



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2023-0253; FRL-11850-01-R4]

Air Plan Approval; KY; Updates to Attainment Status Designations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Commonwealth of Kentucky, through the Kentucky Energy and Environment Cabinet (Cabinet), Kentucky Division for Air Quality (KDAQ), submitted a revision to the Kentucky State Implementation Plan (SIP) on November 29, 2022. The SIP revision updates the geographical boundary description and attainment status designation for the Henderson-Webster nonattainment area for the 2010 Sulfur Dioxide (SO₂) primary National Ambient Air Quality Standards (NAAQS). The update is being made to conform Kentucky's attainment status tables with the federal attainment status designations made for this area. The SIP revision also includes minor language changes in the attainment status designations provisions. EPA is proposing to approve Kentucky's SIP revision pursuant to the Clean Air Act (CAA or Act).

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2023-0253 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be

accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Josue Ortiz Borrero, 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. Mr. Ortiz can be reached via phone number (404) 562-8085 or via electronic mail at ortizborrero.josue@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On November 29, 2022, the Cabinet submitted a SIP revision containing changes to 401 Kentucky Administrative Regulation (KAR) 51:010 – *Attainment status designations*, State effective June 9, 2022, to be consistent with the SO₂ designation status codified by EPA at title 40 CFR part 81, subpart C as designated pursuant to section 107 of the CAA. Regulation 401 KAR 51:010 “establishes the designation status of all areas of the Commonwealth of Kentucky with regard to attainment of the” NAAQS. Specifically, the regulation compiles the designation status for the entire Commonwealth for the following NAAQS: ozone (O₃), fine particulate matter (PM_{2.5}), lead (Pb), carbon monoxide (CO), nitrogen dioxide (NO₂), SO₂, and Total Suspended Particles (TSP) in a tabular format that identifies the area and the legal geographical boundary description consistent with the designation status codified at 40 CFR part 81. Specifically, Kentucky’s SIP submission adds the attainment status and the legal geographical boundary description for the Henderson-Webster nonattainment area for the 2010 SO₂ NAAQS

as determined by EPA in SO₂ designations effective on April 14, 2021.¹ This update is being made to ensure Kentucky's attainment designation tables are consistent with those codified at 40 CFR 81.318 for the Commonwealth. Kentucky's proposed amendment to 401 KAR 51:010 also includes minor language changes as described below in Section II. The SIP submittal amending the Kentucky regulation to incorporate these changes can be found in the docket at www.regulations.gov and is summarized below.

A. NAAQS Review and Designations

Sections 108 and 109 of the CAA require EPA to set NAAQS for the criteria air pollutants: O₃, PM, CO, Pb, SO₂, and NO₂, and to undertake periodic review of these standards. After EPA sets a new NAAQS or revises an existing standard, the CAA requires EPA to determine if areas of the country meet the new standard and to designate areas as either nonattainment, attainment, or unclassifiable. Such designations inform the state's planning and implementation of requirements to achieve and maintain the NAAQS for each area within that state.

Section 107(d) of the CAA governs the process for these area designations. Under this process, states and tribes submit recommendations to EPA as to whether an area is attaining the NAAQS for criteria air pollutants. EPA then considers these recommendations as part of its obligation to promulgate the area designations and boundaries for the new or revised NAAQS. EPA codifies its designations for areas within each state in 40 CFR part 81.² Under section 107(d) of the CAA, a designation for an area remains in effect until redesignated by EPA.

B. SO₂ NAAQS Designations

¹ See 86 FR 16055. This round of designations for the 2010 1-hour SO₂ NAAQS was signed on December 21, 2020 (86 FR 16055 (March 26, 2021)) and April 8, 2021 (86 FR 19576 (April 14, 2021)). These designations were signed by former EPA Administrator Andrew Wheeler on December 21, 2020, pursuant to a court-ordered deadline of December 31, 2020. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, former Acting Administrator Jane Nishida re-signed the same action on March 10, 2021, for publication in the Federal Register. EPA and state documents and public comments related to these final designations are in the docket at regulations.gov with Docket ID No. EPA-HQ-OAR-2020-0037 and at EPA's website for SO₂ designations at <https://www.epa.gov/sulfur-dioxide-designations>.

² See 40 CFR 81.318 for designations for Kentucky.

On June 2, 2010, EPA revised the primary SO₂ NAAQS to provide requisite protection of public health with an adequate margin of safety. *See* 75 FR 35520 (June 22, 2010). Specifically, EPA established a new 1-hour daily maximum SO₂ standard at a level of 75 parts per billion (ppb), codified at 40 CFR 50.17. The CAA requires EPA to complete the designations process within two years of promulgating a new or revised standard or June 2012 for the 1-hour SO₂ NAAQS. If the Administrator has insufficient information to make these designations by that deadline, the EPA has the authority to extend the deadline for completing designations by up to one year. On July 27, 2012, EPA extended the deadline for area designations for the 2010 primary SO₂ standard from June 2012 by one year to June 2013 due to having insufficient information to make initial area designations in two years (77 FR 46295, August 3, 2012). With this extension, EPA completed initial designations on July 25, 2013 (78 FR 47191, August 5, 2013) based on air quality monitoring data available at the time.^{3, 4}

EPA completed the remaining area designations in three specific “rounds” of designations: July 2, 2016 (“Round 2”), December 31, 2017 (“Round 3”), and December 31, 2020 (“Round 4”). EPA designated the Henderson-Webster area⁵ in Round 4 as nonattainment for the 2010 primary SO₂ NAAQS. This designation was effective on April 30, 2021⁶ and codified at 40 CFR 81.318.

