



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2025-0137; FRL-12752-01-R9]

Air Plan Approval; Guam; Clean Data Determination for the Piti-Cabras Nonattainment Area for the 2010 1-Hour Sulfur Dioxide National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing a clean data determination (CDD) for the Piti-Cabras, Guam sulfur dioxide (SO₂) nonattainment area (“Piti-Cabras area”) based on our determination that the area has attained the 2010 1-hour SO₂ National Ambient Air Quality Standard (NAAQS, “standard,” or “2010 SO₂ NAAQS”). In designated nonattainment areas where air quality data demonstrate that a NAAQS has been attained, the EPA interprets certain requirements of the Clean Air Act (CAA) as no longer applicable for so long as air quality continues to meet the standard. Under this Clean Data Policy, the EPA may issue a determination of attainment, known as a CDD, that a nonattainment area is attaining the relevant NAAQS. If finalized, this proposed CDD would suspend the obligation to submit certain attainment planning requirements for the Piti-Cabras area for as long as the area continues to attain the 2010 SO₂ NAAQS or until the area is formally redesignated.

DATES: Written comments must arrive on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-OAR-2025-0137 at <https://www.regulations.gov>. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information

(CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Karina Oconnor, Manager, Planning Section, Planning & Analysis Branch, Air & Radiation Division, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972-3498, or by email at OConnor.Karina@epa.gov.

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

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I. Background

On June 22, 2010 (75 FR 35520), the EPA published in the *Federal Register* a strengthened, primary 1-hour SO₂ NAAQS, establishing a new standard at a level of 75 parts per billion (ppb), based on the 3-year average of the annual 99th percentile of daily maximum 1-hour

average concentrations of SO₂.¹ Following promulgation of a new or revised NAAQS, the EPA is required to designate all areas of the country as either “attainment,” “nonattainment,” or “unclassifiable.”² On December 21, 2017, the EPA designated six areas in three States and two territories as nonattainment in the third round of SO₂ designations, effective April 9, 2018.³ With that action, the EPA designated as nonattainment the portion of Guam within a 6.074-km radius centered on UTM Easting 249,601.60 m, and UTM Northing 1,489,602.00 m (UTM Zone 55N).⁴

The Piti-Cabras area is located on the western side of the island of Guam, centered on the Piti and Cabras power plants, which are both owned by Guam Power Authority (GPA). The Piti facility (also referred to as Marianas Energy Company (MEC)) consists of two baseload electric generating units (8 and 9). Piti 8 and 9 are two 45.2 megawatt (MW) diesel engines. The Cabras facility consists of two baseload electric generating units (1 and 2) that are 66 MW units. These facilities are the primary emitters of SO₂ in the area. Nearby, the Taiwan Electrical and Mechanical Engineering Services (TEMES) power plant (also referred to as “Piti 7”),⁵ and commercial and United States Navy (“Navy”) marine vessel ports are also significant emitters of SO₂. No other sources on or beyond the island were determined to have the potential to cause concentration gradient impacts within the area of analysis. The Modeling Technical Support Document (TSD) included in the docket for this rulemaking contains more information on the facilities and emissions.

The CAA directs states containing an area designated nonattainment for the 2010 SO₂ NAAQS to develop and submit a nonattainment area SIP revision to the EPA within 18 months of the effective date of an area's designation as nonattainment. The nonattainment area SIP revision (also referred to as an attainment plan) must meet the requirements of subparts 1 and 5 of

¹ On June 2, 2010, the EPA signed the final rule titled, “Primary National Ambient Air Quality Standard for Sulfur Dioxide,” 75 FR 35520 (June 22, 2010), codified at 40 CFR part 50.

² CAA section 107(d)(1).

³ 83 FR 1098 (January 9, 2018).

⁴ For designations technical discussions, see the Technical Support Document, Chapter 11: Intended Round 3 Area Designations for the 2010 1-Hour SO₂ Primary National Ambient Air Quality Standard for Guam. EPA Office of Air and Radiation, December 2017, Section 3, 6–26, available in the docket for this action.

