled the “General Preamble for the Implementation of title I of the Clean Air Act Amendments of 1990,” published in the **Federal Register** at 57 FR 13498 (April 16, 1992) (General Preamble). Among other things, the General Preamble addressed SO₂ SIPs and fundamental principles for SIP control strategies. *Id.* at 13545–49, 13567–68. On April 23, 2014, the EPA issued guidance and recommendations for meeting the statutory requirements in SO₂ SIPs addressing the 2010 primary NAAQS, in a document entitled, “Guidance for 1-Hour SO₂ Nonattainment Area SIP Submissions” (hereafter referred to as “2014 SO₂ Nonattainment Guidance”).³ In the 2014 SO₂ Nonattainment Guidance, the EPA described the statutory requirements for a complete nonattainment area SIP, which include an accurate emissions inventory of current emissions for all sources of SO₂ within the nonattainment area; an attainment demonstration; enforceable emissions limitations and control measures;

³ Memorandum from Stephen D. Page, “Guidance for 1-Hour SO₂ Nonattainment Area SIP Submissions”, April 23, 2014. www.epa.gov/sites/default/files/2016-06/documents/20140423guidance_nonattainment_sip.pdf.

¹ 78 FR 47191 (August 5, 2013).

² *Sierra Club, et al. v. EPA*, Case No. 20–3568 (3d Cir.).

demonstration of RFP; implementation of RACM (including RACT); nonattainment new source review; and adequate contingency measures for the affected area.

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

CAA section 172(c)(1) directs states with areas designated as nonattainment to demonstrate that the submitted plan provides for attainment of the NAAQS. 40 CFR part 51, subpart G further delineates the control strategy requirements that SIPs must meet, and the EPA has long required that all SIPs and control strategies reflect the four fundamental principles of quantification, enforceability, replicability, and accountability. See General Preamble, 57 FR 13498 at 13567–68 (April 16, 1992). SO₂ attainment plans must consist of two components: (1) emission limits and other controls, including measures that assure implementation of permanent, enforceable and necessary emission controls, and (2) a modeling analysis which meets the requirements of 40 CFR part 51, appendix W and demonstrates that these emission limits and control measures provide for timely attainment of the primary SO₂ NAAQS as expeditiously as practicable, but by no later than the attainment date for the affected area. In all cases, the emission limits and control measures must be accompanied by appropriate methods and conditions to determine compliance with the respective emission limits and control measures, and must be quantifiable (*i.e.*, a specific amount of emission reduction can be ascribed to the measures), fully enforceable (specifying clear, unambiguous and measurable requirements for which compliance can be practicably determined), replicable (the procedures for determining compliance are

sufficiently specific and non-subjective so that two independent entities applying the procedures would obtain the same result), and accountable (source-specific limits must be permanent and must reflect the assumptions used in the SIP demonstrations).

II. Summary of SIP Revision and EPA Analysis

On June 7, 2024 (89 FR 48523), the EPA published a notice of proposed rulemaking (NPRM) for Pennsylvania. In the NPRM, the EPA proposed approval of a revision to Pennsylvania's SIP to demonstrate attainment of the 2010 SO₂ NAAQS in the Indiana, PA NAA. As noted, Pennsylvania submitted the formal SIP revision on October 12, 2023. This submission includes Pennsylvania's attainment demonstration and other attainment plan elements required under the CAA, including the requirement for meeting RFP toward attainment of the NAAQS, RACM/RACT, enforceable emission limitations and control measures, and contingency measures. Notably, the submission does not contain information regarding the required emissions inventory or the state's NNSR program, as these were previously approved by the EPA (87 FR 50778, August 18, 2022). In this action, the EPA is determining that the Pennsylvania 1-hour SO₂ attainment plan for Indiana, PA meets the applicable statutory and regulatory requirements and is thus approving Pennsylvania's submission into its SIP. Also, the EPA is incorporating the following SO₂ emission limits into the source-specific section of the PA SIP for the Keystone Plant, Conemaugh Station and Seward Station (as well as the compliance strategies listed in the unredacted portion of the Consent Order and Agreements (COAs) found in appendix C of the state submittal):

- **Keystone**—Remove 9,600 lbs/hr on a 24-hour (daily) block average and replace with 8,328 lbs/hr combined based on a 24-hour block average for Boiler 1 & Boiler 2 (Source IDs 031 & 032).
- **Seward**—Remove 3,038.4 lbs/hr and replace with 2,895 lbs/hr combined based on a 30-day operating hours average rolling by one day for Source IDs 034 & 035. Remove 13,308 tpy and replace with 12,680 tpy combined for Source IDs 034 & 035. Add the requirement to inject limestone into Source ID 034 and Source ID 035 during initial firing each time Source ID 034 and Source ID 035 are operated to reduce the magnitude and frequency of

SO₂ emission spikes in accordance with good air pollution control practices.

- **Conemaugh**—Add 3,080 lbs/hr combined on a 3-hour block average for Units 1 & 2 (Source IDs 031 & 032).

Other specific requirements of the Indiana County attainment plan and the rationale for the EPA's action are explained in the NPRM, and its associated technical support document (TSD), and will not be restated here.

III. EPA's Response to Comments Received

The EPA received four sets of comments in response to the NPRM. Two sets of comments were in opposition to the EPA's proposed action. The EPA also received one comment in support of the EPA's proposed action and one that was not relevant.

Comment 1. The comment asserts that the EPA's interpretation of what contingency measures are permissible in an SO₂ attainment plan is not the "best reading" of the Clean Air Act. The comment cites section 172(c)(9), Contingency Measures, emphasizing that contingency measures take effect "without further action by the State or Administrator." The comment takes issue with the approach to SO₂ contingency measures set forth in the EPA's General Preamble, which states that "contingency measures" mean ". . . the State agency has a comprehensive program to identify sources of violations of the SO₂ NAAQS and to undertake an aggressive follow-up for compliance and enforcement." See 57 FR 13498 at 13547 (April 16, 1992). The comment asserts that an enforcement action is "further action," which contradicts section 172(c)(9). Additionally, the comment claims that the EPA's citation to the state's authority to enforce its SIP is already required by CAA section 110(a)(2)(C) and does not necessarily meet the conditions of an enforcement program, let alone the contingency measure requirement, without a schedule and mechanism requiring action when violations occur. The comment suggests alternative contingency measures including switching to low-sulfur fuel, limiting operation until the SIP is revised, or a daily SO₂ emission limit. Lastly, the comment states that the SIP lacks provisions to ensure "aggressive follow-up" can and will take place in the event the area fails to attain the NAAQS and therefore fails to meet the requirements of section 172(c)(9).

Response 1. The EPA disagrees with this comment.

