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**FOR FURTHER INFORMATION CONTACT:** Edward Doty, Air Programs Branch (AR-18J), Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6057, [Doty.Edward@epa.gov](mailto:Doty.Edward@epa.gov).

**SUPPLEMENTARY INFORMATION:** In the Final Rules section of this **Federal Register**, EPA is approving IEPA’s SIP revision as a direct final rule without prior proposal because EPA views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that, if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information see the direct final rule, which is located in the Rules section of this **Federal Register**.

Dated: February 22, 2016.

**Robert A. Kaplan,**

*Acting Regional Administrator, Region 5.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R08-OAR-2015-0205; FRL-9943-27-Region 8]

#### Designation of Areas for Air Quality Planning Purposes; Redesignation Request and Associated Maintenance Plan for Billings, MT 2010 SO<sub>2</sub> Nonattainment Area

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

**ACTION:** Proposed rule.

**SUMMARY:** On December 14, 2015, the State of Montana submitted a request for the Environmental Protection Agency (EPA) to redesignate the Billings, Montana, 2010 sulfur dioxide (SO<sub>2</sub>) National Ambient Air Quality Standard (NAAQS) nonattainment area to attainment and to approve a State Implementation Plan (SIP) revision containing a maintenance plan for the area. In response to this submittal, the EPA is proposing to take the following actions: Determine that the Billings SO<sub>2</sub> nonattainment area is attaining the 2010 SO<sub>2</sub> primary NAAQS; approve Montana’s plan for maintaining attainment of the 2010 SO<sub>2</sub> primary NAAQS in the area; and redesignate the Billings SO<sub>2</sub> nonattainment area to attainment for the 2010 SO<sub>2</sub> primary NAAQS.

**DATES:** Comments must be received on or before April 6, 2016.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R08-OAR-2015-0205, at <http://www.regulations.gov> Web site. 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, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

#### FOR FURTHER INFORMATION CONTACT:

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#### SUPPLEMENTARY INFORMATION:

##### I. General Information

*What should I consider as I prepare my comments for EPA?*

1. *Submitting Confidential Business Information (CBI).* Do not submit CBI to the EPA through [www.regulations.gov](http://www.regulations.gov) or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to the EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns and suggest alternatives.

- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

## II. What is the background for the EPA's proposed actions?

On June 2, 2010, the EPA revised the primary SO<sub>2</sub> NAAQS, establishing a new 1-hour SO<sub>2</sub> standard of 75 parts per billion (ppb). See 75 FR 35520 (June 2, 2010). Under the EPA's regulations at 40 CFR part 50, the 2010 1-hour SO<sub>2</sub> NAAQS is met at a monitoring site when the 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations is less than or equal to 75 ppb (based on the rounding convention in 40 CFR part 50, appendix T). See 40 CFR 50.17. Ambient air quality monitoring data for the 3-year period must meet a data completeness requirement. A year meets data completeness requirements when all 4 quarters are complete, and a quarter is complete when at least 75 percent of the sampling days for each quarter have complete data. A sampling day has complete data if 75 percent of the hourly concentration values, including state-flagged data affected by exceptional events which have been approved for exclusion by the Administrator, are reported.<sup>1</sup>

Upon promulgation of a new or revised NAAQS, the CAA requires the EPA to designate as nonattainment any area that does not meet (or that contributes to ambient air quality in a nearby area that does not meet) the NAAQS.<sup>2</sup> At the time the EPA conducted the initial round of designations for the 2010 1-hour SO<sub>2</sub> primary NAAQS,<sup>3</sup> Billings contained an SO<sub>2</sub> monitor (Coburn Road) which registered violations of the standard based on the three most recent years of complete, quality assured, and certified ambient air quality data. In a letter to the EPA, Montana Governor Brian Schweitzer requested that all 56 counties in Montana be designated as attainment or unclassifiable. The EPA responded to Montana's initial designations request in a February 6, 2013 letter in which the EPA disagreed

with Montana's request to classify Yellowstone County (which includes Billings) as unclassifiable for the 2010 1-hour SO<sub>2</sub> standard and presented the case that all of Yellowstone County should be designated as nonattainment. In an April 3, 2013 letter to the EPA, Montana reiterated its request that Yellowstone County be designated unclassifiable, but requested an alternative nonattainment area boundary consisting of only a small portion of Billings if the EPA determined that a nonattainment designation was appropriate. The EPA agreed with the State's technical rationale for reducing the nonattainment area to a small portion of Billings which included only one source of SO<sub>2</sub>: The PPL Corette Power Plant.<sup>4</sup> The EPA found that Montana's technical analysis demonstrated that the PPL Corette plant was the key contributor to the 2010 SO<sub>2</sub> NAAQS violations at the Coburn Road monitor. The EPA, therefore, designated the area recommended by Montana as nonattainment for the 2010 SO<sub>2</sub> NAAQS on August 5, 2013, (effective October 4, 2013) using 2009–2011 ambient air quality data, leaving the remaining portion of Billings and Yellowstone County undesignated and subject to future analysis and designation. See 78 FR 47191 (August 5, 2013). This nonattainment designation established an attainment date five years after the October 4, 2013, effective date for areas classified as nonattainment for the 2010 1-hour SO<sub>2</sub> NAAQS.<sup>5</sup> Therefore, the Billings SO<sub>2</sub> nonattainment area's attainment date is October 4, 2018. The Montana Department of Environmental Quality (MDEQ) was also required to submit an attainment SIP to EPA within 18 months following the October 4, 2013 effective date of designation, or by April 6, 2015.<sup>6</sup>

