

As the Court found in *Metzenbaum v. Federal Energy Regulatory Commission*, 675 F.2d 1282, 1291 (D.C. Cir. 1982), the opportunity for notice and comment where there is no discretion is “unnecessary.” *Id.* (quoting 5 U.S.C. 553(b)(B)). The Court further stated that notice and comment for such a nondiscretionary action “might even have been ‘contrary to the public interest,’ given the expense that would have been involved in a futile gesture.” *Id.* See also *Lake Carriers’ Ass’n v. E.P.A.*, 652 F.3d 1, 10 (D.C. Cir. 2011) (notice and comment rulemaking “would have served no purpose” where agency lacked the authority to amend or reject the conditions at issue). As this waiver and extension fulfills our understanding of congressional intent for the \$500,000 appropriated in FY 2020 for the NCITSPSD grant program to go to the current grantee to fulfill the program’s objectives during this fiscal year, the Department finds that there is similarly good cause to waive notice and comment rulemaking. The goals of the NCITSPSD grant program cannot be met by other potential applicants with the small amount of funding available for the NCITSPSD program in FY 2020.

The APA also requires that a substantive rule must be published at least 30 days before its effective date, except as otherwise provided for good cause (5 U.S.C. 553(d)(3)). In addition to the reasons stated above, a delayed effective date would be contrary to the public interest because it might prevent the waivers and extension from taking effect prior to the expiration of the current project period. Therefore, the Secretary waives the delayed effective date provision for good cause.

#### Regulatory Flexibility Act Certification

The Regulatory Flexibility Act does not apply to this rulemaking because there is good cause to waive notice and comment under 5 U.S.C. 553.

#### Paperwork Reduction Act of 1995

This notice of waivers and extension of project period does not contain any information collection requirements.

#### Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance. This document provides early notification of

our specific plans and actions for this program.

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**Robert L. King,**

*Assistant Secretary for Postsecondary Education.*

[FR Doc. 2020–17145 Filed 8–4–20; 11:15 am]

**BILLING CODE 4000–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[EPA–R04–OAR–2020–0003; FRL–10011–97–Region 4]

#### Air Plan Approval and Designation of Areas; Kentucky; Redesignation of the Jefferson County 2010 1-Hour Sulfur Dioxide Nonattainment Area to Attainment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** In a letter dated December 9, 2019, the Commonwealth of Kentucky, through the Kentucky Division of Air Quality (KDAQ) on behalf of the Louisville Metro Air Pollution Control District (LMAPCD), submitted a request for the Environmental Protection Agency (EPA) to redesignate the Jefferson County sulfur dioxide (SO<sub>2</sub>) nonattainment area (hereinafter referred to as the “Jefferson County Area” or “Area”) to attainment for the 2010 1-hour SO<sub>2</sub> primary national ambient air

quality standard (NAAQS or standard) and to approve an accompanying state implementation plan (SIP) revision containing a maintenance plan for the Area. EPA is taking final action to determine that the Jefferson County Area has attained the 2010 1-hour SO<sub>2</sub> NAAQS; to approve the SIP revision containing the Commonwealth’s plan for maintaining attainment of the 2010 1-hour SO<sub>2</sub> standard and to incorporate the maintenance plan into the SIP; and to redesignate the Jefferson County Area to attainment for the 2010 1-hour SO<sub>2</sub> NAAQS.

**DATES:** This rule is effective September 8, 2020.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2020–0003. All documents in the docket are listed on the [www.regulations.gov](http://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 can either be retrieved electronically via [www.regulations.gov](http://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:

Madolyn Sanchez, 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. Ms. Sanchez may be reached by phone at (404) 562–9644 or via electronic mail at [sanchez.madolyn@epa.gov](mailto:sanchez.madolyn@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. What is the background for the actions?

