

- 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
- Will not have disproportionate human health or environmental effects under Executive Order 12898 (59 FR 7629, February 16, 1994).

These proposed actions do not apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, these proposed actions do not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will they impose substantial direct costs on tribal governments or preempt tribal law.

#### List of Subjects

##### 40 CFR Part 52

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

##### 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

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

Dated: July 18, 2019.

Mary S. Walker,

Regional Administrator, Region 4.

[FR Doc. 2019-16070 Filed 7-30-19; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[EPA-R01-OAR-2019-0352; FRL-9997-35-Region 1]

### Air Plan Approval and Air Quality Designation; New Hampshire; Redesignation of the Central New Hampshire Sulfur Dioxide Nonattainment Area

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve the maintenance plan and redesignation request submitted by the State of New Hampshire for the Central New Hampshire nonattainment area for the 2010 1-hour sulfur dioxide (SO<sub>2</sub>) national ambient air quality standard (NAAQS). This nonattainment area consists of portions of Hillsborough County, Merrimack County, and Rockingham County, New Hampshire. The primary emission source in the nonattainment area is now subject to federally-enforceable emission control standards, and air quality in the area now meets the 2010 SO<sub>2</sub> NAAQS. This action is being taken under the Clean Air Act.

**DATES:** Written comments must be received on or before August 30, 2019.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R01-OAR-2019-0352 at <https://www.regulations.gov>, or via email to [biton.leiran@epa.gov](mailto:biton.leiran@epa.gov). For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.regulations.gov). For either manner of submission, 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. 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 <http://www.epa.gov/dockets/commenting-epa-dockets>. Publicly available docket materials are available at <https://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to

schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Leiran Biton, Air Permits, Toxics, and Indoor Programs Branch, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square—Suite 100, (Mail code 05-2), Boston, MA 02109-3912, tel. (617) 918-1267, email [biton.leiran@epa.gov](mailto:biton.leiran@epa.gov).

#### SUPPLEMENTARY INFORMATION:

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

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#### I. Background and Purpose

On June 2, 2010 (75 FR 35520, June 22, 2010), EPA promulgated a new 1-hour primary SO<sub>2</sub> NAAQS of 75 parts per billion (ppb), which is met at an ambient air quality monitoring site when the 3-year average of the annual 99th percentile of daily maximum 1-hour concentrations does not exceed 75 ppb, as determined in accordance with appendix T of 40 CFR part 50. On August 5, 2013 (78 FR 47191), EPA designated a first set of 29 areas of the country as nonattainment for the 2010 SO<sub>2</sub> NAAQS, including the Central New Hampshire nonattainment area within the State of New Hampshire. These “round one” area designations were effective October 4, 2013. In that action, the Central New Hampshire area was designated nonattainment for the SO<sub>2</sub> NAAQS based on data collected at the Pembroke, New Hampshire ambient air quality monitoring station in calendar years 2009 through 2011. The Central New Hampshire nonattainment area is comprised of 14 municipalities in portions of three different counties in New Hampshire. These cities and towns, and the counties in which they are located, are listed in Table 1. All other areas in the State were designated as attainment/unclassifiable for the 2010 SO<sub>2</sub> NAAQS in the “round 3” area designations on January 9, 2018. The Central New Hampshire nonattainment area contains the electric generating source Merrimack Station, currently owned and operated by GSP Merrimack

LLC and formerly by Public Service of Hampshire, to which the State contributing to the nonattainment New Hampshire (PSNH) d/b/a attributed about 90% of SO<sub>2</sub> emissions designation. Eversource Energy, in Bow, New

TABLE 1—LIST OF COUNTIES AND MUNICIPALITIES INCLUDED WITHIN THE CENTRAL NEW HAMPSHIRE NONATTAINMENT AREA

County	Municipality
Hillsborough County (part) .....	Goffstown Town.
Merrimack County (part) .....	Allenstown Town, Bow Town, Chichester Town, Dunbarton Town, Epsom Town, Hooksett Town, Loudon Town, Pembroke Town, Pittsfield Town, City of Concord.
Rockingham County (part) .....	Candia Town, Deerfield Town, Northwood Town.

