



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA-HQ-OAR-2019-0011; FRL-9999-60-OAR]

RIN 2060-AU14

Reconsideration of the Area Designation for the 2010 1-Hour Sulfur Dioxide (SO₂) Primary National Ambient Air Quality Standard for Williamson County, Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) has completed its reconsideration of the nonattainment designation under the Clean Air Act (CAA) for the Williamson County, Illinois area for the 2010 1-hour sulfur dioxide (SO₂) primary national ambient air quality standard (NAAQS). On June 30, 2016, the EPA Administrator signed a final action that designated the Williamson County, Illinois area as nonattainment based on a review of available information. On September 12, 2016, Southern Illinois Power Cooperative (SIPC), the owner of the largest source of SO₂ emissions in the area (the Marion Power Station), submitted to the EPA an updated modeling analysis that characterized SO₂ air quality in the area at the time of the final designation action. The EPA has reviewed that modeling and concludes the available information demonstrates that, as of the date of the Administrator's signature on the final action, the Williamson County, Illinois area was not violating the 2010 1-hour SO₂ NAAQS and was not contributing to a NAAQS violation in a nearby area. Therefore, the EPA is changing the initial designation of Williamson County, Illinois, from nonattainment to attainment/unclassifiable.

DATES: This final 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-HQ-OAR-2019-0011. All documents in the docket are listed in the index at <http://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 either electronically in the docket or in hard copy at the EPA Docket Center Reading Room, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The hours of operation at the EPA Docket Center Reading Room are 8:30 a.m.-4:30 p.m., Monday-Friday. The telephone number for the EPA Docket Center is (202) 566-1744. Air dispersion modeling input and output files are too large to post in the docket or on the website and must be requested from the EPA Docket Center or the Regional office contacts listed in the **FOR FURTHER INFORMATION CONTACT** section.

In addition, the EPA has established a website for SO₂ designations rulemakings at: <https://www.epa.gov/sulfur-dioxide-designations>. The website includes the EPA's final SO₂ designations, as well as state and tribal recommendation letters, the EPA's modification letters, technical support documents, responses to comments and other related technical information.

FOR FURTHER INFORMATION CONTACT: For further information concerning this action, please contact Corey Mocka, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Policy Division, Mail Code C539-01, 109 T.W. Alexander Drive, Research Triangle Park, NC 27709; by telephone at (919) 541-5142 or by email at mocka.corey@epa.gov.

SUPPLEMENTARY INFORMATION:

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

Table of Contents

- I. Background
- II. Response to Comments
- III. Final Action
- IV. Environmental Justice Concerns
- V. Statutory and Executive Order Reviews
 - A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
 - B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs
 - C. Paperwork Reduction Act (PRA)
 - D. Regulatory Flexibility Act (RFA)
 - E. Unfunded Mandates Reform Act (UMRA)
 - F. Executive Order 13132: Federalism
 - G. Executive Order 13175: Consultation and Coordination with Indian Tribal Government
 - H. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks
 - I. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use
 - J. National Technology Transfer and Advancement Act (NTTAA)
 - K. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
 - L. Congressional Review Act (CRA)
 - M. Judicial Review

I. Background

On June 7, 2019, the EPA proposed to change the initial designation of Williamson County, Illinois, from nonattainment to attainment/unclassifiable. *See* 84 FR 26627. A detailed analysis of the EPA’s rationale, which was provided in the notice of proposed rulemaking, is hereby incorporated into this notice and will not be restated here. The public comment period for this proposed rule ended on July 8, 2019.

II. Response to Comments

The EPA received one anonymous comment on the proposal, which is addressed in this section.

