PENALTIES APPLICABLE TO FEDERAL SAVINGS ASSOCIATIONS—Continued

U.S. code citation	CMP description	Maximum penalty amount (in dollars) [8]
12 U.S.C. 1820(k)(6)(A)(ii).	Violation of Post-Employment Restrictions:	
	Per violation	390,271
12 U.S.C. 1832(c)	Violation of Withdrawals by Negotiable or Transferable Instruments for Transfers to Third Parties:	
	Per violation	3,132
12 U.S.C. 1884	Violation of the Bank Protection Act	345
12 U.S.C. 1972(2)(F)	Violation of Provisions regarding Correspondent Accounts, Unsafe or Unsound Practices, or Breach of Fiduciary Duty:	
	Tier 1	11,864
	Tier 2	59,316
	Tier 3	[2] 2,372,677
15 U.S.C. 78u–2(b)	Violations of Various Provisions of the Securities Act, the Securities Exchange Act, the Investment Company Act, or the Investment Advisers Act:	
	1st Tier (natural person)—Per violation	11,162
	1st Tier (other person)—Per violation	111,614
	2nd Tier (natural person)—Per violation	111,614
	2nd Tier (other person)—Per violation	558,071
	3rd Tier (natural person)—Per violation	223,229
	3rd Tier (other person)—Per violation	1,116,140
15 U.S.C. 1639e(k)	Violation of Appraisal Independence Requirements:	
	First violation	13,627
	Subsequent violations	27,252
42 U.S.C. 4012a(f)(5)	Flood Insurance:	
	Per violation	2,577

[8] The maximum penalty amount is per day, unless otherwise indicated.
[2] The maximum penalty amount for a federal savings association is the lesser of this amount or 1 percent of total assets.
[3] These amounts also apply to statutes that cross-reference 12 U.S.C. 1818, such as 12 U.S.C. 2804, 3108, 3349, 4309, and 4717 and 15 U.S.C. 1607, 1681s, 1691c, and 1692l.

D.J. Fink,
Associate Chief Counsel, Office of the Comptroller of the Currency.
[FR Doc. 2022–28539 Filed 1–3–23; 8:45 am]
BILLING CODE 4810–33–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2022–0844]

Special Local Regulations; Recurring Marine Events, Sector St. Petersburg

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: On January 28, 2023, the Coast Guard will enforce a special local regulation for the Gasparilla Invasion and Parade to provide for the safety of life on navigable waterways during this event. Our regulation for recurring marine events within Sector St. Petersburg identifies the regulated area for this event in Tampa, FL. During the enforcement periods, the operator of any vessel in the regulated area must comply with directions from the Patrol Commander or any designated representative.

DATES: The regulations in 33 CFR 100.703, Table 1 to § 100.703, Line No. 1, will be enforced from 11:30 a.m. through 2:00 p.m., on January 28, 2023.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email Marine Science Technician First Class Ryan Shaak, Sector St. Petersburg Prevention Department, Coast Guard; telephone (813) 228–2191, email: *Ryan.D.Shaak@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulation in 33 CFR 100.703, Table 1 to § 100.703, Line No. 1, for the Gasparilla Invasion and Parade on January 28, 2023 from 11:30 a.m. until 2:00 p.m. This action is being taken to provide for the safety of life on navigable waterways during this event. Our regulation for recurring marine events, Sector St. Petersburg, § 100.703, Table 1 to § 100.703, Line No. 1, specifies the location of the regulated area for the Gasparilla Invasion and Parade which encompasses portions of Hillsborough Bay, Seddon Channel, Sparkman Channel and Hillsborough River near Tampa, FL. During the enforcement periods, as reflected in § 100.703(c), if you are the operator of a vessel in the regulated area you must comply with directions from the Patrol Commander or any designated representative.

In addition to this notice of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via the Local Notice to Mariners and/or marine information broadcasts.

Dated: December 27, 2022.

Michael P. Kahle,
Captain, U.S. Coast Guard, Captain of the Port St. Petersburg.
[FR Doc. 2022–28564 Filed 1–3–23; 8:45 am]
BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2022–0531; FRL–9976–02–R7]

Air Plan Disapproval; Missouri; Control of Sulfur Dioxide Emissions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to disapprove revisions to the Missouri State Implementation Plan (SIP)

submitted by Missouri on March 7, 2019. In its submission, Missouri requested rescinding a regulation addressing sulfur compounds from the SIP and replacing it with a new regulation that establishes requirements for units emitting sulfur dioxide (SO_2). The EPA is disapproving the SIP revision because the state has not demonstrated that the removal of SO_2 emission limits for the Evergy-Hawthorn (Hawthorn, formerly Kansas City Power & Light-Hawthorn) and Ameren Labadie (Labadie) power plants from the SIP would not interfere with National Ambient Air Quality Standard (NAAQS) attainment and reasonable further progress (RFP), or any other applicable requirement of the Clean Air Act (CAA). This disapproval action is being taken under the CAA to maintain the stringency of the SIP and preserve air quality.