⁵ TEMES, or Piti 7, is a 40 MW combustion turbine and is also owned by GPA.

part D, of Title 1 of the CAA, 42 U.S.C. 7401 *et seq.*, and provide for attainment of the NAAQS by the applicable statutory attainment date.⁶ To be approved by the EPA, under section 192(a), these nonattainment area SIP revisions must provide for attainment of the NAAQS as expeditiously as practicable, but no later than five years from the effective date of designation. The Guam Environmental Protection Agency (Guam EPA) was required to prepare and submit to the EPA a nonattainment area SIP revision by October 9, 2019, to bring the area into attainment by the attainment date of April 9, 2023. However, Guam EPA failed to submit a complete attainment plan for the area by the October 9, 2019 deadline. On November 3, 2020, the EPA issued a finding that the Territory, among other areas, had failed to submit the required attainment plan.⁷

Pursuant to section 179 of the CAA and 40 CFR 52.31, the November 3, 2020 “finding of failure to submit” (FFS) triggered sanctions clocks. More specifically, under 40 CFR 52.31, the offset sanction in CAA section 179(b)(2) would be imposed 18 months after November 3, 2020, and the highway funding sanction in CAA section 179(b)(1) would be imposed six months after the offset sanction was imposed, unless the EPA determined that a subsequent SIP submission corrected the identified deficiencies before the applicable deadlines.⁸

The FFS action also started a two-year clock by which the EPA is required under CAA section 110(c) to promulgate a Federal Implementation Plan (FIP) for the area, unless Guam submits, and the EPA approves, an attainment plan for the area before December 3, 2022. Guam EPA has not submitted an attainment plan for the Piti-Cabras area, and both offset and highway sanctions are currently in effect in the area.

Because there are no available ambient SO₂ monitoring data and there are only limited data available regarding recent actual emissions, the EPA proposes to determine, based on an evaluation of updated emissions data for the major SO₂ sources in the Piti-Cabras area and based

⁶ See sections 172 and 191-192 of the CAA.

⁷ 85 FR 69504 (November 3, 2020).

⁸ See 40 CFR 52.31(d)(5).

on more recently available supporting air quality modeling data, that the Piti-Cabras area is attaining the 2010 SO₂ NAAQS and qualifies for a CDD under the EPA's Clean Data Policy.

II. EPA Clean Data Policy and Clean Data Determinations

Following enactment of the CAA Amendments of 1990, the EPA discussed its interpretation of the requirements for implementing the NAAQS in the “General Preamble for the Implementation of title I of the CAA Amendments of 1990” (“General Preamble”).⁹ In 1995, based on the interpretation of CAA sections 171, 172, and 182 in the General Preamble, the EPA set forth what has become known as its “Clean Data Policy” for the 1-hour ozone NAAQS.¹⁰ Under the Clean Data Policy, for a nonattainment area that is attaining the NAAQS, the EPA interprets the requirements of the CAA that are specifically designed to help an area achieve attainment to be suspended for so long as air quality continues to meet the standard.¹¹ These requirements include attainment demonstrations, implementation of reasonably available control measures (RACM), including reasonably available control technology (RACT), reasonable further progress (RFP) demonstrations, emissions limitations and control measures as necessary to provide for attainment, and contingency measures.¹² The EPA’s “Guidance for 1-Hour SO₂ Nonattainment Area SIP Submissions,” provides guidance and the EPA’s rationale for the application of the existing Clean Data Policy to the 2010 1-hour primary SO₂ NAAQS.¹³

⁹ 57 FR 13498, 13564 (April 16, 1992).