By April 4, 2015, New Hampshire was required to submit a nonattainment plan State Implementation Plan (SIP) that meets the requirements of sections 172(c) and 191–192 of the CAA, and that would provide for attainment of the NAAQS as expeditiously as practicable, but no later than October 4, 2018. On March 18, 2016 (81 FR 14736), EPA found for a number of areas, including the Central New Hampshire area, that the states in which those areas are located had failed to submit the required SO<sub>2</sub> nonattainment plan by the submittal deadline. In response to the requirement for SO<sub>2</sub> nonattainment plan submittals, New Hampshire submitted a nonattainment area plan and attainment demonstration for the Central New Hampshire nonattainment area on January 31, 2017.

New Hampshire’s submittal included new SO<sub>2</sub> emissions limits and associated control technology efficiency requirements for Merrimack Station. In 2011, Merrimack Station installed and began operation of a flue gas desulfurization (FGD) scrubber system that is efficient in removing SO<sub>2</sub> from the exhaust gas stream. On September 1, 2016, the State established permit conditions that include stringent emissions limits and prohibit operation of either of Merrimack Station’s two coal-fired boilers when the FGD scrubber system is not operating except as necessary to prevent severe damage to equipment or potential injury to facility personnel.

On June 5, 2018, EPA found that the emissions limits established by New Hampshire for Merrimack Station and submitted to EPA on January 31, 2017 provide for attainment of the NAAQS, and EPA approved the limits and associated conditions into the New Hampshire SIP (83 FR 25922).

Emissions from Merrimack Station have declined considerably in recent years. In 2010, Merrimack Station emitted 33,248 tons of SO<sub>2</sub>. Based on data the State presented from the 2014 National Emissions Inventory (NEI), the total point, area, and mobile source SO<sub>2</sub>

emissions in the entire Central New Hampshire nonattainment area in 2014 were 1,481 tons per year (tpy), with 1,044 tons (70.5%) emitted from Merrimack Station. In 2016, SO<sub>2</sub> emissions reported for Merrimack Station were 228 tons. Because of the significant, permanent, and enforceable reduction in SO<sub>2</sub> emissions affecting the nonattainment area, the (then) proposed approval of the State’s nonattainment area plan and attainment demonstration, and the fact that the Pembroke SO<sub>2</sub> monitor’s three-year SO<sub>2</sub> design value (DV)<sup>1</sup> was below the SO<sub>2</sub> NAAQS for 2012–2014 and 2014–2016, New Hampshire submitted a redesignation request in 2018.

On March 16, 2018, the New Hampshire Department of Environmental Services (NHDES) submitted its request to EPA to redesignate the Central New Hampshire nonattainment area to attainment. The title of the submittal is “1-Hour Sulfur Dioxide (2010 Standard) Redesignation Request and Maintenance Plan for the Central New Hampshire Nonattainment Area” (New Hampshire’s March 16, 2018 submittal). For the reasons set forth in this document, EPA is proposing to approve New Hampshire’s request to redesignate the area to attainment.

**II. Redesignation Requirements**

Under CAA section 107(d)(3)(E), there are five criteria which must be met before a nonattainment area may be redesignated to attainment.

1. EPA has determined that the relevant NAAQS has been attained in the area.
2. The applicable implementation plan has been fully approved by EPA under section 110(k).
3. EPA has determined that improvement in air quality is due to

<sup>1</sup> The DV is a statistic computed according to the data handling procedures of the NAAQS (in 40 CFR part 50 appendix T) that, by comparison to the level of the NAAQS, indicates whether the area is violating the NAAQS. For SO<sub>2</sub>, the DV is the three-year average of the annual 99th percentile of one-hour daily maximum concentrations.

permanent and enforceable reductions in emissions resulting from the SIP, Federal regulations, and other permanent and enforceable reductions.

4. EPA has fully approved a maintenance plan, including a contingency plan, for the area under section 175A of the CAA.

5. The State has met all applicable requirements for the area under section 110 and part D.

Sections III (Determination of Attainment), IV (New Hampshire’s Approved State Implementation Plan), V (Permanent and Enforceable Emission Reductions), VI (Requirements for the Area Under Section 110 and Part D) and VII (Maintenance Plan) of this notice describe how New Hampshire meets each of these criteria for the Central New Hampshire nonattainment area.

