

Dated: August 17, 2020.

Cindy S. Barger,

Director, NEPA Compliance Division, Office of Federal Activities.

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ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OAR-2020-0037; FRL-10013-82-OAR]

EPA Responses to Certain State Designation Recommendations for the 2010 Sulfur Dioxide Primary National Ambient Air Quality Standard: Notice of Availability and Public Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability and public comment period.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) has posted our responses to certain state designation recommendations for the 2010 Sulfur Dioxide (SO₂) Primary National Ambient Air Quality Standard (NAAQS) on the Agency’s website and electronic docket. These responses include our intended designations for the affected areas, specifically all remaining undesignated areas for the 2010 SO₂ NAAQS in the United States. The EPA also invites the public to review and provide input on our intended designations during the comment period specified in the **DATES** section. The EPA sent its responses directly to the states on or about August 13, 2020. The EPA intends to make final designation determinations for the areas of the country addressed by these responses no later than December 31, 2020.

DATES: Comments must be received on or before September 21, 2020. Please refer to **SUPPLEMENTARY INFORMATION** for additional information on the comment period.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2020-0037, at <https://www.regulations.gov>.¹ Follow the online instructions for submitting comments. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting COVID-19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via <https://www.regulations.gov>, as there may be a delay in processing mail and faxes. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at <https://www.epa.gov/dockets>.

Once submitted, comments cannot be edited or removed from [regulations.gov](https://www.regulations.gov). The EPA may publish any comment received to our 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.*, comments hosted 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 <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: For general questions concerning this action, please contact Corey Mocka, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Air Quality Policy Division, 109 T.W. Alexander Drive, Mail Code C539-04, Research Triangle Park, NC 27711; telephone: (919) 541-5142; email address: mocka.corey@epa.gov. The following EPA contacts can answer questions regarding areas in a particular EPA Regional office:

U.S. EPA Regional Office Contacts

Region 2—Marina Castro, telephone (212) 637-3713, email at castro.marina@epa.gov.

Region 3—Megan Goold, telephone (215) 814-2027, email at goold.megan@epa.gov.

Region 4—Twunjala Bradley, telephone (404) 562-9352, email at bradley.twunjala@epa.gov.

Region 5—Alisa Liu, telephone (312) 353-3193, email at liu.alisa@epa.gov.

Region 6—Robert Imhoff, telephone (214) 665-7262, email at imhoff.robert@epa.gov.

Region 7—William Stone, telephone (913) 551-7714, email at stone.william@epa.gov.

Region 8—Rebecca Matichuk, telephone (303) 312-6867, email at matichuk.rebecca@epa.gov.

Region 9—Ashley R. Graham, telephone (415) 972-3877, email at graham.ashley@epa.gov.

Region 10—John Chi, telephone (206) 553-1185, email at chi.john@epa.gov.

Regional offices	Affected state(s)
EPA Region 2—Air Programs Branch, 290 Broadway, 25th Floor, New York, NY 10007	New York.
EPA Region 3—Planning & Implementation Branch, 1650 Arch Street, Philadelphia, PA 19103	Maryland, Pennsylvania, Virginia, and West Virginia.
EPA Region 4—Air Planning & Implementation Branch, Sam Nunn Atlanta Federal Center, 61 Forsyth Street SW, 12th Floor, Atlanta, GA 30303.	Alabama, Georgia, Kentucky, and North Carolina.
EPA Region 5—Air Programs Branch, Air & Radiation Division (AR-18J), 77 West Jackson Blvd., Chicago, IL 60604.	Illinois, Indiana, and Wisconsin.
EPA Region 6—State Planning & Implementation Branch, 1201 Elm Street, Dallas, TX 75270 ..	Louisiana, Oklahoma, and Texas.
EPA Region 7—Air Quality Planning Branch, 11201 Renner Blvd., Lenexa, KS 66219	Missouri and Nebraska.
EPA Region 8—Air Quality Planning Branch, 1595 Wynkoop Street, Denver, CO 80202	North Dakota and Wyoming.
EPA Region 9—Air Planning Branch, 75 Hawthorne Street, San Francisco, CA 94105	Hawaii.
EPA Region 10—Air Planning & State/Tribal Coordinations Branch, 1200 Sixth Avenue, Mail Code OAQ-107, Seattle, WA 98101.	Washington.

