

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).

#### List of Subjects in 40 CFR Part 52

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

Dated: July 5, 2016.

**H. Curtis Spalding,**

*Regional Administrator, EPA New England.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[EPA-R05-OAR-2015-0599; FRL-9949-28-Region 5]

#### Designation of Areas for Air Quality Planning Purposes; Ohio; Redesignation of the Ohio Portion of the Campbell-Clermont KY-OH Sulfur Dioxide Nonattainment Area

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

**ACTION:** Proposed rule.

**SUMMARY:** In accordance with the Clean Air Act (CAA), the Environmental Protection Agency (EPA) is proposing to redesignate the Ohio portion of the Campbell-Clermont KY-OH sulfur dioxide (SO<sub>2</sub>) nonattainment area from nonattainment to attainment. The Ohio portion of this area consists of Pierce Township in Clermont County, Ohio. EPA is also proposing to approve Ohio's maintenance plan submitted on August 11, 2015. The primary emission source in the area has permanently closed, and the air quality in the area is now meeting the SO<sub>2</sub> standard.

**DATES:** Comments must be received on or before August 19, 2016.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2015-0599 at <http://www.regulations.gov> or via email to [persoon.carolyn@epa.gov](mailto:persoon.carolyn@epa.gov). For comments submitted at [Regulations.gov](http://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://www.regulations.gov). For either manner of submission, 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, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

#### FOR FURTHER INFORMATION CONTACT:

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#### SUPPLEMENTARY INFORMATION:

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA. This **SUPPLEMENTARY INFORMATION** section is arranged as follows:

- I. Background
- II. Redesignation Requirements
- III. Determination of Attainment
- IV. Ohio's Section 110(k) SIP
- V. Permanent and Enforceable Emission Reductions
- VI. Requirements for the Area Under Section 110 and Part D
- VII. Maintenance Plan
- VIII. What action is EPA taking?
- IX. Statutory and Executive Order Reviews

#### I. Background

On June 2, 2010 (75 FR 35520, June 22, 2010), EPA established a revised primary SO<sub>2</sub> national ambient air quality standard (NAAQS) of 75 parts per billion (ppb), which is met at a monitoring site when the three-year average of the 99th percentile of daily maximum one-hour concentrations does not exceed 75 ppb. On August 5, 2013 (78 FR 47191), EPA published its initial air quality designations for the SO<sub>2</sub> NAAQS based upon air quality monitoring data for calendar years 2009–2011. In that action, the Campbell-Clermont KY-OH area was designated nonattainment for the SO<sub>2</sub> NAAQS. The Campbell-Clermont KY-OH nonattainment area is comprised of Pierce Township in Clermont County, Ohio, and five census tracts in Campbell

County, Kentucky. The Ohio portion of the nonattainment area contains the Walter C. Beckjord power plant (Beckjord plant). The Kentucky portion of the nonattainment area has less than nine tons of total SO<sub>2</sub> emissions per year, but it contains the SO<sub>2</sub> monitor which had violated the SO<sub>2</sub> standard as of 2011.

By April 4, 2015, Ohio and Kentucky were required to submit nonattainment plan SIPs that meet the requirements of sections 172(c) and 191–192 of the CAA, and provide for attainment of the NAAQS as expeditiously as practicable, but no later than October 4, 2018. Ohio's analysis found the Beckjord plant to be the main contributor to SO<sub>2</sub> monitored levels in the nonattainment area. In 2011, the Beckjord plant had reported 90,835 tons of SO<sub>2</sub> emissions. However, in late 2014, the Beckjord plant permanently ceased operations. Its coal-fired electricity generating units were shut down as of September 2014, and its oil-fired units ceased operations by the end of 2014. Sulfur dioxide emissions at the Beckjord plant totaled 32,603 tons in 2014, and zero tons in 2015. Currently, the total point, area, and mobile source SO<sub>2</sub> emissions in the entire Campbell-Clermont KY-OH nonattainment area are approximately 17 tons per year (tpy). Because of the significant, permanent and enforceable reduction in SO<sub>2</sub> emissions affecting the nonattainment area, and because the Campbell County SO<sub>2</sub> monitor's three-year SO<sub>2</sub> design value<sup>1</sup> for 2012–2014 had fallen below the SO<sub>2</sub> NAAQS, Ohio chose to submit a redesignation request in 2015, in lieu of a nonattainment SIP. On August 11, 2015, the Ohio Environmental Protection Agency (Ohio EPA) submitted its request to EPA to redesignate the Ohio portion of the Campbell-Clermont KY-OH nonattainment area to attainment. For the reasons set forth in this document, EPA is proposing to redesignate the area to attainment.