DATES: The final rule is effective on February 3, 2023.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R07–OAR–2022–0531. All documents in the docket are listed on the *https://www.regulations.gov* web site. Although listed in the index, some information is not publicly available, *i.e.,* 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 *https://www.regulations.gov* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional information.

FOR FURTHER INFORMATION CONTACT: Wendy Vit, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number: (913) 551–7697; email address: *vit.wendy@epa.gov.*

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

Table of Contents

I. What is being addressed in this document?

The EPA is disapproving a submission from Missouri requesting to revise the SIP by removing 10 Code of State Regulations (CSR) 10–6.260 ''Restriction of Emission of Sulfur Compounds'' and replacing it with a new state regulation, 10 CSR 10–6.261 ''Control of Sulfur Dioxide Emissions'' (effective date March 30, 2019). Missouri submitted its request on March 7, 2019. 10 CSR 10–6.260 was originally approved into the SIP at 40 CFR 52.1320(c) in 1998 (63 FR 45727, August 27, 1998) and has been revised several times.[1] 10 CSR 10–6.261 has not been approved into the SIP. Missouri's analysis of the requested SIP revisions can be found in the technical support document (TSD) submitted to the EPA on May 4, 2022, which is included in this docket. The EPA proposed to disapprove these SIP revisions on July 8, 2022 (87 FR 40759). A summary of the EPA's analysis of Missouri's requested SIP revisions is in section II of this document, and additional detail can be found in section II of the proposal.

II. What is the EPA's analysis of the SIP revisions?

In order for the EPA to fully approve a SIP revision, the state must demonstrate that the SIP revision meets the requirements of CAA section 110(l), 42 U.S.C. 7410(l). Under CAA section 110(l), the EPA may not approve a SIP revision that would interfere with any applicable requirement concerning NAAQS attainment and RFP, or any other applicable requirement of the CAA. The EPA interprets section 110(l) such that states have two main options to make this noninterference demonstration. First, a state could demonstrate that emission reductions removed from the SIP are substituted with new control measures that achieve equivalent or greater emission reductions/air quality benefit. Thus, the SIP revision would not interfere with the area's ability to continue to attain or maintain the affected NAAQS or other CAA requirements. The EPA further interprets section 110(l) as requiring such substitute measures to be quantifiable, permanent, surplus, and enforceable.[2] For section 110(l) purposes, ''permanent'' means the state cannot modify or remove the substitute measure without EPA review and approval. Additionally, when a control measure that was previously approved into the SIP is relied on as a substitute, the emission reductions must be ''surplus,'' meaning they cannot otherwise be relied on for attainment/maintenance or Rate of Progress/Reasonable Further Progress requirements. Second, another option for the noninterference demonstration is for a state to develop an air quality analysis showing that, even without the control measure or with the control measure in its modified form, the area (as well as interstate and intrastate areas downwind) can continue to attain and maintain the affected NAAQS. For this air quality analysis option, the state could conduct air quality modeling or develop an attainment or maintenance demonstration based on the EPA's most recent technical guidance.

Missouri's proposed SIP revisions would remove SO_2 emission limits for the Hawthorn and Labadie power plants from the SIP. The Hawthorn SO_2 emission limit is a 30-day rolling average limit of 0.12 pounds/million British thermal units (lb/MMBtu) contained in Table I of 10 CSR 10–6.260 in the SIP. The Labadie SO_2 emission limit is a daily average of 4.8 lb/MMBtu found at 10 CSR 10–6.260 (3)(B)3.A.(II) in the SIP. As discussed in detail in its TSD, Missouri contends that there are substitute measures of comparable or greater stringency to these SO_2 emission limits for Hawthorn and Labadie, and therefore argues that removal of these limits from the SIP would satisfy CAA section 110(l) requirements without the need for an air quality analysis showing that removing the measures will not interfere with NAAQS attainment or other applicable requirements.

We disagree with Missouri's analysis and rationale for removing the Hawthorn and Labadie SO_2 emission limits from the SIP. The substitute SO_2 emission limit for Hawthorn is an equivalent SO_2 emission limit contained in a Prevention of Significant Deterioration (PSD) permit. Although the Hawthorn PSD permit is federally enforceable, it is not approved into the SIP and could be later modified without requiring EPA approval, and therefore the substitute measure is not considered permanent.

For Labadie, the substitute SO_2 emission limit is a facility-wide SO_2 emission limit of 40,837 pounds per hour (lb/hr) contained in a Consent Agreement that the EPA approved into the SIP at 40 CFR 52.1320(d) as part of the maintenance plan for the Jefferson County, Missouri nonattainment area

[1] See 71 FR 12623 (March 13, 2006), 73 FR 35071 (June 20, 2008), and 78 FR 69995 (November 22, 2013).