First, as a general matter, the EPA's longstanding approach to contingency

measures in SO₂ attainment plans, based on the Agency's technical expertise and understanding of control strategies addressing SO₂, has been consistently applied by the EPA and states since shortly after the enactment of the 1990 Clean Air Act Amendments, including in the General Preamble, updated guidance memoranda⁴ and numerous SO₂ SIP approval actions.⁵

Second, in response to the comment's specific objection that contingency measures are to take effect "without further action," the EPA has interpreted "without further action" in the ozone, lead, and carbon monoxide contexts to mean no further rulemaking or legislative action, though the EPA recognized that certain actions such as notification of sources or modifications of permits would be needed for effective implementation. 57 FR 13498, 13512 and 13533 (April 16, 1992), 58 FR 67748, 67752 (December 22, 1993). Undertaking enforcement against sources for violations of emission limitations that were necessary to provide for SO₂ NAAQS attainment is consistent with the EPA's longstanding position across all of the NAAQS that ministerial actions to effectuate contingency measures, rather than additional rulemaking or legislative action to adopt new contingency measures, is appropriate to meet the requirements of CAA section 172(c)(9). To commence an enforcement action when an emission limitation violation is identified, no further administrative or legislative action is necessary, and the state can expeditiously proceed to remedy the violation—even without needing to wait to determine whether such violation has caused or contributed to a violation of the NAAQS in the nonattainment area.

Contrary to the comment's suggestion that Pennsylvania does not have a comprehensive enforcement program as required by CAA section 110(a)(2)(C), Pennsylvania has such a program as specified in section 4(27) of the

Pennsylvania Air Pollution Control Act (APCA), 35 P.S. § 4004(27), which authorizes the Pennsylvania Department of Environmental Protection (PADEP) to take any action it deems necessary or proper for the effective enforcement of the Act and the rules and regulations promulgated thereunder. Such actions include the issuance of orders (*i.e.*, enforcement orders and orders to take corrective action to address air pollution or the danger of air pollution from a source) and the assessment of civil penalties. Any person in violation of the APCA, the rules and regulations, any order of PADEP, or a plan approval or operating permit conditions could also be subject to criminal fines upon conviction under section 9, 35 P.S. § 4009. Section 7.1 of the APCA, 35 P.S. § 4007.1, prohibits PADEP from issuing plan approvals and operating permits for any applicant, permittee, or a general partner, parent or subsidiary corporation of the applicant or the permittee that is placed on PADEP's Compliance Docket until the violations are corrected to the satisfaction of PADEP. Consequently, the EPA disagrees with the comment's assertion that in order to credit PADEP's comprehensive enforcement program as satisfying the CAA section 172(c)(9) SO₂ contingency measure requirement, the program would have to include elements such as mandatory additional penalties or elimination of agency discretion to prosecute violations.

Again, the enforcement process is more streamlined and targeted compared to rulemaking or legislation, which as discussed above, is considered disallowed "further action" for other criteria pollutants, and moreover enforcement is more akin to permissible implementation steps such as notification of sources and modification of permits. *Compare* 57 FR 13498, 13547 (April 16, 1992) (discussing a comprehensive program to identify violations and undertaking aggressive follow-up for compliance and enforcement) *with* 57 FR 13498, 13512 and 13533 (April 16, 1992) (interpreting "without further action" to mean no further rulemaking or legislation but to allow implementation steps such as modification of permits and notification of sources) *and* 58 FR 67748, 67752 (December 22, 1993). Thus, enforcement serves as an appropriate contingency measure for SO₂ nonattainment SIPs.

In addition to having a fully approved comprehensive enforcement program, PADEP has included what it refers to as additional contingency measures that are automatically triggered based on varying parameters, as described

below.⁶ First, when any of the four sources' emissions in the NAA reach 99% of the SO₂ emissions limit for the facility, within 48 hours the facility is required to undertake a full system audit of the SO₂ emitting sources and submit a written report to PADEP within 15 days, and corrective actions shall be identified by PADEP as necessary. Second, if the Strongstown monitor in the NAA registers a daily maximum 1-hour average concentration exceeding 75 ppb, PADEP will notify the facilities in the NAA, and each facility is required to identify whether any of its SO₂-emitting sources were running at the time of the exceedance, and within a reasonable time period leading up to the exceedance, not to exceed 24 hours. If any of the SO₂-emitting sources were running at the time of the exceedance, the facility must then analyze the meteorological data on the day the hourly exceedance occurred to ensure that the exceedance was not due to SO₂ emissions from the respective facility. The facility's findings must be submitted to PADEP within 30 days of being notified of the exceedance.⁷ These emissions-threshold-activated and exceedance-activated measures further ensure that "aggressive follow-up" will occur without further regulatory steps taken by the state. They also further reduce the likelihood of a violation of the emission limits or NAAQS. These measures are in line with the additional contingency measures the EPA mentions in the 2014 SO₂ Nonattainment Guidance and in the General Preamble and are included in the Pennsylvania SIP.⁸ The most recent

⁶ These measures enhance Pennsylvania's fully approved enforcement program that serves to meet the contingency measure requirement, are not necessary to meet applicable requirements of the CAA under section 110(a)(2)(A), and are already included in the SIP.

⁷ Note the daily maximum 1-hour average concentration can be above 75 ppb multiple times in one year and still not violate the NAAQS due to the statistical nature of the design values. Therefore, this measure could be triggered multiple times before a design value of 75 ppb, and therefore a NAAQS violation, ever occurs.

⁸ These exceedance-activated and emissions-threshold-activated measures were retained in the SIP, as explained in the partial disapproval, 87 FR 15166, 15177 (March 17, 2022) (final rule published 87 FR 50778 (August 18, 2022)), and the 2023 SIP submittal's attainment plan reiterates these requirements and the plan will be included in the SIP. For the sake of clarity and consistency, Keystone's COA will be removed from the SIP because the state has requested the removal of the 9600 lb/hr 24-hr SO₂ emission limit which was approved into the SIP via a source-specific SIP revision based on the COA; included in that COA is the emissions-threshold activated measure which in the COA is based on the previously disapproved emissions limit. With the approval of the 2023

⁴ SO₂ Guideline Document, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711, EPA-452/R-94-008, February 1994 (1994 SO₂ Guideline); Guidance for 1-Hour SO₂ Nonattainment Area SIP Submissions, Office of Air Quality Planning and Standards, Stephen D. Page, April 23, 2014 (2014 SO₂ Nonattainment Guidance).