**III. Determination of Attainment**

As stated in the April 23, 2014 “Guidance for 1-Hour SO<sub>2</sub> Nonattainment Area SIP Submissions,” (EPA’s April 23, 2014 Guidance) for SO<sub>2</sub>, there are two components needed to support an attainment determination: (1) A review of representative air quality monitoring data, and (2) a further analysis, generally requiring air quality modeling, to demonstrate that the entire area is attaining the applicable standard, based on current actual emissions or the fully implemented control strategy. New Hampshire has addressed both components, as described in the two following sections III.A and III.B.

**A. Air Quality Monitoring Data**

The first requirement for redesignation is to demonstrate that the standard has been attained in the area. Under EPA regulations at 40 CFR 50.17, the SO<sub>2</sub> standard is met at an ambient air quality monitoring site when the three-year average of the annual 99th percentile of one-hour daily maximum concentrations is less than or equal to 75 ppb, as determined in accordance with appendix T of 40 CFR part 50 at all relevant monitoring sites in the subject area. EPA has reviewed the

ambient air monitoring data for the Central New Hampshire nonattainment area. The Central New Hampshire nonattainment area has two SO<sub>2</sub> monitoring sites: One located in Concord at Hazen Drive (Site ID #33-013-1007)<sup>2</sup> and one in Pembroke (Site ID #33-013-1006). The annual 99th percentile daily maximum SO<sub>2</sub> concentrations were higher at the Pembroke monitor than the Concord monitor for all years reviewed by EPA (2012 through 2017). In New Hampshire’s March 16, 2018 submittal, the State demonstrated that the vast majority of monitored exceedances at the Pembroke monitor during the 2009–2011 period occurred when wind directions were from Merrimack Station and toward the monitor. EPA’s review of monitored air quality includes ambient data collected in the 2012–2014 period through the 2014–2016 period, as

well as data collected in the 2015–2017 period, which were the most recent quality-assured data available at the time of EPA’s review. All data considered are complete, quality-assured, certified, and recorded in EPA’s Air Quality System (AQS) database.

Table 2 shows the three-year DVs for the periods between 2012 and 2017 for the Central New Hampshire nonattainment area. For 2012, the last year during which emissions from Merrimack Station bypassed the FGD system (a practice that is no longer permitted except as necessary to prevent severe damage to equipment or potential injury to facility personnel under the State’s September 1, 2016 permit), the 99th percentile monitored daily maximum value at the Pembroke monitor was 26.9 ppb. For 2017, the first full year during which Merrimack Station was no longer permitted to

operate unless its FGD system was operating, the 99th percentile daily maximum value at the Pembroke monitor was 16.4 ppb. Within the Central New Hampshire nonattainment area, the maximum monitored three-year average DV for 2012–2014 was 23 ppb (31.7% of the NAAQS), and the three-year average DV for 2015–2017 was 15 ppb (20.0% of the NAAQS). Both values are low and show attainment with the SO<sub>2</sub> standard. Therefore, the SO<sub>2</sub> monitors in the Central New Hampshire area clearly show attainment. New Hampshire plans to continue monitoring for SO<sub>2</sub> at the Pembroke location. Preliminary data for 2018 (January 1 through September 30) indicate a 99th percentile monitored daily maximum value of 11.9 ppb at the Pembroke monitor, indicating that the area is continuing to attain the SO<sub>2</sub> standard.

TABLE 2—MONITORING DATA FOR THE CENTRAL NEW HAMPSHIRE NONATTAINMENT AREA FOR 2012 THROUGH 2017

Site Name/ID No.	Annual 99th percentile value (ppb)						Design value (ppb)			
	2012	2013	2014	2015	2016	2017 <sup>a</sup>	2012–2014	2013–2015	2014–2016	2015–2017 <sup>a</sup>
Concord/33-013-1007 .....	7.7	8.6	9.5	7.2	4.9	N/A <sup>b</sup>	9	8	7	N/A <sup>b</sup>
Pembroke/33-013-1006 .....	26.9	17.0	26.0	16.9	16.4	12.1	23	20	20	15

<sup>a</sup> Data from EPA’s “Air Quality Design Values” website at <https://www.epa.gov/air-trends/air-quality-design-values>, accessed on July 18, 2019.

