



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R07-OAR-2017-0251; FRL 9967-49-Region 7]**

**Approval of Missouri Air Quality Implementation Plans; Final Rule; Determination of Attainment for the 2010 1-hour Primary Sulfur Dioxide National Ambient Air Quality Standard; Jefferson County Nonattainment Area**

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to determine that the Jefferson County nonattainment area, in Missouri, has attained the 2010 1-hour primary Sulfur Dioxide (SO<sub>2</sub>) National Ambient Air Quality Standard (NAAQS) per the EPA's Clean Data Policy. This determination of attainment is based upon complete, quality assured, and certified ambient air monitoring data from the 2014-2016 monitoring period, associated dispersion modeling, and supplemental emissions inventory information, which demonstrate that the Jefferson County area attained the 2010 1-hour primary SO<sub>2</sub> NAAQS.

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

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R07-OAR-2017-0251. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, i.e., 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 information.

**FOR FURTHER INFORMATION CONTACT:** Tracey Casburn, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at (913) 551-7016, or by email at [casburn.tracey@epa.gov](mailto:casburn.tracey@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document "we," "us," and "our" refer to EPA. This section provides additional information by addressing the following:

- I. Background Information
- II. EPA's Response to Comments
- III. What Action is EPA Taking?
- IV. Statutory and Executive Order Reviews

**I. Background Information**

On June 2, 2010 (75 FR 35520), the EPA established a health-based 1-hour primary SO<sub>2</sub> NAAQS at 75 ppb. Upon promulgation of a new or revised NAAQS, section 107(d) of the Clean Air Act (CAA) requires the EPA to designate any area that does not meet (or that contributes to ambient air quality in a nearby area that does not meet) the NAAQS as nonattainment. On August 5, 2013, the EPA designated a portion of Jefferson County, Missouri, as nonattainment for the 2010 1-hour primary SO<sub>2</sub> NAAQS, effective October 4, 2013.<sup>1</sup> The designation was based on 2008-2010 monitoring data in Herculaneum, Missouri, which monitored violations of the standard (see section III of this document for additional monitoring information). The effective date of the nonattainment designation was October 4, 2013. This action established an attainment date five years after the effective date for the areas designated as nonattainment for the 2010 SO<sub>2</sub> NAAQS (i.e., by October 4, 2018).

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<sup>1</sup> 78 FR 47191 (August 5, 2013), codified at 40 CFR 81.326.

On February 2, 2016, the state submitted a request asking the EPA to determine that the nonattainment area attained the 2010 1-hour primary SO<sub>2</sub> NAAQS per the EPA's Clean Data Policy.<sup>2,3</sup> On June 23, 2017, the EPA published a notice of proposed rulemaking (NPR) which proposed to approve the State's requests. See 82 FR 28605. Specifically, the EPA proposed to take the following actions: (1) determine that the Jefferson County SO<sub>2</sub> nonattainment area is attaining the 2010 1-hour SO<sub>2</sub> NAAQS; (2) determine that the Jefferson County SO<sub>2</sub> nonattainment area has clean monitoring data 3) suspend the requirements for the state to submit an attainment demonstration, a reasonable further progress plan, contingency measures, and other planning SIPs revisions related to attainment of the 2010 1-hour primary SO<sub>2</sub> NAAQS until such time, if any, that the EPA subsequently determines, after notice-and-comment rulemaking in the **Federal Register**, that the area has violated the 2010 1-hour primary SO<sub>2</sub> NAAQS.

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<sup>2</sup> Memorandum of December 14, 2004, from Steve Page, Director, EPA Office of Air Quality Planning and Standards to the EPA Air Division Directors, "Clean Data Policy for the Fine Particle National Ambient Air Quality Standards." This document is available at: <http://www.epa.gov/pmdesignations/guidance.htm>.

<sup>3</sup> The memorandum of April 23, 2014, from Steve Page, Director, EPA Office of Air Quality Planning and Standards to the EPA Air Division Directors "Guidance for 1-hr SO<sub>2</sub> Nonattainment Area SIP Submissions" provides guidance for the application of the clean data policy to the 2010 1-hour primary SO<sub>2</sub> NAAQS. This document is available at [https://www.epa.gov/sites/production/files/2016-06/documents/20140423guidance\\_nonattainment\\_sip.pdf](https://www.epa.gov/sites/production/files/2016-06/documents/20140423guidance_nonattainment_sip.pdf).