⁵ 87 FR 61514, 61522-61523 (October 12, 2022); 84 FR 51988, 51994-51995 (October 1, 2019); 84 FR 32672, 32677 (July 9, 2019) (final rule 84 FR 49659 (September 23, 2019)); 83 FR 51629, 51632-51633 (October 12, 2018); 83 FR 40487, 40497 (August 15, 2018) (final rules 85 FR 49967 (August 17, 2020) and 84 FR 10692 (March 22, 2019)); 82 FR 45242, 45251 (September 28, 2017) (final rule 83 FR 25922 (June 5, 2018)); 82 FR 40086, 40097-40098 (August 24, 2017) (final rule 85 FR 73218 (November 17, 2020)).

design values at the Strongstown monitor in the NAA are 19 ppb in 2022, 22 ppb in 2021, and 25 ppb in 2020, which are well below the 1-hour primary 2010 SO₂ NAAQS of 75 ppb. The proactive nature of PADEP's emissions-threshold-activated and exceedance-activated measures, as well as the direct quantifiable impact of the SO₂ control measures and the current design values in the NAA, make it very unlikely that a NAAQS violation could occur in this area while the sources are complying with their emission limits.

The comment listed several options for contingency measures that the comment suggests should be included in the SIP. The EPA acknowledges that one or more of these options may be appropriate in a specific situation, and for a specific source, if the area fails to achieve RFP or fails to attain the NAAQS by the statutory attainment date. However, because Indiana, PA is a multisource area with several emission units per facility, requiring one or more of these measures may not be appropriate depending on the cause of the potential violations of the SO₂ standard, which would need to be evaluated at the time of occurrence. For example, triggering a fuel-switch at one facility may not bring the area into attainment if the issue is caused by another facility violating its limit. Similarly, limiting operation of one facility may be appropriate if the subject facility is the cause of the problem, but requiring further measures at other facilities may not be warranted where the cause of the NAAQS violation was non-compliance with emission limits by a different facility and where the NAAQS violation can be most efficiently remedied by bringing that source into compliance with its established emission limits. Likewise, limiting operations at all SO₂-emitting facilities in the area may not appropriately address the issue due to the localized nature of SO₂ emissions and possible direct link between ambient concentrations and emissions from a specific facility. Similarly, changing the limits at all facilities, for example from a longer-term limit to a shorter-term limit, may appropriately address the problem, but it also may not, and the state would evaluate appropriate measures if and when an issue arises. These are illustrative examples, and while not exhaustive, they highlight the need for the state to be able to respond appropriately in a

attainment plan into the SIP, the emissions-threshold activated measure and the exceedance-activated measure for Keystone are still included in the SIP.

particular scenario due to the localized nature of SO₂ impacts.

In summary, the EPA's longstanding approach to implementing the section 172(c)(9) contingency measures requirement in SO₂ attainment plans via comprehensive enforcement programs is appropriate. This approach is based upon the EPA's technical expertise and in-depth understanding of SO₂ control strategies and is consistent with the approaches undertaken for other criteria pollutants that have distinguished acceptable ministerial steps from regulatory or legislative action in satisfying the Act's requirement that contingency measures take effect "without further action." Accordingly, in this case, Pennsylvania's fully approved comprehensive enforcement program, and as bolstered by the state's aforementioned requirements that are triggered automatically when emissions thresholds are reached or NAAQS exceedances are recorded, is approved as meeting the CAA section 172(c)(9) contingency measure requirement.

Comment 2. A comment takes issue with the EPA's approach to attainment determinations when an area initially fails to attain by the attainment date. The comment cites the requirement for the EPA to determine within six months of the attainment date whether the standard has been attained for a given area. Section 179(c)(1) of the Clean Air Act further states that if the Administrator has found that the area did not attain, the EPA "may revise or supplement such determination at any time based on more complete information or analysis concerning the area's air quality as of the attainment date." The comment notes that the EPA's 1996 SO₂ Memorandum⁹ and 2014 SO₂ Nonattainment Guidance do not require a new SIP submittal and further modeling is not required if the source characteristics are "still reasonably represented." The comment claims that the EPA ought to require states to submit a demonstration that modeling assumptions have not changed. The comment states that because neither the EPA nor the state are reevaluating modeling assumptions, there is an added responsibility on the public to comment on the record on proposed attainment determinations. Lastly, the comment notes that this issue is magnified by the improper use of 30-day rolling averages as emission limits, further complicating compliance.

⁹Memorandum from Sally L. Shaver, "Attainment Determination Policy for Sulfur Dioxide Nonattainment Areas", January 26, 1996 (1996 SO₂ Memorandum).

Response 2. This comment is outside the scope of this action and does not require a response. The EPA notes that in this action, it is not implementing CAA section 179(c) or making a determination of attainment by the attainment date. To the extent the comment relates to objections to the emission limits adopted in the attainment plan, as explained elsewhere, the EPA concludes that the plan will provide for attainment, accounting for worst-case allowable emissions and meteorology.

Comment 3. The comment asserts that the EPA's approach to reasonably available control measures (RACM) and reasonably available control technology (RACT) in the context of SO₂ attainment plans is not the "best reading" of the Clean Air Act. The comment cites the EPA's 2014 SO₂ Nonattainment Guidance, stating that the requirement to implement all RACM is fulfilled if a plan provides for attainment of the SO₂ standards. The comment then cites requirements for attainment plans, 42 U.S.C. 7502(c)(1) (emphasis added):

Such plan provisions shall provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology) and shall provide for attainment of the national primary ambient air quality standards.

In interpreting the provision, the comment highlights the word "and" in these nonattainment plan provisions, stating that the requirement for all RACM and RACT must be fulfilled *and* the requirement for attainment must also be met. The comment also states that the EPA must give effect to every word and phrase in a statutory provision and that the EPA has failed to give effect to the requirement that all RACM/RACT be implemented. Next, the comment claims that the EPA fails to consider the plain meaning of statutory terms in reference to "available" control options. The comment claims that the EPA's proposal fails to determine whether additional controls are needed and is lacking an analysis of control efficiencies for existing and potential controls, as well as costs for upgrades.

Response 3. In identifying the "best reading" of a statutory requirement, the EPA has considered the overall and specific purpose of the requirement, the technical context in which it is imposed, and the most reasonable manner in which its obligations may be fulfilled. The Clean Air Act nonattainment planning requirements in section 172(c) applicable to states are set

in place to provide for attainment and subsequent maintenance of the NAAQS in a designated nonattainment area—*i.e.*, an area which the EPA has previously determined is not meeting the NAAQS. All section 172(c) requirements are targeted to remedy that NAAQS-violating occurrence. As the comment referenced, RACM/RACT is required under Clean Air Act section 172(c)(1) *for nonattainment areas*. Section 172(c)(1) of the CAA requires the implementation of all RACM as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of RACT) and shall provide for attainment of the NAAQS.