¹⁰ Memorandum dated May 10, 1995, from John S. Seitz, Director, Office of Air Quality Planning and Standards, to Regional Office Air Division Directors, Regions 1-10, Subject: “Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment areas Meeting the Ozone National Ambient Air Quality Standard The EPA’s statutory interpretation of the Clean Data Policy is further described in the “Final Rule to Implement the 8-hour Ozone National Ambient Air Quality Standard—Phase 2 (referred to as the Phase 2 Final Rule)”, 70 FR 71612 (November 29, 2005). The Tenth, Seventh, and Ninth Circuit Courts have upheld EPA rulemakings applying the Clean Data Policy. See *Sierra Club v. EPA*, 99 F. 3d 1551 (10th Cir. 1996); *Sierra Club v. EPA*, 375 F. 3d 537 (7th Cir. 2004); *Our Children’s Earth Foundation v. EPA*, No. 04–73032 (9th Cir., June 28, 2005) memorandum opinion.

¹¹ *Id.*

¹² See 57 FR 13498, 13564; Memorandum dated September 4, 1992 from John Calcagni, Director, Air Quality Management Division, to Air Directors, Subject: “Procedures for Processing Requests to Redesignate Areas to Attainment” p. 6.

¹³ Memorandum dated April 23, 2014, from Stephen D. Page, Director, EPA Air Quality Management Division, to Regional Office Air Division Directors, Regions 1-10, Subject: “Guidance for 1-Hour SO₂ Nonattainment Area SIP Submissions.”

The EPA may issue a CDD under our Clean Data Policy when a nonattainment area is attaining the 2010 SO₂ NAAQS based on the most recent available data. The EPA will determine whether the area has attained the 2010 SO₂ NAAQS based on available information, including air quality monitoring data and air quality dispersion modeling information for the affected area.

A determination of attainment under the Clean Data Policy does not serve to alter the area's nonattainment designation. CDDs are not redesignations to attainment. For the EPA to redesignate an area to attainment the state must submit, and the EPA must approve, a redesignation request for the area that meets the requirements of CAA section 107(d)(3).

III. The EPA's Analysis Supporting a Clean Data Determination for the Piti-Cabras Area

The EPA may issue a CDD for an SO₂ nonattainment area if the most recent three years of air quality monitoring data from a monitor sited in the area of peak ambient SO₂ concentrations show attainment of the NAAQS and any other relevant information, such as dispersion modeling, show the area is meeting the NAAQS, or based on modeling of actual emissions or permitted allowable emissions. Initial designations for the 2010 SO₂ NAAQS were based on the EPA's technical assessment of, and conclusions regarding the weight of evidence for, each area, including but not limited to available air quality monitoring data (for the three most recent calendar years) and/or air quality modeling. In the case of the Piti-Cabras area, there are no available monitoring data.

For a CDD, in the absence of available monitoring data, air quality dispersion modeling based upon the most recent three years of actual emissions or permitted allowable emissions should show attainment of the 2010 SO₂ NAAQS. In this case, the EPA's modeling analysis was based upon permitted allowable emissions.

A. Overview of the EPA's Modeling Analysis for the Piti-Cabras Area

The EPA's SO₂ Modeling Technical Assistant Document ("Modeling TAD") outlines modeling approaches for SO₂ NAAQS attainment designations to assist State, local, and Tribal air agencies in the characterization of ambient air quality in areas with significant SO₂ emission

sources.¹⁴ The EPA's SO₂ Modeling TAD and the Guidance for 1-Hour SO₂ Nonattainment Area SIP Submissions outline recommended modeling approaches and provide recommendations on several aspects of dispersion modeling in this context, including the use of permitted allowable emissions, source characterization, meteorological data, model selection, and background concentrations. Consistent with the approach set forth in the SO₂ Modeling TAD and the Guidance for 1-Hour SO₂ Nonattainment Area SIP Submissions, the EPA conducted a dispersion modeling analysis for the Piti-Cabras area to show the impact on air quality of all large SO₂ emissions sources.¹⁵

