



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R04-OAR-2020-0003; FRL-10011-97-Region 4]

Air Plan Approval and Designation of Areas; Kentucky; Redesignation of the Jefferson County 2010 1-Hour Sulfur Dioxide Nonattainment Area to Attainment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In a letter dated December 9, 2019, the Commonwealth of Kentucky, through the Kentucky Division of Air Quality (KDAQ) on behalf of the Louisville Metro Air Pollution Control District (LMAPCD), submitted a request for the Environmental Protection Agency (EPA) to redesignate the Jefferson County sulfur dioxide (SO₂) nonattainment area (hereinafter referred to as the “Jefferson County Area” or “Area”) to attainment for the 2010 1-hour SO₂ primary national ambient air quality standard (NAAQS or standard) and to approve an accompanying state implementation plan (SIP) revision containing a maintenance plan for the Area. EPA is taking final action to determine that the Jefferson County Area has attained the 2010 1-hour SO₂ NAAQS; to approve the SIP revision containing the Commonwealth’s plan for maintaining attainment of the 2010 1-hour SO₂ standard and to incorporate the maintenance plan into the SIP; and to redesignate the Jefferson County Area to attainment for the 2010 1-hour SO₂ NAAQS.

DATES: This rule is effective [Insert date 30 days after date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2020-0003. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information 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 can either be retrieved electronically via www.regulations.gov or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Madolyn Sanchez, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Ms. Sanchez may be reached by phone at (404) 562-9644 or via electronic mail at sanchez.madolyn@epa.gov.

SUPPLEMENTARY INFORMATION:

I. What is the Background for the Actions?

On June 2, 2010, EPA revised the primary SO₂ NAAQS, establishing a new 1-hour SO₂ standard of 75 parts per billion (ppb). *See* 75 FR 35520 (June 22, 2010).¹ Under EPA's regulations at 40 CFR part 50, the 2010 1-hour SO₂ NAAQS is met at a monitoring site when the 3-year average of the annual 99th percentile of daily maximum 1-hour average concentrations is less than or equal to 75 ppb (based on the rounding convention in 40 CFR part 50, appendix T). *See* 40 CFR 50.17. Ambient air quality monitoring data for the 3-year period must meet a data completeness requirement. A year meets data completeness requirements when all four quarters are complete, and 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.²

Upon promulgation of a new or revised NAAQS, the CAA requires EPA to designate as nonattainment any area that does not meet (or that contributes to ambient air quality in a nearby area that does not meet) the NAAQS. EPA designated the Jefferson County Area as nonattainment for the 2010 1-hour SO₂ NAAQS, effective on October 4, 2013, based on 2009-2011 complete, quality assured, and certified ambient air quality data. *See* 78 FR 47191 (August 5, 2013). Under the CAA, nonattainment areas must attain the NAAQS as expeditiously as practicable but not later than five years after the October 4, 2013, effective date of the designation. *See* CAA section 192(a). Therefore, the Jefferson County Area's applicable attainment date was no later than October 4, 2018.

¹ On February 25, 2019, EPA retained the existing 2010 primary NAAQS for SO₂ of 75 ppb based on the 3-year average of the 99th percentile of the annual distribution of 1-hour daily maximum concentrations. *See* 84 FR 9866.

² *See* 40 CFR part 50, appendix T, section 3(b).

EPA's 2010 SO₂ nonattainment designation for the Area triggered an obligation for Kentucky to develop a nonattainment SIP revision addressing certain requirements under title I, part D, subpart 1 (hereinafter "Subpart 1"), and to submit that SIP revision to EPA in accordance with the deadlines in title I, part D, subpart 5 (hereinafter "Subpart 5"). Subpart 1 contains the general requirements for nonattainment areas for criteria pollutants, including requirements to develop a SIP that provides for the implementation of reasonably available control measures, requires reasonable further progress, includes base-year and attainment-year emissions inventories, includes a SIP-approved nonattainment new source review (NNSR) permitting program, requires enforceable emission limitations and other such control measures, and provides for the implementation of contingency measures. This SIP revision was due within 18 months following the October 4, 2013, effective date of designation (i.e., April 4, 2015). *See* CAA section 191(a). Kentucky submitted a nonattainment SIP revision to EPA on June 23, 2017.³

On June 28, 2019 (84 FR 30920), EPA approved Kentucky's June 23, 2017, SO₂ nonattainment SIP revision. EPA determined that the nonattainment SIP revision met the applicable requirements of sections 110, 172, 191, and 192 of the CAA and nonattainment regulatory requirements at 40 CFR part 51 (including Kentucky's attainment modeling demonstration for the Jefferson County Area). The attainment modeling demonstration inputs included SO₂ emission limits and compliance parameters (monitoring, recordkeeping, and

³ EPA published a notice on March 18, 2016 (81 FR 14736), announcing its finding that Kentucky (and other pertinent states) had failed to submit the required SO₂ nonattainment plan by the submittal deadline. The finding initiated a deadline under CAA section 179(a) for the potential imposition of NNSR offset and highway funding sanctions. However, pursuant to Kentucky's submittal of June 23, 2017 (received by EPA on July 6, 2017), and EPA's subsequent letter dated October 10, 2017, to Kentucky finding the submittal to be complete and noting the termination of these sanctions deadlines, the sanctions under section 179(a) were not and will not be imposed as a result of Kentucky having missed the April 4, 2015, submittal deadline.

reporting) at Mill Creek established in the facility's title V permit 145-97- TV(R3) at Plant-wide Specific conditions S1-Standards, S2-Monitoring and Record Keeping, and S3-Reporting. EPA incorporated these limits and parameters into the SIP as part of its final action on Kentucky's nonattainment SIP revision, thus making them permanent and enforceable controls.

On December 9, 2019, Kentucky submitted a request to EPA for redesignation of the Jefferson County Area to attainment for the 2010 1-hour SO₂ NAAQS and a related SIP revision containing a maintenance plan for the Area. In a notice of proposed rulemaking (NPRM) published on May 15, 2020 (85 FR 29381), EPA proposed to determine that the Area attained the 2010 1-hour SO₂ NAAQS; to approve the maintenance plan for the Area as meeting the maintenance plan requirements of CAA section 175A and to incorporate it into the SIP; and to approve Kentucky's request for redesignation of the Area from nonattainment to attainment for the 2010 1-hour SO₂ NAAQS as meeting the redesignation requirements of CAA section 107(d)(3)(E). Comments on the May 15, 2020, NPRM were due on or before June 15, 2020. No comments were received. The details of Kentucky's submittal and the rationale for EPA's actions are further explained in the May 15, 2020, NPRM, including the modeled attainment demonstration and quality-assured, complete, and certified 2016-2018 ambient air monitoring data used to determine attainment with the 2010 1-hour SO₂ NAAQS. Recent quality-assured, complete, and certified 2017-2019 ambient air monitoring data at 15 ppb confirm that this area is still demonstrating attainment of the 2010 1-hour SO₂ NAAQS.

II. What are the Effects of these Actions?

Approval of the redesignation request changes the legal designation of the Jefferson County Area, found at 40 CFR 81.318, from nonattainment to attainment for the 2010 1-hour SO₂ NAAQS. Approval of Kentucky's associated SIP revision also incorporates a maintenance

plan into the SIP for maintaining the 2010 1-hour SO₂ NAAQS in the Jefferson County Area as described in the May 15, 2020, NPRM. The maintenance plan also establishes contingency measures to remedy any future violations of the 2010 1-hour SO₂ NAAQS and procedures for evaluation of potential violations.

EPA is finalizing the redesignation of the Jefferson County Area to attainment for the 2010 1-hour SO₂ NAAQS and finalizing the approval of the CAA section 175A maintenance plan for the 2010 1-hour SO₂ NAAQS. The Area is required to implement the CAA section 175A maintenance plan for the 2010 1-hour SO₂ NAAQS that is being approved in this action and the prevention of significant deterioration program for the 2010 1-hour SO₂ NAAQS. The approved maintenance plan can only be revised if the revision meets the requirements of CAA section 110(l) and, if applicable, CAA section 193.