The comment suggests that the RACM/RACT requirement of section 172(c)(1) requires a state to assess and adopt measures that go further than what is necessary to attain the SO₂ NAAQS in the nonattainment area, but such an approach undercuts the purpose of this provision as applied in the SO₂ nonattainment plan context. At its core, this RACM/RACT requirement serves to remedy the status quo situation of an area not meeting the NAAQS, in order to prospectively achieve NAAQS attainment. This is clear from the requirement's placement within one of the two paragraphs in section 172(c)—along with section 172(c)(6)'s requirement that the plan include emissions limitations as necessary to provide for NAAQS attainment—that specify enumerated remedial measures that are not otherwise required absent an area's being designated nonattainment. Moreover, when applied in the SO₂ nonattainment plan context, these provisions of section 172(c) must be read in concert with the other applicable statutory provision that Congress enacted in 1990 specifically governing SO₂ plans, section 192(a), that similarly stressed the need for remedial implementation plans to provide for NAAQS attainment. As explained elsewhere and further below, for SO₂ the EPA has long taken the technical view that this source-oriented pollutant, compared to more regional pollutants like ozone and particulate matter, can be addressed via identification of necessary emission limits, and the control measures needed to meet them, that will provide for attaining air quality. When that analysis has been undertaken and appropriate attainment-providing emission limits have been devised, the central purpose of the section 172(c) attainment planning requirements will have been fulfilled, and it is not

necessary to require additional controls. Consequently, the EPA does not consider that it would be the “best reading” of the RACM/RACT requirement to interpret “reasonably” in section 172(c)(1), when applied in the SO₂ SIP context, as requiring imposition of additional controls when those that are necessary to provide for NAAQS attainment have already been identified and required.

For decades, the EPA has consistently defined RACT for SO₂ as that control technology that will achieve the NAAQS within statutory timeframes. *See, e.g.*, General Preamble, 57 FR 13498, 13547 (April 16, 1992), which was published soon after the enactment of the 1990 Clean Air Act Amendments; *see also*, 1994 SO₂ Guideline at 6–39. RACT for certain other criteria pollutants is control technology that is reasonably available considering technological and economic feasibility (see December 9, 1976 memorandum from Roger Strelow, “Guidance for Determining Acceptability of SIP Regulations in Non-Attainment Areas”). The EPA's definition of RACT for SO₂, as that control technology which is necessary to achieve the NAAQS (40 CFR 51.100 (o)),¹⁰ is based on the specific characteristics of SO₂. Since SO₂ RACT is already defined as the technology necessary to achieve the SO₂ NAAQS, control technology that failed to achieve the NAAQS would fail to be SO₂ RACT, and control technology beyond what is necessary to attain the SO₂ NAAQS would be beyond the central purpose of the nonattainment planning requirements of section 172(c).

When determining RACT for SO₂, it is appropriate to take into account the necessity of the control in meeting the standard. As noted, the EPA's definition of RACT in the SO₂ nonattainment context accounts for the characteristics of the specific pollutant. For a pollutant such as SO₂, the relationship between an individual source's emissions and the overall air quality can be explicitly quantified, and the emission reductions necessary to attain the NAAQS are based on a limited number of sources in a NAA.¹¹ Therefore, a state can

¹⁰ RACT means devices, systems, process modifications, or other apparatus or techniques that are reasonably available taking into account: (1) The necessity of imposing such controls in order to attain and maintain a national ambient air quality standard; (2) The social, environmental, and economic impact of such controls; and (3) Alternative means of providing for attainment and maintenance of such standard. (This provision defines RACT for the purposes of 40 CFR 51.341(b) only.)

¹¹ For reference, in the Indiana, PA NAA, 99.6% of the area's SO₂ emissions inventory comes from the four facilities controlled in the attainment plan.

explicitly calculate the emission reductions necessary to provide for attainment of the SO₂ NAAQS, and it is appropriate not to require states to impose control measures requiring further reductions beyond what is necessary to achieve attainment.

For the Indiana, PA NAA, PADEP provided the necessary modeling, which demonstrated the specific hourly emission limits (and comparably stringent longer-term limits) that are required to provide for attainment of the standard. The EPA reviewed this modeling and determined it comports with the EPA's Guideline on Air Quality Models (40 CFR part 51, appendix W) and the EPA's 2014 SO₂ Nonattainment Guidance. Therefore, the EPA concluded that the emission limits established as RACM were shown to provide for attainment and thus met the longstanding definition of RACT for SO₂. PADEP implemented these emission limits as expeditiously as practicable (with Keystone's and Conemaugh's limits effective immediately after August 15, 2023, and Seward's limits effective immediately after August 17, 2023 via Consent Orders and Agreements).

While the comment disagrees with the EPA's approach to RACM/RACT for SO₂ and characterizes its version as a better reading of the Act, the comment does not explain why its reading of the Act is a better reading specific to the SO₂ NAAQS. The comment does not address the specific characteristics of the pollutant, characteristics that the EPA has considered while it has consistently defined RACT for SO₂.¹²

As discussed above, this has been the EPA's longstanding definition and approach for SO₂ RACT since the 1990 Clean Air Act Amendments. The EPA has consistently applied this definition of SO₂ RACT and promulgated numerous implementation plan approvals using this approach.¹³ Consequently, the EPA disagrees with the comment's assertion that its approach does not reflect the “best

¹² The comment refers to the visibility program's method of determining retrofit controls. However, the visibility program operates under a different statutory and regulatory framework, and SO₂ is one of many visibility impairing pollutants.

¹³ 87 FR 61514, 61520–61521 (October 12, 2022); 84 FR 32672, 32676–32677 (July 9, 2019) (final rule 84 FR 49659 (September 23, 2019)); 83 FR 50314, 50321–50324 (October 5, 2018) (final rule 84 FR 51988 (October 1, 2019)); 83 FR 12516, 12519–12520 (March 22, 2018) (final rule 83 FR 51629 (October 12, 2018)); 83 FR 40487, 40497 (August 15, 2018) (final rules 85 FR 49967 (August 17, 2020) and 84 FR 10692 (March 22, 2019)); 82 FR 45242, 45250–45251 (September 28, 2017) (final rule 83 FR 25922 (June 5, 2018)); 82 FR 40086, 40096–40097 (August 24, 2017) (final rule 85 FR 73218 (November 17, 2020)).

reading” of Clean Air Act section 172(c)(1) for SO₂ implementation plans.

Comment 4. Two comments claim that longer-term emission limits do not support attainment of the 1-hour SO₂ standard. One comment states that the EPA’s 2014 SO₂ Nonattainment Guidance¹⁴ allows the use of 30-day emission limits as long as hourly emissions above the critical emission value¹⁵ (CEV) are rare and if the magnitude of emissions do not significantly exceed the CEV. The comment further states that the EPA justified 30-day emission limits to allow for operational flexibility at sources. Next, the comment claims that the EPA’s 2014 SO₂ Nonattainment Guidance highlights the value of supplemental limits, *e.g.*, caps on the frequency or magnitude of elevated emissions, but fails to explain and justify approving longer-term emission limits in the absence of supplemental limits. Further, the comment states that the EPA’s recognition of the value of supplemental limits in the 2014 SO₂ Nonattainment Guidance demonstrates that 30-day rolling averages, when used without supplemental limits, insufficiently protect the NAAQS.