On June 2, 2010, EPA revised the primary SO<sub>2</sub> NAAQS, establishing a new 1-hour SO<sub>2</sub> standard of 75 parts per billion (ppb). See 75 FR 35520 (June 22,

2010).<sup>1</sup> Under EPA's regulations at 40 CFR part 50, the 2010 1-hour SO<sub>2</sub> NAAQS is met at a monitoring site when the 3-year average of the annual 99th percentile of daily maximum 1-hour average 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.<sup>2</sup>

Upon promulgation of a new or revised NAAQS, the CAA 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. EPA designated the Jefferson County Area as nonattainment for the 2010 1-hour SO<sub>2</sub> NAAQS, effective on October 4, 2013, based on 2009–2011 complete, quality assured, and certified ambient air quality data. See 78 FR 47191 (August 5, 2013). Under the CAA, nonattainment areas must attain the NAAQS as expeditiously as practicable but not later than five years after the October 4, 2013, effective date of the designation. See CAA section 192(a). Therefore, the Jefferson County Area's applicable attainment date was no later than October 4, 2018.

EPA's 2010 SO<sub>2</sub> nonattainment designation for the Area triggered an obligation for Kentucky to develop a nonattainment SIP revision addressing certain requirements under title I, part D, subpart 1 (hereinafter "Subpart 1"), and to submit that SIP revision to EPA in accordance with the deadlines in title I, part D, subpart 5 (hereinafter "Subpart 5"). Subpart 1 contains the general requirements for nonattainment areas for criteria pollutants, including requirements to develop a SIP that provides for the implementation of reasonably available control measures, requires reasonable further progress, includes base-year and attainment-year emissions inventories, includes a SIP-approved nonattainment new source

review (NNSR) permitting program, requires enforceable emission limitations and other such control measures, and provides for the implementation of contingency measures. This SIP revision was due within 18 months following the October 4, 2013, effective date of designation (*i.e.*, April 4, 2015). See CAA section 191(a). Kentucky submitted a nonattainment SIP revision to EPA on June 23, 2017.<sup>3</sup>

On June 28, 2019 (84 FR 30920), EPA approved Kentucky's June 23, 2017, SO<sub>2</sub> nonattainment SIP revision. EPA determined that the nonattainment SIP revision met the applicable requirements of sections 110, 172, 191, and 192 of the CAA and nonattainment regulatory requirements at 40 CFR part 51 (including Kentucky's attainment modeling demonstration for the Jefferson County Area). The attainment modeling demonstration inputs included SO<sub>2</sub> emission limits and compliance parameters (monitoring, recordkeeping, and reporting) at Mill Creek established in the facility's title V permit 145–97–TV(R3) at Plant-wide Specific conditions S1-Standards, S2-Monitoring and Record Keeping, and S3-Reporting. EPA incorporated these limits and parameters into the SIP as part of its final action on Kentucky's nonattainment SIP revision, thus making them permanent and enforceable controls.

On December 9, 2019, Kentucky submitted a request to EPA for redesignation of the Jefferson County Area to attainment for the 2010 1-hour SO<sub>2</sub> NAAQS and a related SIP revision containing a maintenance plan for the Area. In a notice of proposed rulemaking (NPRM) published on May 15, 2020 (85 FR 29381), EPA proposed to determine that the Area attained the 2010 1-hour SO<sub>2</sub> NAAQS; to approve the maintenance plan for the Area as meeting the maintenance plan requirements of CAA section 175A and to incorporate it into the SIP; and to approve Kentucky's request for redesignation of the Area from nonattainment to attainment for the 2010 1-hour SO<sub>2</sub> NAAQS as meeting the

redesignation requirements of CAA section 107(d)(3)(E). Comments on the May 15, 2020, NPRM were due on or before June 15, 2020. No comments were received. The details of Kentucky's submittal and the rationale for EPA's actions are further explained in the May 15, 2020, NPRM, including the modeled attainment demonstration and quality-assured, complete, and certified 2016–2018 ambient air monitoring data used to determine attainment with the 2010 1-hour SO<sub>2</sub> NAAQS. Recent quality-assured, complete, and certified 2017–2019 ambient air monitoring data at 15 ppb confirm that this area is still demonstrating attainment of the 2010 1-hour SO<sub>2</sub> NAAQS.