For this area, the primary sources of SO₂ emissions include the Piti facility, which consists of Units 8 and 9, and the Cabras facility which consists of Units 1 and 2. Nearby, the TEMES power plant and commercial and Navy marine vessel ports are also significant emitters of SO₂. No other sources on or beyond the island were determined to have the potential to cause concentration gradient impacts within the area of analysis. We chose to model these facilities using the federally enforceable emissions limits for SO₂. Pursuant to a consent decree with the United States, GPA was required by July 31, 2022, and continuing thereafter, to use only ultra-low sulfur diesel (ULSD) to power Piti Units 8 and 9, and by December 31, 2022, to use fuel oil with no greater than 0.2 percent sulfur by weight to power Cabras Units 1 and 2.¹⁶ We also note that, since an explosion and fire in August 2015, Cabras units 3 and 4 have not been operational, which was memorialized in a 2020 consent decree. The consent decree also required the permanent retirement of Cabras units 3 and 4 by May 20, 2020. The TEMES (Piti 7) facility is

¹⁴ EPA, Office of Air Quality Planning and Standards, "SO₂ NAAQS Designations Modeling Technical Assistance Document," August 2016.

¹⁵ We note that Guam EPA provided processed meteorological and surface datafiles for input to AERMOD and AERMOD files to assist in the modeled demonstration. Subsequently, we refined AERMOD input files for purposes of conducting the modeling work discussed here. See Docket items A-1 to A-3 for relevant email exchanges between Guam EPA, Guam Power Authority, TRC Corporation, and EPA Region 9.

¹⁶ D. Guam, Case 1:20-cv-00007, Document 5, Filed 04/20/20; D. Guam, Case 1:20-cv-00007, Document 7, Filed 01/14/22. See also Guam Power Authority, Semi-Annual Report dated January 31, 2024, included in the docket for this action, for compliance verification from GPA.

limited to use of 0.5 percent sulfur under the terms of its current permit.¹⁷ Accordingly, emissions rates corresponding to these fuel sulfur levels were used in the modeling.

The modeling TSD prepared by the EPA for this rulemaking contains a summary of the facilities in the modeling analysis and their associated potential to emit (PTE) rates.¹⁸

Based on the source-specific annual SO₂ emissions in the Modeling TSD, permitted allowable emissions from the Piti facility have been reduced by 99.9 percent between original designation and CDD modeling periods, emissions from the Cabras facility have been reduced by 90 percent between designation and CDD modeling periods, and marine vessel emissions have been reduced by 75 percent between designation and CDD modeling periods.

The EPA modeled the emissions impacts from the Cabras, Piti, TEMES, and marine vessel facilities and sources described in this document in the Piti-Cabras area. The EPA used permitted allowable emissions for the Cabras, Piti, TEMES, facilities, and marine vessel emissions. The EPA's analysis uses the American Meteorological Society/Environmental Protection Agency Regulatory Model (AERMOD), with pre-processing input data from the EPA's Regulatory Model Terrain Pre-processor (AERMAP) and the EPA's AERMOD Meteorological Preprocessor (AERMET) models. AERMOD is a steady-state plume model that incorporates air dispersion based on planetary boundary layer (PBL) turbulence structure and scaling concepts, including treatment of both surface and elevated sources, and both simple and complex terrain. AERMAP is a stand-alone terrain pre-processor, which is used to both characterize terrain and generate receptor grids for use in AERMOD. AERMET is a stand-alone program which provides AERMOD with the information it needs to characterize the state of the surface and mixed layer, and the vertical structure of the PBL. The EPA's modeling comports with the EPA's SO₂ Modeling TAD and the Guidance for 1-Hour SO₂ Nonattainment Area SIP Submissions, with additional guidance provided by EPA's AERMOD Implementation Guide

¹⁷ GEPA Title V Operating Permit, Taiwan Electrical & Mechanical Services, Inc. (TEMES Guam), Permit Number:02-MAJFOPP0329.12, issued March 29, 2007, section II.C.5.

¹⁸ The Modeling TSD is included in the docket for this rulemaking.

along with appropriate sections of 40 CFR part 51, appendix W and AERMOD, AERMAP, and AERMET user guides.