The second comment states that the SO₂ limit was set as a 1-hour standard to protect human health from harmful, short-term exposures of SO₂ and that Seward’s and Keystone’s emission limits are not protective under that standard. The comment claims that the Seward and Keystone generating stations “regularly and frequently” exceed their hourly CEV. Citing data from January 1, 2018 through March 31, 2024, the comment asserts that Keystone exceeded the 9,718 lbs/hr CEV on 532 occasions and that Seward exceeded the 3,830 lbs/hr CEV on 349 occasions, which occurred on 28 separate days in 2018, 7 days in 2019, 13 days in 2020, 31 days in 2021, 58 days in 2022, 40 days in 2023, and 16 days in 2024. The comment claims that the PADEP justification for disregarding these exceedances, *i.e.*, because they “occurred over a large number of possible operating hours per year,” is dismissive of the fact that the SO₂ standard is a short-term standard and that just four hours on four days with SO₂ concentrations over 75 ppb will lead to nonattainment of the NAAQS.

Response 4. The EPA disagrees with the assertion that longer-term limits

cannot be protective of a 1-hour SO₂ standard. As explained in the NPRM for this action, and in the EPA’s 2014 SO₂ Nonattainment Guidance, the EPA believes that appropriately set longer-term limits can be protective of the 1-hour SO₂ NAAQS.

The EPA acknowledges the concern that longer-term emission limits can allow short periods with emissions above the CEV, which, if coincident with meteorological conditions conducive to high SO₂ concentrations, could in turn create the possibility of an hourly NAAQS exceedance occurring on a day when an exceedance would not have occurred if emissions were continuously controlled at the level corresponding to the CEV. However, for several reasons, the EPA believes that the approach recommended in its guidance document suitably addresses this concern.

First, from a practical perspective, the EPA expects the actual emission profile of a source subject to an appropriately set longer-term average limit to be similar to the emission profile of a source subject to an analogous 1-hour average limit. The EPA expects this similarity because it has recommended that the longer-term average limit be set at a level that is comparably stringent to the otherwise applicable 1-hour limit (reflecting a downward adjustment from the CEV) and that takes the source’s emissions profile (and inherent level of emissions variability) into account. This downward adjustment of the limit is to compensate for the loss of stringency inherent in applying a longer-term average limit, by requiring most values to be lower than they are required to be with a 1-hour limit at the CEV. As a result, the EPA expects either form of emission limit to yield comparable air quality.

Second, from a more theoretical perspective, the EPA has compared the likely air quality with a source having maximum allowable emissions under an appropriately set longer-term limit, to the likely air quality with the source having maximum allowable emissions under the comparable 1-hour limit. In this comparison, in the 1-hour average limit scenario, the source is presumed at all times to emit at the CEV, and in the longer-term average limit scenario, the source is presumed occasionally to emit more than the CEV, but on average, and presumably at most times, to emit well below the CEV. In an “average year,”¹⁶

compliance with the 1-hour limit is expected to result in three exceedance days (*i.e.*, three days with maximum hourly values above 75 ppb) and a fourth day with a maximum hourly value at 75 ppb. By comparison, with the source complying with a longer-term limit, it is possible that additional hourly exceedances would occur that would not occur in the 1-hour limit scenario (if emissions exceed the CEV at times when meteorology is conducive to poor air quality). However, this comparison must also factor in the likelihood that exceedances that would be expected in the 1-hour limit scenario would not occur in the longer-term limit scenario. This result arises because the longer-term limit requires lower emissions most of the time (because the limit is set below the CEV), so a source complying with an appropriately set longer-term limit is likely to have lower emissions at critical times than would be the case if the source were emitting as allowed with a 1-hour limit.

To illustrate this point, the EPA conducted a statistical analysis using a range of scenarios using actual plant data. The analysis is described in appendix B of the EPA’s 2014 SO₂ Nonattainment Guidance. Based on the analysis described in the 2014 SO₂ Nonattainment Guidance, the EPA expects that an emission profile with maximum allowable emissions under an appropriately set, comparably stringent 30-day average limit is likely to have the net effect of having a lower number of hourly exceedances and better air quality than an emission profile with maximum allowable emissions under a 1-hour emission limit at the CEV. This result provides a compelling policy rationale for allowing the use of a longer averaging period in appropriate circumstances where the facts indicate this result can be expected to occur.

The 2014 SO₂ Nonattainment Guidance offers specific recommendations for determining an appropriate longer-term average limit. PADEP correctly followed the recommendations in devising the longer-term limits for Seward and Keystone. The 24-hour average limit of 8,328 lbs/hr went into effect for Keystone on August 15, 2023, and the 30-day average limit of 2,895 lbs/hr went into effect for Seward on August 17, 2023. The EPA reviewed the comment’s hourly data files for Seward and Keystone from January 1, 2018 through March 31, 2024, in which the CEV at Keystone was exceeded on 532

¹⁴ www.epa.gov/sites/default/files/2016-06/documents/20140423guidance_nonattainment_sip.pdf.

¹⁵ The maximum modeled emission rate expressed as a 1-hour average that results in attainment is labeled the “critical emissions value” or CEV.

¹⁶ An “average year” is used to mean a year with average air quality. While 40 CFR part 50, appendix T, provides for averaging three years of annual 99th percentile daily maximum hourly values (*e.g.*, the fourth highest maximum daily hourly concentration in a year with 365 days with valid data), this

discussion and an example below uses a single “average year” to simplify the illustration of relevant principles.

separate occasions, and the CEV at Seward was exceeded on 349 separate occasions. During the majority of this time period, the sources were not subject to the new limits developed for this attainment plan. Additionally, the stated number of occasions over the CEV for Seward and Keystone during the six and one quarter years of data equate to less than one percent of the hours for each source, which EPA considers to be a minimal amount of occasions over the CEV. The EPA disagrees with the comment on the air quality consequences of these occasions of elevated emissions. While there were times after the new 30-day limit went into effect where hourly emissions were above the CEV, there is no evidence that these emissions caused an exceedance of the NAAQS. The EPA believes that a full analysis of the air quality impact of Pennsylvania's limits must consider these hours of elevated emissions in conjunction with the far greater number of hours when emissions are required to be well below the level that would model violations (*i.e.*, the CEV). The comment provided no modeling analysis that incorporated both the hours of emissions above the CEV and the hours below. For reasons described in more detail in the EPA's guidance, the NPRM and the EPA's Technical Support Document: Critical Emission Value Modeling Analysis for the Indiana, PA 1-Hour SO₂ Nonattainment Area (EPA Modeling TSD) for this action, the EPA believes that the net effect of these compensating factors is that PADEP's limits provide adequate assurance that the area will attain the SO₂ standard.

