

• 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 Clean Air Act; and

• Does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, 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 the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and 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, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: November 14, 2016.

**Alexis Strauss,**

*Acting Regional Administrator, Region IX.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[EPA-R04-OAR-2016-0361; FRL-9955-80-Region 4]

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

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve two separate but related submissions (one of which includes multiple components) provided by the Commonwealth of Kentucky, through the Kentucky Division of Air Quality

(KDAQ), in relation to attainment of the 2010 Sulfur Dioxide (SO<sub>2</sub>) national ambient air quality standards (NAAQS) for the Kentucky portion of the Campbell-Clermont, Kentucky-Ohio 2010 1-hour SO<sub>2</sub> nonattainment area (hereafter referred to as the “Campbell-Clermont, KY-OH Area” or “Area”). On March 31, 2015, KDAQ submitted a request for EPA to determine that the Campbell-Clermont, KY-OH Area attained the 2010 1-hour SO<sub>2</sub> NAAQS per EPA’s “Clean Data Policy.” Subsequently, on February 22, 2016, KDAQ submitted a request for EPA to redesignate the Campbell County portion of Kentucky that is within the Campbell-Clermont, KY-OH Area to attainment for the 2010 1-hour SO<sub>2</sub> NAAQS, and to approve a State Implementation Plan (SIP) revision containing a maintenance plan, base year inventory, and reasonably available control measures (RACM) determination for the Kentucky portion of the Area. EPA is proposing to approve the Commonwealth’s RACM determination and incorporate it into the SIP; to approve the base year emissions inventory for the Kentucky portion of the Area and incorporate it into the SIP; to approve the Commonwealth’s request for a clean data determination; to approve the Commonwealth’s plan for maintaining attainment of the 2010 1-hour SO<sub>2</sub> NAAQS and incorporate it into the SIP; and to redesignate the Kentucky portion of the Area to attainment for the 2010 1-hour SO<sub>2</sub> NAAQS.

**DATES:** Comments must be received on or before January 3, 2017.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2016-0361 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia

submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

#### FOR FURTHER INFORMATION CONTACT:

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#### I. What are the actions EPA is proposing to take?

EPA is proposing to take the following five separate but related actions regarding Kentucky’s aforementioned requests and SIP submission: (1) To approve Kentucky’s RACM determination for the Kentucky portion of the Campbell-Clermont, KY-OH Area pursuant to Clean Air Act (CAA or Act) section 172(c)(1) and incorporate it into the SIP; (2) to approve the base year emissions inventory for the 2010 1-hour SO<sub>2</sub> NAAQS for the Kentucky portion of the Area pursuant to CAA section 172(c)(3) and incorporate it into the SIP; (3) to approve the Commonwealth’s March 31, 2015, request for EPA to determine that the Area attained the 2010 1-hour SO<sub>2</sub> NAAQS per EPA’s “Clean Data Policy;” (4) to approve Kentucky’s plan for maintaining the 2010 1-hour SO<sub>2</sub> NAAQS (maintenance plan) in the Area and incorporate it into the SIP; and (5) to redesignate the Kentucky portion of the Campbell-Clermont, KY-OH Area to attainment for the 2010 1-hour SO<sub>2</sub> NAAQS. The Campbell-Clermont, KY-OH Area consists of a portion of Campbell County in Kentucky and a portion of Clermont County in Ohio.<sup>1</sup> These proposed actions are summarized below

<sup>1</sup> The Kentucky portion of the Area emits less than nine tons of total SO<sub>2</sub> emissions per year, but it contains the SO<sub>2</sub> monitor that violated the SO<sub>2</sub> standard in 2011. The Ohio portion of the Area contains the Walter C. Beckjord power plant (Beckjord Facility) which shut down in 2014.

and described in greater detail throughout this notice of proposed rulemaking.

Based on the 1-hour SO<sub>2</sub> nonattainment designation for the Area, Kentucky was required to develop a nonattainment SIP revision addressing certain CAA requirements. Among other things, the Commonwealth was required to submit a SIP revision addressing RACM and base year inventory requirements pursuant to CAA section 172(c)(1) and section 172(c)(3), respectively, for its portion of the Area. Although EPA does not believe that section 172(c)(1) RACM must be approved into a SIP prior to redesignation of an area to attainment once that area is attaining the NAAQS, EPA is proposing to approve Kentucky's RACM determination into its SIP pursuant to a recent decision by the United States Court of Appeals for the Sixth Circuit (Sixth Circuit), as discussed in Section V.A, below. EPA is also proposing to approve Kentucky's 2011 base year inventory as satisfying section 172(c)(3) requirements.