The EPA developed the receptor grid consistent with the SO₂ Modeling TAD. For the area of analysis, the EPA placed receptors at a spacing of 25 meters along the ambient air boundary around GPA sources, a spacing of 50 meters out to a distance of 1 kilometer from each major source,¹⁹ a spacing of 100 meters from that point out to a distance of 2 kilometers from a major source, a spacing of 250 meters from that point out to a distance of 10 kilometers from a major source, and a spacing of 500 meters from that point out to the furthest coast of the island. Additional receptors were placed to locate the area of maximum modeled concentration. The receptor network covered the island of Guam. Consistent with the Modeling TAD, the EPA placed receptors in locations that would be considered ambient air relative to each modeled facility, including other facilities' property. The EPA's selected modeling domain for the CDD analysis captures the maximum modeled concentration from the primary emissions sources in the Piti-Cabras area, per the appendix W modeling guidance. For further information on the receptor grid utilized for the EPA's modeling analysis, refer to the AERMAP/Model Receptor Development section of EPA's Modeling TSD prepared in support of this rulemaking.

In accordance with the EPA's SO₂ Modeling TAD, the EPA selected the surface meteorology from an onsite meteorological tower located at the Cabras Plant and coincident upper air observations from the Guam Airport (GUM) as best representative of meteorological conditions within the area of analysis. The modeling analysis used surface data in Integrated Surface Hourly Data (ISHD) format and upper air data in Forecast Systems Laboratory (FSL) format for GUM from 2011 through 2015 for analysis.²⁰ The onsite meteorological data of wind speed and direction from the 60-meter tower level located at the Cabras Plant were used as the

¹⁹ In this case, we are referring to a major source of SO₂ in the Piti-Cabras area, defined in section III.A of this proposed rulemaking.

²⁰ Review of the data indicated that observations of cloud cover and other stability-type data necessary to run AERMOD were missing for a significant portion of the year 2014 and this year did not meet minimum data collection requirements. Thus, the three- year consecutive data period of 2011 through 2013 was used in this analysis.

primary source of surface wind data for the analysis. Onsite data collected from 2011 to 2013 were used, as this was the most recent data collection available.

To estimate surface characteristics of the area of analysis, Guam EPA did not use AERSURFACE because the National Land Cover Dataset is not available for Guam. Instead, Guam EPA used Coastal Change Analysis Program data for Guam for 2005 to determine surface micro-meteorological characteristics at the primary on-site meteorological station. The Territory estimated values for albedo and the Bowen ratio²¹ using a ten-by-ten-kilometer area. The Territory estimated values for eight spatial sectors out to 1 kilometer centered around the onsite meteorological station at an annual temporal resolution for wet and average conditions for calculating the surface roughness. These data were then provided to the EPA by Guam EPA for use in these modeling analyses.

Meteorological data from the above surface and upper air National Weather Service (NWS) stations were used in generating AERMOD-ready files with the AERMET processor. The output meteorological data created by the AERMET processor is used with AERMOD input files for AERMOD modeling runs. The Territory followed the methodology and settings presented in the SO₂ NAAQS Designations Modeling Protocol for the Island of Guam, dated June 22, 2016, in the processing of the raw meteorological data into an AERMOD-ready format.²²

Hourly surface meteorological data records are read by AERMET and include all the necessary elements for data processing. However, wind data taken at hourly intervals may not always portray wind conditions for the entire hour, which can be variable in nature. Hourly wind data may also be overly prone to indicate calm conditions, which are not modeled by AERMOD. In order to better represent actual wind conditions at the meteorological tower, Automated Surface Observing System (ASOS) wind data of 1-minute duration was provided by the GUM

²¹ The Bowen ratio is a method generally used to calculate heat lost or heat gained in a substance.

²² For designations technical discussions, see the EPA's Technical Support Document, Chapter 11, Section 3, 6–26, available in the docket for this rulemaking.

