

neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for communities with EJ concerns.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Particulate matter, Sulfur oxides, Volatile organic compounds.

Dated: September 23, 2024.

David Cash,

Regional Administrator, EPA Region 1.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R10-OAR-2024-0371; FRL-12159-01-R10]

Designation of Areas for Air Quality Planning Purposes; Redesignation Request and Associated Maintenance Plan for Whatcom County, WA 2010 SO₂ Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On July 25, 2024, the State of Washington (WA) submitted a request for the Environmental Protection Agency (EPA) to redesignate to attainment a portion of Whatcom County immediately surrounding the now permanently closed aluminum smelter, Intalco Aluminum LLC, which the EPA designated nonattainment for the 2010 sulfur dioxide (SO₂) primary National Ambient Air Quality Standard (NAAQS). Washington also submitted a request for the EPA to approve a State Implementation Plan (SIP) revision containing a maintenance plan for the area. In response to this submittal, the EPA is proposing to take the following actions: determine that the Whatcom County (partial) SO₂ nonattainment area (NAA) is attaining the 2010 SO₂ primary NAAQS; approve Washington's plan for maintaining attainment of the 2010 SO₂ primary NAAQS in the area; and redesignate the Whatcom County

(partial) SO₂ NAA to attainment for the 2010 1-hour primary SO₂ NAAQS.

DATES: Written comments must be received on or before October 28, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R10-OAR-2024-0371 at <https://www.regulations.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, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information or other information the disclosure of which is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about confidential business information or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Jeff Hunt, EPA Region 10, 1200 Sixth Avenue, Suite 155, Seattle, WA 98101, at (206) 553-6357 or hunt.jeff@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, the use of “we” and “our” means the EPA.

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

On June 22, 2010, the EPA published a new 1-hour primary SO₂ 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 average concentrations does not exceed 75 parts per billion (ppb), as determined in accordance with appendix T of 40 CFR part 50 (75 FR 35520). Under Clean Air Act (CAA) section 107(d)(1), the EPA is required to designate areas as “nonattainment,” “attainment,” or “unclassifiable” within two years of establishing a new or revising an existing standard. As part of this process, states must submit recommendations for area designations

and boundaries to the EPA within one year of the effective date of the standard. In 2011, Washington State, like many states across the nation, did not have sufficient SO₂ monitoring data for specific stationary sources that may cause or contribute to violations of the revised SO₂ NAAQS and recommended that all areas in the state be designated as unclassifiable. In response to the lack of sufficient SO₂ monitoring data across the nation, the EPA promulgated the Data Requirements Rule (DRR) on August 21, 2015 (80 FR 51052), which established a phased-in approach for state air agencies to characterize air quality via additional monitoring or modeling in areas associated with sources meeting certain criteria. In addition to the original round of nonattainment designations published on August 5, 2013 (78 FR 47191), the EPA promulgated three subsequent rounds of designations in 2016 (81 FR 45039, July 12, 2016), 2018 (83 FR1098, January 9, 2018), and 2021 (86 FR 16055, March 26, 2021), as information to characterize air quality became available. The EPA designated Whatcom County (partial), Washington (also referred to as the “nonattainment area” or “area”) as nonattainment effective April 30, 2021, as part of the Agency's Round 4 designations (86 FR 16055, March 26, 2021).

In the case of Washington, the EPA and the Washington Department of Ecology (Ecology) identified the Alcoa Intalco Aluminum LLC (Intalco) facility, located in the Cherry Point Industrial Area in Whatcom County, as emitting 2,000 tons or more of SO₂ annually, which triggered the DRR requirement for additional modeling or monitoring to characterize air quality in the area. Washington chose to meet this DRR requirement via the establishment of monitoring at the Intalco facility beginning on January 1, 2017. Based on the monitoring data established under the DRR, the Ferndale Mountain View Road monitor (AQS ID 53-073-0017) violated the 75 ppb level of the revised 1-hour primary SO₂ NAAQS with a 2017-2019 design value of 106 ppb.¹ The state did not send an updated formal designation recommendation for Whatcom County. However, Ecology, in collaboration with Northwest Clean Air Agency (NWCAA), submitted a technical report and modeling analysis on June 12, 2020, to help inform the EPA's nonattainment boundary determination using data from the monitors that were installed pursuant to

¹ The design value is the metric used for determining compliance with the SO₂ NAAQS under appendix T of 40 CFR part 50.

the DRR. Given that the state did not provide a formal recommendation for the boundary, the EPA conducted an extensive review of the submitted modeling to develop sufficient evidence to support the determination of a nonattainment boundary. The nonattainment boundary must contain all of the area where the NAAQS are not attained and all areas that contribute to the violations. Based on our review, the EPA determined that the state's modeling assessment was reliable for determining the extent of the area of violation of the 1-hour primary SO₂ NAAQS. Specifically, we agreed that the region of violation was most likely due to plume downwash at the Intalco facility during certain wind conditions, that the modeled area of violation did not extend far from the Intalco facility fence line, that the gradient of concentration near the areas of violation was steep, quickly dropping with distance from the Intalco facility fence line, and that other nearby industrial facilities did not sufficiently contribute to violations of the 1-hour primary SO₂ NAAQS to warrant inclusion in the NAA boundary. In our final nonattainment boundary determination, we concurred with Ecology and NWCAA's view that the boundary should be drawn to encompass the cause of the SO₂ violations, the Intalco facility. However, we used a simpler nonattainment boundary consisting of four Universal Transverse Mercator (UTM) coordinates instead of the various roadways and property lines suggested by NWCAA in a June 9, 2020, letter. For more information about the specific modeling and the EPA's analysis, please see "Appendix A Whatcom County SO₂ Area Designation" included in the docket for this action.

