



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R02-OAR-2021-0871; FRL-11226-02-R2]

Air Plan Approval; New Jersey; Redesignation of the Warren County 1971 Sulfur Dioxide Nonattainment Area to Attainment and Approval of the Area's Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On November 15, 2021, the New Jersey Department of Environmental Protection (NJDEP) submitted a request for the Environmental Protection Agency (EPA) to approve the redesignation of the New Jersey portion of the Northeast Pennsylvania-Upper Delaware Valley Interstate Air Quality Control Region (Warren County, New Jersey) from nonattainment to attainment for the 1971 Sulfur Dioxide (SO₂) National Ambient Air Quality Standards (NAAQS). In conjunction with its redesignation request, NJDEP submitted a State Implementation Plan (SIP) revision containing a limited maintenance plan and its associated contingency measures for the Warren County 1971 SO₂ Nonattainment Area (Warren County SO₂ NAA) to ensure that attainment of the SO₂ NAAQS will continue to be maintained. The EPA is taking final action to approve the requested SIP revision and to redesignate the Warren County SO₂ NAA from nonattainment to attainment for the 1971 SO₂ NAAQS.

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

ADDRESSES: The EPA has established a docket for this action under Docket ID Number EPA-R02-OAR-2021-0871. 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, e.g., Controlled Unclassified Information (CUI) (formally referred

to as 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 electronically through <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Kenneth Fradkin, Air Programs Branch, Environmental Protection Agency, 290 Broadway, New York, New York 10007-1866, at (212) 637-3702, or by email at Fradkin.Kenneth@epa.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. What is the background for this action?
- II. Environmental Justice Considerations
- III. What comments were received in response to the EPA's proposed action?
- IV. What action is the EPA taking?
- V. Statutory and Executive Order Reviews

I. What is the background for this action?

On August 14, 2023, the EPA proposed to redesignate the Warren County SO₂ NAA to attainment for the 3-hour, 24-hour, and annual 1971 SO₂ NAAQS, based on the demonstrated compliance with the requirements of the redesignation criteria provided under CAA section 107(d)(3)(E). The EPA also proposed to approve the limited maintenance plan as a revision to the New Jersey SIP. NJDEP submitted the redesignation request and SIP revision on November 15, 2021.

The specific details of New Jersey's redesignation request and SIP revision, and the rationale for the EPA's approval action are explained in the EPA's proposed rulemaking and are not restated in this final action. For this detailed information, the reader is referred to the EPA's August 14, 2023, proposed rulemaking (88 FR 54983).

II. Environmental Justice Considerations

NJDEP provided a supplement to its SIP submission on March 16, 2023, which described New Jersey's programs and initiatives addressing the needs of communities with Environmental Justice (EJ) concerns.

The EPA performed an EJ analysis for the Warren County SO₂ NAA for the purpose of providing additional context and information about this rulemaking to the public and not as a basis for the action.

On August 14, 2023, we proposed to find that action would not have or lead to disproportionately high or adverse human health or environmental effects on communities with EJ concerns. For the specific details regarding the EPA's evaluation of EJ considerations, the reader is referred to the August 14, 2023, proposed rulemaking (88 FR 54983, 54994-54995).

III. What comments were received in response to the EPA's proposed action?

The EPA provided a 30-day review and comment period for the August 14, 2023, proposed rule. The comment period ended on September 13, 2023. The EPA received no comments on the proposed action.

IV. What action is the EPA taking?

The EPA has evaluated New Jersey's redesignation request and determined that it meets the redesignation criteria provided under CAA section 107(d)(3)(E) and is consistent with Agency regulations and policy. The EPA is approving New Jersey's request to redesignate the Warren County SO₂ NAA to attainment for the 3-hour, 24-hour, and annual 1971 SO₂ NAAQS. Additionally, the EPA is approving the maintenance plan for the Warren County SO₂ NAA pursuant to section 175A of the CAA.

In accordance with 5 U.S.C. 553(d) of the Administrative Procedure Act (APA), the EPA finds there is good cause for this action to become effective immediately upon publication. The immediate effective date for this action is authorized under 5 U.S.C.

553(d)(1). Section 553(d)(1) of the APA provides that final rules shall not become effective until 30 days after publication in the *Federal Register* “except . . . a substantive rule which grants or recognizes an exemption or relieves a restriction.” The purpose of this provision is to “give affected parties a reasonable time to adjust their behavior before the final rule takes effect.” *Omnipoint Corp. v. Fed. Commc'n Comm'n*, 78 F.3d 620, 630 (D.C. Cir. 1996); *see also United States v. Gavrilovic*, 551 F.2d 1099, 1104 (8th Cir. 1977) (quoting legislative history). However, when the agency grants or recognizes an exemption or relieves a restriction, affected parties do not need a reasonable time to adjust because the effect is not adverse. The EPA has determined that this rule relieves a restriction because this rule relieves sources in the area of Nonattainment New Source Review (NNSR) permitting requirements; instead, upon the effective date of this action, sources will be subject to less restrictive Prevention of Significant Deterioration (PSD) permitting requirements. For this reason, the EPA finds good cause under 5 U.S.C. 553(d)(1) for this action to become effective on the date of publication of this action.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA’s role is to approve State choices, provided that they meet the criteria of the Clean Air Act. 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 14094 (88 FR 21879, April 11, 2023);

- 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 subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a State program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- 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 Clean Air Act.

In addition, the SIP is not approved to 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 it 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).

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse

human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” The EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

NJDEP evaluated EJ considerations as part of its SIP submittal even though the CAA and applicable implementing regulations neither prohibit nor require an evaluation. The EPA’s evaluation of the NJDEP’s environmental justice considerations is described above in the section titled, “Environmental Justice Considerations.” The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. The EPA is taking action under the CAA on reasoning independent of the NJDEP’s evaluation of environmental justice. Due to the nature of this action, it is expected to have a neutral to positive impact on the air quality of the affected area.

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

Under section 307(b)(1) of the Clean Air Act, 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, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

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

Lisa Garcia,
Regional Administrator,
Region 2.

For the reasons set forth in the preamble, 40 CFR part 52 is 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 FF—New Jersey

2. In § 52.1570, the table in paragraph (e) is amended by adding the entry for “1971 Sulfur Dioxide Redesignation Request and Maintenance Plan for the Warren County Area”, at the end of the table to read as follows:

§ 52.1570 Identification of plan.

* * * * *

(e) * * *

EPA-Approved New Jersey Nonregulatory and Quasi-Regulatory provisions

SIP element	Applicable geographic or nonattainment area	New Jersey submittal date	EPA approval date	Explanation
* * * * *				
1971 Sulfur Dioxide Redesignation Request and Maintenance Plan for the Warren County Area	New Jersey portion of the Northeast Pennsylvania-Delaware Valley Interstate Air Quality Control Region (Warren County, New Jersey)	November 15, 2021	[insert date of publication in the Federal Register], [insert Federal Register citation]	• Full approval

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 § 81.331 the table entitled “New Jersey—1971 Sulfur Dioxide NAAQS” is amended by revising the entries under “Northeast Pennsylvania-Upper Delaware Valley Interstate AQCR” to read as follows:

§ 81.331 New Jersey.

New Jersey—1971 Sulfur Dioxide NAAQS

[Primary and Secondary]

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
* * * * *				
Northeast Pennsylvania-Upper Delaware Valley Interstate AQCR:				
The Township of Harmony				X
The Township of White				X
The Township of Oxford				X
The Township of Belvidere				X
Portions of Liberty Township				X
Portions of Mansfield Township				X
Remainder of AQCR				X

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