NWS station. These ASOS data were subsequently integrated into the AERMET processing to produce final hourly wind records of AERMOD-ready meteorological data that better estimate hourly average conditions and that are less prone to over-report calm wind conditions. This allows AERMOD to apply more hours of meteorology to modeled inputs, consequently producing a more complete set of modeled concentrations. To prevent the computation of unreasonably and excessively high concentrations that could be produced by AERMOD in calm winds, Guam EPA set a minimum wind speed threshold of 0.5 meters per second in processing meteorological data for use in AERMOD, as suggested in the User's Guide for the AERMOD Meteorological Preprocessor (AERMET).²³ In setting this threshold, no wind speeds lower than this value were used for determining concentrations. This threshold was specifically applied to the 1-minute wind data.

In accordance with the EPA's SO₂ Modeling TAD, the background concentration was calculated using data from the monitoring site at Nimitz Hill, which operated from 1999 to 2000, but is no longer in operation. Data collected when the monitor was within a 90-degree downwind sector from the modeled sources were excluded in the background concentration calculation to avoid including facility impacts in the background concentration, as they are explicitly modeled. These data were the most representative of the area due to its location, being both closer to the GPA sources than one other option and downwind of the sources during westerly winds, unlike another option. Furthermore, the Nimitz Hill monitor is located inland in mountainous terrain, similar to where the highest concentrations were expected based on designations modeling. Although other monitoring sites were considered as well, their 99th percentile concentrations without excluding the 90-degree sector were lower, suggesting that the Nimitz Hill monitor was representative, but conservative. The subsequent background concentration for this area of

²³ User's Guide for the AERMOD Meteorological Preprocessor (AERMET), EPA, November 2024.

analysis was determined by the Territory to be 29 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$), or 11 ppb,²⁴ which was incorporated into the final AERMOD results.

To capture the CDD model impacts, the physical stack parameters and hourly, actual SO_2 emissions rates must be properly constructed. The CDD modeling analysis utilized stack and building information and is described in detail in the Source Characterization section of the Modeling TSD prepared by the EPA in support of this rulemaking.

B. Results of the EPA's Air Quality Modeling Analysis

The EPA's modeling analysis utilized meteorological data, permitted allowable hourly SO_2 emissions, and corresponding hourly stack velocities and stack temperatures to simulate SO_2 concentrations over the Piti-Cabras nonattainment area. This modeling analysis shows that in 2023, the Piti-Cabras area did not violate the 2010 1-hour SO_2 NAAQS based on allowable SO_2 emissions from sources within or near the area.²⁵

The EPA's main modeling analysis based on 2023 allowable emissions showed a peak design value (i.e., the 3-year average of the annual 99th percentile of daily maximum 1-hour average concentrations, or the 99th percentile concentrations) of $178 \mu\text{g}/\text{m}^3$. This modeled value is approximately 91 percent of the level of the 75 ppb ($196.4 \mu\text{g}/\text{m}^3$) 2010 SO_2 NAAQS. For added conservatism in the modeled demonstration, the EPA conducted additional AERMOD runs which included numerous small generators and boilers located in the nonattainment area that were not expected to cause violations of the NAAQS based on modeling performed during the designations process. Additional details of these runs can be found in appendix A of the Modeling TSD. In summary, the inclusion of emissions from these small sources into the modeling analysis also do not result in violations of the NAAQS.

²⁴ The SO_2 NAAQS level is expressed in ppb but AERMOD gives results in $\mu\text{g}/\text{m}^3$. The conversion factor for SO_2 (at the standard conditions applied in the ambient SO_2 reference method) is 1 ppb = approximately $2.619 \mu\text{g}/\text{m}^3$.

²⁵ We note that since the EPA is modeling allowable emissions, the results are the same for 2024 and 2025, as allowable emissions have remained the same each year.