On January 16, 2015, MDEQ submitted a request for the EPA to determine that the Billings SO<sub>2</sub> nonattainment area has attained the 2010 SO<sub>2</sub> NAAQS per the EPA's "clean data policy" (Billings 2010 SO<sub>2</sub> Clean Data Request).<sup>7</sup> The clean data policy represents the EPA's interpretation that certain planning-related requirements of part D of the Act, such as the attainment demonstration, reasonably available control measures (RACM), and reasonable further progress (RFP), are suspended for areas that are in fact

attaining the NAAQS. The clean data policy will be explained further in Section IV of this proposed rulemaking. A determination of attainment, or clean data determination, does not constitute a formal redesignation to attainment. If EPA subsequently determines that an area is no longer attaining the standard, those requirements that were suspended by the clean data determination are once again due.

On April 10, 2015, James Parker of PPL Montana sent a letter to Ed Warner of MDEQ notifying him that the PPL Corette Plant was officially retired on March 18, 2015, and had consumed its last coal on March 3, 2015. On May 13, 2015, Gordon Criswell of PPL Montana sent a letter to MDEQ requesting a revocation of the Montana Air Quality Permit (MAQP) #2953–00 and Title V Operating Permit #OP2953–08. On May 21, 2015, David Klemp of MDEQ sent a letter to Mr. Criswell informing him that MDEQ was revoking both permits, as PPL had requested, effective immediately.

On December 14, 2015, the State submitted to the EPA a request for redesignation of the Billings 2010 SO<sub>2</sub> nonattainment area to attainment and a SIP revision containing a maintenance plan for the area.

## III. What are the criteria for redesignation?

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) of the CAA allows for redesignation of a nonattainment area provided that: (1) The Administrator determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k); (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable federal air pollutant control regulations and other permanent and enforceable reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and (5) the state containing such area has met all requirements applicable to the area for purposes of redesignation under section 110 and part D of the CAA.

On April 16, 1992, the EPA provided guidance on redesignation in the General Preamble for the Implementation of title I of the CAA Amendments of 1990 (57 FR 13498), and supplemented this guidance on

<sup>1</sup> 40 CFR part 50, appendix T, section 3(b).

<sup>2</sup> CAA section 107(d)(1)(A)(i).

<sup>3</sup> The EPA finalized nonattainment designations for 29 areas of the U.S. that contained SO<sub>2</sub> monitors violating the NAAQS on August 5, 2013 (78 FR 47191, 47205), and took no designation-related action on the rest of the country. The EPA was placed under a binding schedule for designation of the remaining portions of the U.S. for the 2010 1-hour SO<sub>2</sub> NAAQS on March 2, 2015. See, *Sierra Club, et al. v. McCarthy*, Case No. 13–cv–03953–SI (N.D. Cal., March 2, 2015).

<sup>4</sup> Montana's recommended alternative boundary, now the Billings 2010 SO<sub>2</sub> Nonattainment Area, can be found in the Billings Redesignation Request at 13.

<sup>5</sup> CAA section 192.

<sup>6</sup> CAA section 191.

<sup>7</sup> The Billings 2010 SO<sub>2</sub> Clean Data Request is available in the docket for this action.

April 28, 1992 (57 FR 18070). The EPA has provided further guidance on processing redesignation requests in several guidance documents. For the purposes of this action, the EPA will be referencing two of these documents: (1) The September 4, 1992 Memorandum from John Calcagni titled “Procedures for Processing Requests to Redesignate Areas to Attainment,” (hereafter referred to as the “Calcagni Memo”); and (2) The April 23, 2014 Memorandum from Stephen D. Page titled “Guidance for 1-Hour SO<sub>2</sub> Nonattainment Area SIP Submissions,” (hereafter referred to as “2010 SO<sub>2</sub> NAA Guidance”).

**IV. What is EPA’s analysis of the request?**

EPA’s evaluation of Montana’s redesignation request and maintenance plan was based on consideration of the five redesignation criteria provided under CAA section 107(d)(3)(E).

*Criteria (1)—The Billings SO<sub>2</sub> Nonattainment Area Has Attained the 2010 1-Hour SO<sub>2</sub> NAAQS*

For redesignating a nonattainment area to attainment, the CAA requires the EPA to determine that the area has attained the applicable NAAQS (CAA section 107(d)(3)(E)(i)). The two primary methods for evaluating ambient air quality impacted by SO<sub>2</sub> emissions are through dispersion modeling and air quality monitoring. For SO<sub>2</sub>, an area may in some circumstances be considered to be attaining the 2010 1-hour SO<sub>2</sub> NAAQS if it meets the NAAQS as determined in accordance with 40 CFR 50.17 and Appendix T of part 50, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain the NAAQS based on monitoring, the 3-year average of the annual 99th percentile (fourth highest value) of 1-hour daily maximum concentrations measured at each monitor within an area must be less than or equal to 75 ppb. The data must be collected and

quality-assured in accordance with 40 CFR part 58 and recorded in the EPA Air Quality System (AQS). The EPA’s determination of attainment can be based on monitoring data alone, without the need for dispersion modeling analyses, if the air agency provides an analysis demonstrating that the monitor(s) for the affected area is located in the area of maximum ambient concentration of SO<sub>2</sub>.<sup>8</sup>