In response to the EPA's designation of the NAA, Washington submitted an attainment plan on December 15, 2022, to the EPA for approval. This plan and associated order required significant upgrades to the Intalco facility including installation and operation of a new SO₂ wet scrubber.² Subsequently, on March 16, 2023, Alcoa Corporation publicly announced their plans to permanently close the Intalco facility.³ Ecology issued a notice of intent to revoke the associated minor new source review (NSR) and Title V Operating Permits on November 30, 2023, which

became effective December 7, 2023.⁴ Under Revised Code of Washington (RCW) and Washington Administrative Code (WAC), Intalco cannot operate the facility without first obtaining a new Title V operating permit and applicable NSR permits, including a demonstration of compliance with the 2010 1-hour SO₂ NAAQS. Since the 2022 attainment plan, which imposed specific control requirements on Intalco, became functionally moot with the 2023 permanent closure of the facility, Ecology proceeded directly to submitting a redesignation request and maintenance plan for the area. Upon the EPA's final approval of the redesignation request and maintenance plan for the area, Ecology intends to withdraw the now outdated 2022 attainment plan. The EPA is not proposing to act on the 2022 attainment plan in this action.

II. What are the criteria for redesignation?

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

On April 16, 1992, the EPA provided guidance on redesignation in the General Preamble for the Implementation of title I of the CAA Amendments of 1990 (57 FR 13498) and supplemented this guidance on April 28, 1992 (57 FR 18070). The EPA has provided further guidance on processing redesignation requests in several

guidance documents. For the purposes of this action, the EPA will be referencing two of these documents: (1) the September 4, 1992, Memorandum from John Calcagni titled "Procedures for Processing Requests to Redesignate Areas to Attainment," (hereafter referred to as the "Calcagni Memo"); and (2) the April 23, 2014, Memorandum from Stephen D. Page titled "Guidance for 1-Hour SO₂ Nonattainment Area SIP Submissions," (hereafter referred to as "2014 SO₂ NAA Guidance").

III. What is the EPA's analysis of the request?

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

Criteria (1)—The Whatcom County (Partial) SO₂ Nonattainment Area Has Attained the 2010 1-Hour SO₂ NAAQS

For redesignating a NAA, the CAA requires the EPA to determine that the area has attained the applicable NAAQS (CAA section 107(d)(3)(E)(i)). The two primary methods for evaluating ambient air quality impacted by SO₂ emissions are through dispersion modeling and air quality monitoring. For SO₂, an area may be considered attaining the 2010 1-hour SO₂ NAAQS if it meets the NAAQS as determined in accordance with 40 CFR 50.17 and appendix T of part 50, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain the NAAQS based on monitoring, the 3-year average of the annual 99th percentile (fourth highest value) of 1-hour daily maximum concentrations measured at each monitor within an area must be less than or equal to 75 ppb. The data must be collected and quality-assured in accordance with 40 CFR part 58 and recorded in the EPA Air Quality System (AQS). The EPA's determination of attainment can be based on monitoring data alone, without the need for dispersion modeling analyses, if the air agency provides an analysis demonstrating that the monitor(s) for the affected area is located in the area of maximum ambient concentration of SO₂.⁵

In this action, the EPA is proposing to determine that the Whatcom County (partial) SO₂ nonattainment area is attaining the 2010 1-hour SO₂ NAAQS. The EPA reviewed SO₂ monitoring data from the two monitoring stations inside the Whatcom County (partial) SO₂ nonattainment area, the Ferndale-Mountain View Road station (AQS Site

² See 202 Intalco Sulfur Dioxide Attainment Plan_2202035.pdf, included in the docket for this action.

³ See Appendix A of state submittal included in the docket for this action.

⁴ *Id.*, November 30, 2023, from James DeMay to Tia Daulph, "Termination of Title V Air Operating Permit No. 0002950 and Notice of Construction Orders, Compliance Orders, and Agreed Orders" and December 7, 2023, from Tia Daulph to James DeMay, "Re: Termination of Title V Air Operating Permit No. 0002950" included in the docket for this action.

⁵ See 2014 SO₂ NAA Guidance, at 62.

ID 53-073-0017) and the Ferndale-Kickerville Road station (AQS Site ID 53-073-0013). The monitoring station data have been quality-assured, are

recorded in the EPA's Air Quality System (AQS), and indicate that the area is attaining the 2010 1-hour SO₂ NAAQS. The fourth-highest 1-hour SO₂

values at the monitoring stations for the 3-year averages of these values (*i.e.*, design values), are summarized in Table 1, below.

TABLE 1—WHATCOM COUNTY (PARTIAL) MONITORED SO₂ CONCENTRATIONS [ppb]

| Station | 2021 99th Percentile | 2022 99th Percentile | 2023 99th Percentile | 2021–2023 Design value |
|-----------------------------------|----------------------|----------------------|----------------------|------------------------|
| Ferndale-Mountain View Road | 2.6 | 3.3 | 4.4 | 3 |
| Ferndale-Kickerville Road | 2.4 | 3.1 | 4.4 | 3 |

As shown, the 3-year design values for 2021–2023 at the monitoring stations are well below the 2010 1-hour SO₂ NAAQS. Concentrations of SO₂ at these monitoring stations decreased significantly from the 2017–2019 design value of 106 ppb following the shutdown of the Intalco facility. Since the facility last operated in July 2020, 99th percentile values at the monitoring stations have not exceeded 4.4 ppb SO₂. These low values are anticipated to be consistent, as the state demonstrated in its analysis that SO₂ emissions since 2020 have consistently decreased to levels well below the 2010 1-hour SO₂ NAAQS during both curtailment and permanent closure of the Intalco facility.⁶