#### II. Redesignation Requirements

Under CAA section 107(d)(3)(E), there are five criteria which must be met before a nonattainment area may be redesignated to attainment.

1. EPA has determined that the relevant NAAQS has been attained in the area.

<sup>1</sup> The design value is a statistic computed according to the data handling procedures of the NAAQS (in 40 CFR part 50 appendix T) that, by comparison to the level of the NAAQS, indicates whether the area is violating the NAAQS. For SO<sub>2</sub>, the design value is the three-year average of the annual 99th percentile of one-hour daily maximum concentrations.

2. The applicable implementation plan has been fully approved by EPA under section 110(k).

3. EPA has determined that improvement in air quality is due to permanent and enforceable reductions in emissions resulting from the SIP, Federal regulations, and other permanent and enforceable reductions.

4. EPA has fully approved a maintenance plan, including a contingency plan, for the area under section 175A of the CAA.

5. The State has met all applicable requirements for the area under section 110 and part D.

**III. Determination of Attainment**

The first requirement for redesignation is to demonstrate that the standard has been attained in the area. As stated in the April 2014 “Guidance for 1-Hour SO<sub>2</sub> Nonattainment Area SIP Submissions,” for SO<sub>2</sub>, there are two components needed to support an attainment determination: A review of representative air quality monitoring

data, and a further analysis, generally requiring air quality modeling, to demonstrate that the entire area is attaining the applicable standard, based on current actual emissions or the fully implemented control strategy. Ohio has addressed both components.

Under EPA regulations at 40 CFR 50.17, the SO<sub>2</sub> standard is met at an ambient air quality monitoring site when the three-year average of the annual 99th percentile of one-hour daily maximum concentrations is less than or equal to 75 ppb, as determined in accordance with appendix T of 40 CFR part 50 at all relevant monitoring sites in the subject area. EPA has reviewed the ambient air monitoring data for the Campbell-Clermont KY-OH nonattainment area. The Campbell-Clermont KY-OH nonattainment area has one SO<sub>2</sub> monitoring site, located in northern Campbell County, Kentucky. The Campbell County SO<sub>2</sub> monitor is operated by the Kentucky Division for Air Quality. This review addresses air quality data collected in the 2012–2014

and 2013–2015 periods, which are the most recent quality-assured data available. All data considered are complete, quality-assured, certified, and recorded in EPA’s Air Quality System database.

Table 1 shows the 2012–2014 and 2013–2015 design values for the Campbell-Clermont KY-OH nonattainment area. For 2014, the last year in which the Beckjord plant was operating, the 99th percentile monitored daily maximum value was 61 ppb. For 2015, after the Beckjord plant had shut down, the 99th percentile monitored daily maximum value was 18 ppb. The three-year average design value for 2012–2014 is 72 ppb, and the three-year average design value for 2013–2015 is 50 ppb. Both are below the SO<sub>2</sub> standard. Therefore, the Campbell County SO<sub>2</sub> monitor clearly shows attainment. Kentucky has committed to continue monitoring for SO<sub>2</sub> at this location. Preliminary data for 2016 indicate that the area is continuing to attain the SO<sub>2</sub> standard.

TABLE 1—MONITORING DATA FOR THE CAMPBELL-CLERMONT KY-OH NONATTAINMENT AREA FOR 2012–2014 AND 2013–2015

Site	County	Year and 99th percentile value (ppb)				Average 2012–2014 (ppb)	Average 2013–2015 (ppb)
		2012	2013	2014	2015		
21–037–3002 .....	Campbell, KY .....	85	71	61	18	72	50

Regarding the second component of the attainment determination, Ohio examined the extent to which the earlier NAAQS violations and subsequent improvement in the local monitored SO<sub>2</sub> values were primarily attributable to the Beckjord plant. Ohio used three methods to judge the prospects of future violations following the shutdown of the Beckjord plant. In these methods, Ohio evaluated local emission inventories, wind patterns during monitored exceedances, and monitored data during periods when the Beckjord plant was still active but not emitting SO<sub>2</sub>. EPA proposes to find that these analyses meet the April 2014 guidance requirement to comprehensively evaluate the impacts of the Beckjord plant’s closure on the Campbell-Clermont area and demonstrate that the entire area is attaining the SO<sub>2</sub> standard.