The EPA disagrees with the comment's assertion that supplemental limits must be required to limit the magnitude of emissions spikes when a longer-term limit is established. As explained in detail above, a comparably stringent longer-term limit can provide for protection of the NAAQS, even without supplemental limits. In any event, PADEP exercised additional options for restricting the frequency and magnitude of occurrences of elevated emissions per the 2014 SO₂ Nonattainment Guidance,¹⁷ such as

¹⁷ According to the 2014 SO₂ Nonattainment Guidance, p. 34, states have several additional options for restricting the frequency and magnitude of occurrences of elevated emissions. First, states may apply shorter averaging times, such as 24 hours, which provide less allowance of emission spikes than would longer averaging times, such as 30 days. Second, for sources that are or will be operating emission control equipment, states may establish requirements for the operation of this control equipment. For such sources, a substantial component of the variability in emissions often arises from variations in the operation of the control

setting averaging times shorter than thirty days or analyzing emissions data¹⁸ to determine when to target emission episodes using supplemental limits. For Keystone, PADEP applied a shorter averaging time of 24 hours. For Seward, which has a 30-day limit, PADEP included a supplemental limit in the form of a work practice requirement of injecting limestone into the combustor during initial firing which was deemed appropriate due to specific emissions data patterns experienced during those periods.

Comment 5. The comment states that the CEVs set for each stationary SO₂ source impacting nonattainment in Indiana County are not protective of the NAAQS. The comment cites an assessment of the EPA's modeling analysis which asserts that the CEVs yield peak concentrations approximately 50 micrograms per cubic meter above the NAAQS. Steven Klafka, Conemaugh, Homer City, Keystone and Seward Generating Stations Indiana County, Pennsylvania Evaluation of Compliance with the 1-hour NAAQS for SO₂, (Wingra Engineering July 8, 2024).

Response 5: The EPA has reviewed the July 8, 2024 modeling analysis prepared for the Sierra Club by Wingra Engineering (July 2024 Wingra Analysis) and found several deficiencies with it. These include the choice of meteorological data and the combining of emission sources across an amalgamated modeling domain. The July 2024 Wingra Analysis otherwise utilizes the same modeling system components (receptor grid locations/elevations/hill-height scales, building downwash parameters, surface characteristics, etc.) as those used in the modeling analysis performed by Pennsylvania and reviewed by the EPA. For consistency purposes, the comment's July 2024 Wingra Analysis utilized the same versions of the AERMOD platform used by Pennsylvania.

As described in section 6 of PADEP's Air Dispersion Modeling Technical Support Document (Docket file EPA-R03-OAR-2024-0024-0003 attachment 9) the air dispersion modeling for the Indiana, PA NAA utilized representative meteorological

equipment, perhaps including operating the source when the control equipment is not operating. States have multiple options for requiring less variability in control equipment operation. One option would be a direct work practice requirement for operation of the control equipment, perhaps specifying some minimum level of control efficiency and associated monitoring, recordkeeping, and reporting requirements.

¹⁸ If this type of information on historic emission patterns is not available, it may be difficult to determine supplemental limits.

datasets from two sites. Data from the Johnstown-Cambria County Airport (KJST) meteorological site represented atmospheric conditions in the vicinity of Keystone and Homer City power plants. The KJST meteorological site is approximately 58 kilometers southeast of Keystone and approximately 38 kilometers southeast of Homer City. Data from the Ash Site #1 meteorological site represented atmospheric conditions in the vicinity of Conemaugh and Seward. The Conemaugh-Seward (Ash Site #1) meteorological site is located between the two power plants, approximately 1.9 kilometers northeast of the Conemaugh power plant and approximately 1.7 kilometers south-southwest of the Seward power plant.

Based on the EPA's Guideline on Air Quality Models (40 CFR part 51, appendix W), meteorological data used as input to a dispersion model should be selected on the basis of spatial and climatological (temporal) representativeness as well as the ability of the individual parameters selected to characterize the transport and dispersion conditions in the area of concern. Representativeness of the meteorological data is dependent on numerous factors. These factors include but are not limited to: (1) the proximity of the meteorological monitoring site to the area under consideration; (2) the complexity of the terrain; (3) the exposure of the meteorological monitoring site; and (4) the period of time during which data are collected. Both meteorological data sets used in Pennsylvania's modeling analysis meet applicable completeness requirements.

While the July 2024 Wingra Analysis claims that the Ash Site #1 is representative of impacts from emissions released by all four plants, the EPA disagrees because of the difference in local topography around the modeled sources. The decision to utilize the KJST meteorological site for the Homer City and Keystone power plants and the Ash Site #1 for the Conemaugh and Seward power plants was largely based on the modeled sources' topographical settings (terrain features). Each of the meteorological sites were best suited to capture the proper boundary layer characteristics for their respective sources.

The Indiana, PA NAA sits along the Allegheny Plateau physiographic province of the Appalachian Mountains system west of the eastern continental divide. Maps depicting topographical elevations in the vicinity of the Indiana, PA NAA showing the locations of the Conemaugh, Homer City, Keystone and Seward power plants and the KJST and

Ash Site #1 meteorological sites can be found in the EPA's technical support document that is part of the public record in the docket for this action (Figures 1 and 2 of the EPA Modeling TSD). Relatively flat terrain resides in the western portion of the nonattainment area where the Homer City and Keystone power plants are located. Both power plants sit at significantly lower elevations than the KJST site. Furthermore, the KJST site is located on some of the highest terrain in western Pennsylvania and no topographic features between the KJST site and Homer City and Keystone would unduly influence the wind fields at the KJST site. In contrast, the Conemaugh and Seward power plants are located along the Conemaugh River in the southeastern part of the Indiana, PA NAA between the Chestnut (west) and Laurel (east) ridges that define the northern terminus of the Ligonier Valley. The latter two power plants reside within a valley marked by higher terrain to the east and west. This valley impacts local meteorological parameters such as wind fields and atmospheric stability. Air flow can become channeled within valley features, and topography can influence vertical atmospheric stability, especially at night, setting up potentially strong vertical temperature inversions.

The July 2024 Wingra Analysis amalgamates all of the model receptors Pennsylvania utilized in its three modeling domains covering the entire Indiana, PA NAA. The rationale for dividing the Indiana, PA NAA into three separate modeling domains (with different sources and meteorological data) was explained in the Air Dispersion Modeling Technical Support Document from PADEP (pages 6–8 to 6–9, 6–15 to 6–17, and 8–1 to 8–3) and in the EPA Modeling TSD (pages 63 and 70) that are part of the public docket for this action.

No rationale was provided in the July 2024 Wingra Analysis submitted during the public comment period to support combining the three modeling domains utilized in PADEP's SIP modeling demonstration. Additionally, no rationale was provided to refute the division of the Indiana, PA NAA into three distinct modeling domains. The EPA believes, therefore, that Wingra Engineering's modeling analysis erred on its modeling domain setup by combining all sources into one amalgamated receptor domain.