This analysis demonstrates that the Piti-Cabras area is attaining the 2010 1-hour SO₂ NAAQS, based on allowable emissions beginning in 2023. As a result, the Piti-Cabras area for the 2010 SO₂ NAAQS meets the EPA criteria for the area to qualify for a CDD.

IV. Proposed Action

The EPA is proposing to issue a CDD for the Piti-Cabras area. Finalizing this CDD would suspend the requirements for the Piti-Cabras area to submit an attainment demonstration and certain other associated nonattainment planning requirements for so long as the Piti-Cabras area continues to attain the 2010 SO₂ NAAQS.²⁶ A final CDD would also suspend the EPA's obligation to promulgate a FIP and the sanctions clocks associated with the FFS issued on November 3, 2020,²⁷ with regard to the attainment demonstration, RACM/RACT, RFP, emissions limitations and control measures as necessary to provide for attainment, and contingency measures. If this CDD is finalized, those elements of the EPA's obligation as to this nonattainment area under the consent decree in *Center for Biological Diversity et al. v. Regan*, No. 4:24-cv-01900 (N.D. Cal.), doc. 28, paragraphs 1.c-d, 2, will be met. Guam EPA would still be required to submit an emissions inventory required by CAA section 172(c)(3) and a nonattainment new source review (NNSR) program required by CAA section 172(c)(5).²⁸ This proposed rulemaking is consistent with the EPA's long-held interpretation of CAA requirements.

Finalizing this rulemaking would not constitute a redesignation of the Piti-Cabras area to attainment for the 2010 SO₂ NAAQS under section 107(d)(3) of the CAA. The Piti-Cabras area will remain designated nonattainment for the 2010 SO₂ NAAQS until such time as the EPA

²⁶ On December 19, 2024, the EPA issued a finding that the Piti-Cabras nonattainment area failed to attain the 2010 SO₂ NAAQS by the statutory attainment date of April 9, 2023. 89 FR 103819. This finding triggered a requirement for Guam EPA to submit a plan demonstrating attainment of the 2010 SO₂ NAAQS as expeditiously as practicable, but no later than December 19, 2030. *Id.* at 103822. A final CDD would suspend the attainment-related requirements triggered by the finding of failure to attain, as well as the attainment-related requirements stemming from the original designation of the area as nonattainment.

²⁷ 85 FR 69504, November 3, 2020.

²⁸ Guam EPA submitted a SIP revision addressing NNSR on March 13, 2025. The EPA is currently evaluating this submittal for completeness.

determines that the area meets the CAA requirements for redesignation to attainment and takes action to redesignate the area.

V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

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 (OMB) for review. This action proposes to issue a Clean Data Determination for the Piti-Cabras area in Guam.

B. Executive Order 14192: Unleashing Prosperity Through Deregulation

Executive Order 14192 does not apply because it is not a significant regulatory action and is therefore exempted from review under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. This action proposes to determine that the Piti-Cabras area is attaining the 2010 SO₂ NAAQS. Thus, this proposed action does not impose additional requirements beyond those imposed by territorial law.

D. 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 will not impose any requirements on small entities beyond those imposed by state law. The proposed CDD does not create any new requirements and does not directly regulate any entities.

E. 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. This action does not

impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector will result from this action.

F. 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 responsibilities among the various levels of government. This action proposes a CDD for the Piti-Cabras nonattainment area under the CAA.

G. Executive Order 13175: Coordination With Indian Tribal Governments

This action does not have Tribal implications, as specified in Executive Order 13175, because the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction, and it will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

H. 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. Therefore, this action is not subject to Executive Order 13045 because it merely proposes a CDD. Furthermore, the EPA's Policy on Children's Health does not apply to this action.

I. 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.

J. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

List of Subjects in 40 CFR Part 52

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

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

Dated: **June 2, 2025.**

Joshua F. W. Cook,

Regional Administrator, Region IX.

[FR Doc. 2025-11326 Filed: 6/18/2025 8:45 am; Publication Date: 6/20/2025]