In this action, the EPA is determining that the Billings SO<sub>2</sub> nonattainment area is attaining the 2010 1-hour SO<sub>2</sub> NAAQS. The EPA reviewed SO<sub>2</sub> monitoring data from the lone monitoring station inside the Billings SO<sub>2</sub> nonattainment area, the Coburn Road station. The Coburn Road monitor data have been quality-assured, are recorded in AQS, and indicate that the area is attaining the 2010 1-hour SO<sub>2</sub> NAAQS. The fourth-highest 1-hour SO<sub>2</sub> values at the Coburn Road monitor for the 3-year averages of these values (*i.e.*, design values), are summarized in Table 1, below.

TABLE 1—COBURN ROAD MONITORED SO<sub>2</sub> CONCENTRATIONS

	2012	2013	2014	2012–2014 Design value
Annual 99th Percentile .....	70	48	93	70

As shown, the 3-year design value for 2012–2014 at the Coburn Road monitor meets the 2010 SO<sub>2</sub> NAAQS. Further, the EPA expects the SO<sub>2</sub> emissions at this monitor to decrease significantly following the shutdown of the PPL Corette facility. Since the facility last operated on March 3, 2015, the values at the Coburn Road monitor have not exceeded 19 ppb SO<sub>2</sub>. This trend is anticipated to be permanent, as the State indicated in its analysis that SO<sub>2</sub> emissions have since 2010 consistently decreased to levels well below the NAAQS during times when PPL Corette was not operating.<sup>9</sup>

As part of Montana’s redesignation request, the State submitted information to support a showing that the Coburn Road monitor was sited in the area of maximum ambient SO<sub>2</sub> concentration within the Billings SO<sub>2</sub> nonattainment area in accordance with the 2010 SO<sub>2</sub> NAA Guidance. This showing included data from historical monitors near the Coburn Road monitor which

consistently showed lower values than those at Coburn Road. The EPA has reviewed Montana’s information regarding this showing, but finds that it is no longer applicable to the current SO<sub>2</sub> emissions mix in the Billings SO<sub>2</sub> nonattainment area because the sole SO<sub>2</sub> source in the area (PPL Corette) has shut down. The EPA does not find it necessary to require the State to conduct new modeling or exploratory monitoring as recommended by EPA’s May 2013 Draft Monitoring Technical Assistance Document (TAD)<sup>10</sup> to determine the point of maximum concentration in the nonattainment area because the source of concern in the area has shut down and been dismantled, resulting in SO<sub>2</sub> concentrations well below the standard.

In this action, the EPA is proposing to determine that the Billings SO<sub>2</sub> nonattainment area is attaining the 2010 1-hour SO<sub>2</sub> NAAQS, and therefore meets the requirements of CAA section 107(d)(3)(E)(i). If the 3-year design value

exceeds the NAAQS prior to the EPA taking action in response to the State’s request, the EPA will not take final action to approve the redesignation request.<sup>11</sup> As discussed in more detail below, Montana has committed to continue monitoring in this area in accordance with 40 CFR part 58.

As noted, Montana separately submitted to the EPA a request for a determination of clean data for the Billings SO<sub>2</sub> nonattainment area on January 16, 2015. The clean data policy represents the EPA’s interpretation that certain requirements of part D of title I of the Act are suspended for areas that are currently attaining the NAAQS. The requirements that are suspended in an area attaining the standard include the requirements to submit an “attainment SIP” that provides for: Attainment of the NAAQS; implementation of all RACM; RFP; and implementation of contingency measures for failure to meet deadlines for RFP and attainment. In the 2010 SO<sub>2</sub> NAA guidance, the EPA

<sup>8</sup> See 2010 SO<sub>2</sub> NAA Guidance, at 62.

<sup>9</sup> Billings Redesignation Request at 8–12.

<sup>10</sup> On page 58 of the 2010 SO<sub>2</sub> NAA Guidance, EPA recommends that air agencies follow the Draft

“SO<sub>2</sub> NAAQS Designations Source-Oriented Monitoring Technical Assistance Document,” Office of Air Quality Planning and Standards, Air Quality Assessment Division. Although this 2010 SO<sub>2</sub> NAA Guidance references the Draft monitoring

TAD with regard to reviewing clean data determinations, the EPA also considers the TAD recommendations applicable to attainment demonstrations.