As a first step in this approach, Ohio reviewed the inventory of SO<sub>2</sub> sources in the area. This inventory shows no large SO<sub>2</sub> sources in the Kentucky portion of the nonattainment area. There are several SO<sub>2</sub> sources in the Cincinnati area, in Hamilton County, Ohio. The largest of these is Dynegey’s

Miami Fort Power Station (Miami Fort plant), which emitted over 28,000 tons of SO<sub>2</sub> in 2014. The Miami Fort plant is located 30 kilometers (km) west of the Campbell County SO<sub>2</sub> monitor. As of June 2015, the Miami Fort plant reduced its emissions by approximately 50% from 2014 levels with the closure of its Unit 6. The next largest source, at 1,600 tons of SO<sub>2</sub>, is the DTE St. Bernard facility, which is located 17 km north of the Campbell County SO<sub>2</sub> monitor. The other SO<sub>2</sub> sources in Hamilton County emitted less than 200 tons of SO<sub>2</sub> in 2014, and are located 16–31 km from the Campbell County SO<sub>2</sub> monitor. In Clermont County, outside the nonattainment area, the only other SO<sub>2</sub> source is the W.H. Zimmer power plant (Zimmer plant), located approximately 15 km south of the Beckjord plant and 27 km southwest of the SO<sub>2</sub> Campbell County SO<sub>2</sub> monitor. The Zimmer plant emitted 13,500 tons of SO<sub>2</sub> in 2014.

The second part of this review was to more closely examine potential contributors to SO<sub>2</sub> NAAQS exceedances in the Campbell-Clermont KY-OH nonattainment area. For this purpose, Ohio analyzed wind patterns

and back-trajectories for the 44 hours<sup>2</sup> for which SO<sub>2</sub> levels were greater than 75 ppb at the Campbell County SO<sub>2</sub> monitor between 2010 and 2014. The hourly monitored SO<sub>2</sub> values ranged from 76 ppb to 180 ppb. The 24-hour back trajectories seek to determine the origins of air flow leading toward the monitor location. Hourly wind data were also used to help focus on the short term flow close to the times of exceedances. Ohio found that the trajectories indicated that high concentrations at the Campbell County SO<sub>2</sub> monitor were most often

<sup>2</sup> Although it is possible for a SO<sub>2</sub> monitor to measure SO<sub>2</sub> values above the NAAQS for several individual hours during a given day, only the single highest monitored hourly SO<sub>2</sub> value in each 24-hour day is formally defined as “an exceedance of the SO<sub>2</sub> NAAQS,” if it is greater than 75 ppb. There were 26 exceedances of the SO<sub>2</sub> NAAQS at the Campbell County SO<sub>2</sub> monitor during 2012–2014, but there were 44 total hours for which the SO<sub>2</sub> monitor recorded SO<sub>2</sub> values above the SO<sub>2</sub> NAAQS of 75 ppb. A violation of the SO<sub>2</sub> NAAQS, as opposed to an exceedance, is recorded when the three-year average of the annual 99th percentile of one-hour daily maximum concentrations exceeds 75 ppb. In this analysis, to identify contributing SO<sub>2</sub> sources, Ohio evaluated the 44 hours in 2012–2014 for which the SO<sub>2</sub> monitor had registered a SO<sub>2</sub> concentration over 75 ppb.

attributable to wind flows from the vicinity of the Beckjord plant. Winds (measured at the Cincinnati/Northern Kentucky airport) were almost exclusively from the east during the 44 hours with high monitored concentrations. Trajectories passed over or near the Beckjord plant in about two thirds of the 44 hours. The Beckjord plant appeared to be the main contributor to 42 of the hours. One hour appeared to have some influence from the Zimmer plant as well as from the Beckjord plant, and for another hour, Ohio could not identify any SO<sub>2</sub> source located in the area indicated by the back-trajectory and surface winds. None of the exceedances appeared to be attributable to the Miami Fort plant or other sources west of the Campbell County SO<sub>2</sub> monitor.

The third analysis considered monitored SO<sub>2</sub> values and wind directions during the time period of January 1, 2012, through February 28, 2015. During that period, there were a total of 10,231 hours when the Beckjord plant's SO<sub>2</sub> emissions were zero. The Beckjord plant was not operating at all in 2015 or during the last four months of 2014, and there were 1400–2500 hours in which the Beckjord plant did not emit SO<sub>2</sub> during 2012 and 2013 as well. Ohio examined the Campbell County monitored data and found that no exceedances of the SO<sub>2</sub> NAAQS were measured during these 10,231 hours. The maximum monitored concentration at the Campbell County SO<sub>2</sub> monitor during these hours was 34 ppb. The highest monitored values measured while the Beckjord plant was emitting SO<sub>2</sub> were typically associated with winds coming from the east and southeast, suggesting the Beckjord plant's influence. The winds associated with the highest monitored values during the 10,231 hours without impacts from the Beckjord plant, however, came from the west and southwest. As those monitored values were less than half of the SO<sub>2</sub> NAAQS in magnitude, Ohio's analysis supports the assertion that the closing of the Beckjord plant has led to attainment of the SO<sub>2</sub> NAAQS, and suggests that future violations caused by other nearby sources are unlikely.