¹ The <https://www.regulations.gov> platform is in the process of being upgraded. Users may be automatically redirected to [https://](https://beta.regulations.gov)

beta.regulations.gov. Both website addresses contain the same information and both website

addresses allow users to submit comments to the docket.

Most EPA offices are closed to reduce the risk of transmitting COVID-19, but staff remain available via telephone and email. The EPA encourages the public to review designation recommendations from states, our recent letters notifying the affected states of our intended designations, and area-specific technical support information online at <https://www.epa.gov/sulfur-dioxide-designations> and also in the public docket for these SO₂ designations at <https://www.regulations.gov> under Docket ID No. EPA-HQ-OAR-2020-0037.

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I. What is the purpose of this action?

The purpose of this notice of availability is to solicit input from interested parties on the EPA's recent responses to the state designation recommendations for the 2010 SO₂ NAAQS. These responses, and their supporting technical analyses, can be found at <https://www.epa.gov/sulfur-dioxide-designations> and also in the public docket for these SO₂ designations at <https://www.regulations.gov> under Docket ID No. EPA-HQ-OAR-2020-0037.

On June 2, 2010, the EPA Administrator signed a final rule that revised the primary SO₂ NAAQS (75 FR 35520; June 22, 2010) after review of the existing primary SO₂ standards promulgated on April 30, 1971 (36 FR 8187). The EPA established the revised primary SO₂ NAAQS at a level of 75 parts per billion (ppb) which is attained when the 3-year average of annual 99th percentile of daily maximum 1-hour

average concentrations of SO₂ does not exceed 75 ppb.

The process for designating areas following promulgation of a new or revised NAAQS is contained in the Clean Air Act (CAA or Act) section 107(d) (42 U.S.C. 7407(d)). After promulgation of a new or revised NAAQS, each governor or tribal leader has an opportunity to recommend air quality designations, including the appropriate boundaries for nonattainment areas, to the EPA. The EPA considers these recommendations as part of its duty to promulgate the formal area designations and boundaries for the new or revised NAAQS. By no later than 120 days prior to promulgating designations, the EPA is required to notify states, territories, and tribes, as appropriate, of any intended modifications to an area designation or boundary recommendation that the EPA deems necessary.

After invoking a 1-year extension of the deadlines to designate areas, as provided for in section 107 of the Act, the EPA completed an initial round of SO₂ designations for certain areas of the country on July 25, 2013 (referred to as "Round 1").² Following the initial designations, three lawsuits were filed against the EPA in different U.S. District Courts, alleging the agency had failed to perform a nondiscretionary duty under the CAA by not designating all portions of the country by the June 2, 2013, deadline. In one of those cases, the U.S. District Court for the Northern District of California on March 2, 2015, entered an enforceable order for the EPA to complete the area designations by three specific deadlines according to the court-ordered schedule.³

To meet the first court-ordered deadline, additional areas were designated on June 30, 2016, and November 29, 2016 (collectively referred to as "Round 2").⁴ To meet the second deadline of the court-ordered schedule, the EPA completed SO₂ designations for most remaining areas of the country on December 21, 2017, and March 28, 2018 (collectively referred to

² A total of 29 areas throughout the U.S. were designated in this action published on August 5, 2013 (78 FR 47191). The EPA designated all 29 areas nonattainment based on violating monitored SO₂ concentrations from Federal Reference Method and Federal Equivalent Method monitors that are sited and operated in accordance with 40 CFR parts 50 and 58, and did not at that time designate any other areas.

³ *Sierra Club v. McCarthy*, No. 3–13–cv–3953 (SI) (N.D. Cal. Mar. 2, 2015).