As part of Washington's 2022 attainment plan and 2024 redesignation request, Ecology submitted information to support a showing that the Ferndale-Mountain View Road monitor was sited in the area of maximum ambient SO₂ concentration within the Whatcom County (partial) SO₂ NAA in accordance with the 2014 SO₂ NAA Guidance. Ecology identified appropriate locations for the two Ferndale monitors in 2015 by running the AERMOD⁷ dispersion model using SO₂ actual emissions from Intalco.⁸ The EPA reviewed Washington's information regarding this showing in designating the area nonattainment in Round 4. We found that the state's modeling assessment was reliable for determining the extent of the area of violation of the 1-hour SO₂ NAAQS. Specifically, we agreed that the region of violation was most likely due

to plume downwash at the Intalco facility during certain wind conditions, that the modeled area of violation does not extend far from the Intalco facility fence line, that the gradient of concentration near the areas of violation is steep, quickly dropping with distance from the Intalco facility fence line, and that other nearby industrial facilities do not sufficiently contribute to violations of the SO₂ NAAQS to warrant inclusion in the nonattainment area boundary.⁹ With Intalco permanently closed, monitored SO₂ concentrations in the Whatcom County (partial) SO₂ nonattainment area are well below the 75 ppb standard.

In this action, the EPA is proposing to determine that the Whatcom County (partial) SO₂ nonattainment area is attaining the 2010 1-hour SO₂ NAAQS, and therefore meets the requirements of CAA section 107(d)(3)(E)(i). If the 3-year design value exceeds the NAAQS prior to the EPA taking action in response to the state's request, the EPA will not take final action to approve the redesignation request.¹⁰

Because the EPA's analysis in determining whether an area has attained under the clean data policy is the same as its analysis under the first redesignation criterion, the EPA is also here proposing that the Whatcom County (partial) SO₂ nonattainment area qualifies for a determination of attainment under the clean data policy, based on the 2021–2023 monitoring data at the two Ferndale monitoring stations. The clean data policy represents the EPA's interpretation that certain requirements of part D of title I of the Act are suspended for areas that are currently attaining the NAAQS. The requirements that are suspended in an area attaining the standard include the requirements to submit an "attainment SIP" that provides for: attainment of the NAAQS; implementation of all reasonably available control measures (RACM); reasonable further progress

(RFP); and implementation of contingency measures for failure to meet deadlines for RFP and attainment. In the 2014 SO₂ NAA Guidance, the EPA explained our intention to apply the EPA's clean data policy to the 2010 SO₂ primary NAAQS.¹¹

In the event that the EPA does not finalize the proposed redesignation, the EPA may choose to finalize the clean data determination, thereby suspending attainment planning-related requirements for the area for as long as the area continues to attain the standard.

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

For redesignating a nonattainment area to attainment under a NAAQS, the CAA requires the EPA to determine that the state has met all applicable requirements for that NAAQS under section 110 and part D of title I of the CAA (CAA section 107(d)(3)(E)(v)) and that the state has a fully approved SIP under section 110(k) for that NAAQS for the area (CAA section 107(d)(3)(E)(ii)). The EPA proposes to find that Washington has met all applicable SIP requirements for the Whatcom County (partial) SO₂ nonattainment area for the 2010 SO₂ NAAQS under section 110 of the CAA (general SIP requirements) for purposes of redesignation. Additionally, the EPA proposes to find that the Washington SIP satisfies the criterion that it meets applicable SIP requirements for purposes of redesignation under part D of title I of the CAA in accordance with section 107(d)(3)(E)(v). Further, the EPA proposes to determine that the SIP is fully approved with respect to all requirements applicable for the 2010 SO₂ NAAQS for purposes of redesignation in accordance with section 107(d)(3)(E)(ii). In making the determinations, the EPA ascertained

⁶ Whatcom County (partial) redesignation request, at pages 20–22.

⁷ AERMOD is one of the EPA's preferred and recommended dispersion models listed in the Guideline on Air Quality Models—Appendix W to be used for State Implementation Plan (SIP) revisions for existing sources and for New Source Review (NSR) and Prevention of Significant Deterioration (PSD) programs. See <https://www.epa.gov/scram/air-quality-dispersion-modeling-preferred-and-recommended-models>.

⁸ See 201_Appendix A Whatcom County SO₂ Area Designation and 203_Appendix C Intalco SO₂ Attainment Modeling Report, included in the docket for this action.

⁹ Id.

¹⁰ See 2014 SO₂ NAA Guidance, at 56.

¹¹ Id. at 52.

which requirements are applicable to the Whatcom County (partial) SO₂ nonattainment area and, if applicable, that they are fully approved under section 110(k).

a. The Whatcom County (Partial) SO₂ Nonattainment Area Has Met All Applicable Requirements Under Section 110 and Part D of the CAA

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

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

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

designation and classification are the relevant measures to evaluate in reviewing a redesignation request. This approach is consistent with the EPA's existing policy on applicability (*i.e.*, for redesignations) of conformity and oxygenated fuels requirements, as well as with section 184 ozone transport requirements. *See* Reading, Pennsylvania, proposed and final rules (61 FR 53174–53176, October 10, 1996), (62 FR 24826, May 7, 2008); Cleveland-Akron-Loraine, Ohio, final rule (61 FR 20458, May 7, 1996); and Tampa, Florida, final rule (60 FR 62748, December 7, 1995). *See also* the discussion on this issue in the Cincinnati, Ohio, redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh, Pennsylvania, redesignation (66 FR 0399, October 19, 2001).