Ohio did not further evaluate the sources to the north and west of the nonattainment area due to their distance from the area and their emission levels, and because the previously discussed analyses did not indicate that sources north and west of the nonattainment area have had a significant influence on monitored exceedances. Ohio did, however, specifically evaluate the Zimmer plant for its potential

contribution to elevated SO<sub>2</sub> levels in the Campbell-Clermont KY-OH nonattainment area. The Zimmer plant's impacts warranted additional analysis because it has substantial emissions, is located relatively near the Beckjord plant, and generally has the greatest potential (after the shutdown of the Beckjord plant) to cause violations in the nonattainment area.

First, the State considered a graphical analysis of the 2012–2014 hourly SO<sub>2</sub> levels at the Campbell County SO<sub>2</sub> monitor compared to the hourly SO<sub>2</sub> emissions from the Beckjord and Zimmer plants. The Zimmer plant's emissions stayed relatively constant over the time period, while the Beckjord plant's emissions, which were much larger than the Zimmer plant's, also varied more widely. The data showed that the monitored SO<sub>2</sub> levels seemed to fluctuate in a pattern similar to the Beckjord plant's emission variations, falling to its lowest levels when the Beckjord plant's emissions were very low, even as the Zimmer plant's emissions remained relatively steady, which suggests that the Campbell County SO<sub>2</sub> monitor was more strongly influenced by the Beckjord plant's impacts. Based on these results, particularly from the trajectory analyses, Ohio's first approach yields a finding that the violations previously recorded at the SO<sub>2</sub> monitor were primarily attributable to emissions from the Beckjord plant, which in turn indicates that the shutdown of the Beckjord plant can be expected to result in no further violations at this monitoring site.

Ohio's second approach to assessing prospects of future violations in the nonattainment area was to perform a modeling analysis to evaluate the location of the Zimmer plant's maximum impacts and to estimate a worst-case impact within the nonattainment area. This analysis was intended to address the potential for violations not just at the monitoring site (28 km from the Zimmer plant) but also elsewhere in the nonattainment area. The Zimmer plant is approximately 11.5 km from the nearest edge of the Campbell-Clermont KY-OH SO<sub>2</sub> nonattainment area. Ohio's analysis covered only the time period with available meteorological data after the Beckjord plant's coal units shut down: August 30, 2014, to February 28, 2015. Because this data set is shorter than the five-year period typically used to demonstrate attainment of the SO<sub>2</sub> standard, Ohio used the second high modeled maximum daily value to represent the 99th percentile, rather than the fourth high modeled maximum daily value. Ohio used a coarse receptor

grid within the nonattainment area, and a finer grid within three kilometers of the Zimmer plant. Maximum impacts were found to occur within one kilometer of the Zimmer plant. In this analysis, Ohio modeled a unit emission rate of one gram per second from the Zimmer plant's two stacks, to find the relative impacts from the Zimmer plant at the monitoring location and at a range of other receptors inside the nonattainment area as well as closer to the plant. Ohio then used the second high value measured at the Campbell County monitor during this time period with zero impacts from The Beckjord plant, under the conservative assumption that this monitored value was entirely caused by the Zimmer plant's emissions, to develop a numerical estimate of the relative worst-case impact of the Zimmer plant elsewhere within the nonattainment area. The second high monitored value was 24 ppb, and Ohio determined that the Zimmer plant's highest impact within the nonattainment area relative to that monitored value would be approximately 52 ppb. Impacts at this level would not cause exceedances of the SO<sub>2</sub> NAAQS within the nonattainment area.

