

(k) The Missouri Department of Natural Resources submitted Missouri rule 10 CSR 10-6.110, "Submission of Emission Data, Emission Fees, and Process Information" on December 27, 2001, approval effective April 22, 2002.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[MT-001-0036a; FRL-7139-6]

#### Approval and Promulgation of Air Quality Implementation Plans; State of Montana; Billings Carbon Monoxide Redesignation to Attainment and Designation of Areas for Air Quality Planning Purposes

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

**ACTION:** Direct final rule.

**SUMMARY:** On February 9, 2001, the Governor of Montana submitted a request to redesignate the Billings "not classified" carbon monoxide (CO) nonattainment area to attainment for the CO National Ambient Air Quality Standard (NAAQS). The Governor also submitted a CO maintenance plan. In this action, EPA is approving the Billings CO redesignation request and the maintenance plan.

**DATES:** This direct final rule is effective on April 22, 2002, without further notice, unless EPA receives adverse comments by March 25, 2002. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Written comments may be mailed to: Richard R. Long, Director, Air and Radiation Program, Mailcode 8P-AR, United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202-2466.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the following offices:

United States Environmental Protection Agency, Region VIII, Air and Radiation Program, 999 18th Street, Suite 300, Denver, Colorado 80202-2466; and, United States Environmental Protection Agency, Air and Radiation Docket and Information Center, 401 M Street, SW, Washington, DC 20460.

Copies of the State documents relevant to this action are available for

public inspection at: Montana Air and Waste Management Bureau, Department of Environmental Quality, P.O. Box 20901, Helena, Montana, 59620-0901.

**FOR FURTHER INFORMATION CONTACT:** Tim Russ, Air and Radiation Program, Mailcode 8P-AR, United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202-2466; Telephone number: (303) 312-6479.

#### SUPPLEMENTARY INFORMATION:

Throughout this document wherever "we," "us," or "our" are used we mean the Environmental Protection Agency.

#### I. What Is the Purpose of This Action?

In this action, we are approving a change in the legal designation of the Billings area from nonattainment for CO to attainment and we're approving the maintenance plan that is designed to keep the area in attainment for CO for the next 10 years.

We originally designated the Billings area as nonattainment for CO under the provisions of the 1977 Clean Air Act (CAA) Amendments (see 43 FR 8962, March 3, 1978). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted (Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q). Under section 107(d)(1)(C) of the CAA, we designated the Billings area as nonattainment for CO because the area had been previously designated as nonattainment before November 15, 1990. The Billings area was classified as a "not classified" CO nonattainment area as the area had not violated the CO NAAQS in 1988 and 1989.<sup>1</sup>

Under the CAA, designations can be changed if sufficient data are available to warrant such changes and if certain other requirements are met. See CAA section 107(d)(3)(D). Section 107(d)(3)(E) of the CAA provides that the Administrator may not promulgate a redesignation of a nonattainment area to attainment unless:

- (i) the Administrator determines that the area has attained the national ambient air quality standard;
- (ii) the Administrator has fully approved the applicable implementation plan for the area under CAA section 110(k);
- (iii) the Administrator determines that the improvement in air quality is due to

<sup>1</sup> The EPA describes areas as "not classified" if they were designated nonattainment both prior to enactment and (pursuant to CAA section 107(d)(1)(C) at enactment, and if the area did not violate the primary CO NAAQS in either year for the 2-year period of 1988 through 1989. Refer to the "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 57 FR 13498, April 16, 1992. See specifically 57 FR 13535, April 16, 1992.

permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions;

(iv) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of CAA section 175A; and,

(v) the State containing such area has met all requirements applicable to the area under section 110 and part D of the CAA.

Before we can approve the redesignation request, we must decide that all applicable State Implementation Plan (SIP) elements have been fully approved. Approval of the applicable SIP elements may occur prior to final approval of the redesignation request or simultaneously with final approval of the redesignation request. We note there are no outstanding SIP elements necessary for the Billings redesignation.

#### II. What Is the State's Process To Submit These Materials to EPA?

Section 110(k) of the CAA sets out provisions governing our actions on submissions of revisions to a SIP. The CAA also requires States to observe certain procedural requirements in developing SIP revisions for submittal to EPA. Section 110(a)(2) of the CAA requires that each SIP revision be adopted after reasonable notice and public hearing. This must occur prior to the revision being submitted by a State to us.

The Montana Department of Environmental Quality (DEQ) held a public hearing on December 19, 2000, for the Billings CO redesignation request and maintenance plan. The redesignation request and maintenance plan were adopted by the Montana DEQ directly after the hearing and became State effective December 19, 2000. These SIP materials were submitted by the Governor to us on February 9, 2001. We have evaluated the Governor's submittal and have determined that the State met the requirements for reasonable notice and public hearing under section 110(a)(2) of the CAA.