Noting the deficiencies in the July 2024 Wingra Analysis, the EPA concludes that the modeling analysis presented by PADEP demonstrates the validity of the CEVs established for the

Conemaugh, Homer City, Keystone and Seward power plants.

Comment 6. The comment states that the adjustment factor of 0.756, used to convert the Seward generating station's CEV to a 30-day rolling average, is too high. The comment claims that Pennsylvania's proposed adjustment factor results in 20% higher emission limits when compared to emission limits calculated with the EPA's adjustment factor of 0.63. The comment states that if the January 2019 through March 2023 dataset is used instead of the 2018–2021 dataset used by PADEP, the Seward adjustment factor would be reduced to 0.712. Next, the comment provided seven different adjustment factors calculated based on differing historic data periods. Additionally, the comment asserts that Seward's SO₂ emissions have increased since 2013, and the proposed 30-day limit increases the likelihood of continued nonattainment if emission reductions are not established.

Response 6. The spreadsheet submitted as Attachment C to the comment, included incorrect calculations for the 30-day average values. As specified in the state submittal, the 30-day rolling average for Seward should be calculated for each operating day, by calculating the average of all the hourly emission data, using only hours during which fuel is combusted from the preceding 30 operating days. In the spreadsheet calculations, the comment always averaged the previous 30-days using 720 hours (total number of hours in 30 days) as opposed to the number of hours when fuel was actually burned. In the SIP submittal, PADEP correctly calculated the 30-day average emission values in developing the adjustment factors for Seward. PADEP also justified the period of time used for the calculations by explaining that, in line with the EPA's 2014 SO₂ Nonattainment Guidance, PADEP used data from years of stable operation. As PADEP described, when the SIP analysis began in 2022, it initially considered emission data for years 2017 through 2021. However, in 2017, there was an operational change at Seward¹⁹ that could have affected the emission variability. Because of operational changes at Seward in 2017 and in an effort to have one consistent emission dataset for all three facilities with longer-term SO₂ emission limits, PADEP calculated the adjustment factors using

¹⁹ After a change of ownership in December 2016, Seward implemented a startup operational change, which is the addition of limestone to the combustor during initial firing to reduce SO₂ emissions.

emission data for years 2018 through 2021. The EPA believes this is consistent with the recommendation on emission data use in the 2014 SO₂ Nonattainment Guidance, pages 29–30.

Also, the comment appears to misunderstand the adjustment factor of 0.63 included in table 1 of appendix B of the 2014 SO₂ Nonattainment Guidance. The EPA's 2014 SO₂ Nonattainment Guidance did not calculate nor provide source-specific adjustment factors for Seward, but rather, calculated the average adjustment factor for 90 sources equipped with a dry scrubber. The EPA believes that if continuous emissions monitoring systems (CEMs) data is available for a source, it is most appropriate to use that data for developing adjustment factors, as long as it continues to represent the distribution of emissions that is expected once the attainment plan is implemented. This was the case with Seward. The EPA concludes that the adjustment factor of 0.756 calculated for Seward is more appropriate because it is source-specific, based on CEMS data and provides for a comparably stringent 30-day average emission limit.

Regarding the comment about the annual SO₂ emissions increases since 2013, the EPA reviewed the data and notes that SO₂ emissions increased from 2013–2018. However, after that period the emissions remained in a similar range. Additionally, annual emissions are not a direct indicator of compliance with the NAAQS nor with the 30-day emission limit which the EPA is approving as providing for attainment in this plan.

Comment 7. The comment claims that the EPA ignores the ongoing negative impacts of Indiana County's major SO₂ sources on neighboring Westmoreland and Cambria counties. The comment states that Pennsylvania has failed to meaningfully address SO₂ sources in Indiana County and that the EPA should encourage Pennsylvania to implement more protective SO₂ limits to wholly address nonattainment caused by these sources and to be protective of vulnerable populations in Indiana County and neighboring areas.

Response 7. The comment's concern regarding negative impacts outside of the Indiana, PA NAA boundaries from the Indiana County SO₂ sources is beyond the scope of this action.

Section 171(2) of the CAA defines nonattainment area to mean for any air pollutant, an area which is designated "nonattainment" with respect to that pollutant within the meaning of section 107(d) of this title. In an earlier, separate action, the boundaries of the Indiana,

PA NAA were set and finalized in August 2013 in “Round One” of EPA’s designations for the 2010 SO₂ NAAQS under section 107(d) of the CAA, and these boundaries were not challenged.²⁰ Westmoreland and Cambria counties are not included within those boundaries.

Pennsylvania’s obligation under section 110(a) of the CAA is to submit “. . . a plan which provides for implementation, maintenance, and enforcement of such primary standard in each air quality control region (or portion thereof) within such State.” CAA section 110(a)(1). Section 110 further provides that “[i]n the case of a plan or plan revision for an area designated as a nonattainment area, [the plan shall] meet the applicable requirements of part D of this subchapter (relating to nonattainment areas).” CAA section 110(a)(2)(I). Section 172(c)(6) then requires the SIP for a nonattainment area to include enforceable emission limitations and control measures as necessary or appropriate to provide for NAAQS attainment “in such area.” In this case, Pennsylvania’s attainment plan for the Indiana, PA NAA includes limits on SO₂ sources and a modeling demonstration showing that SO₂ concentrations throughout the nonattainment area are at or below the NAAQS.

Further, the EPA’s role is limited to determining whether the submitted SIP meets the requirements of the CAA, see section 110(k)—in this action, Pennsylvania’s 2023 SIP submittal does not address areas outside the defined nonattainment area. Absent a clear requirement that Pennsylvania must include model receptors outside of the nonattainment area in its submission, the EPA will confine its analysis to whether the attainment SIP demonstrates attainment within the designated nonattainment area.

On February 12, 2024, EPA published notice in a separate action of its intent to redesignate portions of Cambria and Westmoreland Counties²¹ to nonattainment for the 2010 SO₂ NAAQS (89 FR 9815). The CAA provides the EPA with the authority to revise designations of, or “redesignate,” areas under CAA section 107(d)(3). Such redesignations can originate as requests by states (per CAA section 107(d)(3)(D)), and the EPA can also notify a state at

any time that a designation of any area or portion of an area should be revised, on the basis of air quality data, planning and control considerations, or any other air quality-related considerations the EPA Administrator deems appropriate. If finalized, the nonattainment designation for these counties will require the state to submit nonattainment area requirements per CAA section 172.

Comment 8. The comment states that the SIP should incorporate the closure of the Homer City generating station, as well as the projected 2028 retirements of the Keystone and Conemaugh generating stations. Further, the comment asserts that the SIP should not be approvable until the SO₂ emission limits for these plants are removed.