III. Final Actions

EPA is taking final actions regarding Kentucky's request to redesignate the Jefferson County Area to attainment for the 2010 1-hour SO₂ NAAQS and associated SIP revision. EPA is determining that the Jefferson County Area has attained the 2010 1-hour SO₂ NAAQS. EPA is also approving the SIP revision containing the Commonwealth's plan for maintaining attainment of the 2010 1-hour SO₂ standard and incorporating the maintenance plan into the SIP. Finally, EPA is approving Kentucky's redesignation request and redesignating the Jefferson County Area to attainment for the 2010 1-hour SO₂ NAAQS. As mentioned above, approval of the redesignation request changes the official designation of the Jefferson County Area from nonattainment to attainment, as found in 40 CFR part 81.

IV. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to 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 redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the Act 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. For these reasons, these actions:

- Are not significant regulatory actions 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);
- Are not Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory actions because these actions are not significant regulatory actions under Executive Order 12866;
- Do not impose information collection burdens under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are 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.*);

- Do 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);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are 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
- Will not have disproportionate human health or environmental effects under Executive Order 12898 (59 FR 7629, February 16, 1994).

These actions are not approved to apply on any Indian reservation land or in any other area where 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 as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

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).

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 of this document 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 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, Incorporation by reference, Intergovernmental relations, Sulfur dioxide, Reporting and recordkeeping requirements.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control.

Dated: July 13, 2020.

Mary Walker,
Regional Administrator,
Region 4.

Therefore, for the reasons stated in the preamble, EPA amends 40 CFR parts 52 and 81 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 S – Kentucky

2. In § 52.920 amend the table in paragraph (e) by adding an entry for “2010 1-hour SO₂ Maintenance Plan for the Jefferson County Area” at the end of the table to read as follows:

§ 52.920 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED KENTUCKY NON-REGULATORY PROVISIONS

Name of non-regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanations
**	**	**	*	
2010 1-hour SO ₂ Maintenance Plan for the Jefferson County Area	Jefferson County	12/9/2019	[Insert date of publication in the Federal Register]. [Insert citation of publication]	

PART 81-DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

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

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

4. In § 81.318, amend the table entitled “Kentucky-2010 Sulfur Dioxide NAAQS [Primary]” by revising the entry for “Jefferson County, KY” to read as follows:

§ 81.318 Kentucky.

* * * * *

**Kentucky-2010 Sulfur Dioxide NAAQS
[Primary]**

Designated area ⁴	Designation	
	Date ¹	Type
***	**	**
Jefferson County, KY ²	[<u>Insert date of publication in the Federal Register</u>]	Attainment
Jefferson County (part)		
That portion of Jefferson County encompassed by the polygon with the vertices using Universal Traverse Mercator (UTM) coordinates in UTM zone 16 with datum NAD83 as follows:		
(1) Ethan Allen Way extended to the Ohio River at UTM Easting (m) 595738, UTM Northing 4214086 and Dixie Highway (US60 and US31W) at UTM Easting (m) 597515, UTM Northing 4212946;		
(2) Along Dixie Highway from UTM Easting (m) 597515, UTM Northing 4212946 to UTM Easting (m) 595859, UTM Northing 4210678;		
(3) Near the adjacent property lines of Louisville Gas and Electric-Mill Creek Electric Generating Station and Kosmos Cement where they join Dixie Highway at UTM Easting (m) 595859, UTM Northing 4210678 and the Ohio River at UTM Easting (m) 595326, UTM Northing 4211014;		
(4) Along the Ohio River from UTM Easting (m) 595326, UTM Northing 4211014 to UTM Easting (m) 595738, UTM Northing 4214086		
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¹ This date is April 9, 2018, unless otherwise noted.

² Excludes Indian country located in each area, if any, unless otherwise specified.

³ 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.

⁴ Webster County and the remainder of Henderson County will be designated by December 31, 2020.

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[FR Doc. 2020-15598 Filed: 8/5/2020 8:45 am; Publication Date: 8/6/2020]