<sup>b</sup> The Concord monitor ceased collection of SO<sub>2</sub> monitoring data at the end of 2016.

**B. Air Quality Modeling Data**

Regarding the second component of the attainment determination, *i.e.*, air quality modeling, EPA stated in its April 23, 2014 Guidance that a previously submitted modeled attainment demonstration would suffice, along with evidence that the control strategy in the SIP has been fully implemented, to show attainment for a nonattainment area. In New Hampshire’s March 16, 2018 submittal, the State provides details about the SO<sub>2</sub> modeled attainment demonstration that the State submitted to EPA on January 31, 2017 with its SO<sub>2</sub> nonattainment area plan. As previously stated, EPA approved the State’s nonattainment area plan and attainment demonstration on June 5, 2018 (83 FR 25922). The control strategy for the nonattainment area consists of emission limits on Merrimack Station’s SO<sub>2</sub> emission units. Specifically, the emission limits for Merrimack Station are 7-boiler operating day rolling averages that New Hampshire established as being

comparably stringent, using a method described in EPA’s April 23, 2014 Guidance, to a 1-hour emission limit for which the attainment demonstration was performed. Therefore, since the emission limits have been fully implemented at Merrimack Station and are being complied with, as discussed in section V of this notice, then New Hampshire’s attainment demonstration is a sufficient basis to show attainment for the Central New Hampshire nonattainment area.

In its approved attainment demonstration, New Hampshire conducted air dispersion modeling using EPA’s AERMOD modeling system in a manner consistent with the requirements and recommendations specified in appendix W to 40 CFR part 55, known as the *Guideline on Air Quality Models* (the *Guideline*). This modeling established the 1-hour “critical emission value” of 0.54 lb/million British thermal units (mmBtu) for emissions from Merrimack Station to attain the 1-hour SO<sub>2</sub> NAAQS. The State

established for Merrimack Station a 7-boiler operating day emissions limit of 0.39 lb/MMBtu, determined to be comparably stringent to the critical emissions value using a method consistent with recommendations contained in appendix C to EPA’s April 23, 2014 Guidance. Details of New Hampshire’s attainment demonstration are provided in EPA’s proposal (82 FR 45242, September 28, 2017) and final action (83 FR 25922, June 5, 2018) for the approval of New Hampshire’s nonattainment area plan and attainment demonstration.

In summary, the monitored data show attainment in the Central New Hampshire nonattainment area for all three-year periods between 2012 and 2017, inclusive. New Hampshire has demonstrated, through an analysis of hourly wind directions correlated with the monitored exceedances at the Pembroke monitor for the 2009–2011 period, that Merrimack Station was responsible for the violation in the area. New Hampshire established through its

<sup>2</sup> The Concord monitor ceased collection of SO<sub>2</sub> monitoring data at the end of 2016 due to low concentrations measured at that location.

attainment demonstration, air dispersion modeling that Merrimack Station will not cause a violation of the NAAQS in the area in the future. Therefore, EPA agrees that the Central New Hampshire nonattainment area is currently attaining the SO<sub>2</sub> NAAQS.

#### IV. New Hampshire's Approved State Implementation Plan

As described in EPA's April 23, 2014 Guidance, for EPA to redesignate a nonattainment area to attainment, there must be a fully approved SIP under section 110(k) of the CAA for the area with respect to the NAAQS, without any current disapproval, finding of failure to submit or failure to implement the SIP, or partial, conditional, or limited approval.

EPA has determined that New Hampshire has a fully approved SIP with respect to section 110(k). On July 8, 2016, EPA approved New Hampshire's infrastructure SIP for the 2010 1-hour SO<sub>2</sub> NAAQS (81 FR 44542), except for an aspect of the SIP related to notification of neighboring states, which EPA conditionally approved, and the interstate transport provisions, which were not included in New Hampshire's SIP submittal. On May 25, 2017, EPA converted the conditional approval to a full approval based on a proposed amendment to the New Hampshire SIP (82 FR 24057). On December 17, 2018, EPA approved the State's interstate transport provisions (83 FR 64470). As stated previously, New Hampshire's nonattainment area plan for the area was approved on June 5, 2018 (83 FR 25922). There are no elements of the State's SIP that are subject to disapproval, finding of failure to submit, or partial, conditional, or limited approval, with respect to the 2010 1-hour SO<sub>2</sub> NAAQS. Therefore, the State has a fully approved SIP under section 110(k) of the CAA and satisfies all applicable requirements for the 2010 1-hour SO<sub>2</sub> NAAQS.