As required by under section 110(k)(1)(B) of the CAA, we reviewed these SIP materials for conformance with the completeness criteria in 40 CFR part 51, appendix V and determined that the Governor's February 9, 2001, submittal was administratively and technically complete. Our completeness determination was sent on March 16, 2001, through a letter from Jack W.

McGraw, Acting Regional Administrator, to Governor Judy Martz.

### III. EPA's Evaluation of the Redesignation Request and Maintenance Plan

EPA has reviewed the State's redesignation request and maintenance plan and believes that approval of the request is warranted, consistent with the requirements of CAA section 107(d)(3)(E). The following are descriptions of how the section 107(d)(3)(E) requirements are being addressed.

(a) *Redesignation Criterion:* The Area Must Have Attained The Carbon Monoxide (CO) NAAQS.

Section 107(d)(3)(E)(i) of the CAA states that for an area to be redesignated to attainment, the Administrator must determine that the area has attained the applicable NAAQS. As described in 40 CFR 50.8, the national primary ambient air quality standard for carbon monoxide is 9 parts per million (10 milligrams per cubic meter) for an 8-hour average concentration not to be exceeded more than once per year. 40 CFR 50.8 continues by stating that the levels of CO in the ambient air shall be measured by a reference method based on 40 CFR part 50, appendix C and designated in accordance with 40 CFR part 53 or an equivalent method designated in accordance with 40 CFR part 53. Attainment of the CO standard is not a momentary phenomenon based on short-term data. Instead, we consider an area to be in attainment if each of the CO ambient air quality monitors in the area doesn't have more than one exceedance of the CO standard over a one-year period. 40 CFR 50.8 and 40 CFR part 50, appendix C. If any monitor in the area's CO monitoring network records more than one exceedance of the CO standard during a one-year calendar period, then the area is in violation of the CO NAAQS. In addition, our interpretation of the CAA and our national policy, as presented in the September 4, 1992, John Calcagni policy memorandum entitled "Procedures for Processing Requests to Redesignate Areas to Attainment" (hereafter referred to as the "Calcagni Memorandum"), has been that an area seeking redesignation to attainment must show attainment of the CO NAAQS for at least a continuous two-year calendar period. In addition, the area must continue to show attainment through the date that we promulgate the redesignation to attainment in the **Federal Register**.

Montana's CO redesignation request for the Billings area is based on an analysis of quality assured ambient air quality monitoring data that are relevant

to the redesignation request. Ambient air quality monitoring data for consecutive calendar years 1988 through 2000 show a measured exceedance rate of the CO NAAQS of 1.0 or less per year, per monitor, in the Billings nonattainment area. These data were collected and analyzed as required by EPA (see 40 CFR 50.8 and 40 CFR part 50, appendix C) and have been archived by the State in EPA's Aerometric Information and Retrieval System (AIRS) national database. Further information on CO monitoring is presented in section 56.12.3 of the State's maintenance plan. We have evaluated the ambient air quality data and determined that the Billings area has not violated the CO standard and continues to demonstrate attainment.

Because the Billings nonattainment area has quality-assured data showing no violations of the CO NAAQS for 1997, 1998, and 1999, the years the State used to support the redesignation request, the Billings area has met the first component for redesignation: demonstration of attainment of the CO NAAQS. We note that the State of Montana has also committed in section 56.12.7.4.A of the maintenance plan to the necessary continued operation of the CO monitors in compliance with all applicable federal regulations and guidelines.

(b) *Redesignation Criterion:* The Area Must Have Met All Applicable Requirements Under Section 110 and Part D of the CAA.

To be redesignated to attainment, section 107(d)(3)(E)(v) requires that an area must meet all applicable requirements under section 110 and part D of the CAA. We interpret section 107(d)(3)(E)(v) to mean that for a redesignation to be approved by us, the State must meet all requirements that applied to the subject area prior to or at the time of the submission of a complete redesignation request. In our evaluation of a redesignation request, we don't need to consider other requirements of the CAA that became due after the date of the submission of a complete redesignation request.

#### 1. CAA Section 110 Requirements

On January 10, 1980, we approved revisions to Montana's SIP as meeting the requirements of section 110(a)(2) of the CAA (see 45 FR 2034). Although section 110 of the CAA was amended in 1990, most of the changes were not substantial. Thus, we have determined that the SIP revisions approved in 1980 continue to satisfy the requirements of section 110(a)(2). For further detail, please see 45 FR 2034. In addition, we have analyzed the SIP elements that we

are approving as part of this action and we have determined they comply with the relevant requirements of section 110(a)(2).