⁴ A total of 65 areas throughout the U.S. were designated in these actions published on July 12, 2016 (81 FR 45039), and December 13, 2016 (81 FR 89870). Of these 65 areas, seven were designated nonattainment.

as "Round 3").⁵ Finally, the EPA is under a December 31, 2020, court-ordered deadline, the final of the three deadlines established by the court, to designate all remaining undesignated areas (collectively referred to as "Round 4" or the "final round"). The remaining undesignated areas are: (1) Those areas which, under the court order, did not meet the criteria that required designation in Round 2 and also were not required to be designated in Round 3 due to installation and operation of a new SO₂ monitoring network by January 2017 in the area meeting EPA's specifications referenced in EPA's SO₂ Data Requirements Rule (DRR),⁶ and (2) those areas which EPA has not otherwise previously designated for the 2010 SO₂ NAAQS. After these Round 4 designations are completed, there will be no remaining undesignated areas for the 2010 SO₂ NAAQS.

On or about August 13, 2020, consistent with section 107(d)(1)(b)(ii) of the CAA, the EPA notified affected states either of our assessment of their recommended designations for Round 4 or of our intended designations for areas without recommendations. While we are in agreement with the recommendations for many areas, some may warrant further discussion. The EPA is available to assist and hopes to resolve any differences regarding the proper designation for these areas within the 120-day period provided by the CAA.

For any areas that we designate nonattainment in our final action, the CAA directs states to develop and submit to the EPA State Implementation Plans within 18 months of the effective date of the final designations, that meet the requirements of CAA sections 172(c) and 191–192 and provide for attainment of the NAAQS as expeditiously as practicable, but not later than 5 years from the effective date of the final designations.

II. Instructions for Submitting Public Comments and Internet Website for Rulemaking Information

A. Invitation To Comment

The purpose of this document is to solicit input from interested parties, other than the states to which we have sent notification letters, on the EPA's recent responses to the designation recommendations for the 2010 SO₂ NAAQS. These responses, and their

⁵ Most remaining areas of the U.S. were designated in actions published on January 9, 2018 (83 FR 1098) and April 5, 2018 (83 FR 14597). Of these areas, six were designated nonattainment.

⁶ See 80 FR 51052 (August 21, 2015), codified at 40 CFR part 51 subpart BB.

supporting technical analyses, can be found at <https://www.epa.gov/sulfur-dioxide-designations> and also in the public docket for these intended SO₂ designations at <https://www.regulations.gov> under Docket ID No. EPA-HQ-OAR-2020-0037.

CAA section 107(d) provides a process for air quality designations that involves recommendations by states, territories, and tribes to the EPA and responses from the EPA to those parties, prior to the EPA promulgating final area designations and boundaries. The EPA is not required under CAA section 107(d) to seek public comment during the designation process, but we are electing to do so for these areas with respect to the 2010 SO₂ NAAQS in order to gather additional information for the EPA to consider before making final designations for the specific areas addressed in the EPA's recent letters to states, territories, and tribes. The EPA invites public input on our responses to states regarding our intended designations for these areas during the 30-day comment period provided in this document. In order to receive full consideration, input from the public must be submitted to the docket by September 21, 2020. At this time, the EPA is not asking for public comments on areas beyond those areas that are the subject of this proposed action. This document and opportunity for public comment does not affect any rights or obligations of any state, territory, or tribe, or of the EPA, which might otherwise exist pursuant to the CAA section 107(d).

Please refer to the **FOR FURTHER INFORMATION CONTACT** section of this document for specific instructions on submitting comments and locating relevant public documents.