#### V. Permanent and Enforceable Emission Reductions

New Hampshire established stringent emissions limits and associated requirements for Merrimack Station on September 1, 2016 in its permit, TP-0189, for Merrimack Station. These emission limits were achieved through optimized operation of Merrimack Station's FGD system to more efficiently control SO<sub>2</sub> emissions. EPA incorporated those permit conditions from TP-0189 into the SIP in the approval of New Hampshire's nonattainment area plan. SO<sub>2</sub> emissions from Merrimack Station decreased by 21,388 tons (greater than 95%) in 2012,

the first full year of FGD operation at the facility, from the previous year. In 2016, the facility emitted 228 tons of SO<sub>2</sub>, about 1% of its emissions in 2011.

According to EPA's review of more recent annual emissions information from the Air Markets Program Data (AMPD) tool website for the facility, Merrimack Station emitted 431.2 tons of SO<sub>2</sub> in 2018,<sup>3</sup> which is about 2% of its emissions in 2011.

In addition, EPA has reviewed emissions data from Merrimack Station to assess whether the State's federally-enforceable permit conditions are effective in controlling emissions from the facility. Specifically, EPA reviewed AMPD emissions data using EPA's Field Audit Checklist Tool (FACT)<sup>4</sup> for the period between September 1, 2016, when the State's 7-day emissions limit became effective, and March 31, 2019, which is the most recent date for which emissions data are currently available. EPA's review indicates that Merrimack Station's emissions have not exceeded the SIP-approved SO<sub>2</sub> emissions limit. Furthermore, hourly emissions from Merrimack Station have been generally well below both the 1-hour critical emissions limit, which the State demonstrated to be comparably stringent to the permitted 7-day limit. Emissions from Merrimack Station were only above the critical emissions value for four individual hours since September 1, 2016, specifically: Twice in 2016, once in 2017, and once in 2018. A spreadsheet of these data and EPA's analysis is provided in the public docket. This operating pattern is consistent with EPA's expectation, as stated in EPA's approval of the State's nonattainment area plan, that "the source is presumed occasionally to emit more than the critical emission value but on average, and presumably at most times, to emit well below the critical emission value" (83 FR 25922, June 5, 2018). In summary, EPA's review of emissions information for Merrimack Station indicates that the facility has not exceeded its 7-day SO<sub>2</sub> emissions limit contained in the TP-0189 permit, and the facility has rarely exceeded the 1-hour critical emissions value, as anticipated by EPA. EPA therefore concludes that the emissions limits incorporated into the New Hampshire SIP for Merrimack Station are being complied with.

<sup>3</sup> Annual emissions data from EPA's AMPD tool, available at <https://ampd.epa.gov/ampd/>.

<sup>4</sup> Field Audit Checklist Tool (FACT) version 1.2.0.1, available for download at: [www.epa.gov/airmarkets/field-audit-checklist-tool-fact](http://www.epa.gov/airmarkets/field-audit-checklist-tool-fact). FACT provides users with metadata beyond the information available using the AMPD website.

#### VI. Requirements for the Area Under Section 110 and Part D

New Hampshire has submitted information demonstrating that it meets the requirements for the area under section 110 and part D of the CAA. In demonstrating that it has met all requirements for section 110 and part D of the CAA for the 2010 SO<sub>2</sub> NAAQS, New Hampshire cited its Air Pollution Control statutes at Chapter 125-C of the New Hampshire Revised Statutes Annotated (RSA), and its Rules Governing the Control of Air Pollution in the New Hampshire Code of Administrative Rules at Env-A 100 through 4800, of which some (but not all) have been approved into the State's SIP. As stated earlier in section IV, EPA has approved New Hampshire's entire infrastructure SIP for SO<sub>2</sub> in three separate actions. This prior infrastructure SIP approval confirms that New Hampshire's SIP meets the requirements of CAA section 110(a)(1) and 110(a)(2) to contain the basic program elements, such as an active enforcement program and permitting program.