[2] In addition, if a new substitute control measure is relied on in a CAA section 110(l) noninterference demonstration, the new substitute measure should be contemporaneous to the time the emission reductions from the removed/modified measure cease occurring. Because the substitute control measures discussed in this action are existing measures, not new measures, whether or not they are contemporaneous is not a consideration in this disapproval action.

when the area was redesignated to attainment for the 1-hour SO_2 NAAQS (87 FR 4508, January 28, 2022). 10 CSR 10–6.261 does not include any of the limits contained in the Consent Agreement. The proposal details our analysis showing that the 4.8 lb/MMBtu limit, which applies to each of Labadie's four units individually, is more stringent than the 40,847 lb/hr limit in the Consent Agreement under certain operating scenarios. As an example, our analysis shows that Labadie could exceed the 4.8 lb/MMBtu limit but still comply with the Consent Agreement limit when a single unit is operating at 100% load. Furthermore, because the SO_2 emission limit for Labadie contained in the already SIP-approved Consent Agreement is being relied upon for the purpose of maintaining the 1-hour SO_2 NAAQS in the Jefferson County area, it cannot be considered surplus. In addition, Missouri has not provided an air quality analysis demonstrating their proposed SIP revisions related to the Labadie SO_2 emission limits will not interfere with NAAQS attainment or other applicable requirements.

III. Have the requirements for approval of a SIP revision been met?

As explained above, because the EPA's approval of Missouri's requested SIP revisions would not be consistent with CAA section 110(l), we are disapproving the submission. However, the state submission met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The state provided public notice of the revisions from August 1, 2018, to October 4, 2018, and held a public hearing on September 27, 2018. The state received and addressed four comments from three entities, which included the EPA. The state did not make changes to 10 CSR 10–6.261 as a result of comments received prior to submitting to the EPA.

IV. The EPA's Responses to Comments

The public comment period on the EPA's proposed rule opened July 8, 2022, the date of its publication in the **Federal Register**, and closed on August 8, 2022. During this period, the EPA received comments from one commenter, the Missouri Department of Natural Resources (MoDNR), which are addressed below.

Comment 1: The commenter states that the EPA's proposed action is inconsistent with the plain text of CAA section 110(l). The commenter argues that Missouri's SIP does not rely on either of the limits in question for demonstrating attainment, maintenance, or RFP for any NAAQS, and therefore, removal of the limits will not interfere with any of these SIP requirements. The commenter contends that the EPA's proposed disapproval injects new language into CAA section 110(l) requiring states to prove a submitted SIP revision could never interfere with attainment, RFP, or other applicable requirements. On the contrary, according to the commenter, the plain text of the CAA requires the EPA to prove the revision would interfere with applicable CAA requirements. The commenter concludes that because the EPA made no attempt to demonstrate the SIP revision would interfere with any of these requirements, the EPA's basis for disapproval lacks a necessary finding that interference would occur.

Response to Comment 1: States have primary responsibility for air quality within their jurisdictions by submitting SIPs and SIP revisions that specify the manner in which the NAAQS will be achieved and maintained. 42 U.S.C. 7407(a); *Concerned Citizens of Bridesburg* v. *EPA,* 836 F.2d 777, 779 (3d Cir. 1987) (The ''states have the primary authority for establishing a specific plan . . . for achieving and maintaining acceptable levels of air pollutants in the atmosphere.''). After the EPA promulgates the NAAQs, or a revision thereof, each state must submit to the EPA a SIP for the ''implementation, maintenance, and enforcement'' of the standard. 42 U.S.C. 7410(a)(1). The contents of SIPs and the requirements they must fulfill with respect to each NAAQS depend upon the designations and classifications of an area. States must formally adopt SIPs or SIP revisions through state-level notice-and-comment rulemaking. *Id.* § 7410(a)(2).

The EPA's role is to review the SIP or SIP revision. The EPA ''shall'' approve the SIP or SIP revision if it meets the minimum requirements of the CAA. *Id.* section 7410(k)(3); *Train* v. *Nat. Res. Def. Council, Inc.,* 21 U.S. 60, 79 (1975). The EPA cannot disapprove state regulations that form a SIP or SIP revision because the EPA decides that the regulations should be more stringent, as long as the SIP meets the CAA requirements. *See Union Elec Co.* v. *EPA,* 427 U.S. 246, 265 (1976); *Duquesne Light Co.* v. *EPA,* 166 F.3d 609, 611, 613 (3d Cir. 1999).