#### 2. Part D Requirements

The Billings area was originally designated as nonattainment for CO on March 3, 1978 (see 43 FR 8962). Montana's original CAA Part D plan for attainment of the CO standards in the Billings area was submitted to EPA on April 24, 1979. On March 4, 1980, we proposed conditional approval of the April 24, 1979, Governor's submittal (see 45 FR 14072). On September 25, 1980, we finalized our conditional approval of this plan (see 45 FR 62982). A revision, responding to our conditions as stated in our March 4, 1980, proposed action (see 45 FR 14072), was submitted by the Governor on August 14, 1981. The Governor's 1979 and 1981 submittals relied on traffic flow improvements and projected emission reductions from mobile sources to attain the CO NAAQS. On January 16, 1986 (see 51 FR 2397), we granted full approval for the Billings CO SIP element as by 1985, ambient air quality data were showing that the area had attained the CO NAAQS.

EPA had begun development of its forthcoming post-1987 policy for carbon monoxide; however, we did not finalize our post-1987 policy for CO because the Clean Air Act (CAA) was amended on November 15, 1990. Under section 107(d)(1)(C) of the CAA, we designated the Billings area as nonattainment for CO because the area had been previously designated nonattainment before November 15, 1990. As stated previously, the Billings area was classified as a "not classified" CO nonattainment area as the area had not violated the CO NAAQS in 1988 and 1989.

Before the Billings not classified CO nonattainment area may be redesignated to attainment, the State must have fulfilled the applicable requirements of part D. Under part D, an area's classification indicates the requirements to which it will be subject. Subpart 1 of part D sets forth the basic nonattainment requirements applicable to all nonattainment areas, whether classified or nonclassifiable.

The relevant Subpart 1 requirements are contained in sections 172(c) and 176. The April 16, 1992, General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 (see 57 FR 13498; hereafter referred to as the "General Preamble of April 16, 1992") provides our interpretations of the CAA requirements

for not classified CO areas (see specifically 57 FR 13535):

"Although it seems clear that the CO-specific requirements of subpart 3 of part D do not apply to CO "not classified" areas, the 1990 CAAA are silent as to how the requirements of subpart 1 of part D, which contains general SIP planning requirements for all designated nonattainment areas, should be interpreted for such CO areas. Nevertheless, because these areas are designated nonattainment, some aspects of subpart 1 necessarily apply."

Under section 172(b), the applicable section 172(c) requirements, as determined by the Administrator, were due no later than three years after an area was designated as nonattainment under section 107(d) of the amended CAA (see 56 FR 56694, November 6, 1991). In the case of the Billings area, the due date was November 15, 1993. As the Billings CO redesignation request and maintenance plan were not submitted by the Governor until February 9, 2001, the General Preamble of April 16, 1992, provides that the applicable requirements of CAA section 172 are 172(c)(3) (emissions inventory), 172(c)(5) (new source review permitting program), and 172(c)(7) (the section 110(a)(2) air quality monitoring requirements)). See 57 FR 13535, April 16, 1992. We have determined that Part D requirements for Reasonably Available Control Measures (RACM), an attainment demonstration, reasonable further progress (RFP), and contingency measures (CAA section 172(c)(9)) are not applicable to not classified CO areas. See 57 FR 13535, April 16, 1992. It is also worth noting that we have interpreted the requirements of sections 172(c)(1) (reasonable available control measures—RACM), 172(c)(2) (reasonable further progress—RFP), 172(c)(6) (other measures), and 172(c)(9) (contingency measures) as being irrelevant to a redesignation request because they only have meaning for an area that is not attaining the standard. See the General Preamble of April 16, 1992, and the Calcagni Memorandum. Finally, the State has not sought to exercise the options that would trigger sections 172(c)(4) (identification of certain emissions increases) and 172(c)(8) (equivalent techniques). Thus, these provisions are also not relevant to this redesignation request.

Section 176 of the CAA contains requirements related to conformity. Although our regulations (see 40 CFR 51.396) require that states adopt transportation conformity provisions in their SIPs for areas designated nonattainment or subject to an EPA-approved maintenance plan, we have decided that a transportation conformity

SIP is not an applicable requirement for purposes of evaluating a redesignation request under section 107(d) of the CAA. This decision is reflected in our 1996 approval of the Boston carbon monoxide redesignation. (See 61 FR 2918, January 30, 1996.)

The applicable requirements of CAA section 172 are discussed below.