Section 191 of the CAA required New Hampshire to submit a part D nonattainment SIP for the Central New Hampshire nonattainment area by April 4, 2015. EPA issued a finding of failure to submit the required SO<sub>2</sub> nonattainment plan by the submittal deadline for a number of areas, including the Central New Hampshire nonattainment area (81 FR 14736). New Hampshire submitted a plan for the Central New Hampshire nonattainment area on January 31, 2017, and EPA approved that plan on June 5, 2018 (83 FR 25922). Therefore, the State has met its obligations to establish a plan for the nonattainment area under section 191 of the CAA.

Part D includes general requirements, in subpart 1, and more specific requirements applicable to SO<sub>2</sub>, in subpart 5, for nonattainment areas. For purposes of evaluating this redesignation request, the applicable section 172 SIP requirements for the Central New Hampshire area are contained in sections 172(c)(1)-(9). A thorough discussion of the requirements contained in section 172 can be found in the General Preamble for Implementation of Title I (57 FR 13498, 13564, April 16, 1992).

Section 172(c)(1) requires nonattainment area SIPs to provide for the implementation of all reasonably available control measures (RACM) as expeditiously as practicable and to provide for attainment of the NAAQS. 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 EPA can redesignate the area. In the 1992 General Preamble for Implementation of Title I, EPA set forth its interpretation of applicable requirements for purposes of evaluating redesignation requests when an area is attaining a standard (57 FR 13498, 13564, April 16, 1992). EPA noted that the requirements for reasonable further progress (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. EPA’s understanding of section 172 also forms the basis of its Clean Data Policy, which was articulated for SO<sub>2</sub> in EPA’s April 23, 2014 Guidance and it 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 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).<sup>5</sup> Therefore, because the Central New Hampshire nonattainment area has attained the SO<sub>2</sub> standard, 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). In any case, in the context of implemented measures (especially the installation of the FGD at Merrimack Station, and establishment and incorporation into the SIP of the conditions of TP–0189), EPA believes that New Hampshire has satisfied the reasonably available control measures/ reasonably available control techniques (RACM/RACT) requirement for this area.

The other section 172 requirements that are designed to help an area achieve attainment are 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. These 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. In New Hampshire’s March

16, 2018 submittal, as part of its maintenance plan for the area, the State submitted an attainment inventory of the SO<sub>2</sub> emissions from sources in the nonattainment area. New Hampshire chose 2011 for its base year emissions inventory, as comprehensive emissions data was available and updated that year. The State provided emissions inventories for 2014, the most recent year with quality assured actual emissions for the area, and the 2018 interim year and project emissions for the 2028 maintenance year.<sup>6</sup> EPA considers these inventories, which are summarized in Table 3, to satisfy the requirement of section 172(c)(3). Merrimack Station, the only electric generating unit (EGU) in the Central New Hampshire nonattainment area, remains the largest source of SO<sub>2</sub> in the area, and emissions from Merrimack Station have declined substantially as discussed previously. For 2011 and 2014, the emissions inventories were based on the NEI for the respective years.

Note that New Hampshire’s projected inventory for the 2028 maintenance year, accounting for Merrimack Station’s continued operation under the conditions established in TP–0189, show overall emissions in the nonattainment area about 19,046 tons lower than those from 2011. This large reduction is expected to be sufficient to maintain the SO<sub>2</sub> standard. EPA is proposing to approve the 2014 emissions inventory, submitted by New Hampshire along with the redesignation request, as meeting the section 172(c)(3) emissions inventory requirement.

TABLE 3—SO<sub>2</sub> EMISSIONS INVENTORIES IN TONS PER YEAR FOR THE CENTRAL NEW HAMPSHIRE NONATTAINMENT AREA<sup>a</sup>

Year	EGU point sources	Non-EGU point sources	Area sources	On-road mobile sources	Non-road mobile sources	Total emissions
2011 .....	22,393	115	451	15	1	22,975
2014 .....	1,044	63	359	14	1	1,481
2018 <sup>b</sup> .....	<sup>c</sup> 1,927	90	425	5	1	<sup>c</sup> 2,473
2028 <sup>b</sup> .....	3,443	127	353	5	1	3,929

<sup>a</sup> New Hampshire’s emissions inventory provided emissions for each of the three partial counties in the nonattainment area. This table provides only the area-wide emissions totals for each inventory year.