As a third approach, Ohio and Kentucky estimated future SO<sub>2</sub> concentrations in the nonattainment area using a method similar to developing a conservative background concentration for a typical modeled attainment demonstration. Ohio used Campbell County SO<sub>2</sub> monitor data from 2010–2014 for this calculation. Since the Beckjord plant was operating during this period, Ohio followed EPA guidance to ensure that the monitored values for background did not count impacts from the Beckjord plant or the Zimmer plant. Ohio determined the 90 degree wind direction sector for which the Campbell County SO<sub>2</sub> monitor could be impacted by direct emissions from either power plant, and excluded monitored hours when winds came from this sector. Ohio averaged the remaining monitored values in each year, excluding values of zero for additional conservatism, and chose the highest value, 4.4 ppb. Ohio further refined the analysis to exclude only the 45 degree sector centered on the Beckjord plant. The highest average value in this case, which could include the Zimmer plant's impacts, was 4.76 ppb. Since no significant sources exist now that would be expected to cause significant concentration gradients within the nonattainment area, conceptually a modeling analysis for this area would reflect modeling zero

emissions, and the final “modeled” result would be equal to the background concentration. Since the background value could also conservatively include actual 2010–2014 contributions from Cincinnati-area sources which have reduced their SO<sub>2</sub> emissions since 2014, this analysis supports Ohio’s assertion that the Campbell-Clermont KY-OH nonattainment area will continue to attain the SO<sub>2</sub> NAAQS.

In addition to these analyses, all of which were provided in Ohio’s redesignation request, Ohio has also provided relevant information in the separate context of addressing the prospective SO<sub>2</sub> designation for the more immediate vicinity of the Zimmer plant. Ohio’s September 16, 2015, submittal provided a full modeling analysis in accordance with EPA’s modeling Technical Assistance Document (TAD) which indicated that the maximum concentration estimated near the Zimmer plant was 56 ppb, at a distance just over one kilometer from the plant’s stacks. Based largely on this information, EPA wrote to Ohio on February 16, 2016, stating EPA’s preliminary intention to promulgate an unclassifiable/attainment designation for all of Clermont County that is not already designated, *i.e.* for all of Clermont County except the portion (Pierce Township) that is included in the Campbell-Clermont KY-OH nonattainment area. Since the Campbell-Clermont KY-OH nonattainment area is substantially more distant than the peak impacts of the Zimmer plant, and the impacts of the Zimmer plant in the area would therefore be much lower than 56 ppb, this modeling provides clear evidence that the Zimmer plant is not causing violations anywhere in the Campbell-Clermont KY-OH nonattainment area. In summary, the monitored data show attainment for 2012–2014 and for 2013–2015; Ohio has demonstrated that the closed Beckjord plant was likely to have caused the previous violations of the SO<sub>2</sub> NAAQS; and Ohio has demonstrated that neither the Zimmer plant nor other SO<sub>2</sub> emissions are expected to cause future violations in the area. Therefore, EPA agrees that the Campbell-Clermont KY-OH nonattainment area is currently attaining the SO<sub>2</sub> NAAQS.

#### IV. Ohio’s Section 110(k) SIP

EPA has determined that Ohio has a fully approved SIP under section 110(k). Ohio has implemented its SO<sub>2</sub> SIP regulations at Ohio Administrative Code

(OAC) 3745–18, and Ohio maintains an active enforcement program to ensure ongoing compliance. Ohio’s new source review/prevention of significant deterioration program will address emissions from new sources. Ohio’s current SO<sub>2</sub> SIP rule for Clermont County is codified at OAC 3745–18–19. The existing rule addressing the Beckjord plant’s SO<sub>2</sub> emissions, OAC 3745–18–19(B), remains in the SIP, but Ohio has submitted documents which demonstrate that the facility has closed and is no longer authorized under the State’s permitting program to operate.

#### V. Permanent and Enforceable Emission Reductions

As previously stated, the Beckjord plant closed in late 2014, and the monitored improvement in air quality is largely due to this closure. The closure results in a reduction of 90,835 tpy, considering the plant’s 2011 emissions, representing the time the area was classified nonattainment; or a reduction of 32,603 tpy, considering the plant’s emissions in 2014, when the area first began to monitor attainment. Upon notification of the Beckjord plant’s closure, in accordance with Ohio EPA policy, Ohio ceased its authorization for the facility to operate unless it obtains a new permit. Ohio EPA provided documentation of this shutdown in the form of an October 14, 2014, letter from Duke Energy Ohio, Inc., to the Southwest Ohio Air Quality Agency. In this letter, Duke Energy Ohio, Inc. confirmed that the Beckjord plant’s six large coal-fired units are permanently shut down and removed from service as of October 1, 2014. The letter confirmed that Ohio’s authorization for Duke Energy Ohio, Inc. to operate the six units had ceased. The Beckjord plant has been demonstrated to be the primary SO<sub>2</sub> source which caused the monitored exceedances. As it has closed and cannot reopen without applying for a new operating permit, EPA agrees that the improvement in air quality in the nonattainment area is due to permanent and enforceable emission reductions.