Title I, Part D, Applicable SIP Requirements. Section 172(c) of the CAA sets forth the basic requirements of attainment plans for NAAs that are required to be submitted pursuant to section 172(b). Subpart 5 of part D, which includes section 191 and 192 of the CAA, establishes requirements for SO₂, nitrogen dioxide and lead NAAs. A thorough discussion of the requirements contained in sections 172(c) can be found in the General Preamble for Implementation of Title I (57 FR 13498, April 16, 1992).

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

The EPA's longstanding interpretation of the nonattainment planning requirements of section 172 is that once an area is attaining the NAAQS, those requirements are not "applicable" for purposes of CAA sections 107(d)(3)(E)(ii) and (v) and therefore, need not be approved into the SIP before the EPA can redesignate the area. In the 1992 General Preamble for Implementation of Title I, the EPA set forth its interpretation of applicable requirements for purposes of evaluating redesignation requests when an area is attaining a standard. *See* 57 FR 13498, 13564 (April 16, 1992). The EPA noted that the requirements for RFP and other

measures designed to provide for attainment do not apply in evaluating redesignation requests because those nonattainment planning requirements "have no meaning" for an area that has already attained the standard. *Id.* This interpretation was also reiterated in the 1992 Calcagni Memo and consistently applied in many proposed and final redesignation actions since. The EPA's understanding of section 172 also forms the basis of its Clean Data Policy, which was articulated with regard to SO₂ in the 2014 SO₂ NAA Guidance and suspends a state's obligation to submit most of the attainment planning requirements that would otherwise apply, including an attainment demonstration and planning SIPs to provide for RFP, RACM, and contingency measures under section 172(c)(9). Courts have upheld the EPA's interpretation of section 172(c)(1) for "reasonably available" control measures and control technology as meaning only those controls that advance attainment, which precludes the need to require additional measures where an area is already attaining. *NRDC v. EPA*, 571 F.3d 1245, 1252 (D.C. Cir. 2009); *Sierra Club v. EPA*, 294 F.3d 155, 162 (D.C. Cir. 2002); *Sierra Club v. EPA*, 314 F.3d 735, 744 (5th Cir. 2002); *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004). But *see Sierra Club v. EPA*, 793 F.3d 656 (6th Cir. 2015).

Therefore, because the design values for 2021–2023 are well below the NAAQS in the Whatcom County (partial) SO₂ NAA, no additional measures are needed to provide for attainment, and section 172(c)(1) requirements for an attainment demonstration and RACM are not part of the "applicable implementation plan" required to have been approved prior to redesignation per CAA section 107(d)(3)(E)(ii). The other section 172 requirements that are designed to help an area achieve attainment—the section 172(c)(2) requirement that nonattainment plans contain provisions promoting reasonable further progress, the requirement to submit the section 172(c)(9) contingency measures that would apply if the area fails to timely attain, and the section 172(c)(6) requirement for the SIP to contain control measures necessary to provide for attainment of the NAAQS—are also not required to be approved as part of the "applicable implementation plan" for purposes of satisfying CAA section 107(d)(3)(E)(ii).

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

meeting the inventory requirements of the maintenance plan.¹² Ecology submitted an emissions inventory as part of the maintenance plan for the Whatcom County (partial) SO₂ nonattainment area, and this inventory will be discussed further in the maintenance plan portion of this proposed action.

Section 172(c)(4) requires the identification and quantification of allowable emissions for major new and modified stationary sources to be allowed in an area, and section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. The EPA has determined that, since PSD requirements will apply after redesignation, areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the NAAQS without part D NSR. A more detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled “Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment.” Ecology has demonstrated that the Whatcom County (partial) SO₂ nonattainment area will be able to maintain the NAAQS without part D NSR in effect, and therefore Washington need not have fully approved part D NSR programs prior to approval of the redesignation request. Nevertheless, we note that Washington’s nonattainment NSR for major sources was last approved by the EPA on October 6, 2016 (81 FR 69386) and the NWCAA’s nonattainment NSR for minor sources was last approved by the EPA on June 5, 2020 (85 FR 36156). Both programs meet all relevant NSR requirements for SO₂. Washington’s PSD program for major sources will become effective in the Whatcom County (partial) SO₂ nonattainment area upon redesignation to attainment. Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2). As noted above, the EPA believes the Washington SIP meets the requirements of section 110(a)(2) applicable for purposes of redesignation.

Section 176 Conformity Requirements. Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to

determine conformity applies to transportation plans, programs, and projects that are developed, funded, or approved under title 23 of the United States Code (U.S.C.) and the Federal Transit Act (transportation conformity) as well as to all other federally supported or funded projects (general conformity). State transportation conformity SIP revisions must be consistent with Federal conformity regulations relating to consultation, enforcement, and enforceability that the EPA promulgated pursuant to its authority under the CAA.

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

For these reasons, the EPA proposes to find that Washington has satisfied all applicable requirements for purposes of redesignation of the Whatcom County (partial) SO₂ nonattainment area under section 110 and part D of title I of the CAA.

b. The Whatcom County (Partial) SO₂ Nonattainment Area Has a Fully Approved Applicable SIP Under Section 110(k) of the CAA

The EPA has fully approved the applicable Washington SIP for the Whatcom County (partial) area under section 110(k) of the CAA for all requirements applicable for purposes of redesignation. As indicated above, the EPA believes that the section 110 elements that are neither connected with nonattainment plan submissions nor linked to an area’s nonattainment status are not applicable requirements for purposes of redesignation. The EPA has approved all part D requirements applicable under the 2010 SO₂ NAAQS, as identified above, for purposes of this redesignation.