#### A. Section 172(c)(3)—Emissions Inventory

Section 172(c)(3) of the CAA requires a comprehensive, accurate, current inventory of all actual emissions from all sources in the Billings nonattainment area. Our interpretation of the emission inventory requirement for "not classified" CO nonattainment areas is detailed in the General Preamble of April 16, 1992. We determined that an emissions inventory is specifically required under CAA section 172(c)(3) and is not tied to an area's proximity to attainment. We concluded that an emissions inventory must be included as a revision to the SIP and was due three years from the time of the area's designation. For "not classified" CO areas, this date became November 15, 1993. To address the section 172(c)(3) requirement for a "current" inventory, EPA interpreted "current" to mean calendar year 1990 (see 57 FR 13502, April 16, 1992).

On July 18, 1995, the Governor submitted to us the 1990 base year inventory for the Billings CO nonattainment area. We approved this 1990 base year CO emissions inventory on December 15, 1997 (see 62 FR 65613.).

#### B. Section 172(c)(5) New Source Review (NSR)

The CAA requires all nonattainment areas to meet several requirements regarding NSR, including provisions to ensure that increased emissions will not result from any new or modified stationary major sources and a general offset rule. The State of Montana has a fully-approved NSR program (60 FR 36715, July 18, 1995) that meets the requirements of CAA section 172(c)(5). The State also has a fully approved Prevention of Significant Deterioration (PSD) program (60 FR 36715, July 18, 1995) that will apply after the redesignation to attainment is approved by EPA.

#### C. Section 172(c)(7)—Compliance With CAA Section 110(a)(2): Air Quality Monitoring Requirements

According to our interpretations presented in the General Preamble of April 16, 1992, "not classified" CO nonattainment areas should meet the

"applicable" air quality monitoring requirements of section 110(a)(2) of the CAA as explicitly referenced by sections 172(b) and (c) of the CAA. With respect to this requirement, the State indicates in section 56.12.3 ("Ambient Air Quality Data") of the maintenance plan, that relevant ambient CO monitoring data have been properly collected and uploaded to EPA's Aerometric Information and Retrieval System (AIRS) for the Billings area. Air quality data through 1999 are included in section 56.12.3A of the maintenance plan. We have more recently polled the AIRS database and has verified that the State has also uploaded additional ambient CO data through 2000. The data in AIRS indicate that the Billings area has shown, and continues to show, attainment of the CO NAAQS.

Information concerning CO monitoring in Montana is included in the Monitoring Network Review (MNR) prepared by the State and submitted to EPA. EPA personnel have concurred with Montana's annual network reviews and have agreed that the Billings network remains adequate. Finally, in section 56.12.7.4.A of the maintenance plan, the State commits to the continued operation of the existing Billings CO monitoring network, according to all applicable Federal regulations and guidelines, even after the Billings area is redesignated to attainment for CO.

(c) *Redesignation Criterion:* The Area Must Have A Fully Approved SIP Under Section 110(k) of the CAA.

Section 107(d)(3)(E)(ii) of the CAA states that for an area to be redesignated to attainment, it must be determined that the Administrator has fully approved the applicable implementation plan for the area under section 110(k).

Based on the approval into the SIP of provisions under the pre-1990 CAA, our prior approval of a SIP revision required under the 1990 amendments to the CAA, and our approval of the State's commitment to maintain an adequate monitoring network (contained in the maintenance plan), we have determined that, as of the date of this **Federal Register** action, Montana has a fully approved CO SIP under section 110(k) for the Billings CO nonattainment area.

(d) *Redesignation Criterion:* The Area Must Show That the Improvement in Air Quality Is Due To Permanent And Enforceable Emissions Reductions.

Section 107(d)(3)(E)(iii) of the CAA provides that for an area to be redesignated to attainment, the Administrator must determine that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from

implementation of the applicable implementation plan (Billings CO revision as approved on January 16, 1986, see 51 FR 2397), implementation of applicable Federal air pollutant control regulations, and other permanent and enforceable reductions.

The CO emissions reductions for the Billings area were primarily derived through the Federal Motor Vehicle Control Program (FMVCP) and an intersection reconstruction that was detailed in the Billings SIP revision (see 51 FR 2397, January 16, 1986.)

In general, the FMVCP provisions require vehicle manufacturers to meet more stringent vehicle emission limitations for new vehicles in future years. These emission limitations are phased in (as a percentage of new vehicles manufactured) over a period of years. As new, lower emitting vehicles replace older, higher emitting vehicles ("fleet turnover"), emission reductions are realized for a particular area such as Billings. For example, EPA promulgated lower hydrocarbon (HC) and CO exhaust emission standards in 1991, known as Tier I standards for new motor vehicles (light-duty vehicles and light-duty trucks) in response to the 1990 CAA amendments. These Tier I emissions standards were phased in with 40% of the 1994 model year fleet, 80% of the 1995 model year fleet, and 100% of the 1996 model year fleet. The benefits to the Billings CO area of the FMVCP are further presented in section 56.12.5.B of the maintenance plan.