On November 21, 2016, EPA published its final approval of the redesignation request and maintenance plan for the Ohio portion of the Area. See 81 FR 83158. As part of that final action, EPA determined that the entire Area has attained the 2010 1-hour SO<sub>2</sub> NAAQS. Based on EPA's final determination of attainment, EPA is proposing to approve Kentucky's March 31, 2015, request for EPA to determine that the Campbell-Clermont, KY-OH Area has attained the 2010 1-hour SO<sub>2</sub> NAAQS per EPA's "Clean Data Policy." Under the Clean Data Policy, a determination that an area is attaining the NAAQS suspends the obligations to submit an attainment demonstration and associated RACM, RFP plans, contingency measures, and certain other planning-related requirements until EPA redesignates the Area to attainment (at which time the requirements no longer apply) or EPA determines that the Area violates the standard.<sup>2</sup>

<sup>2</sup> Following enactment of the CAA Amendments of 1990, EPA promulgated its interpretation of the requirements for implementing the NAAQS in the general preamble for the Implementation of Title I of the CAA Amendments of 1990 (General Preamble) 57 FR 13498, 13564 (April 16, 1992). In 1995, based on the interpretation of CAA sections 171 and 172, and section 182 in the General Preamble, EPA set forth what has become known as its "Clean Data Policy" for the 1-hour ozone NAAQS. See Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, "RFP, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard" (May 10, 1995). Since 1995, EPA has applied its interpretation under the Clean Data Policy in many rulemakings, suspending certain

EPA is also proposing to approve Kentucky's maintenance plan for its portion of the Campbell-Clermont, KY-OH Area as meeting the requirements of section 175A (such approval being one of the CAA criteria for redesignation to attainment status) and incorporate it into the SIP. The maintenance plan is designed to keep the Area in attainment of the 2010 1-hour SO<sub>2</sub> NAAQS through 2027.

EPA also proposes to determine that the Kentucky portion of the Campbell-Clermont, KY-OH Area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. Accordingly, in this action, EPA is proposing to approve a request to change the legal designation of the portion of Campbell County, Kentucky, within the Campbell-Clermont, KY-OH Area, as found at 40 CFR part 81, from nonattainment to attainment for the 2010 1-hour SO<sub>2</sub> NAAQS.

In summary, this proposed rulemaking is in response to Kentucky's March 31, 2015, submittal requesting a clean data determination and to Kentucky's February 22, 2016, redesignation request and associated SIP submission that address the necessary elements described in section 107(d)(3)(E) of the CAA for redesignation of the Kentucky portion of the Campbell-Clermont, KY-OH Area to attainment for the 2010 1-hour SO<sub>2</sub> NAAQS.

## II. What is the background for EPA's proposed 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). 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 1-hour daily maximum 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

attainment-related planning requirements for individual areas, based on a determination of attainment and that interpretation has been upheld by federal courts.

exceptional events which have been approved for exclusion by the Administrator, are reported.<sup>3</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. At the time EPA conducted the initial round of designations for the 2010 1-hour SO<sub>2</sub> primary NAAQS, Campbell County contained an SO<sub>2</sub> monitor which registered violations of the standard based on the three most recent years of complete, quality assured, and certified ambient air quality data. Using 2009–2011 ambient air quality data, EPA designated the Area as nonattainment for the 2010 1-hour SO<sub>2</sub> NAAQS on August 5, 2013 (78 FR 47191), which became effective on October 4, 2013. This nonattainment designation established an attainment date five years after the October 4, 2013, effective date for areas designated as nonattainment for the 2010 1-hour SO<sub>2</sub> NAAQS. Therefore, the Campbell-Clermont, KY-OH Area's attainment date is October 4, 2018. KDAQ was also required to submit a SIP to EPA that meets the requirements of CAA sections 172(c) and 191–192 within 18 months following the October 4, 2013, effective date of designation (*i.e.*, April 4, 2015).

As mentioned above, on March 31, 2015, KDAQ submitted a request for EPA to determine that the Campbell-Clermont, KY-OH Area has attained the 2010 1-hour SO<sub>2</sub> NAAQS per EPA's "Clean Data Policy." Subsequently, on February 22, 2016, KDAQ submitted to EPA a request for redesignation of the Campbell-Clermont, KY-OH Area to attainment and a SIP revision containing a maintenance plan for the Kentucky portion of the Area.