Criteria (3)—The Air Quality Improvement in the Whatcom County (Partial) SO₂ Nonattainment Area Is Due to Permanent and Enforceable Reductions in Emissions

For redesignating a nonattainment area to attainment, the CAA requires the EPA to determine that the air quality improvement in the area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, applicable

Federal air pollution control regulations, and other permanent and enforceable reductions (CAA section 107(d)(3)(E)(iii)). The EPA proposes to find that Washington has demonstrated that the observed air quality improvement in the Whatcom County (partial) SO₂ NAA is due to permanent and enforceable reductions in emissions. Specifically, the EPA considers the shutdown of the Intalco facility, identified as the key contributor to the SO₂ NAAQS violations at the Ferndale-Mountain View Road monitor,¹³ to be both permanent and enforceable. Given the well-established correlation of much lower SO₂ emissions at the two Ferndale monitors during periods when Intalco has not operated and the very low SO₂ concentrations following the facility’s permanent shutdown, the EPA anticipates that the area will continue to attain the SO₂ NAAQS. As stated in the Calcagni Memo, “Emission reductions from source shutdowns can be considered permanent and enforceable to the extent that those shutdowns have been reflected in the SIP and all applicable permits have been modified accordingly.”¹⁴ Ecology revoked Alcoa’s Title V (operating) and NSR permits for the Intalco facility.¹⁵ The facility is now permanently closed, making its future operation impossible and thus displaying the permanence of the emissions reductions in the NAA. Any new sources that may come into being within the area would be required to demonstrate that their new SO₂ emissions would not interfere with attainment and maintenance of the 2010 1-hour primary SO₂ NAAQS. Therefore, the EPA is proposing to find that the air quality improvement in the Whatcom County (partial) SO₂ NAA is due to permanent and enforceable reductions in emissions.

Criteria (4)—The Whatcom County (Partial) SO₂ Nonattainment Area Has a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA

To redesignate a NAA to attainment, the CAA requires the EPA to determine that the area has a fully approved maintenance plan pursuant to section 175A of the CAA (CAA section 107(d)(3)(E)(iv)). In conjunction with its

¹³ See EPA’s final Technical Support Document (TSD) for the Whatcom County (partial) SO₂ nonattainment area, included in the docket for this action. See 201_Appendix A Whatcom County SO₂ Area Designation.pdf.

¹⁴ Calcagni Memo at 10.

¹⁵ Ecology’s November 30, 2023, permit revocation letter is included in appendix A of the redesignation request, included in the docket for this action.

¹² Calcagni Memo at 6.

request to redesignate the Whatcom County (partial) SO₂ nonattainment area to attainment for the 2010 1-hour SO₂ NAAQS, Ecology submitted a SIP revision to provide for the maintenance of the 2010 1-hour SO₂ NAAQS for at least 10 years after the effective date of redesignation to attainment. The EPA is proposing to find that this maintenance plan for the area meets the requirements for approval under section 175A of the CAA.

a. What is required in a maintenance plan?

CAA section 175A sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan demonstrating that attainment will continue to be maintained for the 10 years following the initial 10-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures as the EPA deems

necessary to assure prompt correction of any future 2010 1-hour SO₂ violations. The Calcagni Memo provides further guidance on the content of a maintenance plan, explaining that a maintenance plan should address five elements: The attainment emissions inventory, maintenance demonstration, monitoring, verification of continued attainment, and a contingency plan. As is discussed more fully below, the EPA is proposing to determine that Washington’s maintenance plan includes all the necessary components and is thus proposing to approve it as a revision to the Washington SIP.

b. Attainment Emissions Inventory

As part of a state’s maintenance plan for a 2010 SO₂ NAA, the air agency should develop an attainment inventory to identify the level of emissions in the affected area which is sufficient to attain and maintain the SO₂ NAAQS.¹⁶ Washington selected 2020 as the base year (*i.e.*, attainment emissions inventory year) for developing an emissions inventory for SO₂ in the NAA through 2033. The 2020 base year represents the most contemporaneous National Emissions Inventory (NEI) available. The 2020 base year also represents Intalco’s final year of

operation with facility emissions of 1,613 tons of SO₂.

In the 2019–2021 monitoring period, representative of the base year, the Ferndale-Mountain View Road monitor had a 3-year design value of 56 ppb and the Ferndale-Kickerville Road monitor had a 3-year design value of 44 ppb, both below the 75 ppb concentration of the 1-hour SO₂ NAAQS. The 2020 99th percentiles recorded at the two monitors are consistent with these low design values at 62.0 ppb and 59.2 ppb, respectively. The EPA has therefore determined that this is a level sufficient to attain the 2010 1-hour SO₂ NAAQS and is proposing to find that the attainment inventory submitted as part of Washington’s maintenance plan meets the “Attainment Emissions Inventory” requirement.

The EPA notes that the permanent shutdown of Intalco has left the Whatcom County (partial) SO₂ NAA with no significant sources of SO₂, and the maintenance plan for the area contains an emissions inventory which projects no significant SO₂ emissions in the NAA from 2020 through 2033. The EPA therefore does not anticipate emissions activity in the 2010 SO₂ nonattainment area that will approach 1,613 tons of SO₂.