<sup>11</sup> See 2010 SO<sub>2</sub> NAA Guidance, at 56.

explained our intention to apply the EPA's clean data policy to the 2010 SO<sub>2</sub> primary NAAQS.<sup>12</sup> Because EPA's analysis in determining whether an area has attained under the clean data policy is the same as its analysis under the first redesignation criterion, EPA is also here proposing that the Billings SO<sub>2</sub> nonattainment area qualifies for a determination of attainment under the clean data policy, based on the 2012–2014 monitoring data from the Coburn Road monitor. In the event that EPA does not finalize the proposed redesignation, EPA may choose to separately finalize the clean data determination, thereby suspending Montana's obligation to submit the attainment planning-related requirements for the area for as long as the area continues to attain the standard. As with its analysis that the area has attained under the redesignation requirements, for purposes of the clean data determination, the EPA is not requiring Montana to demonstrate that the monitor is located in the area of maximum concentration in accordance with the 2010 SO<sub>2</sub> NAA Guidance due to the unique circumstances associated with the PPL Corette shutdown.<sup>13</sup>

*Criteria (2)—Montana Has a Fully Approved SIP Under Section 110(k); and Criteria (5)—Montana Has Met All Applicable Requirements Under Section 110 and Part D of Title I of the CAA*

For redesignating a nonattainment area to attainment under a NAAQS, the CAA requires the EPA to determine that the state has met all applicable requirements for that NAAQS under section 110 and part D of title I of the CAA (CAA section 107(d)(3)(E)(v)) and that the state has a fully approved SIP under section 110(k) for that NAAQS for the area (CAA section 107(d)(3)(E)(ii)). The EPA proposes to find that Montana has met all applicable SIP requirements for the Billings SO<sub>2</sub> nonattainment area for the 2010 SO<sub>2</sub> NAAQS under section 110 of the CAA (general SIP requirements) for purposes of redesignation. Additionally, the EPA proposes to find that the Montana SIP satisfies the criterion that it meets applicable SIP requirements for purposes of redesignation under part D of title I of the CAA in accordance with section 107(d)(3)(E)(v). Further, the EPA proposes to determine that the SIP is fully approved with respect to all requirements applicable for the 2010 SO<sub>2</sub> NAAQS for purposes of redesignation in accordance with

section 107(d)(3)(E)(ii). In making these determinations, the EPA ascertained which requirements are applicable to the Billings SO<sub>2</sub> nonattainment area and, if applicable, that they are fully approved under section 110(k).

a. The Billings SO<sub>2</sub> Nonattainment Area Has Met All Applicable Requirements Under Section 110 and Part D of the CAA

*General SIP requirements.* General SIP elements and requirements are delineated in section 110(a)(2) of title I, part A of the CAA. These requirements include, but are not limited to, the following: Submittal of a SIP that has been adopted by the state after reasonable public notice and hearing; provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality; implementation of a source permit program; provisions for the implementation of part C requirements (Prevention of Significant Deterioration (PSD)) and provisions for the implementation of part D requirements (New Source Review (NSR) permit programs); provisions for air pollution modeling; and provisions for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, the EPA has required certain states to establish programs to address the interstate transport of air pollutants. The section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification in that state. The EPA believes that the requirements linked with a particular nonattainment area's designation and classifications are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state. Thus, the EPA does not believe that the CAA's interstate transport requirements should be construed to be applicable requirements for purposes of redesignation.

In addition, the EPA believes other section 110 elements that are neither connected with nonattainment plan submissions nor linked with an area's attainment status are applicable requirements for purposes of redesignation. The area will still be subject to these requirements after the area is redesignated. The section 110 and part D requirements which are

linked with a particular area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. This approach is consistent with the EPA's existing policy on applicability (*i.e.*, for redesignations) of conformity and oxygenated fuels requirements, as well as with section 184 ozone transport requirements. *See* Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176, October 10, 1996), (62 FR 24826, May 7, 2008); Cleveland-Akron-Lorain, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking at (60 FR 62748, December 7, 1995). *See also* the discussion on this issue in the Cincinnati, Ohio, redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh, Pennsylvania, redesignation (66 FR 50399, October 19, 2001).

*Title I, Part D, applicable SIP requirements.* Section 172(c) of the CAA sets forth the basic requirements of attainment plans for nonattainment areas that are required to submit them pursuant to section 172(b). Subpart 5 of part D, which includes section 191 and 192 of the CAA, establishes requirements for SO<sub>2</sub>, nitrogen dioxide and lead nonattainment areas. A thorough discussion of the requirements contained in sections 172(c) can be found in the General Preamble for Implementation of Title I (57 FR 13498).

*Subpart 5 Section 172 Requirements.* Section 172(c)(1) requires the plans for all nonattainment areas to provide for the implementation of all RACM as expeditiously as practicable and to provide for attainment of the NAAQS. The EPA interprets this requirement to impose a duty on all nonattainment areas to consider all available control measures and to adopt and implement such measures as are reasonably available for implementation in each area as components of the area's attainment demonstration. Under section 172, states with nonattainment areas must submit plans providing for timely attainment and meeting a variety of other requirements.

The EPA's longstanding interpretation of the nonattainment planning requirements of section 172 is that once an area is attaining the NAAQS, those requirements are not "applicable" for purposes of CAA section 107(d)(3)(E)(ii) and therefore need not be approved into the SIP before the EPA can redesignate the area. In the 1992 General Preamble for Implementation of Title I, the EPA set forth its interpretation of applicable requirements for purposes of evaluating redesignation requests when an area is attaining a standard. *See* 57 FR 13498,

<sup>12</sup> Id. at 52.