CAA section 110(l), 42 U.S.C. 7410(l), provides in relevant part, that ''[t]he Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment.'' The EPA has consistently interpreted CAA section 110(l) as permitting approval of a SIP revision as long as ''emissions in the air are not increased,'' thereby preserving ''status quo air quality.'' *Ky. Res. Council, Inc.* v. *EPA,* 467 F.3d. 986, 991, 996 (6th Cir. 2006); *see also Indiana* v. *EPA,* 796 F.3d 803, 805 (7th Cir. 2015) (same); *Ala. Env't Council* v. *EPA,* 711 F.3d 1277, 1292–93 (11th Cir. 2013) (same); *Galveston-Houston Ass'n for Smog Prevention* v. *EPA,* 289 F. App'x 745, 754 (5th Cir. 2008) (same). CAA section 110(l) is an ''antibacksliding'' provision that does not impose substantive obligations, but instead erects a ''high threshold for *removing* controls from a SIP.'' *S. Coast Air Quality Mgmt. Dist.* v. *EPA,* 472 F.3d 882, 900 (D.C. Cir. 2006), *decision clarified on denial of reh'g on other grounds,* 489 F.3d 1245 (D.C. Cir. 2007) (emphasis added); *see also Indiana,* 796 F.3d at 806 (describing CAA section 110(l) as an ''antibacksliding'' provision).

The EPA implements this interpretation of CAA section 110(l) by approving SIP revisions if they do not allow an increase of net emissions. In doing so, ''the level of rigor needed for any CAA [section 110(l)] demonstration will vary depending on the nature and circumstances of the revision.'' [3] Where the EPA anticipates that a SIP revision may increase emissions, it typically requires that a state either (1) submit an air quality analysis to demonstrate that the revision would not interfere with any applicable requirement or (2) substitute equivalent or greater emissions reductions in order to preserve status quo air quality. See 86 FR 48908, September 1, 2021, at 48910 and 86 FR 60170, November 1, 2021, at 60172; *see also Ky. Res. Council,* 467 F. 3d at 995 (denying petition challenging SIP revision approval under CAA section 110(l) where the revision would not increase net emissions).

As described in the proposal, the substitute SO_2 emission limit for Hawthorn is contained in a PSD permit that is not SIP-approved and therefore is not considered permanent. For Labadie, the substitute SO_2 emission limit in the SIP-approved Consent Agreement is less stringent in certain operating scenarios

[3] See Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Reasonably Available Control Technology Determinations for Case-by-Case Sources Under the 1997 and 2008 8-Hour Ozone National Ambient Air Quality Standards, Final Rule, 86 FR 48908, September 1, 2021, at 48910. Also see Air Plan Approval; Pennsylvania; Reasonably Available Control Technology Determinations for Case-by-Case Sources Under the 2008 8-Hour Ozone National Ambient Air Quality Standards, Final Rule, 86 FR 60170, November 1, 2021, at 60172.

than the limit in 10 CSR 10–6.260 in the SIP and does not result in surplus emission reductions. Because the substitute limit is less stringent, Missouri would need to provide an air quality analysis showing that removing the 4.8 lb/MMBtu limit from the SIP will not interfere with any CAA requirement including but not limited to NAAQS attainment, and of most relevance, the current 1-hour SO_2 NAAQS, or alternatively provide substitute emissions reductions that are equivalent or greater to protect air quality.

Comment 2: The commenter states that CAA section 110(l) requires the EPA to make a finding that removal of the Hawthorn SO_2 limit would result in an emission increase that would interfere with an applicable CAA requirement. The commenter says the EPA cannot show that removal of the Hawthorn limit from the rule would result in any emissions increase and therefore the EPA lacks the basis for disapproving the SIP due to its concerns about Hawthorn. The commenter says Hawthorn's limit has not been changed in over 20 years since the permit was issued, and there is no cause to believe this permit limit would ever be relaxed. In addition, the commenter notes that Hawthorn's permit was issued under SIP-approved state new source review (NSR) rule, 10 CSR 10–6.060 ''Construction Permits Required,'' which incorporates by reference federal PSD requirements. The commenter further contends that removing an emission limit from a major source like Hawthorn in a future permitting action would trigger the PSD permit review process, in which case the facility would be subject to a more recent New Source Performance Standard requirement for SO_2, as well as NAAQS impact and Best Available Control Technology analyses, which would likely result in a SO_2 limit that is equal to, if not more stringent than, the limit in the SIP-approved rule.