TABLE 2—BASE YEAR 2020 AND PROJECTION YEARS 2026 AND 2033 SO₂ EMISSIONS FOR THE MAINTENANCE AREA [Tons per year]

| Source | 2020 Base year | 2026 Projection | 2033 Projection |
|--|-------------------|-----------------|-----------------|
| Alcoa Primary Metals Intalco Works | 1613.4000 | 0 | 0 |
| Residential non-wood fuel use | 0.0026 | 0.0026 | 0.0026 |
| Residential wood combustion (home heating) | 0.0266 | 0.0266 | 0.0266 |
| On-road mobile sources | 0.0095 | 0.0095 | 0.0095 |
| Ships (commercial marine vessels) | 0.0221 | 0.0221 | 0.0221 |
| Railroad (locomotives) | 0.0002 | 0.0002 | 0.0002 |
| Non-road mobile equipment and vehicles (NEC) | 0.0010 | 0.0010 | 0.0010 |
| Total | 1,613.4620 | 0.0620 | 0.0620 |

c. Maintenance Demonstration

An air agency may generally demonstrate maintenance of the NAAQS by either showing that future emissions of SO₂ will not exceed the level of the attainment inventory, or by modeling to show that the future mix of sources and emission rates will not cause a violation of the NAAQS.¹⁷ Washington has demonstrated maintenance by showing that future year emissions (through “out year” 2033) of SO₂ in the maintenance area are expected to remain near zero following the Intalco shutdown. Due to the small geographic scope of the

nonattainment area surrounding the facility boundary (4.5 square miles), other contributing sources such as mobile sources and area sources are nearly nonexistent and are projected to remain constant through 2033. The EPA considers the inventory projection sufficient to attain and maintain the SO₂ NAAQS. The EPA is therefore also proposing to find that Washington’s “Maintenance Demonstration” requirement is met based on this projected emissions inventory.

d. Monitoring Network and Verification of Continued Attainment

According to the Calcagni Memo, the state should continue to operate an appropriate air quality monitoring network to verify the attainment status of the area.¹⁸ In addition, the state must have the legal authority to implement and enforce all measures necessary to attain and maintain the NAAQS and the maintenance plan should contain provisions to track the progress of the maintenance plan.

With respect to the monitoring network, Ecology maintains two SO₂ monitors in the nonattainment area:

¹⁶ See 2014 SO₂ NAA Guidance, at 66.

¹⁷ See 2014 SO₂ NAA Guidance at 67.

¹⁸ Calcagni Memo at 11.

Ferndale-Mountain View Road and the Ferndale-Kickerville Road. These monitors were included in Ecology's 2023 Ambient Air Monitoring Network Plan as microscale SLAMS monitors.¹⁹ EPA approved this network plan on November 16, 2023.²⁰ As discussed in the EPA's 2020 designation of the area and the 2022 attainment plan included in the docket for this action, the Ferndale-Mountain View Road and the Ferndale-Kickerville Road SO₂ monitors were sited for the specific purpose of measuring building downwash impacts from the Intalco facility.²¹ With the closure of the Intalco facility, these monitors would not be considered to be sited in the area of maximum concentration if a new SO₂ emitting source were to locate to the area.

Therefore, Ecology included in its maintenance plan a stepwise analytical process for deploying SO₂ monitors in the maintenance area and verifying continued attainment. Ecology's intentions with this process are twofold: (1) provide an alternative to maintaining the existing microscale monitors for the duration of the maintenance period and (2) providing a basis for potential future discontinuation of the two microscale Ferndale monitors under 40 CFR 58.14(c)(3). Note, EPA is not proposing in this action to approve any discontinuation of any monitoring sites. Any future discontinuation of monitoring is subject to the approval procedures in 40 CFR part 58.

Ecology lays out its plan for deploying monitors and verifying continued attainment in Chapter 6 *Verification of Attainment, Control Measures, and Maintenance Demonstration* of the maintenance plan. This plan builds upon Washington's SIP-approved minor and major NSR programs. Washington's SIP includes NWCAA Rule 300 which establishes the minor NSR program applicable to sources constructed or modified in the Ferndale Area. Under Rule 300, save for certain limited exemptions, sources with a potential to emit more than 2.0 tons per year (tpy) of SO₂ must obtain approval prior to construction.²² NWCAA may not approve construction or modification unless, among other things, the source will employ best available control

technology and allowable emissions will not cause or contribute to a violation of any NAAQS.²³ As to the latter, NWCAA may require modeling using EPA guidelines in appendix W of 40 CFR part 51 to determine whether construction and operation of the source will cause or contribute to a violation of any NAAQS.

Washington's SIP also includes a major new source review program to regulate the construction and modification of major sources constructed or modified in the Ferndale Area.²⁴ In general, Washington's major NSR program incorporates by reference the Federal major NSR program at 40 CFR 52.21. The major NSR program applies to sources with a potential to emit 100 tpy of any regulated NSR pollutant for certain listed source categories, and 250 tpy of any regulated NSR pollutant for unlisted sources. Regulated NSR pollutant includes pollutants for which the EPA has established a NAAQS.

Similar to the minor NSR program, all sources subject to the major NSR program must obtain a permit before commencing construction. In order to obtain a permit, the source must, among other things, demonstrate the source will apply best available control technologies for each regulated NSR pollutant that the source has the potential to emit in significant amounts. In the case of SO₂, the significant emissions rate is 40 tpy. In addition, the source must demonstrate through dispersion modeling that construction and operation of the source will not cause or contribute to a violation of any NAAQS or violate any prevention of significant deterioration increment.