## II. What are the effects of these actions?

Approval of the redesignation request changes the legal designation of the Jefferson County Area, found at 40 CFR 81.318, from nonattainment to attainment for the 2010 1-hour SO<sub>2</sub> NAAQS. Approval of Kentucky's associated SIP revision also incorporates a maintenance plan into the SIP for maintaining the 2010 1-hour SO<sub>2</sub> NAAQS in the Jefferson County Area as described in the May 15, 2020, NPRM. The maintenance plan also establishes contingency measures to remedy any future violations of the 2010 1-hour SO<sub>2</sub> NAAQS and procedures for evaluation of potential violations.

EPA is finalizing the redesignation of the Jefferson County Area to attainment for the 2010 1-hour SO<sub>2</sub> NAAQS and finalizing the approval of the CAA section 175A maintenance plan for the 2010 1-hour SO<sub>2</sub> NAAQS. The Area is required to implement the CAA section 175A maintenance plan for the 2010 1-hour SO<sub>2</sub> NAAQS that is being approved in this action and the prevention of significant deterioration program for the 2010 1-hour SO<sub>2</sub> NAAQS. The approved maintenance plan can only be revised if the revision meets the requirements of CAA section 110(l) and, if applicable, CAA section 193.

## III. Final Actions

EPA is taking final actions regarding Kentucky's request to redesignate the Jefferson County Area to attainment for the 2010 1-hour SO<sub>2</sub> NAAQS and associated SIP revision. EPA is determining that the Jefferson County Area has attained the 2010 1-hour SO<sub>2</sub> NAAQS. EPA is also approving the SIP revision containing the Commonwealth's plan for maintaining attainment of the 2010 1-hour SO<sub>2</sub> standard and incorporating the maintenance plan into the SIP. Finally, EPA is approving Kentucky's

<sup>1</sup> On February 25, 2019, EPA retained the existing 2010 primary NAAQS for SO<sub>2</sub> of 75 ppb based on the 3-year average of the 99th percentile of the annual distribution of 1-hour daily maximum concentrations. See 84 FR 9866.

<sup>2</sup> See 40 CFR part 50, appendix T, section 3(b).

<sup>3</sup> EPA published a notice on March 18, 2016 (81 FR 14736), announcing its finding that Kentucky (and other pertinent states) had failed to submit the required SO<sub>2</sub> nonattainment plan by the submittal deadline. The finding initiated a deadline under CAA section 179(a) for the potential imposition of NNSR offset and highway funding sanctions. However, pursuant to Kentucky's submittal of June 23, 2017 (received by EPA on July 6, 2017), and EPA's subsequent letter dated October 10, 2017, to Kentucky finding the submittal to be complete and noting the termination of these sanctions deadlines, the sanctions under section 179(a) were not and will not be imposed as a result of Kentucky having missed the April 4, 2015, submittal deadline.

redesignation request and redesignating the Jefferson County Area to attainment for the 2010 1-hour SO<sub>2</sub> NAAQS. As mentioned above, approval of the redesignation request changes the official designation of the Jefferson County Area from nonattainment to attainment, as found in 40 CFR part 81.

#### 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);
- Are not Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory actions because these actions are not significant regulatory actions under Executive Order 12866;
- Do not impose information collection burdens 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 (Pub. L. 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).

These actions are 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 October 5, 2020. 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, Sulfur dioxide, Reporting and recordkeeping requirements.

##### 40 CFR Part 81

Environmental protection, Air pollution control.

Dated: July 13, 2020.

Mary Walker,

Regional Administrator, Region 4.