Response to Comment 2: As stated in the proposal, the disapproval is not based on an expectation that Hawthorn emissions would increase if the limit were removed from the SIP. Rather, our rationale is based on Missouri's reliance on a substitute measure that is not SIP-approved.[4] The equivalent SO_2 emission limit in Hawthorn's federally enforceable PSD permit is not considered permanent because it is not contained in the Missouri SIP and could be modified without requiring EPA approval. While the EPA can provide comments on PSD permits during the state's public notice period, Missouri can issue or modify PSD permits that are not in the SIP without EPA approval pursuant to SIP-approved NSR rule, 10 CSR 10–6.060, and the State's federally approved permitting program. Because substitute emission reduction measures must be not only enforceable but also permanent to be used for 110(l) analysis purposes, it would be inconsistent with CAA section 110(l) to approve the removal of a SIP-approved limit based on a permit that is not SIP-approved.

Comment 3: The commenter states that 10 CSR 10–6.260 in the SIP includes a footnote to Table I in 10 CSR 10–6.260 stating the emission limit comes from the PSD permit and is implemented in accordance with the terms of the permit. The commenter says it is unclear why EPA allowed for all the enforceable requirements for implementation of the limit in 10 CSR 10–6.260 to be dictated by the permit itself, but now indicates it is not acceptable to rely on the permit conditions due to their lack of permanence.

Response to Comment 3: In order for a source-specific permit limit to be practically enforceable, the permit must specify (1) a technically accurate limitation and the portions of the source subject to the limitation; (2) the time period for the limitation (*e.g.,* hourly, daily, monthly, annually); and (3) the method to determine compliance including appropriate monitoring, record keeping and reporting.[5] Through regulations and policies, the EPA has long interpreted the CAA to require monitoring, record keeping, reporting and other compliance assurance measures in SIPs. As stated previously, the substitute SO_2 emission limit for Hawthorn must be SIP-approved to ensure that it cannot be removed or modified without EPA approval. It follows that the associated monitoring, record keeping, and reporting provisions that make the limit practically enforceable must also be approved into the SIP, otherwise these enforceability provisions could be modified without EPA approval.

After carefully reviewing our previous actions pertaining to 10 CSR 10–6.260, we have discovered that monitoring, record keeping, and reporting provisions associated with the Hawthorn SO_2 limit that should have been included in the SIP were not in fact included. However, this previous omission from the State's prior submissions does not justify or allow for the subsequent removal of the numerical limit and averaging period from the approved SIP. In light of the continued omission from the SIP of monitoring, reporting and recordkeeping provisions associated with Hawthorn's approved SO_2 emission limit, the EPA is not taking final action on its proposed determination that there is no deficiency in the SIP.

Comment 4: The commenter notes that in January of 2022, the EPA redesignated the Jackson County, Missouri SO_2 nonattainment area to attainment (87 FR 4812, January 31, 2022). The commenter explains that a separate 24-hour average SO_2 limit for Hawthorn from the same PSD permit was relied on in the modeling demonstration for the Jackson County maintenance plan and redesignation. Hawthorn's 24-hour SO_2 limit is also not SIP-approved. The commenter questions why the EPA allowed the use of a non-SIP approved permit limit in a maintenance demonstration (which directly concerns attainment), but now indicates it is not acceptable to remove a limit from the SIP when the equivalent limit exists in the permit.

Response to Comment 4: To redesignate a nonattainment area to attainment, CAA section 107(d)(3)(E)(iii) specifies that the air quality improvement must be due to permanent and enforceable reductions in emissions. The Jackson County redesignation to attainment for the 1-hour SO_2 NAAQS was based on Missouri's demonstration that the air quality improvement resulted from permanent and enforceable emission reductions at the Vicinity Energy-Kansas City (Vicinity) steam plant.[6] The State's demonstration for the Jackson County redesignation did not rely on SO_2 emission reductions at the Hawthorn power plant.

Hawthorn is located approximately two kilometers outside of the Jackson County nonattainment area boundary. In Missouri's modeling demonstration supporting the redesignation, the state included Hawthorn as a ''nearby source'' in accordance with Table 8–1 in

[4] *See* CAA section 110(a)(2)(D) (''Each such [SIP] shall . . . contain adequate provisions . . .''). See also CAA section 110(a)(2)(A); *Committee for a Better Arvin* v. *EPA,* 786 F.3d 1169, 1175–1176 (9th Cir. 2015) (holding that measures relied on by a state to meet CAA requirements must be included in the SIP).

[5] The EPA guidelines on ''practical enforceability'' considerations are contained in a January 25, 1995 memorandum from the EPA's Office of Enforcement and Compliance Assurance (OECA) entitled ''Guidance on Enforceability Requirements for Limiting Potential to Emit through SIP and § 112 Rules and General Permits.''

[6] See 87 FR 4812, January 31, 2022. Vicinity switched from burning coal to natural gas in its boilers. The fuel switch was made permanent and enforceable via a Consent Agreement approved into the SIP at 40 CFR 52.1320(d).