#### VI. Requirements for the Area Under Section 110 and Part D

Ohio has submitted information demonstrating that it meets these requirements. EPA approved Ohio’s infrastructure SIP for SO<sub>2</sub> on August 14, 2015 (80 FR 48733). This infrastructure SIP approval confirms that Ohio’s SIP meets the requirements of CAA section 110(a)(1) and 110(a)(2) to contain the basic program elements, such as an

active enforcement program and permitting program.

Section 191 of the CAA requires Ohio to submit a part D nonattainment SIP for the Campbell-Clermont KY-OH nonattainment area by April 4, 2015. Because Ohio submitted its August 11, 2015, redesignation request instead of a nonattainment SIP, EPA was compelled to include this area in our March 18, 2016, finding of failure to submit (81 FR 14736). However, final promulgation of this redesignation to attainment would end any nonattainment plan requirements, and promulgation of this redesignation within 18 months of the finding of failure to submit would result in no sanctions taking effect.

With the redesignation request of August 11, 2015, Ohio submitted information addressing the section 172 part D SIP requirements. Ohio submitted an attainment inventory of the SO<sub>2</sub> emissions from sources in the nonattainment area. Ohio chose 2011 for its base year emissions inventory, as comprehensive emissions data was available and updated that year, which satisfies the 172(c)(3) requirements. The Kentucky portion of the nonattainment area contained 11 minor point source facilities. Their combined SO<sub>2</sub> emissions were less than one ton per year. The only significant source in the Ohio portion of the nonattainment area is the Beckjord plant. Area and non-highway mobile source emissions were taken from the 2011 National Emissions Inventory (NEI), with county-wide values adjusted based on the population percentages in the nonattainment area. Highway mobile source emissions were provided by the Ohio-Kentucky-Indiana Regional Council of Governments (OKI), based on dividing the vehicle miles traveled in the nonattainment area by the vehicle miles traveled in the entire county. Census data and projections were used to develop growth factors for future years. The attainment year inventory was based on 2014 emissions, adjusted for projected growth in the area, and accounting for the Beckjord plant’s closure.

Table 2 shows the projected inventories. Note that Kentucky’s inventory remains steady at approximately 8 tpy total, while Ohio’s projected inventory, accounting for the Beckjord plant’s actual closure, drops from over 90,000 tpy in 2011 to approximately 8 tpy in the interim and maintenance years. This large reduction is expected to be sufficient to maintain the SO<sub>2</sub> standard.

TABLE 2—CAMPBELL-CLERMONT NONATTAINMENT AREA SO<sub>2</sub> EMISSION INVENTORY TOTALS  
[tpy]

	2011 base-year emissions	2014 attainment year	2020 interim year	2027 maintenance year
Ohio .....	90,842.51	32,610.56	8.36	8.46
Kentucky .....	8.56	8.54	8.47	8.27
Combined total .....	90,851.07	32,619.10	16.83	16.73

Section 172(c)(1) requires nonattainment area SIPs to provide for the implementation of all reasonably available control measures (RACM) as expeditiously as practicable and to provide for attainment of the NAAQS. EPA’s longstanding interpretation of the nonattainment planning requirements of section 172 is that once an area is attaining the NAAQS, those requirements are not applicable for purposes of CAA section 107(d)(3)(E)(ii) and therefore need not be approved into the SIP before EPA can redesignate the area. In the 1992 General Preamble for Implementation of Title I, EPA set forth its interpretation of applicable requirements for purposes of evaluating redesignation requests when an area is attaining a standard. See 57 FR 13498, 13564 (April 16, 1992). EPA noted that the requirements for reasonable further progress (RFP) and other measures designed to provide for attainment do not apply in evaluating redesignation requests because those nonattainment planning requirements “have no meaning” for an area that has already attained the standard. EPA’s understanding of section 172 also forms the basis of its Clean Data Policy, which was articulated with regard to SO<sub>2</sub> in the April 2014 “Guidance for 1-Hour SO<sub>2</sub> Nonattainment Area SIP Submissions,” and suspends a State’s obligation to submit most of the attainment planning requirements that would otherwise apply, including an attainment demonstration and planning SIPs to provide for RFP, RACM, and contingency measures under section 172(c)(9). Courts have upheld EPA’s interpretation of section 172(c)(1) for “reasonably available” control measures and control technology as meaning only those controls that advance attainment, which precludes the need to require additional measures where an area is already attaining. *NRDC v. EPA*, 571 F.3d 1245, 1252 (D.C. Cir. 2009); *Sierra Club v. EPA*, 294 F.3d 155, 162 (D.C. Cir. 2002); *Sierra Club v. EPA*, 314 F.3d 735, 744 (5th Cir. 2002); *Sierra Club v.*