Comment: In general, the commenter questions the EPA's authority to revisit final agency actions in certain circumstances by asserting that the EPA cannot reconsider a final agency action that has already become effective and where statutory deadlines have already been implicated by EPA's action. Because the EPA's final rule designating Williamson County as nonattainment has been in effect for almost 3 years, the commenter implies that the only way to change the area's designation is for the state to request redesignation under the CAA. Lastly, the commenter argues that air dispersion modeling to reconsider the prior designation must use actual SO₂ emissions from the most recent 3 years of data and should consider potential emissions, whereas the modeling used as the basis for the EPA's proposal evaluated Marion Power Station's 2013-2015 actual SO₂ emissions.

Response: The EPA's ability to revisit previous final actions is well-grounded in the law. Specifically, the EPA has inherent authority to reconsider, repeal, or revise past decisions to the extent permitted by law so long as the agency provides a reasoned explanation. *See, e.g., Encino Motorcars LLC v. Navarro*, 136 S.Ct. 2117, 2125 (2016). This is true when, as is the case here, review is undertaken "in response to . . . a change in administrations." *National Cable & Telecommunications Ass'n v. Brand X Internet Services*, 545 U.S. 967, 981 (2005). Indeed, "[a]gencies obviously have broad discretion to reconsider a regulation at any time" and an agency "is free to do so as long as 'the new policy is permissible under the statute ..., there are good reasons for it, and ... the agency believes it to be better.'" *Clean Air Council v. Pruitt*, 862 F.3d 1, 8-9 (D.C. Cir. 2017) (quoting *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515

(2009)). Here, the EPA changed its view regarding whether, as an exercise of the agency's discretion in this particular matter, it would be appropriate to reconsider this designation based on information that was submitted to the EPA after the close of the public comment period and that had not been demonstrated to be impracticable to raise within such time, but which upon review appeared to reflect better information regarding air quality in the area at the time of the initial designation than the information that formed the basis for the agency's prior determination. The EPA thinks that this change in this particular circumstance leads to a more accurate determination, as it results in a designation that is based on the most complete and informative information regarding the area's air quality at the time of the EPA's initial designation. The EPA also notes that its authority to reconsider prior decisions exists regardless of whether the final agency action has already become effective, though the initial action remains effective until the action reconsidering it is finalized. The 2016 nonattainment designation becoming effective and triggering planning requirements does not preclude the EPA from reconsidering that action. The EPA is reconsidering the Williamson County area's initial designation for the 2010 SO₂ NAAQS under its inherent reconsideration authority. It is not redesignating the area pursuant to its authority under CAA section 107(d)(3) authority, and, therefore, the requirements of section 107(d)(3) do not apply to this action.¹ Thus, to the extent the comment discusses what requirements apply to and what information is relevant to redesignation actions under CAA section 107(d)(3), those comments are outside the scope of this action.²

¹ The EPA is also not reconsidering this area's designation under CAA section 307(d). The Round 2 designations final action is not a CAA section 307(d) rule.

² The EPA also would like to correct the commenter's statement regarding the error correction petition that the EPA received regarding the initial designation. The EPA neither granted nor

Regarding the appropriate use of SO₂ emissions data, the EPA's SO₂ NAAQS Designations Modeling Technical Assistance Document outlines our longstanding rationale for using actual emissions in modeling for designations, and we hereby incorporate that rationale in support of basing our reconsidered designation on such actual emissions modeling.³ Marion Power Station's 2013-2015 actual SO₂ emissions data are representative of conditions in the area at the time of the final designation action for Williamson County on June 30, 2016, and the air quality for the area at that time is what we were evaluating for that designation. Because this action is a reconsideration of the initial designation for this area that occurred in 2016, rather than a redesignation based on an evaluation of current air quality, it is reasonable for our analysis of the air quality and the resulting designation to be based on modeling of actual emissions from that same time, rather than of more recent emissions.⁴ Therefore, as outlined in the proposed action, the modeling appropriately demonstrates that the Williamson County area was not violating the 2010 1-hour SO₂ NAAQS and was not contributing to a NAAQS violation in a nearby area at the time of our initial designation in 2016.