<sup>13</sup> Id. at 58.

13564 (April 16, 1992). The EPA noted that the requirements for RFP and other measures designed to provide for attainment do not apply in evaluating redesignation requests because those nonattainment planning requirements “have no meaning” for an area that has already attained the standard. *Id.* This interpretation was also set forth in the Calcagni Memo. The EPA’s understanding of section 172 also forms the basis of its Clean Data Policy, which was articulated with regard to SO<sub>2</sub> in the 2010 SO<sub>2</sub> NAA Guidance, and suspends a state’s obligation to submit most of the attainment planning requirements that would otherwise apply, including an attainment demonstration and planning SIPs to provide for RFP, RACM, and contingency measures under section 172(c)(9). Courts have upheld the EPA’s interpretation of section 172(c)(1) for “reasonably available” control measures and control technology as meaning only those controls that advance attainment, which precludes the need to require additional measures where an area is already attaining. *NRDC v. EPA*, 571 F.3d 1245, 1252 (D.C. Cir. 2009); *Sierra Club v. EPA*, 294 F.3d 155, 162 (D.C. Cir. 2002); *Sierra Club v. EPA*, 314 F.3d 735, 744 (5th Cir. 2002); *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004). But see *Sierra Club v. EPA*, 793 F.3d 656 (6th Cir. 2015).

Therefore, because attainment has been reached in the Billings SO<sub>2</sub> nonattainment area, no additional measures are needed to provide for attainment, and section 172(c)(1) requirements for an attainment demonstration and RACM are not part of the “applicable implementation plan” required to have been approved prior to redesignation per CAA section 107(d)(3)(E)(ii). The other section 172 requirements that are designed to help an area achieve attainment—the section 172(c)(2) requirement that nonattainment plans contain provisions promoting reasonable further progress, the requirement to submit the section 172(c)(9) contingency measures, and the section 172(c)(6) requirement for the SIP to contain control measures necessary to provide for attainment of the NAAQS—are also not required to be approved as part of the “applicable implementation plan” for purposes of satisfying CAA section 107(d)(3)(E)(ii).

Section 172(c)(3) requires submission and approval of a comprehensive, accurate, and current inventory of actual emissions. The requirement for an emission inventory can be satisfied by meeting the inventory requirements of

the maintenance plan.<sup>14</sup> MDEQ submitted an emissions inventory as part of the maintenance plan for the Billings SO<sub>2</sub> nonattainment area, and this inventory will be discussed further in the maintenance plan portion of this proposed action.

Section 172(c)(4) requires the identification and quantification of allowable emissions for major new and modified stationary sources to be allowed in an area, and section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. The EPA has determined that, since PSD requirements will apply after redesignation, areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the NAAQS without part D NSR. A more detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled “Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment.” MDEQ has demonstrated that the Billings SO<sub>2</sub> nonattainment area will be able to maintain the NAAQS without part D NSR in effect, and therefore Montana need not have fully approved part D NSR programs prior to approval of the redesignation request. Montana’s PSD program will become effective in the Billings SO<sub>2</sub> nonattainment area upon redesignation to attainment.

Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2). As noted above, the EPA believes the Montana SIP meets the requirements of section 110(a)(2) applicable for purposes of redesignation.

**Section 176 Conformity Requirements.** Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs, and projects that are developed, funded, or approved under title 23 of the United States Code (U.S.C.) and the Federal Transit Act (transportation conformity) as well as to all other federally supported or funded projects (general conformity). State transportation conformity SIP revisions must be consistent with federal conformity regulations relating to consultation,

enforcement, and enforceability that the EPA promulgated pursuant to its authority under the CAA.

Montana has an approved general conformity SIP for the Billings area. See 67 FR 62392 (October 7, 2002). Moreover, the EPA interprets the conformity SIP requirements as not applying for purposes of evaluating a redesignation request under section 107(d) because, like other requirements listed above, state conformity rules are still required after redesignation and federal conformity rules apply where state rules have not been approved. See *Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001) (upholding this interpretation); see also 60 FR 62748 (December 7, 1995) (redesignation of Tampa, Florida).

For these reasons, the EPA proposes to find that Montana has satisfied all applicable requirements for purposes of redesignation of the Billings SO<sub>2</sub> nonattainment area under section 110 and part D of title I of the CAA.

b. The Billings SO<sub>2</sub> Nonattainment Area Has a Fully Approved Applicable SIP Under Section 110(k) of the CAA

The EPA has fully approved the applicable Montana SIP for the Billings Area under section 110(k) of the CAA for all requirements applicable for purposes of redesignation. As indicated above, the EPA believes that the section 110 elements that are neither connected with nonattainment plan submissions nor linked to an area’s nonattainment status are not applicable requirements for purposes of redesignation. The EPA has approved all part D requirements applicable under the 2010 SO<sub>2</sub> NAAQS, as identified above, for purposes of this redesignation.