*EPA*, 375 F.3d 537 (7th Cir. 2004).<sup>3</sup> Therefore, because the Campbell-Clermont KY-OH nonattainment area has attained the SO<sub>2</sub> standard, no additional measures are needed to provide for attainment, and section 172(c)(1) requirements for an attainment demonstration and RACM are not part of the “applicable implementation plan” required to have been approved prior to redesignation per CAA section 107(d)(3)(E)(ii). In any case, in the absence of major point sources, and in the context of implemented measures (especially the shutdown of the Beckjord plant) having achieved attainment, EPA believes that Ohio has satisfied the reasonably available control measures/reasonably available control techniques (RACM/RACT) requirement for this area. The other section 172 requirements that are designed to help an area achieve attainment are the section 172(c)(2) requirement that nonattainment plans contain provisions promoting reasonable further progress, the requirement to submit the section 172(c)(9) contingency measures, and the section 172(c)(6) requirement for the SIP to contain control measures necessary to provide for attainment of the NAAQS. These are also not required to be approved as part of the “applicable implementation plan” for purposes of satisfying CAA section 107(d)(3)(E)(ii). Section 172(c)(4) requires the identification and quantification of allowable emissions for major new and modified stationary sources to be allowed in an area, and section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. EPA has determined that, since PSD requirements will apply after redesignation, areas being redesignated

<sup>3</sup> Although the Court of Appeals for the Sixth Circuit has issued a contrary opinion in the context of redesignations for ozone and PM<sub>2.5</sub>, EPA believes that these opinions, interpreting the applicability of the ozone and PM<sub>2.5</sub> RACM/RACT requirements for redesignations for those pollutants, do not address the applicability of the RACM/RACT requirement for SO<sub>2</sub>. See *Sierra Club v. EPA*, 793 F.3d 656 (6th Cir. 2015).

need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the NAAQS without part D NSR. A more detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled “Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment.” Ohio has demonstrated that the Campbell-Clermont KY-OH nonattainment area will be able to maintain the NAAQS without part D NSR in effect, and therefore Ohio does not need to have a fully approved part D NSR program prior to approval of the redesignation request. Ohio’s PSD program will become effective in the Campbell-Clermont KY-OH nonattainment area upon redesignation to attainment. Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2). As noted above, EPA believes that the Ohio SIP meets the requirements of section 110(a)(2) applicable for purposes of redesignation. Section 176(c) of the CAA requires States to establish criteria and procedures to ensure that federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs, and projects that are developed, funded, or approved under title 23 of the United States Code (U.S.C.) and the Federal Transit Act (transportation conformity) as well as to all other federally supported or funded projects (general conformity). State transportation conformity SIP revisions must be consistent with Federal conformity regulations relating to consultation, enforcement, and enforceability that EPA promulgated pursuant to its authority under the CAA. On August 20, 2014, Ohio submitted documentation establishing transportation conformity procedures in its SIP. EPA approved these procedures on March 2, 2015 (80 FR 11133). Moreover, EPA interprets the

conformity SIP requirements as not applying for purposes of evaluating a redesignation request under section 107(d) because, like other requirements listed above, State conformity rules are still required after redesignation and Federal conformity rules apply where State rules have not been approved. *See Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001) (upholding this interpretation); *see also* 60 FR 62748 (December 7, 1995) (redesignation of Tampa, Florida).

As discussed above, EPA is proposing to find that Ohio has satisfied all applicable requirements for purposes of redesignation of the Campbell-Clermont KY-OH nonattainment area under section 110 and part D of title I of the CAA.

### VII. Maintenance Plan

CAA section 175A sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the nonattainment area is redesignated to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan demonstrating that attainment will continue to be maintained for the ten years following the initial ten-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures as EPA deems necessary to assure prompt correction of any future one-hour SO<sub>2</sub> violations. Specifically, the maintenance plan should address five requirements: The attainment emissions inventory, maintenance demonstration, monitoring, verification of continued attainment, and a contingency plan.