For some cases, the EPA has indicated to a state that further discussion is needed—*e.g.*, where a state's recommended nonattainment area boundary differs from the EPA's intended nonattainment area boundary, or areas where the state recommended a designation of attainment/unclassifiable (or unclassifiable) and available air quality monitoring or modeling data show that the area may be violating the 2010 SO₂ NAAQS or contain sources that may be contributing to air quality in a nearby area that may be violating the 2010 primary SO₂ NAAQS. In establishing nonattainment area boundaries for a particular area, the EPA is required to include within the boundaries both the area that does not meet the standard and any nearby area contributing to the area that does not meet the standard. We are particularly interested in receiving

comments, supported by relevant information, if you believe that a specific geographic area for which further discussion is needed concerning a state's recommended designation of attainment/unclassifiable or unclassifiable (and for which available air quality data would require a modification of the recommended designation) should not be categorized by the CAA section 107(d) criteria as nonattainment, or if you believe that a specific nearby area for which the EPA does agree with a state's recommended designation of attainment/unclassifiable or unclassifiable should in fact be categorized as contributing to nonattainment using the CAA section 107(d) criteria. Please be as specific as possible in supporting your views.

- Describe any assumptions and provide any technical information and/or data that you used.
- Provide specific examples to illustrate your concerns and suggest alternatives.
- Explain your views as clearly as possible.
- Provide your input by the comment period deadline identified.

The EPA intends to complete designations for the areas subject to this round no later than December 31, 2020. Additional information on the EPA's intended approach for addressing designations for all areas can be found on the EPA's SO₂ implementation website at <https://www.epa.gov/so2-pollution/applying-or-implementing-sulfur-dioxide-standards>.

B. What should I consider as I prepare my comments for the EPA?

1. *Submitting CBI.* Do not submit confidential business information (CBI) to the EPA through <https://www.regulations.gov> or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI in a USB flash drive or CD ROM that you mail to the EPA, mark the outside of the USB flash drive or CD ROM as CBI and then identify electronically within the USB flash drive 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 Code of Federal Regulations (CFR) part 2.

Send information identified as CBI only to the following address: Tiffany Purifoy, OAQPS Document Control Officer, U.S. EPA, Office of Air Quality

Planning and Standards, 109 T.W. Alexander Drive, Mail Code C404-02, Research Triangle Park, NC 27711, Attention Docket ID No. EPA-HQ-OAR-2020-0037. There will be a delay in confirming receipt of CBI packages, because the EPA-RTP office is closed to reduce the risk of transmitting COVID-19. Due to the office closure, EPA is also requesting that parties notify the OAQPS Document Control Officer via telephone, (919) 541-0878, or email at purifoy.tiffany@epa.gov when mailing information identified as CBI.

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.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

C. Where can I find additional information for this rulemaking?

The EPA has also established a website for this rulemaking at <https://www.epa.gov/sulfur-dioxide-designations>. The website includes the state designation and boundary recommendations, the EPA's intended area designations, information supporting the EPA's preliminary designation decisions, as well as the rulemaking actions and other related information that the public may find useful.

III. What is the 2010 SO₂ NAAQS and what are the health concerns that it addresses?

The Administrator signed a final rule revising the primary SO₂ NAAQS on June 2, 2010. The rule was published in the **Federal Register** on June 22, 2010 (75 FR 35520) and became effective on August 23, 2010. Specifically, the EPA established a new 1-hour SO₂ standard at a level of 75 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 average concentrations of SO₂ is less than or equal to 75 ppb, as determined in accordance with appendix T of 40 CFR part 50. 40 CFR 50.17(a) and (b). Current scientific evidence links short-term exposures to SO₂, ranging from 5 minutes to 24 hours, with an array of adverse respiratory effects including bronchoconstriction and increased asthma symptoms. Studies also show a connection between short-term exposure and increased visits to emergency departments and hospital admissions for respiratory illnesses,

particularly in at-risk populations including children, the elderly, and asthmatics.⁷

IV. What are the CAA requirements for air quality designations and what action has the EPA taken to meet these requirements?

After the EPA promulgates a new or revised NAAQS, the EPA is required to designate all areas of the country as either “nonattainment,” “attainment,” or “unclassifiable,” for that NAAQS pursuant to section 107(d)(1)–(2) of the CAA. As part of these Round 4 designations, the EPA is implementing its interpretation of statutory terms under CAA section 107(d) nationwide and is basing these designations on EPA’s nationwide analytical approach and technical analysis, including evaluation of monitoring data and air quality modeling, applied to the available evidence for each area.