III. Final Action

The EPA is changing the initial designation of Williamson County, Illinois for the 2010 1-hour SO₂ NAAQS. Based on the information available to the EPA, we are finalizing the Williamson County, Illinois area's initial designation as attainment/unclassifiable for that SO₂

denied that error correction petition in the EPA's letter responding to receipt of the petition. Moreover, with this final action revising the designation at issue in that petition, that petition and the previous reconsideration petition are now moot.

³ <https://www.epa.gov/sites/production/files/2016-04/documents/so2modelingtd.pdf>.

⁴ Nevertheless, the EPA notes that SO₂ emissions from the Marion Power Station have been declining, from a 2013 to 2015 average of 7,081 tons per year (See Docket Item No. EPA-HQ-OAR-2019-0011-0007) to a 2016 to 2018 average of 4,214 tons per year (See <https://ampd.epa.gov/ampd/>). So, the modeling results may be conservative.

NAAQS.⁵ This final action relieves Illinois of obligations under CAA sections 172, 191, and 192 to submit a state implementation plan that demonstrates attainment of the SO₂ NAAQS, because those requirements do not apply to areas designated attainment/unclassifiable.

IV. Environmental Justice Concerns

When the EPA establishes a new or revised NAAQS, the CAA requires the EPA to designate all areas of the United States as either nonattainment, attainment, or unclassifiable. This final action reconsiders the initial nonattainment designation for the Williamson County, Illinois area for the 2010 1-hour SO₂ NAAQS. Area designations address environmental justice concerns by ensuring that the public is properly informed about the air quality in an area. In locations where air quality does not meet the NAAQS, the CAA requires relevant state authorities to initiate appropriate air quality management actions to ensure that all those residing, working, attending school, or otherwise present in those areas are protected, regardless of minority and economic status.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is exempt from review by the Office of Management and Budget because it is a reconsideration of an initial action taken pursuant to the CAA requirement to promulgate air quality designations after promulgation of a new or revised NAAQS. This final rule is not a significant regulatory action under Executive Order 12866.

⁵ Docket Item No. EPA-HQ-OAR-2019-0011-0006.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not an Executive Order 13771 regulatory action because actions such as air quality designations after promulgating a new revised NAAQS are exempt under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. In this action, the EPA reconsiders the SO₂ NAAQS designation for the Williamson County, Illinois area promulgated previously on July 12, 2016. The action does not encompass any information collection activities.

D. Regulatory Flexibility Act (RFA)

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. NAAQS designations do not in and of themselves create any new requirements beyond what is mandated by the CAA. Instead, this rulemaking only makes factual determinations, and does not directly regulate any entities.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in the Unfunded Mandates Reform Act, 2 U.S.C. 1531–1538 and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector.

F. 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. The division of responsibility between the federal government and the states for purposes of implementing the NAAQS is established under the CAA.

G. Executive Order 13175: Consultation and Coordination with Indian Tribal Government

This action does not have tribal implications, as specified in Executive Order 13175. This action concerns the designation of Williamson County, Illinois for the 2010 1-hour SO₂ NAAQS. This rule does not have a substantial direct effect on one or more Indian tribes. This action changes the initial designation for Williamson County for the 2010 1-hour SO₂ NAAQS, but no areas of Indian country are designated or have their designation changed by this action. There are no areas of Indian country in or near Williamson County. Furthermore, this rule does not affect the relationship or distribution of power and responsibilities between the federal government and Indian tribes. The CAA and the Tribal Authority Rule establish the relationship of the federal government and tribes in developing plans to attain the NAAQS, and this rule does nothing to modify that relationship. Thus, Executive Order 13175 does not apply.

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

The EPA interprets Executive Order 13045 as applying 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 does not establish an environmental standard intended to mitigate health or safety risks.

I. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

K. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). When the EPA establishes a new or revised NAAQS, the CAA requires the EPA to designate all areas of the U.S. as either nonattainment, attainment, or unclassifiable. This action reconsiders the nonattainment designation for the Williamson County, Illinois area for the 2010 1-hour SO₂ NAAQS. Area designations address environmental justice concerns by ensuring that the public is properly informed about the air quality in an area. In locations where air quality does not meet the NAAQS, the CAA requires relevant state authorities to initiate appropriate air quality management actions to ensure that all those residing, working, attending school, or otherwise present in those areas are protected, regardless of minority and economic status.

L. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the U.S. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

M. Judicial Review

Under section 307(b)(1) of the CAA, petitions for review of this final action must be filed in the U.S. Court of Appeals for the appropriate circuit within 60 days from the date this final action is published in the **Federal Register**.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: September 5, 2019.

Andrew R. Wheeler,
Administrator.

For the reasons set forth in the preamble, 40 CFR part 81 is amended as follows:

PART 81—DESIGNATIONS OF AREAS FOR AIR QUALITY PLANNING PURPOSES

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

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

Subpart C—Section 107 Attainment Status Designations

2. Section 81.314 is amended by revising the table titled “Illinois--2010 Sulfur Dioxide NAAQS (Primary)” to read as follows:

§ 81.314 Illinois.

* * * * *

ILLINOIS--2010 SULFUR DIOXIDE NAAQS (PRIMARY)

Designated area ^{1,2}	Designation	
	Date ³	Type
Alton Township, IL	9/12/16	Nonattainment
Madison County (part)		
Within Alton Township: Area east of Corporal Belchik Memorial Expressway, south of East Broadway, south of Route 3, and north of Route 143		
Lemont, IL	10/4/13	Nonattainment
Cook County (part)		
Lemont Township		
Will County (part)		
DuPage Township and Lockport Township		
Pekin, IL	10/4/13	Nonattainment
Tazewell County (part)		
Cincinnati Township and Pekin Township		
Peoria County (part)		
Hollis Township		
Adams County		Attainment/ Unclassifiable
Alexander County		Attainment/ Unclassifiable
Bond County		Attainment/ Unclassifiable

Boone County		Attainment/ Unclassifiable
Brown County		Attainment/ Unclassifiable
Bureau County	9/12/16	Attainment/ Unclassifiable
Calhoun County		Attainment/ Unclassifiable
Carroll County		Attainment/ Unclassifiable
Cass County		Attainment/ Unclassifiable
Champaign County		Attainment/ Unclassifiable
Christian County		Attainment/ Unclassifiable
Clark County		Attainment/ Unclassifiable
Clay County		Attainment/ Unclassifiable
Clinton County		Attainment/ Unclassifiable
Coles County		Attainment/ Unclassifiable
Cook County (part) (remainder)		Attainment/ Unclassifiable
Crawford County		Attainment/ Unclassifiable
Cumberland County		Attainment/ Unclassifiable
De Kalb County		Attainment/ Unclassifiable
De Witt County		Attainment/ Unclassifiable
Douglas County		Attainment/ Unclassifiable
Du Page County		Attainment/ Unclassifiable
Edgar County		Attainment/ Unclassifiable
Edwards County		Attainment/ Unclassifiable
Effingham County		Attainment/ Unclassifiable
Fayette County		Attainment/ Unclassifiable
Ford County		Attainment/ Unclassifiable
Franklin County		Attainment/ Unclassifiable
Fulton County		Attainment/ Unclassifiable
Gallatin County		Attainment/ Unclassifiable
Greene County		Attainment/ Unclassifiable
Grundy County		Attainment/ Unclassifiable
Hamilton County		Attainment/ Unclassifiable
Hancock County		Attainment/ Unclassifiable
Hardin County		Attainment/ Unclassifiable
Henderson County		Attainment/ Unclassifiable
Henry County		Attainment/ Unclassifiable
Iroquois County		Attainment/ Unclassifiable
Jackson County		Attainment/ Unclassifiable
Jasper County	9/12/16	Attainment/ Unclassifiable
Jefferson County		Attainment/ Unclassifiable
Jersey County		Attainment/ Unclassifiable
Jo Daviess County		Attainment/ Unclassifiable
Johnson County		Attainment/ Unclassifiable
Kane County		Attainment/ Unclassifiable
Kankakee County		Attainment/ Unclassifiable
Kendall County		Attainment/ Unclassifiable