Ohio's August 11, 2015, redesignation request contains its maintenance plan, which Ohio has committed to review eight years after redesignation. Ohio submitted an attainment emission inventory which addresses current emissions and projections of future emissions, for point, area, and mobile sources. Total SO<sub>2</sub> emissions in the nonattainment area were 90,851 tpy in the base year, 2011; 32,619 tpy in the attainment year, 2014; and 16.7 tpy in the projected future years between 2017 and 2027 (see Table 2). Ohio has demonstrated that after the closure of the Beckjord plant, the area is attaining and is expected to maintain the SO<sub>2</sub> NAAQS. Kentucky has committed to continue monitoring at the Campbell County site in accordance with the requirements of 40 CFR part 58. These data will be used to verify continued

attainment. Ohio has the authority to adopt, implement and enforce any subsequent emissions control measures deemed necessary to correct any future SO<sub>2</sub> violations. Regarding contingency measures to implement in the case of a future violation of the SO<sub>2</sub> standard, Ohio did not name a specific control measure, as there are no sources in or near the nonattainment area with the potential to cause a violation. As a contingency plan, therefore, Ohio has committed to identify any sources which cause or contribute to monitored violations, and follow up with enforcement proceedings, expediting any necessary corrective actions. SIP rules will be revised in accordance with Ohio's rulemaking procedures if new control measures are needed. Ohio commits to study SO<sub>2</sub> emission trends and identify areas of concern if the annual average 99th percentile maximum daily one-hour SO<sub>2</sub> concentration of 79 ppb or greater occurs in a single year, or if a two-year average of 76 ppb or greater occurs in the maintenance area. Ohio will adopt and implement corrective actions as necessary to address such trends of increasing emissions or ambient impacts. The public will have the opportunity to participate in the contingency measure implementation process. EPA proposes to find that Ohio's maintenance plan adequately addresses the five basic components necessary to maintain the SO<sub>2</sub> standard in the Campbell-Clermont KY-OH nonattainment area.

### VIII. What action is EPA taking?

In accordance with Ohio's August 11, 2015, request, EPA is proposing to redesignate the Ohio portion of the Campbell-Clermont KY-OH nonattainment area from nonattainment to attainment of the SO<sub>2</sub> NAAQS. Ohio has demonstrated that the area is attaining the SO<sub>2</sub> standard, and that the improvement in air quality is due to the permanent and enforceable shutdown of the main SO<sub>2</sub> source in the nonattainment area. EPA is proposing to approve the maintenance plan that Ohio submitted to ensure that the area will continue to maintain the SO<sub>2</sub> standard.

### IX. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA 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 CAA. 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 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 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

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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).

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: July 11, 2016.

**Robert A. Kaplan,**

*Acting Regional Administrator, Region 5.*

[FR Doc. 2016-17054 Filed 7-19-16; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 174 and 180

[EPA-HQ-OPP-2015-0032; FRL-9948-45]

### Receipt of Several Pesticide Petitions Filed for Residues of Pesticide Chemicals in or on Various Commodities

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

**ACTION:** Notice of filing of petitions and request for comment.

**SUMMARY:** This document announces the Agency's receipt of several initial filings of pesticide petitions requesting the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

**DATES:** Comments must be received on or before August 19, 2016.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number and the pesticide petition number (PP) of interest as shown in the body of this document, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001.

- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.html>.

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <http://www.epa.gov/dockets>.

**FOR FURTHER INFORMATION CONTACT:** Susan Lewis, Registration Division (RD) (7505P), main telephone number: (703) 305-7090; email address:

[RDfRNNotices@epa.gov](mailto:RDfRNNotices@epa.gov). The mailing address for each contact person is: Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington,

DC 20460-0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each pesticide petition summary.

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT** for the division listed at the end of the pesticide petition summary of interest.

###### B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through [regulations.gov](http://www.regulations.gov) or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at <http://www.epa.gov/dockets/comments.html>.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and

enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

##### II. What action is the Agency taking?

EPA is announcing its receipt of several pesticide petitions filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, requesting the establishment or modification of regulations in 40 CFR part 174 or part 180 for residues of pesticide chemicals in or on various food commodities. The Agency is taking public comment on the requests before responding to the petitioners. EPA is not proposing any particular action at this time. EPA has determined that the pesticide petitions described in this document contain the data or information prescribed in FFDCA section 408(d)(2), 21 U.S.C. 346a(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petitions. After considering the public comments, EPA intends to evaluate whether and what action may be warranted. Additional data may be needed before EPA can make a final determination on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of each of the petitions that are the subject of this document, prepared by the petitioner, is included in a docket EPA has created for each rulemaking. The docket for each of the petitions is available at <http://www.regulations.gov>.

As specified in FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

##### New Tolerances

*PP 5F8379.* EPA-HQ-OPP-2015-0559. Bayer CropScience, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709, requests to establish a tolerance in 40 CFR part 180 for residues of the fungicide penflufen, (1H-