Regarding statutory definitions and the EPA’s interpretations of such, section 107(d)(1)(A)(i) of the CAA defines a nonattainment area as an area that does not meet the NAAQS or that contributes to a nearby area that does not meet the NAAQS. An attainment area is defined by section 107(d)(1)(A)(ii) of the CAA as any area (other than an area that meets the definition of a nonattainment area) that meets the NAAQS. Unclassifiable areas are defined by section 107(d)(1)(A)(iii) of the CAA as those that cannot be classified on the basis of available information as meeting or not meeting the NAAQS.

In this action, the EPA defines a nonattainment area as an area that, based on available information including (but not limited to) monitoring data and/or appropriate modeling analyses, the EPA has determined either: (1) Does not meet the 2010 SO₂ NAAQS, or (2) contributes to ambient air quality in a nearby area that does not meet the NAAQS. An attainment/unclassifiable area is defined as an area that, based on available information including (but not limited to) appropriate monitoring data and/or modeling analyses, the EPA has determined meets the NAAQS and does not likely contribute to ambient air quality in a nearby area that does not meet the NAAQS. An unclassifiable area is defined as an area for which the available information does not allow the EPA to determine whether the area meets the definition of a nonattainment area or the definition of an attainment/unclassifiable area.

This nationwide analytical approach also includes but is not limited to: (1) The EPA’s interpretations of other terms (e.g., attainment/unclassifiable, nonattainment, unclassifiable, violating monitor, etc.) in the context of Round 4 of the 2010 SO₂ NAAQS; (2) the appropriate basis for characterizing the air quality of an area; (3) the five-factor analysis to determine the boundaries for each air quality area under the NAAQS (see Section V of this document); and (4) the methodology for appropriately characterizing SO₂ air quality through monitoring or modeling.

The EPA notes that CAA section 107(d) provides the agency with discretion to determine how best to interpret the terms in the definition of a nonattainment area (e.g., “contributes to” and “nearby”) for a new or revised NAAQS, given considerations such as the nature of a specific pollutant, the types of sources that may contribute to violations, the form of the standards for the pollutant, and other relevant information. In particular, the EPA’s position is that the statute does not require the agency to establish bright line tests or thresholds for what constitutes “contribution” or “nearby” for purposes of designations.⁸

Similarly, the EPA’s position is that the statute permits the EPA to evaluate the appropriate application of the term “area” to include geographic areas based upon full or partial county boundaries, as may be appropriate for a particular NAAQS. For example, CAA section 107(d)(1)(B)(ii) explicitly provides that the EPA can make modifications to designation recommendations for an area “or portions thereof,” and under CAA section 107(d)(1)(B)(iv) a designation remains in effect for an area “or portion thereof” until the EPA redesignates it.

By no later than 1 year after the promulgation of a new or revised NAAQS, CAA section 107(d)(1)(A) provides that each state governor is required to recommend air quality designations, including the appropriate boundaries for areas, to the EPA.⁹ The EPA reviews those recommendations and is authorized to make any modifications the Administrator deems necessary. The statute does not define the term “necessary,” but the EPA interprets this to authorize the Administrator to modify designations that did not meet the statutory requirements or were otherwise

inconsistent with the facts or analysis deemed appropriate by the Administrator. If the EPA is considering modifications to a recommendation, we are required by CAA section 107(d)(1)(B)(ii) to notify the state of any such intended modifications not less than 120 days prior to our promulgation of the final designation. These notifications are commonly known as the “120-day letters.” During this period, if the state or territory does not agree with the EPA’s modification, it has an opportunity to respond to the EPA and to demonstrate why it believes the modification proposed by the EPA is inappropriate. If a state or territory fails to provide any recommendation for an area, in whole or in part, the EPA still must promulgate a designation that the Administrator deems appropriate, pursuant to CAA section 107(d)(1)(B)(ii). While CAA section 107(d) specifically addresses the designations process between the EPA and states and territories, the EPA intends to follow the same process to the extent practicable for tribes that submitted designation recommendations. The EPA is required by CAA section 107(d)(2)(A) to publish a notice in the **Federal Register** promulgating its final designations, and the EPA codifies its designations in the Code of Federal Regulations at 40 CFR part 81, subpart C.

