

TABLE 5—STATE OF OREGON AIR QUALITY CONTROL PROGRAM APPROVED BUT NOT INCORPORATED BY REFERENCE—Continued

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanations
*	*	*	*	*
EPA-Approved Oregon State Directives				
Oregon Department of Forestry Directive 1–4–1–601.	Operational Guidance for the Oregon Smoke Management Program.	9/27/2019	5/25/2021, [Insert Federal Register citation].	
*	*	*	*	*

[FR Doc. 2021–11038 Filed 5–24–21; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

Approval and Promulgation of Implementation Plans

CFR Correction

■ In Title 40 of the Code of Federal Regulations, Protection of Environment,

Part 52 (§ 52.2020 to end of part 52), revised as of July 1, 2020, on page 15, the entry for 127.702 is reinstated to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(1) * * *

State citation	Title/subject	State effective date	EPA approval date	Additional explanation/ § 52.2063 citation
Title 25—Environmental Protection Article III—Air Resources				
*	*	*	*	*
Chapter 127—Construction, Modification, Reactivation, and Operation of Sources				
*	*	*	*	*
Subchapter I—Plan Approval and Operating Permit Fees				
Section 127.702	Plan approval fees	11/26/94	7/30/96, 61 FR 39597	(c)(110)(i)(C).
*	*	*	*	*

[FR Doc. 2021–11116 Filed 5–24–21; 8:45 am]
BILLING CODE 0099–10–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–R04–OAR–2020–0482; FRL–10024–20–Region 4]

Air Quality Designation; TN: Redesignation of the Sumner County 2010 Sulfur Dioxide Unclassifiable Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a submission by the State of Tennessee, through the

Tennessee Department of Environment and Conservation (TDEC), on September 29, 2020, to redesignate the Sumner County, Tennessee, unclassifiable area (hereinafter referred to as the “Sumner County Area” or “Area”) to attainment/ unclassifiable for the 2010 1-hour primary sulfur dioxide (SO₂) national ambient air quality standard (hereinafter referred to as the 2010 SO₂ 1-hour NAAQS). EPA now has sufficient information to determine that the Sumner County Area is attaining the 2010 1-hour SO₂ NAAQS and is approving the State’s request and redesignating the Area to attainment/ unclassifiable for the 2010 1-hour SO₂ NAAQS.

DATES: This rule is effective June 24, 2021.

ADDRESSES: EPA has established a docket for this action under Docket

Identification No. EPA–R04–OAR–2020–0482. All documents in the docket are listed on the www.regulations.gov website. 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 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:

Evan Adams, 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. Adams can be reached by telephone at (404) 562-9009 or via electronic mail at adams.evan@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Clean Air Act (CAA or Act) establishes a process for air quality management through the establishment and implementation of the national ambient air quality standards (NAAQS). 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 After the promulgation of a new or revised NAAQS, EPA is required to designate all areas of the country, pursuant to section 107(d)(1)-(2) of the CAA. For the 2010 1-hour SO₂ NAAQS, designations were based on EPA's application of the nationwide analytical approach to, and technical assessment of, the weight of evidence for each area, including but not limited to available air quality monitoring data and air quality modeling results. In advance of designating the Sumner County Area, EPA issued updated designations guidance through a March 20, 2015, memorandum from Stephen D. Page, Director, U.S. EPA, Office of Air Quality Planning and Standards, to Air Division Directors, U.S. EPA Regions 1-10, titled "Updated Guidance for Area Designations for the 2010 Primary Sulfur Dioxide National Ambient Air Quality Standard," which contains the factors that EPA evaluated in determining the appropriate designations and associated boundaries when designating the Sumner County Area, including: (1) Air quality characterization via ambient monitoring or dispersion modeling results; (2) emissions-related data; (3) meteorology; (4) geography and topography; and (5) jurisdictional boundaries.^{2,3} The

guidance also references EPA's non-binding Monitoring Technical Assistance Document (Monitoring TAD) and Modeling Technical Assistance Document (Modeling TAD),⁴ which contain scientifically sound recommendations on how air agencies should conduct such monitoring or modeling.