In addition, as part of the Billings CO SIP revision approved by EPA on January 16, 1986, intersection reconstruction was performed at Exposition Drive and First Avenue North near to where CO violations had previously occurred. The project included widening Exposition Drive from four to six lanes, widening the approach of First Avenue North to the intersection with Exposition Drive, and improving signalization to increase traffic flow and speed. This control measure is further described in section 56.12.5.B of the maintenance plan.

Finally, Yellowstone County (which Billings is a part of), as part of the County's air pollution control plan, developed regulations governing open burning including requiring permits. The State indicates in section 56.12.5.B of the maintenance plan that open burning is not a major contributor to CO levels in the Billings area on average, but may be responsible for elevated levels during certain times of the year. These regulations, that we approved into the SIP (see 66 FR 32545, June 15, 2001), allow Yellowstone County to require Best Available Control

Technology (BACT) on open burning permits to limit emissions through a variety of methods including prioritizing burns. The regulations also dictate the times of year to which open burning is limited. The State indicates that a percent reduction in CO emissions would be difficult to quantify, however, the State believes that having the County's open burning regulations reduces air quality impacts.

We have evaluated the various State and Federal control measures, the 1990 base year emission inventory, and the 1996 attainment year emission inventory, and has concluded that the improvement in air quality in the Billings nonattainment area has resulted from emission reductions that are permanent and enforceable.

(e) *Redesignation Criterion:* The Area Must Have A Fully Approved Maintenance Plan Under CAA Section 175A.

Section 107(d)(3)(E)(iv) of the CAA provides that for an area to be redesignated to attainment, the Administrator must have fully approved a maintenance plan for the area meeting the requirements of section 175A of the CAA.

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. For areas such as Billings that are utilizing EPA's limited maintenance plan approach, as detailed in the EPA guidance memorandum entitled "Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas" from Joseph Paisie, Group Leader, Integrated Policy and Strategies Group, Office of Air Quality and Planning Standards, dated October 6, 1995 (hereafter referred to as "Paisie Memorandum"), the maintenance plan demonstration requirement is considered to be satisfied for nonclassifiable areas if the monitoring data show that the area is meeting the air quality criteria for limited maintenance areas (i.e., a design value at or below 7.65 ppm, or 85% of the CO NAAQS, based on the 8 consecutive quarters—2 years of data—used to determine attainment). There is no requirement to project emissions over the maintenance period. EPA believes if the area begins the maintenance period at or below 85 percent of CO NAAQS, the continued applicability of PSD requirements, any control measures already in the SIP, and Federal measures, should provide adequate assurance of maintenance over the initial 10-year maintenance period. In addition, the design value for the area must continue to be at or below 7.65

ppm until the time of final EPA action on the redesignation. The method for calculating the design value is presented in the June 18, 1990, EPA guidance memorandum entitled "Ozone and Carbon Monoxide Design Value Calculations", from William G. Laxton, Director of the OAQPS Technical Support Division, to Regional Air Directors (hereafter referred to as the "Laxton Memorandum".)

In the case of a nonclassifiable area applying for a limited maintenance plan, all the monitors must have a separate design value calculated and the highest design value must be at or below 7.65 ppm. Should the design value for the area exceed 7.65 ppm prior to final EPA action on the redesignation, then the area no longer qualifies for the limited maintenance plan and must instead submit a full maintenance plan as described in the Calcagni Memorandum.

Eight years after our approval of this redesignation, the State must submit a revised maintenance plan that demonstrates continued maintenance of the CO NAAQS for 10 years following the initial ten-year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for adoption and implementation, that are adequate to assure prompt correction of a violation. In addition, EPA issued further maintenance plan interpretations in the General Preamble of April 16, 1992, the Calcagni Memorandum, and the Paisie Memorandum. In this direct final rulemaking action, we are approving the State of Montana's limited maintenance plan for the Billings nonattainment area because EPA has determined, as detailed below, that the State's maintenance plan submittal meets the requirements of section 175A of the CAA and is consistent with the documents referenced above. Our analysis of the pertinent maintenance plan requirements, with reference to the Governor's February 9, 2001, submittal, is provided as follows:

#### 1. Emissions Inventory—Attainment Year

Our interpretations of the CAA section 175A maintenance plan requirements for a limited maintenance plan are described in the Calcagni Memorandum and Paisie Memorandum as referenced above. The State is to develop an attainment year emissions inventory to identify a level of emissions in the area which is sufficient to attain the CO NAAQS. This inventory is to be consistent with EPA's most

recent guidance on emissions inventories for nonattainment areas available at the time<sup>2</sup> and should represent emissions during the time period associated with the monitoring data showing attainment.