*Criteria (3)—The Air Quality Improvement in the Billings SO<sub>2</sub> Nonattainment Area Is Due to Permanent and Enforceable Reductions in Emissions*

For redesignating a nonattainment area to attainment, the CAA requires the EPA to determine that the air quality improvement in the area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, applicable federal air pollution control regulations, and other permanent and enforceable reductions (CAA section 107(d)(3)(E)(iii)). The EPA proposes to find that Montana has demonstrated that the observed air quality improvement in the Billings SO<sub>2</sub> nonattainment area is due to permanent and enforceable reductions in emissions. Specifically, the EPA considers the shutdown of the PPL Corette Plant, identified as the key

<sup>14</sup> Calcagni Memo at 6.

contributor to the SO<sub>2</sub> NAAQS violations at the Coburn Road monitor,<sup>15</sup> to be both permanent and enforceable. The EPA notes that the Corette facility was still operating (though not continuously)<sup>16</sup> during the 2012–2014 period during which the 2010 SO<sub>2</sub> NAAQS was attained in the Billings nonattainment area. Given the well-established correlation of much lower SO<sub>2</sub> emissions at the Coburn Road monitor during periods when Corette has not operated, EPA anticipates that the SO<sub>2</sub> NAAQS will only attain by a greater margin following the facility’s shutdown. As stated in the Calcagni Memo, “Emission reductions from source shutdowns can be considered permanent and enforceable to the extent that those shutdowns have been reflected in the SIP and all applicable permits have been modified accordingly.”<sup>17</sup> MDEQ revoked PPL’s Title V (operating) and NSR permits for the Corette facility.<sup>18</sup> Further, the PPL Corette facility has been dismantled, making its future operation impossible and thus displaying the permanence of the emissions reductions in the nonattainment area. Any new sources that may come into being within the area would be required to demonstrate that their new SO<sub>2</sub> emissions would not interfere with attainment and maintenance of the 2010 SO<sub>2</sub> NAAQS. Therefore, the EPA is proposing to find that the air quality improvement in the Billings SO<sub>2</sub> nonattainment area is due to permanent and enforceable reductions in emissions.

*Criteria (4)—The Billings SO<sub>2</sub> Nonattainment Area Has a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA*

To redesignate a nonattainment area to attainment, the CAA requires the EPA

to determine that the area has a fully approved maintenance plan pursuant to section 175A of the CAA (CAA section 107(d)(3)(E)(iv)). In conjunction with its request to redesignate the Billings SO<sub>2</sub> nonattainment area to attainment for the 2010 1-hour SO<sub>2</sub> NAAQS, MDEQ submitted a SIP revision to provide for the maintenance of the 2010 1-hour SO<sub>2</sub> NAAQS for at least 10 years after the effective date of redesignation to attainment. The EPA is proposing to find that this maintenance plan for the area meets the requirements for approval under section 175A of the CAA.

a. What is required in a maintenance plan?

CAA section 175A sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan demonstrating that attainment will continue to be maintained for the 10 years following the initial 10-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures as the EPA deems necessary to assure prompt correction of any future 2010 1-hour SO<sub>2</sub> violations. The Calcagni Memo provides further guidance on the content of a maintenance plan, explaining that a maintenance plan should address five requirements: The attainment emissions inventory, maintenance demonstration, monitoring, verification of continued attainment, and a contingency plan. As

is discussed more fully below, the EPA is proposing to determine that Montana’s maintenance plan includes all the necessary components and is thus proposing to approve it as a revision to the Montana SIP.

b. Attainment Emissions Inventory

As part of a state’s maintenance plan for a 2010 SO<sub>2</sub> nonattainment area, the air agency should develop an attainment inventory to identify the level of emissions in the affected area which is sufficient to attain and maintain the SO<sub>2</sub> NAAQS.<sup>19</sup> Montana selected 2014 as the base year (*i.e.*, attainment emissions inventory year) for developing an emissions inventory for SO<sub>2</sub> in the nonattainment area through 2024. In 2014, the final full calendar year in which PPL Corette was permitted to operate prior to the March 2015 shutdown, the facility emitted 1,433 tons of SO<sub>2</sub>.<sup>20</sup>

In 2014, the Coburn Road monitor reported exceedances of the 2010 SO<sub>2</sub> NAAQS on eight different days, giving the monitor a 99th percentile (4th highest 1-hour daily maximum concentration) of 93 ppb. Regardless, the 2014 emissions level of 1,433 tons of SO<sub>2</sub> is the lowest level of any year in the attaining 2012 to 2014 period, making it the most conservative option for the purposes of ensuring future maintenance of the NAAQS (see Table 2). The EPA has therefore determined that this is a level sufficient to attain the 2010 1-hour SO<sub>2</sub> NAAQS, and is proposing to find that the attainment inventory submitted as part of Montana’s maintenance plan meets the “Attainment Emissions Inventory” requirement.