## III. What are the criteria for redesignation?

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) of the CAA allows for redesignation provided that the following criteria are met: (1) The Administrator determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k); (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable federal air pollutant

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

control regulations, and other permanent and enforceable reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and (5) the state containing such area has met all requirements applicable to the area for purposes of redesignation under section 110 and part D of the CAA.

On April 16, 1992 (57 FR 13498), EPA provided guidance on redesignation in the General Preamble for the Implementation of title I of the CAA Amendments of 1990 and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA has provided further guidance on processing redesignation requests in several guidance documents. For the purposes of this proposed action, EPA will be referencing three of these documents: (1) The September 4, 1992, memorandum from John Calcagni titled “Procedures for Processing Requests to Redesignate Areas to Attainment” (hereinafter referred to as the “Calcagni Memo”); (2) the October 14, 1994, memorandum from Mary D. Nichols titled “Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment” (hereinafter referred to as the “Nichols Memo”); and (3) the April 23, 2014 memorandum from Stephen D. Page titled “Guidance for 1-Hour SO<sub>2</sub> Nonattainment Area SIP Submissions” (hereinafter referred to as “2010 SO<sub>2</sub> Nonattainment Area Guidance”).

#### IV. Why is EPA proposing these actions?

On March 31, 2015, KDAQ submitted a request for EPA to determine that the Campbell-Clermont, KY-OH Area has attained the 2010 1-hour SO<sub>2</sub> NAAQS per EPA’s “Clean Data Policy.” Subsequently, on February 22, 2016, KDAQ requested that EPA redesignate the Kentucky portion of the Campbell-Clermont, KY-OH Area to attainment for the 2010 1-hour SO<sub>2</sub> NAAQS. On November 21, 2016, EPA determined that the entire Area has attained the 2010 1-hour SO<sub>2</sub> NAAQS as part of its final action redesignating the Ohio portion of the Area. EPA’s evaluation indicates that the Kentucky portion of the Campbell-Clermont, KY-OH Area meets the requirements for redesignation as set forth in section 107(d)(3)(E), including the maintenance plan requirements under section 175A of the CAA. As a result, EPA is proposing to take the five related actions summarized in section I of this notice.

#### V. What is EPA’s analysis of the redesignation request and SIP revisions?

As stated above, in accordance with the CAA, EPA proposes to: (1) Approve Kentucky’s Subpart 1 RACM determination for the Kentucky portion of the Campbell-Clermont, KY-OH Area and incorporate it into the SIP; (2) approve the base year emissions inventory for the 2010 SO<sub>2</sub> NAAQS for the Kentucky portion of the Area and incorporate it into the SIP; (3) approve Kentucky’s March 31, 2015, request for a clean data determination; (4) approve the 2010 1-hour SO<sub>2</sub> NAAQS maintenance plan for the Kentucky portion of the Area and incorporate it into the SIP; and (5) redesignate the Kentucky portion of the Area to attainment for the 2010 1-hour SO<sub>2</sub> NAAQS.

##### A. RACM Determination

##### 1. Relationship Between Subpart 1 RACM and the Redesignation Criteria

EPA does not believe that Subpart 1 nonattainment planning requirements designed to provide for attainment, including RACM, are “applicable” for purposes of CAA section 107(d)(3)(E)(ii) once an area is attaining the NAAQS and, therefore, does not believe that these planning requirements must be approved into the SIP before EPA can redesignate an area to attainment. See, e.g., 57 FR 13498, 13564 (April 16, 1992); Calcagni Memo. However, the Sixth Circuit issued an opinion in *Sierra Club v. EPA*, 793 F.3d 656 (6th Cir. 2015), that is inconsistent with this longstanding interpretation regarding section 107(d)(3)(E)(ii). In its decision, the Court vacated EPA’s redesignation of the Indiana and Ohio portions of the Cincinnati-Hamilton nonattainment area to attainment for the 1997 Fine Particulate Matter (PM<sub>2.5</sub>) NAAQS because EPA had not yet approved Subpart 1 RACM for the Cincinnati Area into the Indiana and Ohio SIPs. The Court concluded that “a State seeking redesignation ‘shall provide for the implementation’ of RACM/RACT [reasonably available control technology], even if those measures are not strictly necessary to demonstrate attainment with the PM<sub>2.5</sub> NAAQS. If the State has not done so, EPA cannot ‘fully approve’ the area’s SIP, and redesignation to attainment status is improper.” *Sierra Club*, 793 F.3d at 670.