The maintenance plan that the Governor submitted on February 9, 2001, included a comprehensive inventory of CO emissions for the Billings area for a typical CO season day work day in 1996. This inventory includes emissions from stationary point sources, area sources, non-road mobile sources, and on-road mobile sources. The State selected 1996 as the year from which to develop the attainment year inventory as it correlated with other inventory work that the State was proceeding with. The use of a 1996 inventory is acceptable to us as it represents a recent year for which the Billings area was showing attainment for the CO NAAQS. We note,

and as archived in our Aerometric Information Retrieval System (AIRS) national database, that the Billings area has actually continuously demonstrated attainment of the CO NAAQS since 1988. Further, use of the 1996 attainment year conforms with the requirements in both the Calcagni Memorandum and Paisie Memorandum.

A more detailed description of the 1996 attainment year inventory is documented in the maintenance plan, section 56.12.7.1, and in the State's Technical Support Document (TSD). The State's submittal contains detailed emission inventory information for the Billings area that was prepared in accordance with EPA guidance.

We note in the maintenance plan, section 56.12.7.1, and the State's TSD that the State elected to perform a more comprehensive gridded emission inventory that not only contained emissions from Billings, but also

emissions from the nearby communities of Huntley and Laurel which may impact the Billings area. This was denoted as the "Billings CO Emission Inventory Study Area." The total CO emissions for all three communities, as provided in the maintenance plan and in Table 5.1.b of the State's TSD, were 144,645.93 kilograms per day or 159.47 tons per day. However, for the purposes of the redesignation to attainment, only CO emissions from the actual Billings nonattainment area are necessary. The State also provided the CO nonattainment area emission figures in Table 5.1.c of the State's TSD. The total CO emissions for just the Billings nonattainment area were 94,936.31 kilograms per day or 104.67 tons per day.

Therefore, we are only archiving the Billings nonattainment area's summary CO emission figures from the 1996 attainment year in Table II.—2 below.

TABLE II.—2 SUMMARY OF 1996 CO EMISSIONS (TONS PER DAY) FOR BILLINGS\*

Point sources	Area sources	On-road mobile	Non-road mobile	Total
2.13	9.99	85.95	6.60	104.67

\*Note: The Billings 1996 attainment year inventory figures were presented in the maintenance plan and the State's TSD in kilograms per day (kg/day). For the reader's convenience, we have converted kg/day to tons per day (TPD) by multiplying kg/day by 0.0011025 tons per kg.

## 2. Demonstration of Maintenance

As described in our October 6, 1995, limited maintenance plan guidance memorandum (Paisie Memorandum), the maintenance plan demonstration requirement is considered to be satisfied for nonclassifiable CO areas (such as Billings) if the monitoring data show that the area is meeting the air quality criteria for limited maintenance areas (i.e., equal to or less than a 7.65 ppm design value). There is no requirement to project emissions over the maintenance period. EPA believes that if an area begins the maintenance period at or below 85 percent of the CO NAAQS (7.65 ppm), the continued application of control measures already in the SIP, PSD requirements, and Federal measures provides adequate assurance of maintenance over the initial 10-year maintenance period.

As presented in section 56.12.7.2 and in Table 56.12.7.2.A of maintenance plan, the CO design value for the Billings area is 5.8 ppm which is below the limited maintenance plan requirement of 7.65 ppm. Therefore, the Billings area has adequately demonstrated maintenance.

## 3. Monitoring Network and Verification of Continued Attainment

The October 6, 1995, Paisie Memorandum for limited maintenance plan areas states that to verify the attainment status of an area, such as Billings, over the maintenance period, the maintenance plan should contain provisions for the continued operation of an appropriate, EPA-approved air quality monitoring network in accordance with 40 CFR part 58.

This monitoring network requirement is met in section 56.12.7.3 of the Billings maintenance plan. This section states that the Montana Department of Environmental Quality (MDEQ) has operated and will continue to operate the Billings monitoring network in full accordance with the provisions of 40 CFR part 58 and the EPA-approved Montana Quality Assurance Project Plan. The MDEQ will also analyze the monitoring data to verify continued attainment of the CO NAAQS for the Billings area. The above air quality monitoring commitment by the State, which will be enforceable by EPA after this final approval of the Billings

maintenance plan SIP revision, is deemed adequate by EPA.