TABLE 2—ANNUAL SO<sub>2</sub> EMISSIONS IN BILLINGS NONATTAINMENT AREA

Year	2012	2013	2014
Annual SO <sub>2</sub> Emissions (tons) .....	1,884	2,247	1,433

The EPA notes that the permanent shutdown of PPL Corette has left the Billings SO<sub>2</sub> nonattainment area with no sources of SO<sub>2</sub>, and the maintenance plan for the area contains an emissions inventory (in the “Maintenance Demonstration” section) which projects a level of zero SO<sub>2</sub> emissions in the

nonattainment area for each year from 2016 through 2024. The EPA therefore does not anticipate emissions activity in the 2010 SO<sub>2</sub> nonattainment area that will approach 1,433 tons of SO<sub>2</sub>.

c. Maintenance Demonstration

An air agency may generally demonstrate maintenance of the

NAAQS by either showing that future emissions of SO<sub>2</sub> will not exceed the level of the attainment inventory, or by modeling to show that the future mix of sources and emission rates will not cause a violation of the NAAQS.<sup>21</sup> Montana has demonstrated maintenance by showing that future year emissions

<sup>15</sup> See EPA’s final Technical Support Document (TSD) for the Billings SO<sub>2</sub> Nonattainment Area, in the docket for EPA’s initial round of 2010 SO<sub>2</sub> designations at EPA–HQ–OAR–2012–0233–0318.

<sup>16</sup> The Corette facility did not operate for several consecutive months in both 2012 and 2014.

<sup>17</sup> Calcagni Memo at 10.

<sup>18</sup> Permit revocation letters are included in the docket for this action.

<sup>19</sup> See 2010 SO<sub>2</sub> NAA Guidance, at 66.

<sup>20</sup> PPL Corette did not operate for nearly five months during 2014.

<sup>21</sup> See 2010 SO<sub>2</sub> NAA Guidance at 67.

(through “out year” 2024) of SO<sub>2</sub> in the maintenance area are expected to remain at zero following the PPL Corette shutdown. The State’s projected emissions inventory<sup>22</sup> has been reproduced as Table 3, below:

TABLE 3—BILLINGS SO<sub>2</sub> NONATTAINMENT AREA SO<sub>2</sub> PROJECTED EMISSIONS INVENTORY

Year	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
Annual SO <sub>2</sub> Emissions (tons) .....	1433	460	0	0	0	0	0	0	0	0	0

The EPA considers the inventory projection of zero emissions sufficient to attain and maintain the SO<sub>2</sub> NAAQS. The EPA is therefore also proposing to find that the State’s “Maintenance Demonstration” requirement is met based on this projected emissions inventory.

d. Monitoring Network

Montana has committed to continue operating the Coburn Road monitor at its current location in the Billings SO<sub>2</sub> nonattainment area. The State also committed to operating the monitor in accordance with the requirements of 40 CFR part 58, and have thus addressed the requirement for monitoring. The EPA approved Montana’s monitoring plan on January 13, 2015. The EPA is proposing to find that Montana’s maintenance plan meets the “Monitoring Network” requirement.

e. Verification of Continued Attainment

Each air agency should ensure that it has the legal authority to implement and enforce all measures necessary to attain and maintain the 2010 SO<sub>2</sub> NAAQS. The air agency’s submittal should indicate how it will track the progress of the maintenance plan for the area either through air quality monitoring or modeling.<sup>23</sup>

The State of Montana has the legal authority to enforce and implement the maintenance plan for the Billings 2010 SO<sub>2</sub> nonattainment area. This includes the authority to adopt, implement, and enforce any subsequent emissions control contingency measures determined to be necessary to correct future SO<sub>2</sub> attainment problems.<sup>24</sup> As noted, the State will track the progress of the maintenance plan by continuing to operate the Coburn Road monitor. For these reasons, the EPA is proposing to find that Montana’s maintenance plan meets the “Verification of Continued Attainment” requirement.

f. Contingency Measures in the Maintenance Plan

Section 175A of the CAA requires that a maintenance plan include such contingency measures as the EPA deems

necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation, and a time limit for action by the state. A state should also identify specific indicators to be used to determine when the contingency measures need to be implemented. The maintenance plan must also include a requirement that a state will implement all measures with respect to control of the pollutant that were contained in the SIP before redesignation of the area to attainment in accordance with section 175A(d).

The contingency plan includes a triggering mechanism to determine when contingency measures are needed and a process of developing and implementing appropriate control measures. The State listed two types of triggers of its contingency plan. The first, a “warning level response,” will be triggered by a 99th percentile of 1-hour daily maximum SO<sub>2</sub> values greater than 65 ppb in a single calendar year. The second, an “action level response,” is triggered when such a value exceeds 70 ppb in a single calendar year.

If the warning level response is triggered, the State must conduct a study to determine whether the SO<sub>2</sub> values near the level of the 2010 SO<sub>2</sub> NAAQS (75 ppb) are the result of a trend, and if so, what control measures are necessary to reverse that trend. The implementation of the control measures stemming from a warning level response will take place no later than 18 months after the end of the calendar year in which a determination requiring control measures was made. If the action level response is triggered and is not found to be due to an exceptional event as defined at 40 CFR part 50.1(j), the State will work with the entity or entities believed to be responsible for the high levels of SO<sub>2</sub> to evaluate control measures necessary to ensure future attainment of the NAAQS. Montana must submit to the EPA its analysis demonstrating that the proposed control

measures are adequate to ensure continued maintenance of the 2010 SO<sub>2</sub> NAAQS in the area or to return the area to attainment of the NAAQS. The implementation of the control measures stemming from an action level response will take place no later than 18 months after the end of the calendar year in which the action level response was prompted. Montana noted that, since the only source in the nonattainment area has shut down, it is not possible at this time to develop specific contingency measures until the cause of the elevated concentrations is known. The EPA is proposing to find that Montana’s maintenance plan meets the “Contingency Measures” requirement.

