



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2023-0587; FRL-11571-02-R8]

Revisions to the Federal Implementation Plan for the Billings/Laurel, Montana, Sulfur Dioxide Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is revising a Federal Implementation Plan (FIP) applicable to sulfur dioxide (SO₂) emissions from four sources located in Billings and Laurel, Montana. Specifically, the EPA is revising a portion of the FIP promulgated by the EPA in 2008 (2008 Billings/Laurel SO₂ FIP) by removing a provision which contained an affirmative defense for exceedances of flare emission limits during malfunctions, startups, and shutdowns. The EPA is taking this action pursuant to the Clean Air Act (CAA).

DATES: This rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R08-OAR-2023-0587. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Adam Clark, Air and Radiation Division, EPA, Region 8, Mail code 8ARD-IO, 1595 Wynkoop Street, Denver, Colorado, 80202-1129, telephone number: (303) 312-7104, email address: clark.adam@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA.

I. Background

The background for this action is discussed in detail in our October 15, 2024, proposal (89 FR 82948). In that document we proposed to revise the 2008 Billings/Laurel SO₂ FIP by removing the portion of the FIP found at 40 CFR 52.1392(i), titled “Affirmative defense provisions for exceedances of flare emission limits during malfunctions, startups, and shutdowns.” We received one comment on this proposal.

II. Response to Comments

Comment: The EPA received one comment on this proposal from an individual commenter. The commenter expressed support for the EPA’s proposed action, noting the harms of SO₂ pollution and the importance of protecting the communities near impacted sources.

Response: The EPA acknowledges this supportive comment.

III. Final Action

The EPA is revising the 2008 Billings/Laurel SO₂ FIP by removing section 52.1392(i) and all of the provisions therein, including paragraphs sections 52.1392 (i)(1)-(3).

IV. Environmental Justice Considerations

The EPA defines environmental justice (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.”¹ 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

¹ See <https://www.epa.gov/environmentaljustice/learn-about-environmental-justice>.

resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”² Recognizing the importance of these considerations to local communities, the EPA conducted an EJ screening analysis around the location of the facilities associated with this action to evaluate environmental and demographic indicators for the areas impacted by this final action. However, the EPA is providing the information associated with this analysis for informational purposes only. The information provided herein is not a basis of this action.

The EPA conducted the screening analyses using EJScreen, an EJ mapping and screening tool that provides the EPA with a nationally consistent dataset and approach for combining various environmental and demographic indicators.³ The EJScreen tool presents these indicators at a census block group (CBG) level or a larger user-specified “buffer” area that covers multiple CBGs.⁴ An individual CBG is a cluster of contiguous blocks within the same census tract and generally contains between 600 and 3,000 people. EJScreen is not a tool for performing in-depth risk analysis, but is instead a screening tool that provides an initial representation of indicators related to EJ and is subject to uncertainty in some underlying data (e.g., some environmental indicators are based on monitoring data which are not uniformly available; others are based on self-reported data).⁵ For informational purposes, we have summarized EJScreen data within larger “buffer” areas covering multiple block groups and representing the average resident within the buffer areas surrounding the facilities. EJScreen environmental indicators help screen for locations where residents may experience a higher overall pollution burden than would be expected for a block group with the same total population in the U.S. These indicators of overall pollution burden include estimates of ambient particulate matter (PM_{2.5}) and ozone

² Id.

³ The EJSCREEN tool is available at <https://www.epa.gov/ejscreen>.

⁴ See <https://www.census.gov/programs-surveys/geography/about/glossary.html>.

⁵ In addition, EJSCREEN relies on the five-year block group estimates from the U.S. Census American Community Survey. The advantage of using five-year over single-year estimates is increased statistical reliability of the data (i.e., lower sampling error), particularly for small geographic areas and population groups. For more information, see https://www.census.gov/content/dam/Census/library/publications/2020/acs/acs_general_handbook_2020.pdf.

concentration, a score for traffic proximity and volume, percentage of pre-1960 housing units (lead paint indicator), and scores for proximity to Superfund sites, risk management plan (RMP) sites, and hazardous waste facilities.⁶ EJScreen also provides information on demographic indicators, including percent of low-income, communities of color, linguistic isolation, and less than high school education.

The EPA prepared EJScreen reports covering buffer areas of approximately five kilometers around the four facilities subject to the 2008 Billings/Laurel SO₂ FIP. From those reports, no facilities showed EJ indices greater than the 80th national percentiles.⁷ The full, detailed EJScreen reports are provided in the docket for this rulemaking.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 14094: Modernizing Regulatory Review

This action is exempt from review under Executive Order 12866, as amended by Executive Order 14094, as it is not a rule of general applicability. This action specifically applies to 4 facilities in the State of Montana.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act (PRA), because it revises the reporting requirements for 4 facilities in the State of Montana.

C. Regulatory Flexibility Act (RFA)

⁶ For additional information on environmental indicators and proximity scores in EJSCREEN, see “EJSCREEN Environmental Justice Mapping and Screening Tool: EJSCREEN Technical Documentation,” chapter 3 and appendix C (September 2019) at https://www.epa.gov/sites/default/files/2021-04/documents/ejscreen_technical_document.pdf.

⁷ For a place at the 80th percentile nationwide, that means 20 percent of the U.S. population has a higher value. The EPA identified the 80th percentile filter as an initial starting point for interpreting EJScreen results. The use of an initial filter promotes consistency for the EPA’s programs and regions when interpreting screening results.

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities as no small entities are subject to the requirements of this rule.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of \$100 million or more as described in UMRA, 2 U.S.C. 1531-1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any State, local, or Tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It 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.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have Tribal implications, as specified in Executive Order 13175, because this rule would not apply on any Indian reservation land or in any other area where the EPA or an Indian Tribe has demonstrated that the Tribe has jurisdiction, and it will not impose substantial direct costs on Tribal governments or preempt Tribal law. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997). The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it merely removes

a provision from the 2008 Billings/Laurel SO₂ FIP that is inconsistent with the requirements of the CAA.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations and Executive Order 14096: Revitalizing Our Nation's Commitment to Environmental Justice for All

The EPA believes that it is not practicable to assess whether the human health or environmental conditions that exist prior to this action result in disproportionate and adverse effects on communities with environmental justice concerns. While the EPA has identified the sources that would be impacted by this action, the EPA cannot quantify the baseline conditions and impacts the affirmative defense provisions have had on these sources, nor can we project potential emissions impacts from these sources as a result of this action. However, the EPA expects that this action is expected to have a neutral to positive impact on the air quality of the affected area.

K. Determination Under Section 307(d)

Pursuant to CAA section 307(d)(1)(B), this action is subject to the requirements of CAA section 307(d), as it promulgates a FIP under CAA section 110(c).

L. Congressional Review Act (CRA)

This rule is exempt from the CRA because it is a rule of particular applicability.

M. Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review, does not 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* CAA section 307(b)(2).

List of Subjects in 40 CFR Part 52

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

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

Jane Nishida,

Acting Administrator.

For the reasons stated in the preamble, the Environmental Protection Agency is amending 40

CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart BB—Montana

§ 52.1392 [Amended]

2. In § 52.1392, remove and reserve paragraph (i).

[FR Doc. 2025-00220 Filed: 1/16/2025 8:45 am; Publication Date: 1/17/2025]