The details of Missouri's submittal and the rationale for EPA's proposed action are explained in the NPR and will not be restated here.

## **II. EPA's Response to Comments**

The public comment period on EPA's proposed rule opened June 23, 2017, the date of its publication in the **Federal Register**, and closed on July 24, 2017. During this period, the EPA received one set of public comments on the NPR, which supported the proposed redesignation and provided additional technical information. The EPA acknowledges these supportive comments, and the additional technical information, however, as the comments were essentially in favor of the agency's proposed action, the EPA is not responding to the individual comments.

## **III. What Action is EPA Taking?**

The EPA is finalizing its determination that the Jefferson County 2010 1-hour primary SO<sub>2</sub> nonattainment area (hereby referred to as "the nonattainment area"), in Missouri, has attained the 2010 1-hour primary SO<sub>2</sub> NAAQS.<sup>4</sup> This action is based on complete, quality assured, and certified ambient air monitoring data from the 2013-2015 monitoring period, with additional certified monitoring data from 2016, associated dispersion modeling for the 2013-2015 emission years, as well as

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<sup>4</sup> In accordance with appendix T to 40 CFR part 50, the 1-hour primary SO<sub>2</sub> NAAQS is met at an ambient air quality monitoring site when the valid 1-hour primary standard design value is less than or equal to 75 parts per billion (ppb). See 40 CFR 50.17(b).

supplemental 2016 emissions inventory information - which show that the nonattainment area has attained the 2010 1-hour primary SO<sub>2</sub> NAAQS.<sup>5,6</sup>

The EPA has made the monitoring data, the modeling data, the supplemental emissions inventory information and additional information submitted by the state to support this action available in the docket to this rulemaking through [www.regulations.gov](http://www.regulations.gov) and/or at the EPA Region 7 Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information).

#### **IV. Statutory and Executive Order Reviews**

##### *A. General Requirements*

Under the CAA, a determination that a nonattainment area is attaining a NAAQS 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 determination of attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been stated above. Moreover, the Administrator is required to approve

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<sup>5</sup> In accordance with appendix T to 40 CFR part 50, a 1-hour primary SO<sub>2</sub> NAAQS design value is valid if it encompasses three consecutive calendar years of complete data. A year meets data completeness requirements when all 4 quarters are complete. A quarter is complete when at least 75 percent of the sampling days for each quarter have complete data. A sampling day has complete data if 75 percent of the hourly concentration values, including state-flagged data affected by exceptional events which have been approved for exclusion by the Administrator, are reported.

<sup>6</sup> Monitoring data must be reported, quality assured, and certified in accordance with the requirements set forth in 40 CFR part 58.

a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. See 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, these actions merely approve state law as meeting federal requirements and do not impose additional requirements beyond those imposed by state law. This action results in the suspension of certain Federal requirements and would not impose any additional requirements. For these reasons, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- 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 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this action does not 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 does not have tribal

implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

*B. Congressional Review Act*

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 action 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).

*C. Petitions for 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 July 11, 2016. 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 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).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Attainment determination, Incorporation by reference, Sulfur dioxide.

Dated: August 24, 2017.

Edward H. Chu,  
Acting Regional Administrator,  
Region 7.

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as set forth below:

**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 AA - Missouri**

2. Add § 52.1343 to read as follows:

§ 52.1343 Control strategy: Sulfur Dioxide.

(a) *Determination of attainment.* EPA has determined, as of **[Insert date of publication in the Federal Register]**, that the Jefferson County 2010 SO<sub>2</sub> nonattainment has attained the 2010 SO<sub>2</sub> 1-hr NAAQS. This determination suspends the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, reasonable further progress, contingency measures, and other plan elements related to attainment of the standards for as long as the area continues to meet the 2010 SO<sub>2</sub> 1 -hr NAAQS.

(b) [Reserved]