The EPA has concluded that the maintenance plan adequately addresses the five basic components of a maintenance plan: The attainment emissions inventory, maintenance demonstration, monitoring, verification of continued attainment, and a contingency plan. Therefore, the EPA proposes to find that the maintenance plan SIP revision submitted by Montana for the Billings 2010 SO<sub>2</sub> nonattainment area meets the requirements of section 175A of the CAA and is approvable.

**V. What are the actions the EPA is proposing to take?**

The EPA is proposing to take the following four separate but related actions: (1) Determine that the Billings SO<sub>2</sub> nonattainment area is attaining the 2010 1-hour SO<sub>2</sub> NAAQS; (2) Approve Montana’s plan for maintaining the 2010 1-hour SO<sub>2</sub> NAAQS (maintenance plan); (3) Redesignate the Billings SO<sub>2</sub> nonattainment area to attainment for the 2010 1-hour SO<sub>2</sub> NAAQS; and (4) determine that the Billings SO<sub>2</sub> nonattainment area has clean monitoring data. Section IV of this notice provides a discussion of each of these proposed actions.

The EPA proposes to determine that the Billings SO<sub>2</sub> nonattainment area has attained the 2010 1-hour SO<sub>2</sub> standard by the October 4, 2018, required attainment date. This determination is based on complete, quality-assured, and

<sup>22</sup> The State’s emissions inventory projection is listed as Figure 3.2 in the Billings SO<sub>2</sub> Redesignation Request, at 23.

<sup>23</sup> 2010 SO<sub>2</sub> Guidance at 67–68.

<sup>24</sup> EPA last determined that Montana’s SIP was sufficient to meet the requirements of 110(a)(2)(E)(i) of the CAA on July 30, 2013 (78 FR 45864).



certified monitoring data for the 2012–2014 monitoring period. The EPA is also proposing to approve the maintenance plan under the 2010 NAAQS for the Billings SO<sub>2</sub> nonattainment area into the Montana SIP (under CAA section 175A). The maintenance plan demonstrates that the area will continue to maintain the 2010 1-hour SO<sub>2</sub> NAAQS, and includes a process to develop contingency measures to remedy any future violations of the 2010 1-hour SO<sub>2</sub> NAAQS and procedures for evaluation of potential violations.

Additionally, the EPA is proposing to determine that the Billings SO<sub>2</sub> nonattainment area has met the criteria under CAA section 107(d)(3)(E) for redesignation from nonattainment to attainment for the 2010 1-hour SO<sub>2</sub> NAAQS. On this basis, the EPA is proposing to approve Montana's redesignation request for the area. Final approval of Montana's redesignation request would change the legal designation of the portion of Yellowstone County designated nonattainment at 40 CFR part 81.327 to attainment for the 2010 1-hour SO<sub>2</sub> NAAQS.

The EPA is also proposing to determine that the Billings SO<sub>2</sub> nonattainment area has attaining monitoring data for the 2010 SO<sub>2</sub> primary NAAQS based on the most recent complete three-year period (2012–2014) design value period that meets the clean data policy. As noted elsewhere, in the event that EPA does not finalize the proposed redesignation, EPA may choose to separately finalize the clean data determination, thereby suspending the attainment planning-related requirements for the area.

In this action, the EPA is not proposing to take any action on the Billings/Laurel SO<sub>2</sub> area that was the subject of a SIP Call (67 FR 22168, May 2, 2002) and for which EPA promulgated a FIP (77 FR 21418, April 21, 2008) under the prior 24-hour SO<sub>2</sub> primary NAAQS and the still-current SO<sub>2</sub> secondary NAAQS. EPA is also not proposing any action to revoke the prior (1971) SO<sub>2</sub> primary NAAQS in either the 2010 Billings SO<sub>2</sub> nonattainment area or the larger Billings/Laurel area addressed by the May 2, 2002 SIP Call.

#### VI. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the Billings SO<sub>2</sub> Redesignation and Maintenance Plan for action which are identified within this notice of proposed

rulemaking. The EPA has made, and will continue to make, these documents generally available electronically through [www.regulations.gov](http://www.regulations.gov) and/or in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this rule's preamble for more information).

#### VII. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. See 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, these proposed actions merely propose to approve state law as meeting Federal requirements and do not impose additional requirements beyond those imposed by state law. For this reason, these proposed actions:

- Are not significant regulatory actions 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);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are 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.*);
- Do 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);
- Do not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Are not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP does not 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. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: February 23, 2016.

**Richard D. Buhl,**

*Acting Regional Administrator, Region 8.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### 49 CFR Part 222

[Docket No. FRA–2016–0010, Notice No. 1]

#### Use of Locomotive Horns at Public Highway-Rail Grade Crossings; Notice of Safety Inquiry

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Notice of safety inquiry.

**SUMMARY:** FRA is conducting a retrospective review of its locomotive train horn regulations in 49 CFR part 222. As part of its review, FRA is soliciting public comment on whether FRA should modify, streamline, or expand any requirements of FRA's locomotive train horn regulations to reduce paperwork and other economic burdens on the rail industry and States