Response 8. The EPA disagrees with the comment. CAA section 172(c)(6) requires the SIP for a nonattainment area to include enforceable emission limitations and control measures as necessary or appropriate to provide for NAAQS attainment in the area. With this action, the EPA is approving the emission limits for the four sources in the Indiana, PA NAA as meeting this requirement. As such, it is not necessary to include the Homer City retirement nor the projected retirements of Keystone and Conemaugh in the SIP as enforceable measures. And as explained in the NPRM, as the EPA is not aware of PADEP rescinding Homer City’s operating permit, Homer City ceasing operations does not guarantee that the units are permanently and enforceably shutdown. 89 FR 48523, 48528 (June 7, 2024). Nor did PADEP’s 2023 SIP submittal request to incorporate the pending closure of Homer City into the SIP. Similarly for Keystone and Conemaugh, the EPA is not aware of PADEP rescinding the permits for these two sources nor did PADEP’s 2023 SIP submittal request their projected retirements be included in the SIP. The approval of this attainment plan is thus properly based on Homer City’s possible continued operation, as well as Keystone’s and Conemaugh’s continued operations.

IV. Final Action

The EPA is approving the attainment plan for the Indiana, PA NAA for the 2010 1-hour SO₂ NAAQS, which Pennsylvania submitted on October 12, 2023, as a revision to the Pennsylvania SIP. Specifically, the EPA is approving the attainment demonstration, RACM/RACT requirements, RFP requirements, and contingency measures of the attainment plan. The EPA previously approved the emissions inventory and

NNSR program elements of the attainment plan.

This approval terminates the highway funding sanction and FIP clocks started under CAA sections 179 and 110, respectively, resulting from EPA’s partial disapproval of the prior SIP submittal. It also removes the permitting offset sanction that has been in place since March 19, 2024.

V. Incorporation by Reference

In this document, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of SO₂ emission limits and compliance parameters established in (the unredacted portions of) the COAs for the Seward, Conemaugh and Keystone facilities, as discussed in section II of this preamble and described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by the EPA for inclusion in the SIP, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA’s approval, and will be incorporated by reference in the next update to the SIP compilation.²²

VI. Statutory and Executive Order Reviews

A. General Requirements

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

²⁰ 78 FR 47191 (August 5, 2013); www.epa.gov/sulfur-dioxide-designations/so2-designations-state-designations-round-1.

²¹ EPA designated Cambria County unclassifiable and Westmoreland County attainment/unclassifiable for the 2010 1-hour SO₂ NAAQS effective April 9, 2018. 83 FR 1098 (January 9, 2018).

²² 62 FR 27968 (May 22, 1997).

- 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); and
- 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.

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” The EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

PADEP did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

In addition, this final rule approving Pennsylvania’s Indiana, PA NAA SO₂ attainment plan does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and the EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

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. The 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).

C. Petitions for Judicial Review

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 November 12, 2024. 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 approving the Indiana, PA attainment plan for the 2010 1-hour SO₂ NAAQS 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.

Adam Ortiz,

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:
 - a. Amend the table in paragraph (d)(3) by:
 - i. Adding entries for “Keystone Generating Station”, “Conemaugh Generating Station”, and “Seward Generating Station” at the end of the table; and
 - ii. Removing the first entry for “Seward Station”; and the entry for “Keystone Plant”.
 - b. Adding in paragraph (e)(1) table the entry “Attainment Plan for the Indiana County, Pennsylvania Nonattainment Area for the 2010 Sulfur Dioxide Primary National Ambient Air Quality Standard” at the end of the table.

The additions read as follows:

§ 52.2020 Identification of plan.

*	*	*	*	*
(d)	*	*	*	
(3)	*	*	*	

Name of source	Permit No.	County	State effective date	EPA approval date	Additional explanation/§ 52.2063 citation
* Keystone Generating Station.	* Consent Order and Agreement.	* Armstrong ...	* 08/15/23	* 9/13/2024, [INSERT Federal Register CITATION].	* For Source IDs 031 and 032: Combined SO ₂ emission limit; CEMS monitoring; definition of "24-hour block"; Quarterly emission reporting requirement; and reporting of hourly SO ₂ lbs/hr emission averages.
Conemaugh Generating Station.	Consent Order and Agreement.	Indiana	08/15/23	9/13/2024, [INSERT Federal Register CITATION].	For Source IDs 031 and 032: Combined SO ₂ emission limit; CEMS monitoring; definition of "3-hour block"; Quarterly emission reporting requirement; and reporting of hourly SO ₂ lbs/hr emission averages.
Seward Generating Station.	Consent Order and Agreement.	Indiana	08/17/23	9/13/2024, [INSERT Federal Register CITATION].	For Source IDs 034 and 035: Combined SO ₂ emission limit; CEMS monitoring; definition of "operating day"; reporting of hourly SO ₂ lbs/hr emission rate; injection of limestone during initial firing; and quarterly submission of "Hourly Injection Reports."

* * * * *
(e) * * * (1) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* Attainment Plan for the Indiana, Pennsylvania Nonattainment Area for the 2010 Sulfur Dioxide Primary National Ambient Air Quality Standard.	* Indiana County and portions of Armstrong County (Plumcreek Township, South Bend Township, and Elderton Borough).	* 10/12/23	* 9/13/2024, [INSERT Federal Register CITATION]	* 52.2033(g).

* * * * *
■ 3. Amend § 52.2033 by adding paragraph (g) to read as follows:

§ 52.2033 Control strategy: Sulfur oxides.
* * * * *

(g) EPA approves the Attainment Plan for the Indiana, PA Nonattainment Area for the 2010 Sulfur Dioxide National Ambient Air Quality Standard submitted by the Pennsylvania Department of Environmental Protection on October 12, 2023. EPA approves the attainment demonstration and other attainment plan elements, including Reasonably Available Control Technology (RACT)/Reasonably Available Control Measures (RACM) determination, Reasonable Further Progress (RFP) requirements, and contingency measures.

[FR Doc. 2024-20598 Filed 9-12-24; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2023-0277; FRL-12065-02-R4]

Air Plan Approval; Tennessee; Nitrogen Oxides SIP Call Alternative Monitoring and Domtar Paper Company, LLC

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), on June 26, 2023. The June 26, 2023, SIP revision specifies monitoring, recordkeeping, and reporting requirements for large industrial non-electricity generating units (EGUs) subject to the nitrogen oxides (NO_x) SIP Call that are permissible as alternatives

to the monitoring, recordkeeping, and reporting requirements of 40 CFR part 75. The SIP revision also establishes source-specific alternative monitoring, recordkeeping, and reporting requirements under the NO_x SIP Call for Domtar Paper Company, LLC (Domtar).

DATES: This rule is effective October 15, 2024.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2023-0277. All documents in the docket are listed on the [regulations.gov](https://www.regulations.gov) website. Although listed in the index, some information may not be publicly available, *i.e.*, 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 and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation