



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R04-OAR-2016-0361; FRL-9959-10-Region 4]

**Air Plan Approval and Designation of Areas; KY; Redesignation of the Campbell County,
2010 1-Hour SO₂ Nonattainment Area to Attainment**

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving two separate but related submissions (one of which includes multiple components) provided by the Commonwealth of Kentucky, through the Kentucky Division of Air Quality (KDAQ), in relation to attainment of the 2010 Sulfur Dioxide (SO₂) national ambient air quality standards (NAAQS) for the Kentucky portion of the Campbell-Clermont, Kentucky-Ohio 2010 1-hour SO₂ nonattainment area (hereafter referred to as the “Campbell-Clermont, KY-OH Area” or “Area”). On March 31, 2015, KDAQ submitted a request for EPA to determine that the Campbell-Clermont, KY-OH Area attained the 2010 1-hour SO₂ NAAQS. Subsequently, on February 22, 2016, KDAQ submitted a request for EPA to redesignate the Campbell County portion of Kentucky that is within the Campbell-Clermont, KY-OH Area to attainment for the 2010 1-hour SO₂ NAAQS, and to approve a State Implementation Plan (SIP) revision containing a maintenance plan, base year inventory, and reasonably available control measures (RACM) determination for the Kentucky portion of the Area. EPA is approving the Commonwealth’s RACM determination; the base year emissions inventory for the Kentucky portion of the Area;

the Commonwealth's request for a clean data determination; and the Commonwealth's plan for maintaining attainment of the 2010 1-hour SO₂ NAAQS; and is redesignating the Kentucky portion of the Area to attainment for the 2010 1-hour SO₂ NAAQS.

DATES: This rule will be effective [**insert date of publication in the Federal Register**].

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2016-0361. 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 are available either electronically through www.regulations.gov or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management 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: Steven Scofield, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Mr. Scofield may be reached by phone at (404) 562-9034 or via electronic mail at scofield.steve@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background for Final 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). 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 1-hour daily maximum 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.¹

Upon promulgation of a new or revised NAAQS, the Clean Air Act (CAA or Act) 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. At the time EPA conducted the initial round of designations for the 2010 1-hour SO₂ primary NAAQS, Campbell County contained an SO₂ monitor which registered violations of the standard based on the three most recent years of complete, quality assured, and certified ambient air quality data. Using 2009-2011 ambient air quality data, EPA designated the Area as nonattainment for the 2010 1-hour SO₂ NAAQS on August 5, 2013 (78 FR 47191), which became effective on October 4, 2013.

¹ 40 CFR part 50, appendix T, section 3(b).

This nonattainment designation established an attainment date five years after the October 4, 2013, effective date for areas designated as nonattainment for the 2010 1-hour SO₂ NAAQS. Therefore, the Campbell-Clermont, KY-OH Area's attainment date is October 4, 2018. KDAQ was also required to submit a SIP to EPA that meets the requirements of CAA sections 172(c) and 191-192 within 18 months following the October 4, 2013, effective date of designation (i.e., April 4, 2015).

As mentioned above, on March 31, 2015, KDAQ submitted a request for EPA to determine that the Campbell-Clermont, KY-OH Area has attained the 2010 1-hour SO₂ NAAQS per EPA's "Clean Data Policy." Subsequently, on February 22, 2016, KDAQ submitted to EPA a request for redesignation of the Campbell-Clermont, KY-OH Area to attainment and a SIP revision containing a maintenance plan, base year inventory, and RACM determination for the Kentucky portion of the Area. In a notice of proposed rulemaking (NPRM) published on December 1, 2016, EPA proposed to take the following five separate but related actions regarding Kentucky's aforementioned requests and SIP submission: (1) to approve Kentucky's RACM determination for the Kentucky portion of the Campbell-Clermont, KY-OH Area pursuant to CAA section 172(c)(1) and incorporate it into the SIP; (2) to approve the base year emissions inventory for the 2010 1-hour SO₂ NAAQS for the Kentucky portion of the Area pursuant to CAA section 172(c)(3) and incorporate it into the SIP; (3) to approve the Commonwealth's March 31, 2015, request for EPA to determine that the Area attained the 2010 1-hour SO₂ NAAQS per EPA's "Clean Data Policy;" (4) to approve Kentucky's plan for maintaining the 2010 1-hour SO₂ NAAQS (maintenance plan) in the Area and incorporate it into the SIP; and (5) to redesignate the Kentucky portion of the Campbell-Clermont, KY-OH Area to

attainment for the 2010 1-hour SO₂ NAAQS.² *See* 81 FR 86664. No comments were received on the December 1, 2016, proposed rulemaking. The details of Kentucky's submittal and the rationale for EPA's actions are further explained in the NPRM. *See* 81 FR 86664 (December 1, 2016).