40 CFR part 51, appendix W, which allows the source to be modeled at its maximum allowable emission limit or federally enforceable permit limit with adjustments based on actual operations. It was acceptable for Missouri to model Hawthorn as a nearby source using a federally enforceable PSD limit that was not SIP-approved rather than as a ''stationary point source subject to SIP emissions limit evaluation for compliance with ambient standards'' under Appendix W Table 8–1 because (1) Hawthorn was not relied on for the state's maintenance demonstration that air quality improvements resulted from permanent and enforceable SO_2 emission reductions, and (2) Hawthorn is located outside of the former nonattainment area boundary.

Comment 5: The commenter provided a summary of Labadie's total monthly SO_2 emissions allowed under the unit-specific 4.8 lb/MMBtu limit contained in 10 CSR 10–6.260 and the facility-wide Consent Agreement limit of 40,837 lb/hr. Based on this summary, the commenter concludes that the Consent Agreement limit reduces Labadie's allowable facility-wide SO_2 emissions by 66 percent and is therefore more stringent, making the older 4.8 lb/MMBtu limit obsolete. The commenter further states that an air quality modeling analysis comparing the stringencies of the two limits would show the Consent Agreement limit is nearly three times more protective than the 4.8 lb/MMBtu limit.

Response to Comment 5: As demonstrated in Missouri's modeling analysis supporting the redesignation of Jefferson County to attainment for the 1-hour SO_2 NAAQS, the Consent Agreement limit of 40,837 lb/hr was set at a level that addresses Labadie's contributions to the Jefferson County SO_2 nonattainment area.[7] However, that analysis does not demonstrate that the Consent Agreement limit is protective of the 1-hour SO_2 NAAQS in all locations, including locations outside the Jefferson County area, nor does it demonstrate that removal of the 4.8 lb/MMBtu limit would not interfere with any applicable requirements consistent with an air quality analysis under CAA section 110(l).

As described previously, where the EPA anticipates that a SIP revision may allow an increase in emissions, the EPA typically requires that a state either substitute equivalent or greater emissions reductions or submit an air quality analysis demonstrating that the revision would not interfere with any applicable requirement. In this case, to compare the stringencies of the two different SO_2 emission limits (the Consent Agreement limit of 40,837 lb/hr versus 4.8 lb/MMBtu), the limits must first be converted so that they are in equivalent units of measure (*i.e.,* both limits expressed as either lb/MMBtu or lb/hr) and apply to the same number of emission units (*i.e.,* both limits expressed on either a facility-wide basis or an individual unit basis). This analysis requires making assumptions about the number of units that are operating, as well as the heat input rate and load of the individual units in operation. As discussed in the proposal, there are potential operating scenarios in which individual units at Labadie could exceed an SO_2 rate of 4.8 lb/MMBtu while total facility-wide SO_2 emissions remain in compliance with the 40,837 lb/hr limit. Examples include a single unit operating at 100% load or two units operating at approximately 50% load, among other scenarios. Because the SO_2 limit of 4.8 lb/MMBtu can be shown to be exceeded in some situations, we conclude that the limit in the Consent Agreement is not more stringent. For this reason, an air quality analysis demonstrating that removal of the 4.8 lb/MMBtu limit from the SIP would be protective of the 1-hour SO_2 NAAQS is needed.

An air quality analysis for the requested SIP revisions may need to take into account multiple operating scenarios because dispersion of SO_2 emissions from one or two units at Labadie may be different from four units with the same mass of SO_2 emissions.[8] As an example, one scenario could be based on a concentrated SO_2 plume from a single stack consisting of mass emissions totaling 40,847 lb/hr from one of Labadie's units operating at an SO_2 rate at or above 4.8 lb/MMBtu. Other potential operating scenarios may also need to be included in the air quality analysis (*e.g.,* two of Labadie's units operating at 50% load emitting from two separate stacks or from the dual flue stack) in order to demonstrate that the removal of the 4.8 lb/MMBtu limit is protective of the 1-hour SO_2 NAAQS in all areas. An air quality modeling demonstration comparing the stringencies of the two limits, as suggested in the comment, is not sufficient for CAA section 110(l) purposes.

Comment 6: The commenter notes that the EPA's basis for stating the Consent Agreement limit is not always more stringent than the older 4.8 lb/MMBtu limit is based on a scenario where only one unit at the facility is operating during a day. The commenter states that while this is technically true, if the facility were to take advantage of the facility-wide Consent Agreement limit in this way, it would prevent the operation of any of the other three units that day. The commenter states that conversely, the 4.8 lb/MMBtu limit does not prevent additional units from operating if one of the units hits the maximum allowable rate. The commenter concludes that even under the EPA's hypothetical scenario, the Consent Agreement limit is still more stringent and more protective than the 4.8 lb/MMBtu limit.