EPA completed the first set of initial area designations for the 2010 1-hour SO₂ NAAQS in 2013 (Round 1). Pursuant to a March 2, 2015, consent decree and court-ordered schedule,⁵ EPA finalized a second set of initial area designations for the 2010 1-hour SO₂ NAAQS in 2016 (Round 2). The March 2, 2015, consent decree identified the following emissions criteria such that EPA must designate, in Round 2, an area surrounding any stationary source which had: (a) Annual emissions in 2012 exceeding 16,000 tons of SO₂, or (b) both an annual average emissions rate of at least 0.45 pounds of SO₂ per one million British thermal units, according to EPA's Clean Air Markets Division Database, and annual emissions of at least 2,600 tons of SO₂ in 2012. Sumner County, Tennessee, contained one source, Tennessee Valley Authority (TVA) Gallatin Fossil Plant (TVA Gallatin), that met these Round 2 criteria. EPA evaluated the Area, using the five factors identified previously, during the Round 2 designations. TVA Gallatin is a large Electric Generating Unit located in north central Tennessee in the southern portion of Sumner County, approximately five kilometers (km) southeast of the center of Gallatin, Tennessee. The facility was included in the list of facilities to be designated pursuant to the March 2, 2015, Consent Decree.^{6,7}

³ This designation guidance has since been superseded by a July 22, 2016, designation guidance memorandum from Stephen D. Page, Director, U.S. EPA, Office of Air Quality Planning and Standards, to Regional Air Division Directors, U.S. EPA Regions 1-10. The 2016 memorandum is available at <https://www.epa.gov/sites/production/files/2016-07/documents/areadesign.pdf>.

⁴ "Sulfur Dioxide (SO₂) National Ambient Air Quality Standards Designations Modeling Technical Assistance Document," August 2016 draft, available at <https://www.epa.gov/sites/production/files/2016-06/documents/so2modelingtad.pdf>. Note, EPA released earlier drafts of this document in May 2013 and February 2016.

⁵ See *Sierra Club et. al. v. McCarthy*, Civil Action No. 3:13-cv-3953-SI (N.D. Cal.), and 79 FR 31325 (June 2, 2014).

⁶ TVA Gallatin was also subject to EPA's 2015 Data Requirements Rule (DRR) for the 2010 SO₂ 1-hour NAAQS. See <https://www.epa.gov/sites/production/files/2016-06/documents/tn.pdf> for Tennessee's letter dated January 15, 2016, with the Data Requirements Rule (DRR) source list.

⁷ In accordance with the DRR, 40 CFR part 51, subpart BB, through a letter dated June 7, 2016, Tennessee notified EPA that the State chose to

EPA's March 20, 2015, guidance specified the designation category definitions to be used in the Round 2 designations.⁸ EPA was unable to determine whether the Sumner County Area met the definition of a nonattainment area or the definition of an attainment area based on the available information at the time of the Round 2 designations. As a result, EPA designated the Sumner County Area as unclassifiable in the Round 2 designations published on July 12, 2016.⁹ The boundary for this designation was the jurisdictional boundary of Sumner County.¹⁰

In support of this final redesignation action, EPA evaluated new modeling for the Sumner County Area provided by Tennessee and developed a new technical support document (TSD).¹¹ On September 29, 2020, Tennessee submitted a request for EPA to redesignate the Sumner County Area to attainment/unclassifiable for the 2010 1-hour primary SO₂ NAAQS based on air quality dispersion modeling showing that the Area is in compliance with the 2010 1-hour primary SO₂ NAAQS.^{12,13,14}

characterize peak 1-hour SO₂ concentrations for TVA Gallatin using air quality dispersion modeling.

⁸ Specifically, EPA defined a "nonattainment" area as an area that EPA has determined violates the 2010 1-hour SO₂ NAAQS based on the most recent three years of ambient air quality monitoring data or an appropriate modeling analysis, or that EPA has determined contributes to a violation in a nearby area; and defined an "attainment" area as an area that EPA has determined meets the 2010 1-hour SO₂ NAAQS and does not contribute to a violation of the NAAQS in a nearby area based on either: (a) The most recent 3 years of ambient air quality monitoring data from a monitoring network in an area that is sufficient to be compared to the NAAQS per EPA interpretations in the Monitoring TAD, or (b) an appropriate modeling analysis.

⁹ See 81 FR 45039 (July 12, 2016), codified at 40 CFR 81.343.

¹⁰ Detailed rationale, analyses, and other information supporting EPA's original Round 2 designation for this Area can be found in the intended and final Round 2 designation's TSD for Tennessee. This document, along with all other supporting materials for the original 2010 1-hour SO₂ NAAQS designation for Sumner County, can be found on EPA's SO₂ designations website. EPA SO₂ designations website can be found at <https://www.epa.gov/sulfur-dioxide-designations>.