<sup>b</sup> New Hampshire projected emissions for 2018 and 2028.

<sup>c</sup> According to EPA’s AMPD, actual emissions for Merrimack Station, the only EGU in the Central New Hampshire nonattainment area, were 431.2 tons in 2018.

<sup>5</sup> Although the Court of Appeals for the Sixth Circuit has issued a contrary opinion in the context of redesignations for ozone and PM<sub>2.5</sub>, EPA believes that these opinions, interpreting the applicability of the ozone and PM<sub>2.5</sub> RACM/RACT requirements for redesignations for those pollutants, do not address the applicability of the RACM/RACT requirement for SO<sub>2</sub>. See *Sierra Club v. EPA*, 793 F.3d 656 (6th Cir. 2015).

<sup>6</sup> At least one interim year inventory is used to demonstrate that emissions in the area are not expected to exceed the attainment year inventory in the interim between the base year and the last year of the maintenance plan. The demonstration, by means of an interim year inventory, that the area will maintain the standard throughout the maintenance period is derived from CAA section 175A, which states that maintenance in the area is

to be provided “for at least ten years after the redesignation,” and not just in the final year. Thus, a maintenance plan includes at least one interim year inventory to establish that, during the period that maintenance is projected, emissions will remain at or below the level of the attainment year inventory.

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. EPA has determined that, since PSD requirements will apply to new and modified major stationary sources after redesignation, areas being redesignated need not comply with the requirement that an 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." New Hampshire has demonstrated that the Central New Hampshire nonattainment area will be able to maintain the NAAQS without part D NSR in effect, and therefore New Hampshire does not need to have a fully approved part D NSR program prior to approval of the redesignation request. After redesignation, major new or modifying stationary sources would be subject to the State's Env-A 619 Prevention of Significant Deterioration rules and would no longer be subject to the State's part D NSR rules. Furthermore, EPA notes that New Hampshire does have a fully approved part D NSR program contained in its Env-A 618 Nonattainment New Source Review rules. New Hampshire's Env-A 618 and 619 rules were approved by EPA into the State's SIP on September 25, 2015 (80 FR 57722).

Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2). As noted previously, EPA has already approved a SIP for New Hampshire that meets the requirements of section 110(a)(2) applicable for purposes of redesignation.

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 EPA promulgated pursuant to its authority under the CAA. On December 9, 2011, New Hampshire submitted documentation establishing transportation conformity procedures in its SIP. EPA approved these procedures on November 29, 2013 (78 FR 71504). Moreover, 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).

Based on the preceding discussion, EPA is proposing to find that New Hampshire has satisfied all applicable requirements for purposes of redesignation of the Central New Hampshire nonattainment area under section 110 and part D of title I of the CAA.

#### VII. 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 ten years after the nonattainment area is redesignated 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 ten years following the initial ten-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures as EPA deems necessary to assure prompt correction of any future one-hour SO<sub>2</sub> violations. Specifically, the maintenance plan should address five requirements: The attainment emissions inventory, maintenance demonstration, monitoring, verification of continued attainment, and a contingency plan.

New Hampshire's March 16, 2018 redesignation request contains its maintenance plan, which New Hampshire has committed to review eight years after redesignation. New Hampshire submitted an attainment emission inventory which addresses current emissions and projections of future emissions for point, area, and

mobile sources. Total SO<sub>2</sub> emissions in the nonattainment area were 22,975 tons in the base year, 2011; 1,481 tons in the attainment year, 2014; 2,473 tons in the projected interim year, 2018; and 3,929 tons in the projected maintenance year, 2028. See Table 3. EPA notes that actual emissions for the interim year 2018 were considerably lower than the State's projected emissions, indicating that the State's methods for projecting an inventory may overestimate emissions in the area, which lends additional confidence in the continued future attainment of the area. Furthermore, the State indicated in its redesignation request that the projected emissions from all sources in the Central New Hampshire nonattainment area in 2028 are still lower than emissions permitted under TP-0189 for Merrimack Station alone, which have been modeled to show attainment.