## 4. Contingency Plan

Section 175A(d) of the CAA requires that a maintenance plan include contingency provisions. To meet this requirement, the State has identified appropriate contingency measures along with a schedule for the development and implementation of such measures. As stated in section 56.12.7.4 of the maintenance plan, the State will use an exceedance of the CO NAAQS as the trigger for adopting specific contingency measures for the Billings area. The State indicates that notification to EPA, and other affected governments, of the exceedance will occur within 60 days. Upon notification of a CO NAAQS exceedance, the MDEQ and Yellowstone County Air Quality Control (YCAQC) will convene to recommend an appropriate contingency measure or measures that would be necessary to avoid a violation of the CO NAAQS standard. The necessary contingency measure(s) will then be proposed for local adoption. The local adoption process will be completed within three

<sup>2</sup> The October 6, 1995, limited maintenance plan guidance memorandum states that current guidance on the preparation of emissions inventories for CO areas is contained in the following documents:

"Procedures for the Preparation of Emission Inventories for Carbon Monoxide and Precursors of Ozone: Volume I" (EPA-450/4-91-016), and "Procedures for Emission Inventory Preparation:

Volume IV, Mobile Sources" (EPA-450/4-81-026d revised).

months of the exceedance notification. Full implementation of the locally adopted contingency measure(s) will be achieved within one year after the recording of a CO NAAQS violation.

The potential contingency measures, identified in section 56.12.7.4.C of the Billings maintenance plan, include implementation of an oxygenated fuels program with local regulations in the Billings or Yellowstone County area for the winter months of November, December, and January and establishing a high pollution day episodic woodburning curtailment program. A more complete description of the triggering mechanism and these contingency measures can be found in section 56.12.7.4 of the maintenance plan.

Based on the above, we find that the contingency measures and procedures provided in the State's maintenance plan for Billings are sufficient and meet the requirements of section 175A(d) of the CAA and the Paisie Memorandum for CO limited maintenance plans.

#### 5. Subsequent Maintenance Plan Revisions

The State of Montana has committed to submit a future, revised maintenance plan for the Billings area. This commitment is contained in section 56.12.7.4.D of the Billings maintenance plan and meets the requirements of the CAA and EPA policy and guidance. Section 56.12.7.4.D states that eight years after EPA redesignates the Billings area to attainment, the State commits to submit to EPA a revised maintenance plan that will provide maintenance of the CO NAAQS for an additional 10 years after the expiration of the initial maintenance period.

#### IV. Conformity

Because the Billings area qualified for and utilized EPA's limited maintenance plan national policy (Paisie Memorandum), special conformity provisions apply as indicated below in an excerpt from such policy:

##### "e. Conformity Determinations Under Limited Maintenance Plans

The transportation conformity rule (58 FR 62188; November 24, 1993) and the general conformity rule (58 FR 63214; November 30, 1993) apply to nonattainment areas and maintenance areas operating under maintenance plans. Under either rule, one means of demonstrating conformity of Federal actions is to indicate that expected emissions from planned actions are consistent with the emissions budget for the area. Emissions budgets in limited maintenance plan areas may be treated as essentially not constraining for the length of the initial maintenance period because it is unreasonable to expect that such an area will

experience so much growth in that period that a violation of the CO NAAQS would result. In other words, EPA would be concluding that emissions need not be capped for the maintenance period. Therefore, in areas with approved limited maintenance plans, Federal actions requiring conformity determinations under the transportation conformity rule could be considered to satisfy the "budget test" required in sections 93.118, 93.119, and 93.120 of the rule. Similarly, in these areas, Federal actions subject to the general conformity rule could be considered to satisfy the "budget test" specified in section 93.158(a)(5)(i)(A) of the rule."

In addition, for Billings, Federal actions are also considered to satisfy the transportation conformity rule's requirements for expeditious implementation of transportation control measures (TCM) because there are no TCMs in the Billings CO SIP element. Transportation plans, transportation improvement programs, and Federal projects still require conformity determinations in order to proceed and Federal projects are still subject to the hotspot modeling requirements of the transportation conformity rule.

#### V. Final Action

In this action, EPA is approving the Billings carbon monoxide redesignation request to attainment and the maintenance plan.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective April 22, 2002, without further notice unless the Agency receives adverse comments by March 25, 2002.

If EPA receives such comments, then EPA will publish a timely withdrawal of the direct final rule informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on April 22, 2002, and no further action will be taken on the proposed rule.