¹¹ The TSD for this proposed action is included in the docket.

¹² The demonstration of attainment through air quality dispersion modeling requires an area to review and report annual SO₂ emissions pursuant to DRR ongoing verification at 40 CFR 51.1205(b). In its September 29, 2020, redesignation request letter, Tennessee also requested to terminate the section 51.1205(b) annual reporting requirement because the modeling analyses demonstrated a value of at least 50 percent below the 2010 1-hour SO₂ NAAQS at all receptors. EPA will address the annual reporting termination request in a separate action which has no bearing on the final approval of the redesignation.

¹³ See letter signed by Michelle Owenby, Director of TDEC's Division of Air Pollution Control, September 29, 2020, requesting that EPA

¹ On February 25, 2019 (effective April 17, 2019), based on a review of the full body of currently available scientific evidence and exposure/risk information, EPA issued a decision to retain the existing NAAQS for SO₂. See 84 FR 9866.

² The 2015 memorandum is available at <https://www.epa.gov/sites/production/files/2016-04/documents/20150320so2designations.pdf>.

The updated modeling was performed using the current version of EPA's recommended dispersion model, AERMOD version 19191, with the most recent three years of actual SO₂ emissions (2017–2019) from the TVA Gallatin facility and concurrent meteorology data.¹⁵

After reviewing Tennessee's request under CAA section 107(d)(3)(D) and all available information, EPA has determined that the modeling provided by the State comports with EPA's current Modeling TAD and EPA's Guideline on Air Quality Models (40 CFR part 51 Appendix W) and is acceptable for assessing the attainment status of the Sumner County Area. The State's modeling indicates that the predicted maximum design value at any receptor in the modeling domain is 60.5 micrograms per cubic meter (µg/m³), or 23.1 ppb. EPA's review confirms that the modeling results appropriately characterize the air quality in the Sumner County Area and that predicted ambient SO₂ concentrations are below the 2010 1-hour SO₂ NAAQS of 196.4 µg/m³, or 75 ppb. Additionally, there is no evidence of monitored or modeled violations in the surrounding counties such that the source is contributing to any nearby area that does not meet the NAAQS.

EPA is taking final action to approve Tennessee's redesignation request and is redesignating the entirety of Sumner County that was designated as unclassifiable in July 2016 to attainment/unclassifiable based on the currently available information that demonstrates attainment of the 2010 1-hour SO₂ NAAQS.¹⁶ In a notice of

redesignate Sumner County, Tennessee, to attainment/unclassifiable for the 2010 1-hour SO₂ NAAQS.

¹⁴ EPA is redesignating the area to "attainment/unclassifiable" because, as noted in the proposal, EPA reserves the "attainment" category for when EPA redesignates a nonattainment area that has attained the relevant NAAQS and has an approved maintenance plan.

¹⁵ The TSD included in the docket for this proposed redesignation action provides a detailed summary of Tennessee's modeling analysis and EPA's evaluation of the modeling. The modeling files are not included in the electronic docket for this action due to their nature, size, and incompatibility with the Federal Docket Management System. These files are available at the EPA Region 4 office for review. To request these files, please contact the person listed in the notice under the section titled **FOR FURTHER INFORMATION CONTACT**.

¹⁶ For redesignations of unclassifiable areas, the necessary analysis is equivalent to what would be required in a designation in the first instance since EPA has not found the area to be attainment or nonattainment. In this first instance, the goal is to characterize existing ambient air quality. As such, it is appropriate to use actual emissions for estimating existing air quality. EPA's acceptance of modeling using actual emissions in this instance

proposed rulemaking (NPRM) published on March 5, 2021 (86 FR 12892), EPA proposed to approve the State's redesignation request. The details of Tennessee's submittal and the rationale for EPA's actions are further explained in the NPRM. Comments on the NPRM were due on or before April 5, 2021. EPA did not receive any adverse comments on the action.

III. Final Action

EPA is approving Tennessee's September 29, 2020, request to redesignate the Sumner County Area from unclassifiable to attainment/unclassifiable for the 2010 1-hour SO₂ NAAQS. EPA has reviewed the modeling provided by the State with its redesignation request and finds that it complies with EPA's current Modeling TAD and EPA's Guideline on Air Quality Models (40 CFR part 51 Appendix W) and is acceptable for assessing the attainment status of the Sumner County Area. This approval of the redesignation request changes the legal designation, found at 40 CFR part 81, of Sumner County from unclassifiable to attainment/unclassifiable for the 2010 1-hour SO₂ NAAQS.