Response to Comment 6: As discussed above, our analysis based on multiple potential operating scenarios shows that the 4.8 lb/MMBtu limit is more stringent than the Consent Agreement limit *in some cases.* Consistent with CAA section 110(l), in order to support removal of the 4.8 lb/MMBtu limit from the SIP, Missouri would need to provide an air quality analysis showing that the 1-hour SO_2 NAAQS would be protected in all areas under these operating scenarios if the 4.8 lb/MMBtu limit were removed from the SIP. Alternatively, Missouri could demonstrate that the various operating scenarios assumed for Labadie are prohibited by permanent and enforceable measures to be included in the SIP.

Comment 7: The commenter analyzed daily and hourly emissions data from the EPA's Clean Air Markets Division (CAMD) database and concluded there was not a single day in the last five years when only one unit at Labadie was operating. Based on this analysis, the commenter states there were only 55 days over this period where the facility operated two units, which shows how unlikely EPA's assumed scenario is in reality.

Response to Comment 7: The commenter's analysis of operations at Labadie focuses on recent data from CAMD, which does not necessarily reflect how the Labadie plant will be operated in the future. For instance, Ameren Missouri's Integrated Resource Plan, filed in 2020 and updated in 2021 and 2022, states that two of the four units currently operating at Labadie are anticipated to be retired by the end of

[7] Labadie is located approximately 36 kilometers outside of the Jefferson County nonattainment area boundary to the northwest.

[8] Labadie units 1 and 2 are each routed to separate, individual stacks. Labadie units 3 and 4 are vented through two flues contained in a single stack.

2036.[9] It is plausible that with only two remaining coal units in operation at Labadie, situations where only a single unit is operating on a given day may occur more frequently in the future. Without an air quality analysis showing that the 1-hour SO_2 NAAQS would be protected in all areas in this and potentially other operating scenarios as discussed above, we cannot approve removal of the 4.8 lb/MMBtu limit from the SIP.

Comment 8: The commenter provided an analysis of the highest daily average SO_2 emission rate in lb/MMBtu for each of the Labadie boilers during the past five years. Based on this analysis, the commenter concluded that the highest daily average SO_2 emission rate of any of the four boilers during the past five years is 0.78 lb/MMBtu, which is 16 percent of the 4.8 lb/MMBtu limit. The commenter contends that this shows the 4.8 lb/MMBtu limit is not a controlling limit, as there is not a single day in the past five years where the facility did not operate with at least an 80 percent compliance margin with this limit.

Response to Comment 8: We agree that Labadie's boilers have operated at actual SO_2 lb/MMBtu rates well below the 4.8 lb/MMBtu limit in recent years based on CAMD data. However, there is no permanent and enforceable limit or requirement in place to prevent a switch to a higher sulfur coal at Labadie, which potentially allows individual units to emit an SO_2 rate as high as 4.8 lb/MMBtu or more.

Comment 9: The commenter noted that because 10 CSR 10–6.261 is a state enforceable rule, while 10 CSR 10–6.260 remains federally enforceable until it is removed from the SIP, operating permits issued by the state must include conditions from both of these regulations for facilities meeting the applicability criteria. For this reason, according to the commenter, the state's air permitting staff must spend time explaining why both rules must be evaluated for permitting purposes, a common question that arises with nearly every permit application. The commenter concludes that this disapproval action extends the time required for issuing operating permits and takes away time that permit authors could be spending on priority initiatives such as eliminating the permit backlog.

Response to Comment 9: As discussed in greater detail above, the EPA is disapproving Missouri's SIP submission because the state has not demonstrated that the removal of SO_2 emission limits for the Hawthorn and Labadie power plants from the SIP would not interfere with NAAQS attainment, RFP, or any other applicable requirement of the CAA as required under CAA section 110(l). This comment is beyond the scope of this disapproval action.

V. What action is the EPA taking?

The EPA is disapproving a SIP submission from Missouri that would rescind 10 CSR 10–6.260 ''Restriction of Emission of Sulfur Compounds'' and replace it with 10 CSR 10–6.261 ''Control of Sulfur Dioxide Emissions.'' By disapproving these revisions, 10 CSR 10–6.260 will be retained in the SIP, along with the already SIP-approved Consent Agreement. The EPA has determined that Missouri's proposed SIP revisions do not meet the requirements of the Clean Air Act because the revisions would remove permanent and enforceable emission limits, thereby relaxing the stringency of the SIP. Furthermore, Missouri has not shown that the proposed SIP revision related to removal of the Labadie 4.8 lb/MMBtu limit would not have an adverse impact on air quality.

