



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA R05 OAR 2015-0599; FRL-9955-37-Region 5]

**Designation of Areas for Air Quality Planning Purposes; Ohio;
Redesignation of the Ohio Portion of the Campbell-Clermont KY-OH
Sulfur Dioxide Nonattainment Area**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In accordance with the Clean Air Act (CAA), the Environmental Protection Agency (EPA) is redesignating the Ohio portion of the Campbell-Clermont KY-OH sulfur dioxide (SO₂) nonattainment area from nonattainment to attainment. The Ohio portion of this area consists of Pierce Township in Clermont County, Ohio. EPA is also approving Ohio's maintenance plan, submitted on August 11, 2015. The primary emission source in the area has permanently closed, and the air quality in the area is now meeting the SO₂ standard. EPA received one comment in support of the redesignation.

DATES: This final rule is effective on **[insert the date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2015-0599. All documents in the docket are listed on the www.regulations.gov web site. Although

listed in the index, some information is not publicly available, i.e., 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 through www.regulations.gov or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Mary Portanova, Environmental Engineer, at (312) 353-5954 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Mary Portanova, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-5954, Portanova.mary@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. Background
- II. What comments were received on the proposal?

III. How does this affect the finding of failure to submit?

IV. What Action is EPA Taking?

V. Statutory and Executive Order Reviews.

I. Background

On July 20, 2016 (81 FR 47144), EPA proposed to redesignate the Ohio portion of the Campbell-Clermont KY-OH nonattainment area to attainment of the 2010 SO₂ National Ambient Air Quality Standard (NAAQS), because Ohio demonstrated that the most culpable source had closed, because the local SO₂ monitor was now registering attainment, and because various additional analyses showed that no other sources in or near the area were causing or contributing to violations in the area. The Ohio portion of the nonattainment area consists of Pierce Township in Clermont County. EPA also proposed to approve Ohio's maintenance plan for this area.

II. What comments were received on the proposal?

EPA received one comment on the proposal. Cheri A. Budzynski commented on August 19, 2016, on behalf of the Ohio Utility Group and its member companies (the Utilities). The comment states that the Utilities support the proposed action and believe that it should be finalized. This was the only comment EPA received on this notice of proposed rulemaking.

III. How does this affect the finding of failure to submit?

On March 18, 2016 (81 FR 14736), EPA published a finding that Ohio had failed to submit a nonattainment State Implementation Plan (SIP) for the Campbell-Clermont KY-OH SO₂ nonattainment area by the required deadline of April 4, 2015. Because the main SO₂ emission source in the nonattainment area had closed and the design value at the Campbell County, Kentucky, air quality monitor was in attainment of the SO₂ standard after 2014, instead of a full nonattainment SIP for this area, Ohio decided to submit a redesignation request. Ohio presented this decision in its April 3, 2015, nonattainment SIP submittal, and submitted its redesignation request on August 11, 2015. EPA's March 18, 2016, finding of failure to submit would require the imposition of sanctions if the SIP requirements are not met within 18 months; that is, by October 18, 2017. Since EPA is finalizing the redesignation of the Ohio portion of the Campbell-Clermont KY-OH SO₂ nonattainment area before October 18, 2017, EPA no longer requires Ohio to submit a nonattainment SIP for the area, and the sanctions described in the March 18, 2016, finding will not take effect.

IV. What Action is EPA Taking?

EPA is redesignating Pierce Township, Clermont County, Ohio, to attainment of the 2010 SO₂ NAAQS. Pierce Township is

the Ohio portion of the Campbell-Clermont KY-OH SO₂ nonattainment area. Ohio has met the CAA requirements for redesignation. EPA is also approving Ohio's maintenance plan, submitted on August 11, 2015.

In accordance with 5 U.S.C. 553(d), EPA finds there is good cause for this action to become effective immediately upon publication. This is because a delayed effective date is unnecessary due to the nature of a redesignation to attainment, which relieves the area from certain CAA requirements that would otherwise apply to it. The immediate effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule grants or recognizes an exemption or relieves a restriction, and section 553(d)(3), which allows an effective date less than 30 days after publication as otherwise provided by the agency for good cause found and published with the rule. The purpose of the 30-day waiting period prescribed in section 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. This rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, this rule relieves Ohio of various requirements for

the Ohio portion of the Campbell-Clermont area. For these reasons, EPA finds good cause under 5 U.S. C. 553(d)(3) for this action to become effective on the date of publication of this action.

V. Statutory and Executive Order Reviews.

Under the CAA, redesignation of an area to attainment and the accompanying approval of the maintenance plan under CAA 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 required by state law. A redesignation to attainment does not in and of itself impose any new requirements, but rather results in the application 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 CAA and applicable Federal regulations. 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, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, 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 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, the SIP is 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 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).

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 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

40 CFR Part 52

Environmental protection, Air pollution control,
Incorporation by reference, Intergovernmental relations,
Reporting and recordkeeping requirements, Sulfur oxides.

40 CFR Part 81

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

Dated: November 9, 2016.

Robert A. Kaplan,
Acting Regional Administrator, Region 5.

40 CFR parts 52 and 81 are amended 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.*

2. In § 52.1870 the table in paragraph (e) is amended by adding an entry for “SO₂ (2010)” in alphabetical order under “Summary of Criteria Pollutant Maintenance Plan” to read as follows:

§52.1870 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED OHIO NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Title	Applicable geographical or non-attainment area	State date	EPA approval	Comments
* * * * *				
Summary of Criteria Pollutant Maintenance Plan				
* * * * *				
SO ₂ (2010)	Campbell-Clermont (Pierce Township in Clermont County)	8/11/2015	[insert date of publication in the Federal Register], [insert Federal Register citation]	
* * * * *				

3. Section 52.1881 is amended by adding paragraph (a) (16) to read as follows:

§ 52.1881 Control strategy: Sulfur oxides (sulfur dioxide).

(a) * * *

(16) Approval - The 2010 SO₂ maintenance plan for the Ohio portion of the Campbell-Clermont KY-OH (Pierce Township, Clermont County), has been approved as submitted on August 11, 2015.

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PART 81--DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

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

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

5. Section 81.336 is amended by revising the entry for "Campbell-Clermont Counties, KY-OH" in the table entitled "Ohio-2010 Sulfur Dioxide NAAQS [Primary]" to read as follows:

§81.336 Ohio.

* * * * *

OHIO—2010 SULFUR DIOXIDE NAAQS
[Primary]

Designated Area	Designation	
	Date	Type
Campbell-Clermont Counties, KY-OH ¹	[insert date of publication in the Federal Register]	Attainment
Clermont County (part):		
Pierce Township		
* * * * *		

¹ Excludes Indian country located in each area, if any, unless otherwise specified.

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