IV. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment/unclassifiable is an action that affects the status of a geographical area and does not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment/unclassifiable 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. Accordingly, this action merely redesignates an area to attainment/unclassifiable and does not impose additional requirements. 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

should not be construed to define what would be needed for a demonstration of attainment and maintenance for purposes of a redesignation of a nonattainment area to attainment.

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 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
- Will not have disproportionate human health or environmental effects under Executive Order 12898 (59 FR 7629, February 16, 1994).

This final redesignation does not apply to 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 July 26, 2021. 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 81

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

Dated: May 17, 2021.
John Blevins,
Acting Regional Administrator, Region 4.
For the reasons stated in the preamble, EPA amends 40 CFR part 81 as follows:

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

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

Authority: 42 U.S.C. 7401 *et seq.*
■ 2. In § 81.343, the table titled “Tennessee—2010 Sulfur Dioxide NAAQS (Primary)” is amended by revising the entry for “Sumner County, TN” to read as follows:
§ 81.343 Tennessee.
* * * * *

TENNESSEE—2010 SULFUR DIOXIDE NAAQS
[Primary]

Designated area	Designation	
	Date ¹	Type
* * * * *	* * * * *	* * * * *
Sumner County, TN ²	June 24, 2021	Attainment/Unclassifiable.
Sumner County		
* * * * *	* * * * *	* * * * *

¹ This date is April 9, 2018, unless otherwise noted.
² Excludes Indian country located in each area, if any, unless otherwise specified.

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[FR Doc. 2021–10983 Filed 5–24–21; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY
40 CFR Part 112

Definitions

CFR Correction

■ In Title 40 of the Code of Federal Regulations, Protection of Environment, Parts 100 to 135, revised as of July 1, 2020, on page 26, in section 112.2, reinstate the definition of “worst case discharge,” in alphabetical order, to read as follows:

* * * * *

Worst case discharge for an on-shore non-transportation related facility means the largest foreseeable discharge in adverse weather conditions as determined using the worksheets in Appendix D to this part.

[FR Doc. 2021–11115 Filed 5–24–21; 8:45 am]
BILLING CODE 0099–10–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Parts 86 and 92

Notification of Interpretation and Enforcement of Section 1557 of the Affordable Care Act and Title IX of the Education Amendments of 1972

AGENCY: Office of the Secretary, Department of Health and Human Services (HHS).

ACTION: Notification of interpretation and enforcement.

SUMMARY: This Notification is to inform the public that, consistent with the Supreme Court’s decision in *Bostock* and Title IX, beginning May 10, 2021, the Department of Health and Human Services (HHS) will interpret and enforce section 1557 of the Affordable Care Act prohibition on discrimination on the basis of sex to include: Discrimination on the basis of sexual orientation; and discrimination on the basis of gender identity. This interpretation will guide the Office for Civil Rights (OCR) in processing complaints and conducting investigations, but does not itself determine the outcome in any particular case or set of facts.

DATES: This notification of interpretation became effective May 10, 2021.

FOR FURTHER INFORMATION CONTACT: Rachel Seeger at (202) 619–0403 or (800) 537–7697 (TDD).

SUPPLEMENTARY INFORMATION: HHS is informing the public that, consistent with the Supreme Court’s decision in *Bostock* ¹ and Title IX, ² beginning May 10, 2021, the Department of Health and Human Services (HHS) will interpret and enforce Section 1557’s ³ prohibition on discrimination on the basis of sex to include: (1) Discrimination on the basis of sexual orientation; and (2) discrimination on the basis of gender identity.

I. Background

The Office for Civil Rights (OCR) at the U.S. Department of Health and Human Services (the Department) is responsible for enforcing Section 1557 of the Affordable Care Act (Section 1557) and regulations issued under Section 1557, protecting the civil rights of individuals who access or seek to access covered health programs or activities. Section 1557 prohibits discrimination on the bases of race, color, national origin, sex, age, and

¹ *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020). https://www.supremecourt.gov/opinions/19pdf/17-1618_hfci.pdf.
² Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 *et seq.* <https://www.govinfo.gov/content/pkg/CFR-2011-title45-vol1/pdf/CFR-2011-title45-vol1-part86.pdf>.
³ Section 1557 of the Patient Protection and Affordable Care Act. <https://www.govinfo.gov/content/pkg/USCODE-2010-title42/pdf/USCODE-2010-title42-chap157-subchapVI-sec18116.pdf>.