II. Analysis of the Kentucky Submittal

³ EPA completed the first round of SO₂ designations on July 25, 2013, designating 29 areas in 16 states as nonattainment (78 FR 47191, August 5, 2013). EPA based this first round of SO₂ designations on monitored SO₂ concentrations from Federal Reference Method and Federal Equivalent Method monitors that were sited and operated in accordance with 40 CFR parts 50 and 58.

⁴ Following the initial August 5, 2013, designations, three lawsuits were filed against EPA in different U.S. District Courts, alleging the agency had failed to perform a nondiscretionary duty under the CAA by not designating all portions of the country by the June 2, 2013, deadline. In an effort intended to resolve the litigation in one of those cases, EPA and the plaintiffs – Sierra Club, and the Natural Resources Defense Council – filed a proposed consent decree with the U.S. District Court for the Northern District of California. On March 2, 2015, the court entered the consent decree and issued an enforceable order for EPA to complete the area designations by three specific deadlines according to the court-ordered schedule.

⁵ The nonattainment area is comprised of Henderson County (partial) and Webster County (partial) and was designated nonattainment based on the 2017-2019, 3-year design value at the Sebree ambient air quality monitor (AQS ID: 21-101-1011). *See* EPA, Technical Support Document: Chapter 3 Intended Round 4 Area Designations for the 2010 1-Hour SO₂ Primary National Ambient Air Quality Standard for Kentucky, available at https://www.epa.gov/sites/default/files/2020-08/documents/03-ky-rd4_intended_so2_designations_tsd.pdf.

⁶ *See* 86 FR 19576 (April 14, 2021).

Kentucky's November 29, 2022, submission updates the attainment status designation for the 2010 SO₂ NAAQS at section 9 of Regulation 401 KAR 51:010 to include an entry for the Henderson-Webster, KY SO₂ nonattainment area, which was designated by EPA in Round 4 SO₂ designations. The SIP submission also provides minor language changes. Specifically, the SIP revision amends the table in paragraph (2) of section 9 of 401 KAR 51:010 to reflect the nonattainment designation status and geographic boundaries for the Henderson-Webster area for the 2010 primary SO₂ NAAQS. Additionally, the text "Henderson County (part) Census Block Groups 211010207013, 211010207014, 211010207024 and 211010208004" was removed from the bottom section of the table, and the designated status of the area in the table was changed from "Attainment/Unclassifiable" to "Nonattainment". Lastly, footnote 2, "(2) Excluding Webster and the remainder of Henderson County" was removed because the table is now amended to include a specific designation for the Henderson-Webster area.

Kentucky's SIP revision also provides minor language changes to 401 KAR 51:010. The revision replaces the text "designates the status" with the phrase "establishes the designation status" in reference to the purpose of the rule. In section 2, paragraph (1), the phrase "shall be as listed" replaces "is listed" in reference to the NAAQS listed in sections 4 through 10 of 401 KAR 51:010. Subparagraph 3 is revised by replacing "defines" with "delineates" in the sentence "A road, junction, or intersection of two (2) or more roads as used in Section 7 of this administrative regulation that defines a nonattainment boundary for an area that is a portion of a county designated as nonattainment for ozone for any classification except marginal, shall include as nonattainment an area extending 750 feet from the center of the road, junction, or intersection." Also, Kentucky removed the reference to section 7 in that sentence because section 7 specifies that it applies to ozone nonattainment areas.

EPA is proposing to approve the November 29, 2022, submission which amends paragraph (2) of section 9 in 401 KAR 51:010 to include the nonattainment designation status for the Henderson-Webster area for the 2010 primary SO₂ NAAQS and make the other changes

described above. EPA has reviewed these changes and is proposing to find that they are consistent with the CAA and its implementing regulations.

III. Incorporation by Reference

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, and as discussed in sections I and II of this preamble, EPA is proposing to incorporate by reference Kentucky Regulation 401 KAR 51:010, *Attainment status designations*, state effective on June 9, 2022, which was revised to be consistent with the federal attainment status designations for the areas within the Commonwealth. EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 4 office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information).

IV. Proposed Action

EPA is proposing to approve Kentucky’s November 29, 2022, SIP revision described above, which among other things, updates regulation 401 KAR 51:010 to amend the attainment status designation for the Henderson-Webster SO₂ nonattainment area for the 2010 primary SO₂ NAAQS in accordance with the designations codified in 40 CFR 81.318. EPA is proposing to approve these changes because they are consistent with the CAA and its implementing regulations.

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 Clean Air Act 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 Clean Air Act. Accordingly, this proposed action merely proposes to approve state law as meeting Federal requirements and does not

impose additional requirements beyond those imposed by state law. For that reason, this proposed 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 (Pub. L. 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 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).

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. 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.” 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.”

The Cabinet did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this proposed action. Due to the nature of the action being proposed here, this proposed action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this proposed action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

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

Dated: April 5, 2024.

Jeananne Gettle,
Acting Regional Administrator,
Region 4.

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