V. What guidance has the EPA previously issued and how does the EPA now intend to apply the statutory requirements to determine area designations and boundaries?

In the notice of proposed rulemaking for the revised SO₂ NAAQS (74 FR 64810; December 8, 2009), the EPA issued proposed guidance on our approach to implementing the standard, including our approach to initial area designations. The EPA solicited comment on that guidance and, in the final rule (75 FR 35520; June 22, 2010), provided further guidance concerning implementation of the standard and how to identify nonattainment areas and boundaries for the SO₂ NAAQS. Subsequently, on March 24, 2011, the EPA provided additional designations guidance to assist states with making their recommendations for area designations and boundaries.¹⁰ The EPA also issued two additional designations guidance documents on March 20, 2015,

⁸ This view was confirmed in *Catawba County v. EPA*, 571 F.3d 20 (D.C. Cir. 2009).

⁹ Tribes are invited to submit recommendations following promulgation of a new or revised NAAQS but are not required to do so.

¹⁰ See “Area Designations for the 2010 Revised Primary Sulfur Dioxide National Ambient Air Quality Standards,” memorandum to Regional Air Division Directors, Regions I–X, from Stephen D. Page, dated March 24, 2011, available at https://www3.epa.gov/ttn/naaqs/aqmguides/collection/cp2/20110324_page_so2_designations_guidance.pdf.

⁷ See 75 FR 35520 at 35525, June 22, 2010.

and July 22, 2016, specific to Round 2 and Round 3 processes and schedules, respectively.¹¹

An updated designations guidance document was issued by the EPA on September 5, 2019, to better reflect the Round 4 2010 SO₂ NAAQS designations process and to supplement, where necessary, prior designations guidance documents.¹² This memorandum identifies factors that the EPA intends to evaluate in determining whether areas are in violation of the 2010 SO₂ NAAQS. The document also contains the factors that the EPA intends to evaluate in determining the boundaries for all remaining undesignated areas in the country. These factors include: (1) Air quality characterization via ambient monitoring and/or dispersion modeling results; (2) emissions-related data; (3) meteorology; (4) geography and topography; and (5) jurisdictional boundaries.¹³

VI. What air quality information has the EPA used for these intended designations?

These intended designations are based on the EPA's application of the nationwide analytical approach to, and preliminary technical assessment of, the weight of evidence for each area, including but not limited to available air quality monitoring data and air quality modeling results. With respect to air quality monitoring data, the EPA has considered data from at least the most recent 3 full calendar years, *i.e.*, 2017–2019. The 1-hour primary SO₂ standard is violated at an ambient air quality

¹¹ See "Updated Guidance for Area Designations for the 2010 Primary Sulfur Dioxide National Ambient Air Quality Standard," memorandum to Regional Air Division Directors, Regions 1–10, from Stephen D. Page, dated March 20, 2015, available at <https://www.epa.gov/sites/production/files/2016-04/documents/20150320so2designations.pdf>, and "Area Designations for the 2010 Primary Sulfur Dioxide National Ambient Air Quality Standard—Round 3," memorandum to Regional Air Division Directors, Regions 1–10, dated July 22, 2016, available at <https://www.epa.gov/sites/production/files/2016-07/documents/areadesign.pdf>.

¹² See "Area Designations for the 2010 Primary Sulfur Dioxide National Ambient Air Quality Standard—Round 4," memorandum to Regional Air Division Directors, Regions 1–10, from Peter Tsigotis, dated September 5, 2019, available at https://www.epa.gov/sites/production/files/2019-09/documents/round_4_so2_designations_memo_09-05-2019_final.pdf.