II. Effects of These Actions

Approval of Kentucky's redesignation request changes the legal designation of the portion of Campbell County that is within the Campbell-Clermont, KY-OH Area, as 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 plan for maintaining the 2010 1-hour SO₂ NAAQS in the Campbell-Clermont, KY-OH Area through 2027 into the SIP as well as the State's section 172(c)(1) RACM determination. This maintenance plan includes an emissions inventory that satisfies the requirements of section 172(c)(3) and contingency measures to remedy any future violations of the 2010 1-hour SO₂ NAAQS.

III. Final Actions

EPA is taking five separate but related actions regarding Kentucky's aforementioned requests and SIP submission. First, EPA is approving Kentucky's RACM determination for the Kentucky portion of the Campbell-Clermont, KY-OH Area pursuant to CAA section 172(c)(1) and incorporating it into the SIP.

² On November 21, 2016, EPA published its final approval of the redesignation request and maintenance plan for the Ohio portion of the Area. *See* 81 FR 83158. As part of that final action, EPA determined that the entire Area has attained the 2010 1-hour SO₂ NAAQS.

Second, EPA is approving the base year emissions inventory for the 2010 1-hour SO₂ NAAQS for the Kentucky portion of the Area pursuant to CAA section 172(c)(3) and incorporating it into the SIP.

Third, EPA is approving the Commonwealth's March 31, 2015, request for EPA to determine that the Area attained the 2010 1-hour SO₂ NAAQS per EPA's "Clean Data Policy."

Fourth, EPA is approving Kentucky's plan for maintaining the 2010 1-hour SO₂ NAAQS (maintenance plan) in the Area and incorporating it into the SIP. The maintenance plan demonstrates that the Area will continue to maintain the 2010 1-hour SO₂ NAAQS through 2027.

Fifth, EPA is redesignating the Kentucky portion of the Campbell-Clermont, KY-OH Area to attainment for the 2010 1-hour SO₂ NAAQS.

In accordance with 5 U.S.C. 553(d), EPA finds that there is good cause for these actions to become effective immediately upon publication. The immediate effective date for these actions is authorized under 5 U.S.C. 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 immediate effective date for the redesignation action is also authorized under 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. 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 rulemaking, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rules takes effect, and the redesignation will relieve the

Area from certain CAA requirements that would otherwise apply to it. For these reasons, EPA finds good cause under 5 U.S.C. 553(d) for these actions to become effective on the date of publication of this action.

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);
- do not impose an information collection burden 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).

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 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 FROM 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, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control.

Dated: January 20, 2017

V. Anne Heard

Acting Regional Administrator,
Region 4.

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.

Subpart S – Kentucky

2. Section 52.920(e) is amended by adding an entry for “2010 1-hour SO₂ Maintenance Plan for the Kentucky Portion of the Campbell-Clermont, KY-OH Area” at the end of the table to read as follows:

§ 52.920 Identification of plan.

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(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 Kentucky Portion of the Campbell-Clermont, KY-OH Area	Campbell County portion of Campbell-Clermont, KY-OH Nonattainment Area	2/22/2016	[Insert date of publication in <u>Federal Register</u>] [Insert citation of publication]	This includes the 172(c)(1) RACM determination and the 172(c)(3) base-year emissions inventory

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, the table entitled “Kentucky-2010 Sulfur Dioxide NAAQS (Primary)” is amended under “Campbell-Clermont Counties, KY-OH:” by revising the entries for “Campbell County (part)” to read as follows:

§ 81.318 Kentucky.

* * * * *

Kentucky-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
Campbell County (part) That portion of Campbell County which lies south and west of the Ohio River described as follows: Beginning at geographic coordinates 38.9735 North Latitude, 84.3017 West Longitude (NAD 1983) on the edge of the Ohio River running southwesterly to KY Highway 1566; thence continuing running southwesterly along KY Highway 1566 to KY Highway 9 (AA Highway); thence running north westerly along KY Highway 9 (AA Highway) from Hwy 1566 to Interstate 275; thence running northeasterly along Interstate 275 to Highway 2345 (John’s Hill Road), Hwy 2345 to US–27, US–27 to I–275, I–275 to the Ohio River; thence running southeasterly along the Ohio River from Interstate 275 to geographic coordinates 38.9735 North Latitude, 84.3017 West Longitude (NAD 1983)		
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¹ Excludes Indian country located in each area, if any, unless otherwise specified.

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[FR Doc. 2017-04781 Filed: 3/9/2017 8:45 am; Publication Date: 3/10/2017]