In addition to the preexisting NSR programs, Washington's maintenance plan includes a stepwise process for assessing the cumulative impacts of new sources constructed in the area and triggering deployment of SO₂ monitors. This process will ensure that cumulative impacts remain below the NAAQS should multiple facilities move to the nonattainment area. Under the maintenance plan verification of continued attainment provisions, Washington, with NWCAA as the lead agency for the jurisdiction in coordination with Ecology, will evaluate the cumulative impacts of the new source or modifications using three sequential "Action Levels." Under Action Level 1, Washington will conduct cumulative dispersion modeling using potential emissions if

two conditions are met: (1) the cumulative potential SO₂ emissions in the area are greater than or equal to 250 tons per year of SO₂ and (2) the proposed new source or modification has the potential to emit 40 tons per year of SO₂ (the significant emission rate under the major NSR program). Washington will use EPA's preferred screening and dispersion modeling tools identified in 40 CFR part 51 appendix W ("Appendix W") as normally applicable for any source seeking a construction permit under the NSR program. If the results of the modeling under Action Level 1 indicate a design concentration of greater than or equal to 90% of the 1-hour NAAQS, then Washington will proceed to Action Level 2.

Under Action Level 2, Washington will conduct refined dispersion modeling that uses actual emissions from existing sources and potential emissions from the new source or modification. If the results of that modeling indicate a design concentration of greater than or equal to 50% of the 1-hour SO₂ NAAQS, then Washington will proceed to Action Level 3.

Under Action Level 3, Washington will deploy SO₂ ambient monitors within 1 year of the initial startup of the new source or modification. Any new monitors established for verification of continued attainment will be operated as State and Local Air Monitoring Stations (SLAMS) as part of Ecology's Primary Quality Assurance Organization (PQAO). Ecology will verify that monitor siting complies with 40 CFR part 58 appendix E (Probe and Monitoring Path Siting Criteria for Ambient Air Quality Monitoring) and will include any new site proposals in its annual Ambient Air Monitoring Network Plan. This plan is available for public inspection and comment for at least 30 days before its submission to the EPA by July 1 of each year. Any such proposal will be subject to review and approval by the EPA Regional Administrator, following the process described in 40 CFR 58.10.

The State of Washington has the legal authority to enforce and implement the maintenance plan for the Whatcom County (partial) 2010 SO₂ NAA. This includes the authority to conduct the stepwise ambient air quality analysis, deploy monitors, and adopt, implement, and enforce any subsequent emissions control contingency measures

¹⁹ Department of Ecology, State of Washington, 2023 Ambient Air Monitoring Network Plan, Publication 23-02-043, June 2023, at p. 20.

²⁰ November 16, 2023, Letter from Debra Suzuki, Air Planning and State/Tribal Coordination Branch, EPA Region 10, to Jill Schulte, Ambient Air Monitoring Coordinator, Department of Ecology.

²¹ See 201_Appendix A Whatcom County SO₂ Area Designation.pdf and 202_Intalco Sulfur Dioxide Attainment Plan_2202035.pdf, included in the docket for this action.

²² Rule 300.1(A); 300.4.

²³ Rule 300.9.

²⁴ 40 CFR 52.2470(c); WAC 173-400-113 and WAC 173-400-700 through 173-400-750.

determined to be necessary to correct future SO₂ attainment problems.²⁵

Washington's SIP-approved NSR programs coupled with the stepwise approach for assessing cumulative impacts is adequate to verify continued maintenance of the SO₂ NAAQS. The 250 tpy inventory threshold and 40 tpy PTE threshold in Action Level 1 are set at emission levels the EPA anticipates would not cause or contribute to a violation of the NAAQS. For comparison, the emissions inventory in 2017 when the area exceeded the NAAQS was 3,987 tpy of emissions from the Intalco facility.²⁶ Refining the modeling to take into consideration actual emissions of existing sources is also sufficiently protective, particularly considering that Washington will deploy monitors if the design concentration from this modeling is greater than or equal to 50% of the SO₂ NAAQS. For these reasons, the EPA is proposing to find that Washington's maintenance plan meets the Monitoring and "Verification of Continued Attainment" requirements.

e. Contingency Measures in the Maintenance Plan

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

The maintenance plan includes an action level to determine when the contingency plan process is triggered and a process of developing and implementing appropriate control measures. If an SO₂ monitor records a consecutive two-year average of the annual 99th percentile of 1-hour daily maximum SO₂ values exceeding 67.5 ppb (90 percent of the NAAQS), and

such data is certified as accurate, the action level is triggered. If the action level is triggered, NWCAA will first evaluate whether elevated SO₂ readings are due to exceptional events, as defined at 40 CFR 50.1(j), and follow the EPA's exceptional events policy. If the action level is triggered and is not found to be due to an exceptional event, NWCAA will determine if the exceedance was a result of a stationary source's non-compliance with existing regulations and/or permit conditions. If so, NWCAA will undertake enforcement actions in accordance with current agency policy and guidance related to compliance and enforcement. If the high levels of SO₂ are not found to be due to a stationary source's non-compliance, NWCAA will work with the entity or entities believed to be responsible for the high levels of SO₂ to evaluate control measures necessary to ensure future attainment of the NAAQS. The implementation of the control measures will take place no later than 18 months after NWCAA decides, based on quality-assured ambient data, that the action-level response described above was triggered (a consecutive two-year average of the annual 99th percentile of 1-hour daily maximum SO₂ values exceeding 67.5 ppb).