New Hampshire has committed to continue to operate and maintain an appropriate air quality monitoring network to verify the area's attainment status, in accordance with the requirements of 40 CFR part 58. These data will be used to verify continued attainment.

New Hampshire has the authority to adopt, implement and enforce any subsequent emissions control measures deemed necessary to correct any future SO<sub>2</sub> violations. Regarding contingency measures to implement in the case of a future violation of the SO<sub>2</sub> standard, New Hampshire has committed to use its enforcement authority to promptly and aggressively address permit deviations from sources in the Central New Hampshire area, and in particular from Merrimack Station.

EPA proposes to find that New Hampshire's maintenance plan adequately addresses the five basic components necessary to maintain the SO<sub>2</sub> standard in the New Hampshire nonattainment area.

#### VIII. Proposed Action

In accordance with New Hampshire's March 16, 2018 request, EPA is proposing to redesignate the Central New Hampshire nonattainment area from nonattainment to attainment for the 2010 1-hour primary SO<sub>2</sub> NAAQS. New Hampshire has demonstrated that the area is attaining the SO<sub>2</sub> standard, and that the improvement in air quality is due to the permanent and enforceable permit conditions established for the main SO<sub>2</sub> source in the nonattainment area. EPA is also proposing to approve the maintenance plan that New Hampshire submitted to ensure that the area will continue to maintain the SO<sub>2</sub> standard. EPA is soliciting public

comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to this proposed rule by following the instructions listed in the **ADDRESSES** section of this **Federal Register**.

### IX. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 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 Clean Air Act. Accordingly, this proposed action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not expected to be an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would

be inconsistent with the Clean Air Act; and

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

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

### List of Subjects

#### 40 CFR Part 52

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

#### 40 CFR Part 81

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

Dated: July 25, 2019.

**Deborah Szaro,**

*Acting Regional Administrator, EPA Region 1.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 63

**[EPA-HQ-OAR-2019-0282; FRL-9997-62-OAR]**

**RIN 2060-AM75**

### Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act

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

**ACTION:** Notice of public hearing.

**SUMMARY:** On June 25, 2019, the Administrator of the U.S. Environmental Protection Agency (EPA) signed the proposed rulemaking "Reclassification of Major Sources as Area Sources Under Section 112 of the

Clean Air Act." The EPA also requested public comment on the proposed action. The EPA is announcing that it will hold a public hearing to provide interested parties the opportunity to present data, views, or arguments concerning the proposed action.

**DATES:** *Public hearing:* The EPA will hold a public hearing on August 15, 2019, in Washington, DC. Please refer to the **SUPPLEMENTARY INFORMATION** section for additional information on the public hearing.

**ADDRESSES:** The hearing will be held at the EPA WJC East Building, 1201 Constitution Avenue NW, Room 1153, Washington, DC 20004. The hearing will convene at 9:00 a.m. (local time) and will conclude at 5:00 p.m. If there are no additional registered speakers, the EPA will end the hearing 2 hours after the last registered speaker has concluded their comments. The EPA's website for this rulemaking, which includes the proposal and information about the hearing, can be found at: <https://www.epa.gov/stationary-sources-air-pollution/reclassification-major-sources-area-sources-under-section-112-clean>. Written comments on the proposed rulemaking may be submitted to the EPA electronically, by mail, facsimile, or through hand delivery/courier. Please refer to the website for this rulemaking for the addresses and detailed instructions for submitting written comments.

Because this hearing is being held at a U.S. government facility, individuals planning to attend the hearing should be prepared to show valid picture identification to the security staff to gain access to the meeting room. Please note that the REAL ID Act, passed by Congress in 2005, established new requirements for entering federal facilities. For purposes of the REAL ID Act, the EPA will accept government-issued IDs, including driver's licenses from the District of Columbia and all states and territories. Acceptable alternative forms of identification include: federal employee badges, passports, enhanced driver's licenses, and military identification cards. Additional information on the REAL ID Act is available at: <https://www.dhs.gov/real-id>.

Any objects brought into the building need to fit through the security screening system, such as a purse, laptop bag, or small backpack. Demonstrations will not be allowed on federal property for security reasons.

**FOR FURTHER INFORMATION CONTACT:** The EPA will begin pre-registering speakers for the hearing upon publication of this document in the **Federal Register**. To