¹³ The EPA supplemented this guidance with documents first made available to states and other interested parties in 2013 and updated in 2016. See SO₂ NAAQS Designations Source-Oriented Monitoring Technical Assistance Document (February 2016), available at <https://www.epa.gov/sites/production/files/2016-06/documents/so2monitoringtd.pdf>, and SO₂ NAAQS Designations Modeling Technical Assistance Document (August 2016), available at <https://www.epa.gov/sites/production/files/2016-06/documents/so2modelingtd.pdf>.

monitoring site when the 3-year average of the annual 99th percentile of the daily maximum 1-hour average concentrations of SO₂ exceeds 75 ppb, as determined in accordance with Appendix T of 40 CFR part 50.

In the EPA's September 2019 memorandum, we noted that Round 4 area designations will be based primarily on ambient monitoring data, including data from existing and new EPA-approved monitors that have collected data at least from January 2017 forward, pursuant to the DRR. In addition, EPA may evaluate air dispersion modeling submitted by state air agencies for two specific circumstances. First, states may submit air dispersion modeling of actual or allowable emissions to support the geographic extent of a nonattainment boundary. Second, states may submit air dispersion modeling of allowable emissions to demonstrate that new permanent and federally enforceable SO₂ emissions limits that subject sources are meeting provide for attainment of the NAAQS and represent a more accurate characterization of current air quality at the time of designation than does monitoring data reflecting past air quality that does not account for compliance with new limits and associated enforceable emissions reductions.

VII. How do the Round 4 designations affect Indian country?

There are no violating monitors for areas of Indian country, so no areas of Indian country are being designated as nonattainment as part of this round. Any other parts of Indian country being designated as attainment/unclassifiable or unclassifiable are being designated along with the surrounding state area.

VIII. Where can I find information forming the basis for these intended designations and exchanges between the EPA and states related to these intended designations?

Information providing the basis for this intended action are provided in a technical support document (TSD)¹⁴ included in the docket. The TSD, technical assistance documents, applicable EPA guidance memoranda, and copies of correspondence regarding this process between the EPA and the

¹⁴ The single TSD for this action consists of a few sections with information that applies to all affected areas or to certain groups of areas with some common features, and many sections that are specific to individual states. For convenience, the term "TSD" is also used generically to refer to these state-specific sections. For informational purposes, these individual state-specific TSDs are available for separate downloading from the indicated EPA website.

states, territories, tribes, and other parties, are available for review at the public docket for these SO₂ designations at <https://www.regulations.gov> under Docket ID No. EPA-HQ-OAR-2020-0037, at the EPA Docket Center listed in the **FOR FURTHER INFORMATION CONTACT** section of this document, and on the Agency's SO₂ Designations website at <https://www.epa.gov/sulfur-dioxide-designations>. Air dispersion modeling input and output files are too large to post in the docket or on the website and must be requested from the EPA Docket Office or the Regional office contacts listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

Dated: August 13, 2020.

Panagiotis Tsigotis,

Director, Office of Air Quality Planning & Standards.

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ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OGC-2020-0399; FRL-10013-98-OGC]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (CAA or the Act), notice is given of a proposed consent decree in *Center for Biological Diversity, et al., v. Wheeler*, No. 3:20-cv-00448 (N.D. Cal.). On January 22, 2020 and February 19, 2020, the Center for Biological Diversity and the Center for Environmental Health (collectively, Plaintiffs) filed a complaint and a first amended complaint, respectively, in the United States District Court for the Northern District of California, alleging that the Administrator of the United States Environmental Protection Agency (EPA) failed to perform certain non-discretionary duties. First, Plaintiffs allege that EPA failed to issue a finding of failure to submit for state implementation plans (SIPs) addressing reasonably available control technology (RACT) for volatile organic compounds (VOC) from sources covered by the 2016 Oil and Gas control techniques guideline (CTG) for the 2008 ozone National Ambient Air Quality Standards (NAAQS) for states and areas listed in the First Amended Complaint within six months after the SIP due date. Second,