Washington must submit to the EPA its analysis demonstrating that the proposed control measures are adequate to ensure continued maintenance of the 2010 1-hour SO₂ NAAQS in the area or to return the area to attainment of the NAAQS. Since the only significant source of SO₂ in the nonattainment area has shut down, it is not possible to develop specific contingency measures until the cause of the elevated concentrations is known. The EPA is proposing to find that Washington's maintenance plan meets the "Contingency Measures" requirement.

The EPA has concluded that the maintenance plan adequately addresses the five basic components of a maintenance plan: The attainment emissions inventory, maintenance demonstration, monitoring, verification of continued attainment, and a contingency plan. Therefore, the EPA proposes to find that the maintenance plan SIP revision submitted by Washington for the Whatcom County (partial) 2010 SO₂ NAA meets the requirements of section 175A of the CAA and is approvable.

IV. What are the actions the EPA is proposing to take?

The EPA is proposing to take the following four separate but related actions: (1) determine that the Whatcom County (partial) SO₂ nonattainment area is attaining the 2010 1-hour SO₂

NAAQS; (2) approve Washington's plan for maintaining the 2010 1-hour SO₂ NAAQS (maintenance plan), including proposed approval of a "reproducible approach" to representing the air quality of the affected area in the event that the monitors that were sited for the Intalco facility shut down; (3) redesignate the Whatcom County (partial) SO₂ nonattainment area to attainment for the 2010 1-hour SO₂ NAAQS; and (4) determine that the Whatcom County (partial) SO₂ NAA has clean monitoring data. Section III of this document provides a discussion of each of these proposed actions.

The EPA is also proposing to approve the maintenance plan under the 2010 NAAQS for the Whatcom County (partial) SO₂ nonattainment area into the Washington SIP (under CAA section 175A). The maintenance plan demonstrates that the area will continue to maintain the 2010 1-hour SO₂ NAAQS and includes a process to develop contingency measures to remedy any future violations of the 2010 1-hour SO₂ NAAQS and procedures for evaluation of potential violations.

Additionally, the EPA is proposing to determine that the Whatcom County (partial) SO₂ nonattainment area has met the criteria under CAA section 107(d)(3)(E) for redesignation from nonattainment to attainment for the 2010 1-hour SO₂ NAAQS. On this basis, the EPA is proposing to approve Washington's redesignation request for the area. Final approval of Washington's redesignation request would change the legal designation of the portion of Whatcom County designated nonattainment at 40 CFR 81.348 to attainment for the 2010 1-hour SO₂ NAAQS.

The EPA is also proposing to determine that the Whatcom County (partial) SO₂ nonattainment area has attaining monitoring data for the 2010 SO₂ primary NAAQS based on the most recent complete three-year period (2021–2023) design value period that meets the clean data policy. As noted elsewhere, in the event that EPA does not finalize the proposed redesignation, the EPA may choose to finalize the clean data determination, thereby suspending the attainment planning related requirements for the area.

V. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment is an action that affects the status of a geographical area and does not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in

²⁵ The EPA last determined that Washington's SIP was sufficient to meet the requirements of 110(a)(2)(E)(i) of the CAA on February 18, 2021 (86 FR 10022).

²⁶ See 202 Intalco Sulfur Dioxide Attainment Plan_2202035.pdf, at page 45, included in the docket for this action.

and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. In addition, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For these reasons, 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 14094 (88 FR 21879, April 11, 2023);
- 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 subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- 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.

In addition, this proposed action, pertaining to redesignation of the Whatcom County (partial) SO₂ nonattainment area and approval of a maintenance plan for the area, would not be approved to apply on any Indian reservation land or in any other area where the EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction. In those areas of Indian country, the rule would not have Tribal implications and would not impose substantial direct costs on tribal

governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Consistent with EPA policy, the EPA provided a consultation opportunity to Tribes located near the nonattainment area, in letters dated July 25, 2024 and July 29, 2024, included in the docket for this action.

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on communities with environmental justice (EJ) concerns to the greatest extent practicable and permitted by law. The EPA defines EJ as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” The EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

The Washington Department of Ecology did evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA did not perform an EJ analysis and did not consider EJ in this action. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of Executive Order 12898 of achieving environmental justice for communities with EJ concerns.

List of Subjects in 40 CFR Part 52

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

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

Dated: September 19, 2024.

Casey Sixkiller,

Regional Administrator, Region 10.

[FR Doc. 2024-22171 Filed 9-26-24; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[EPA-HQ-OPPT-2021-0221; FRL-12141-01-OCSPF]

RIN 2070-AB27

Significant New Use Rules on Certain Chemical Substances (21-3.F)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing significant new use rules (SNURs) under the Toxic Substances Control Act (TSCA) for chemical substances that were the subject of premanufacture notices (PMNs). The chemical substances received “not likely to present an unreasonable risk” determinations pursuant to TSCA. The SNURs require persons who intend to manufacture (defined by statute to include import) or process any of these chemical substances for an activity that is proposed as a significant new use by this rulemaking to notify EPA at least 90 days before commencing that activity. The required notification initiates EPA's evaluation of the conditions of use for that chemical substance. In addition, the manufacture or processing for the significant new use may not commence until EPA has conducted a review of the required notification, made an appropriate determination regarding that notification, and taken such actions as required by that determination.

DATES: Comments must be received on or before October 28, 2024.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPPT-2021-0221, at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT:

For technical information: William Wysong, New Chemicals Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; telephone number: (202) 564-4163; email address: wysong.william@epa.gov.

For general information: The TSCA-Hotline, ABVI-Goodwill, 422 South