Under section 179(a) of the CAA, final disapproval of a submittal that addresses a requirement of part D, title I of the CAA (CAA sections 171–193) or is required in response to a finding of substantial inadequacy as described in CAA section 110(k)(5) (SIP Call) starts a sanctions clock. The Missouri SIP submission being disapproved was not submitted to meet either of these requirements. Therefore, this disapproval will not trigger mandatory sanctions under CAA section 179. In addition, CAA section 110(c)(1) provides that EPA must promulgate a Federal Implementation Plan (FIP) within two years after either finding that a State has failed to make a required submission or disapproving a SIP submission in whole or in part, unless EPA approves a SIP revision correcting the deficiencies within that two-year period. With respect to the disapproval of Missouri's SIP submission, in our proposed action we concluded that any FIP obligation resulting from this disapproval would be satisfied by finalization of our proposed determination that there is no deficiency in the SIP to correct.[10] We are not taking final action on making that determination, however. Specifically, although the previously approved SO_2 emission limits discussed in this rulemaking will remain in the SIP and remain federally enforceable, as discussed above we have discovered that monitoring, recordkeeping and reporting requirements associated with the SO_2 limit for Hawthorn were not previously approved into the SIP. This omission precludes our finalizing the proposed determination that there is no deficiency in the SIP to correct, and consequently does not eliminate the EPA's duty to promulgate a FIP within two years after disapproving the current SIP submission unless the EPA approves a SIP revision correcting the deficiencies within that two-year period. If the EPA were to take such an action, it would be done through a separate rulemaking process, including a notice of proposed rulemaking with the opportunity for the public to review and comment.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA because it does not contain any information collection activities.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action merely disapproves a SIP submission as not meeting the CAA.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and

[9] See *https://www.ameren.com/missouri/company/environment-and-sustainability/integrated-resource-plan.*

[10] The EPA's obligation under CAA section 110(c)(1) to issue a FIP following a SIP disapproval is not limited to ''required'' plan submissions. However, the EPA can avoid promulgating a FIP if the Agency finds that there is no ''deficiency'' in the SIP for a FIP to correct. *Association of Irritated Residents vs. United States Environmental Protection Agency,* 632 F.3d 584 (9th Cir. 2011).

responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This action does not apply on any Indian reservation land, any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, or non-reservation areas of Indian country. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it merely disapproves a SIP submission as not meeting the CAA.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations. This action merely disapproves a SIP submission as not meeting the CAA.

K. Congressional Review Act

This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

L. CAA Section 307(b)(1)

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 March 6, 2023. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: December 20, 2022.

Meghan A. McCollister,

Regional Administrator, Region 7.

[FR Doc. 2022–28139 Filed 1–3–23; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 405, 410, 411, 412, 413, 416, 419, 424, 485, and 489

[CMS–1772–CN; CMS–3419–CN]

RIN 0938–AU82

Medicare Program: Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs; Organ Acquisition; Rural Emergency Hospitals: Payment Policies, Conditions of Participation, Provider Enrollment, Physician Self-Referral; New Service Category for Hospital Outpatient Department Prior Authorization Process; Overall Hospital Quality Star Rating; COVID–19; Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Final rule with comment period and final rule; correction.

SUMMARY: This document corrects technical errors in the final rule with comment period and final rule that appeared in the **Federal Register** on November 23, 2022, titled ''Medicare Program: Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs; Organ Acquisition; Rural Emergency Hospitals: Payment Policies, Conditions of Participation, Provider Enrollment, Physician Self-Referral; New Service Category for Hospital Outpatient Department Prior Authorization Process; Overall Hospital Quality Star Rating; COVID–19.''

DATES: This correction is effective January 1, 2023.

FOR FURTHER INFORMATION CONTACT:

Elise Barringer via email, *Elise.Barringer@cms.hhs.gov* or at (410) 786–9222, for general inquiries.

Kianna Banks via email, *Kianna.Banks@cms.hhs.gov* or at (410) 786–3498, for issues related to REH Conditions of Participation (CoP) and Critical Access Hospital (CAH) CoP Updates.

Nicole Hilton via email, *Nicole.Hilton@cms.hhs.gov* or at (410) 786–1000, for issues related to Rural Emergency Health Quality Reporting Program (REHQR).

Terri Postma via email, *Terri.Postma@cms.hhs.gov* or at (410) 786–4169, for issues related to Request for Information on Use of CMS Data to Drive Competition in Healthcare Marketplaces.

SUPPLEMENTARY INFORMATION:

I. Background

In the final rule with comment period and final rule that appeared in the November 23, 2022 **Federal Register** (87 FR 71748) titled ''Medicare Program: Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs; Organ Acquisition; Rural Emergency Hospitals: Payment Policies, Conditions of Participation, Provider Enrollment, Physician Self-Referral; New Service Category for Hospital Outpatient Department Prior Authorization Process; Overall Hospital Quality Star Rating; COVID–19'', there were a number of technical and typographical errors that are identified and corrected in this correcting document. The provisions in this correction document are effective as if they had been included in the document published November 23, 2022. Accordingly, the corrections are effective January 1, 2023.