Therefore, for the reasons stated in the preamble, EPA amends 40 CFR parts 52 and 81 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. In § 52.920 amend the table in paragraph (e) by adding an entry for “2010 1-hour SO<sub>2</sub> Maintenance Plan for the Jefferson County Area” at the end of the table to read as follows:

##### § 52.920 Identification of plan.

\* \* \* \* \*

(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 <sub>2</sub> Maintenance Plan for the Jefferson County Area.	Jefferson County .....	12/9/2019	8/6/2020, [Insert citation of publication].	

**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, amend the table entitled “Kentucky-2010 Sulfur Dioxide NAAQS [Primary]” by revising the entry

for “Jefferson County, KY” to read as follows:

**§ 81.318 Kentucky.**

\* \* \* \* \*

**KENTUCKY-2010 SULFUR DIOXIDE NAAQS [PRIMARY]**

Designated area <sup>4</sup>	Designation	
	Date <sup>1</sup>	Type
Jefferson County, KY <sup>2</sup>	8/6/2020	Attainment
Jefferson County (part):		
That portion of Jefferson County encompassed by the polygon with the vertices using Universal Traverse Mercator (UTM) coordinates in UTM zone 16 with datum NAD83 as follows:		
(1) Ethan Allen Way extended to the Ohio River at UTM Easting (m) 595738, UTM Northing 4214086 and Dixie Highway (US60 and US31W) at UTM Easting (m) 597515, UTM Northing 4212946;		
(2) Along Dixie Highway from UTM Easting (m) 597515, UTM Northing 4212946 to UTM Easting (m) 595859, UTM Northing 4210678;		
(3) Near the adjacent property lines of Louisville Gas and Electric-Mill Creek Electric Generating Station and Kosmos Cement where they join Dixie Highway at UTM Easting (m) 595859, UTM Northing 4210678 and the Ohio River at UTM Easting (m) 595326, UTM Northing 4211014;		
(4) Along the Ohio River from UTM Easting (m) 595326, UTM Northing 4211014 to UTM Easting (m) 595738, UTM Northing 4214086.		
* * * * *		

<sup>1</sup> This date is April 9, 2018, unless otherwise noted.

<sup>2</sup> Excludes Indian country located in each area, if any, unless otherwise specified.

<sup>3</sup> Includes any Indian country in each county or area, unless otherwise specified. EPA is not determining the boundaries of any area of Indian country in this table, including any area of Indian country located in the larger designation area. The inclusion of any Indian country in the designation area is not a determination that the state has regulatory authority under the Clean Air Act for such Indian country.

<sup>4</sup> Webster County and the remainder of Henderson County will be designated by December 31, 2020.

\* \* \* \* \*

[FR Doc. 2020-15598 Filed 8-5-20; 8:45 am]

**BILLING CODE 6560-50-P**

**DEPARTMENT OF HOMELAND SECURITY****Federal Emergency Management Agency****44 CFR Part 64**

[Docket ID FEMA-2020-0005; Internal Agency Docket No. FEMA-8639]

**Suspension of Community Eligibility**

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Final rule.

**SUMMARY:** This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain

management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date. Also, information identifying the current participation status of a community can be obtained from FEMA's Community Status Book (CSB). The CSB is available at <https://www.fema.gov/national-flood-insurance-program-community-status-book>.

**DATES:** The effective date of each community's scheduled suspension is the third date (“Susp.”) listed in the third column of the following tables.

**FOR FURTHER INFORMATION CONTACT:** If you want to determine whether a particular community was suspended on the suspension date or for further information, contact Adrienne L. Sheldon, PE, CFM, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 400 C Street SW, Washington, DC 20472, (202) 674-1087.

**SUPPLEMENTARY INFORMATION:** The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local

floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. We recognize that some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue to be eligible for the sale of NFIP flood insurance. A notice withdrawing the suspension of such communities will be published in the **Federal Register**.

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that identifies the Special Flood Hazard Areas (SFHAs) in these communities.