Knox County		Attainment/ Unclassifiable
Lake County		Attainment/ Unclassifiable
La Salle County		Attainment/ Unclassifiable
Lawrence County		Attainment/ Unclassifiable
Lee County		Attainment/ Unclassifiable
Livingston County		Attainment/ Unclassifiable
Logan County		Attainment/ Unclassifiable
McDonough County		Attainment/ Unclassifiable
McHenry County		Attainment/ Unclassifiable
McLean County		Attainment/ Unclassifiable
Macoupin County		Attainment/ Unclassifiable
Madison County (part) (remainder) ⁵		Attainment/ Unclassifiable
Marion County		Attainment/ Unclassifiable
Marshall County		Attainment/ Unclassifiable
Mason County		Attainment/ Unclassifiable
Massac County	9/12/16	Attainment/ Unclassifiable
Menard County		Attainment/ Unclassifiable
Mercer County		Attainment/ Unclassifiable
Monroe County		Attainment/ Unclassifiable
Montgomery County		Attainment/ Unclassifiable
Morgan County		Attainment/ Unclassifiable
Moultrie County		Attainment/ Unclassifiable
Ogle County		Attainment/ Unclassifiable
Peoria County (part) (remainder)		Attainment/ Unclassifiable
Perry County		Attainment/ Unclassifiable
Piatt County		Attainment/ Unclassifiable
Pike County		Attainment/ Unclassifiable
Pope County		Attainment/ Unclassifiable
Pulaski County		Attainment/ Unclassifiable
Putnam County	9/12/16	Attainment/ Unclassifiable
Randolph County		Attainment/ Unclassifiable
Richland County		Attainment/ Unclassifiable
Rock Island County		Attainment/ Unclassifiable
St. Clair County		Attainment/ Unclassifiable
Saline County		Attainment/ Unclassifiable
Sangamon County		Attainment/ Unclassifiable
Schuyler County		Attainment/ Unclassifiable
Scott County		Attainment/ Unclassifiable
Shelby County		Attainment/ Unclassifiable
Stark County		Attainment/ Unclassifiable
Stephenson County		Attainment/ Unclassifiable
Tazewell County (part) (remainder)		Attainment/ Unclassifiable
Union County		Attainment/ Unclassifiable
Vermilion County		Attainment/ Unclassifiable

Wabash County		Attainment/ Unclassifiable
Warren County		Attainment/ Unclassifiable
Washington County		Attainment/ Unclassifiable
Wayne County		Attainment/ Unclassifiable
White County		Attainment/ Unclassifiable
Whiteside County		Attainment/ Unclassifiable
Will County (part) (remainder)		Attainment/ Unclassifiable
Williamson County	INSERT DATE 30 DAYS AFTER DATE OF PUBLICAT ION IN THE FEDERAL REGISTER ⁴	Attainment/ Unclassifiable
Winnebago County		Attainment/ Unclassifiable
Woodford County		Attainment/ Unclassifiable

¹ Includes any Indian country in each county or area, unless otherwise specified. EPA is not determining the boundaries of any area of Indian country in this table, including any area of Indian country located in the larger designation area. The inclusion of any Indian country in the designation area is not a determination that the state has regulatory authority under the Clean Air Act for such Indian country.

² Macon County will be designated by December 31, 2020.

³ This date is April 9, 2018, unless otherwise noted.

⁴ Williamson County was initially designated on September 12, 2016. The initial designation was reconsidered and modified on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

⁵ A portion of Madison County, specifically all of Wood River Township, and the area in Chouteau Township north of Cahokia Diversion Channel, was designated attainment/ unclassifiable on September 12, 2016.

[FR Doc. 2019-19782 Filed: 9/12/2019 8:45 am; Publication Date: 9/13/2019]