#### Administrative Requirements

##### (a) Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

##### (b) Executive Order 13045

*Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

##### (c) Executive Order 13132

*Federalism* (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the

process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves state rules implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. In addition, redesignation of an area to attainment under sections 107(d)(3)(D) and (E) of the Clean Air Act does not impose any new requirements. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

*(d) Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)*

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This direct final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

*(e) Executive Order 13211 (Energy Effects)*

This rule is not subject to Executive Order 13211 "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

*(f) Regulatory Flexibility*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct

a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final approval will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the SIP final approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2). Redesignation of an area to attainment under sections 107(d)(3)(D) and (E) of the Clean Air Act does not impose any new requirements. Redesignation to attainment is an action that affects the legal designation of a geographical area and does not impose any regulatory requirements. Therefore, because the final approval of the redesignation does not create any new requirements, I certify that the final approval of the redesignation request will not have a significant economic impact on a substantial number of small entities.

*(g) Unfunded Mandates*

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that this final approval action does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

*(h) Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective April 22, 2002.

*(i) National Technology Transfer and Advancement Act*

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

*(j) Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 22, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition



for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the Clean Air Act.)

#### List of Subjects

##### 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Reporting and recordkeeping requirements.

##### 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: January 29, 2002.

**Jack W. McGraw,**

*Acting Regional Administrator, Region VIII.*

Chapter I, title 40, parts 52 and 81 of the Code of Federal Regulations are amended as follows:

#### PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

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

#### Subpart BB—Montana

2. Section 52.1373 is amended by redesignating the existing paragraph as paragraph (a) and adding paragraph (b) to read as follows:

##### § 52.1373 Control strategy: Carbon monoxide.

\* \* \* \* \*

#### MONTANA—CARBON MONOXIDE

(b) Revisions to the Montana State Implementation Plan, Carbon Monoxide Redesignation Request and Maintenance Plan for Billings, as adopted by the Montana Department of Environmental Quality on December 19, 2000, State effective December 19, 2000, and submitted by the Governor on February 9, 2001.

#### PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

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

2. In § 81.327, the table entitled “Montana-Carbon Monoxide” is amended by revising the entry for “Billings Area” to read as follows:

##### § 81.327 Montana.

\* \* \* \* \*

Designated area	Designation		Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
Billings Area: Yellowstone County (part): The following areas of Yellowstone Co. (Range and Township) sections: R25E T1N—Sections 24 through 27 and 34 through 36; R25E T1S—Sections 1, 2, and 12; R26E T1N Sections 19 through 22 and 27 through 34; R26E T1S Sections 2 through 11 and 15 through 18..	April 22, 2002.	Attainment		
* * * * *				

<sup>1</sup> This date is November 15, 1990, unless otherwise noted.

\* \* \* \* \*

[FR Doc. 02-4062 Filed 2-20-02; 8:45 am]

BILLING CODE 6560-50-P

#### ENVIRONMENTAL PROTECTION AGENCY

##### 40 CFR Part 70

[KY-JEFF-T5-2002-01a; FRL-7143-9]

#### Clean Air Act Final Approval of Operating Permit Program Revisions; Jefferson County (KY)

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking final action to approve revisions to the operating permit program of the Jefferson County Air Pollution Control District in Kentucky. The County's operating permit program was submitted in response to the directive in the 1990 Clean Air Act (CAA) Amendments that

states develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the states' jurisdiction. EPA granted full approval to Jefferson County's operating permit program on March 22, 1996. The County has revised its program since it received full approval and this action approves those revisions.

**DATES:** This direct final rule is effective on April 22, 2002 without further notice unless EPA receives adverse comments in writing by March 25, 2002. If adverse comment is received, EPA will publish a timely withdrawal of this direct final rule in the **Federal Register** and inform the public that the rule will not take effect. The public comments will be addressed in a subsequent final rule based on the proposed rule published in this **Federal Register**.

**ADDRESSES:** Written comments on this action should be addressed to César Zapata, Air Permits Section, Air Planning Branch, EPA, 61 Forsyth

Street, SW, Atlanta, Georgia 30303-8960. Copies of the County's submittals and other supporting documentation relevant to this action are available for inspection during normal business hours at EPA, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960.

**FOR FURTHER INFORMATION CONTACT:** César Zapata, EPA, Region 4, at (404) 562-9139 or [zapata.cesar@epa.gov](mailto:zapata.cesar@epa.gov).

**SUPPLEMENTARY INFORMATION:** This section provides additional information by addressing the following questions:

What is the operating permit program?  
What is being addressed in this document?  
What are the program changes that EPA is approving?  
What is involved in this final action?

#### What Is the Operating Permit Program?

The CAA Amendments of 1990 required all state and local permitting authorities to develop operating permit programs that met certain federal criteria. In implementing the title V operating permit programs, the