EPA is bound by the Sixth Circuit’s decision in *Sierra Club v. EPA* within

the Court’s jurisdiction.<sup>4</sup> Although EPA continues to believe that Subpart 1 RACM is not an applicable requirement under section 107(d)(3)(E) for an area that has already attained the 2010 1-hour SO<sub>2</sub> NAAQS, EPA is proposing to approve Kentucky’s RACM determination into the SIP pursuant to the Court’s decision.<sup>5</sup>

##### 2. Subpart 1 RACM Requirements

Subpart 1 requires that each attainment plan “provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from the existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology), and shall provide for attainment of the national primary ambient air quality standards.” See CAA section 172(c)(1). EPA has consistently interpreted this provision to require only implementation of potential RACM measures that could advance attainment.<sup>6</sup> Thus, when an area is already attaining the standard, no additional RACM measures are required. EPA’s interpretation that Subpart 1 requires only the implementation of RACM measures that would advance attainment was upheld by the United States Court of Appeals for the Fifth Circuit<sup>7</sup> and by the United States Court of Appeals for the D.C. Circuit.<sup>8</sup>

##### 3. Proposed Action on RACM Based on Attainment of the NAAQS

In its February 22, 2016, SIP revision, Kentucky determined that no additional control measures are necessary in the Area to satisfy the section 172(c)(1)

<sup>4</sup> The states of Kentucky, Michigan, Ohio, and Tennessee are located within the Sixth Circuit’s jurisdiction.

<sup>5</sup> The EPA Region 4 Regional Administrator signed a memorandum on July 20, 2015, seeking concurrence from the Director of EPA’s Air Quality Policy Division (AQPDP) in the Office of Air Quality Planning and Standards to act inconsistent with EPA’s interpretation of CAA sections 107(d)(3)(E) and 172(c)(1) when taking action on pending and future redesignation requests in Kentucky and Tennessee because the Region is bound by the Sixth Circuit’s decision in *Sierra Club v. EPA*. The AQPDP Director issued her concurrence on July 22, 2015. This memorandum is not required to satisfy EPA’s regional consistency regulations. See 40 CFR 56.5(b)(1); 81 FR 51102 (August 3, 2016).

<sup>6</sup> This interpretation was adopted in the General Preamble, see 57 FR 13498 (April 16, 1992), and has been upheld as applied to the Clean Data Policy, as well as to nonattainment SIP submissions. See *NRDC v. EPA*, 571 F.3d 1245 (D.C. Cir. 2009); *Sierra Club v. EPA*, 294 F.3d 155 (D.C. Cir. 2002).

<sup>7</sup> *Sierra Club v. EPA*, 314 F.3d 735, 743–745 (5th Cir. 2002).

<sup>8</sup> *Sierra Club v. EPA*, 294 F.3d 155, 162–163 (D.C. Cir. 2002); *NRDC v. EPA*, 571 F.3d 1245, 1252 (D.C. Cir. 2009).

RACM requirement. EPA is proposing to approve this determination on the basis that the Area has attained the 2010 1-hour SO<sub>2</sub> NAAQS and, therefore, no emission reduction measures are necessary to satisfy Subpart 1 RACM. As noted above, EPA has determined that the Area has attained the 2010 1-hour SO<sub>2</sub> NAAQS and is proposing to determine that the Area continues to attain the standard. See 81 FR 47144. Because the Area is attaining the standard, there are no emissions controls that could advance the attainment date; thus, no emissions controls are necessary to satisfy Subpart 1 RACM.

4. Proposed Action on RACM Based on the Commonwealth's Analysis

Additionally, Kentucky's Subpart 1 RACM determination is approvable on the basis that the SIP revision demonstrates that no additional reasonably available controls would have advanced the attainment date. In Kentucky's RACM analysis, the Commonwealth notes that the only large point source of SO<sub>2</sub> emissions in the Area—the Walter C. Beckjord power plant—was permanently shut down and removed from service in 2014. The Beckjord Facility has been demonstrated to be the primary SO<sub>2</sub> source that caused the monitored exceedances, and since the closure of the Beckjord Facility, there has been a significant monitored improvement in SO<sub>2</sub> air quality (see Table 2 in section V.C, below). The closure results in a reduction of 90,835 tons per year (tpy) based on the Facility's 2011 emissions (representing emissions from the time period for which the design value for the Area was above the NAAQS) and a reduction of 32,602 tpy based on the Facility's 2014 emissions (representing emissions from a time period for which the design value was below the NAAQS) (see Tables 3–5 in section V.C, below). Because the only large point source of

SO<sub>2</sub> emissions in the Area is permanently shut down and because total point source SO<sub>2</sub> emissions in the Kentucky portion of the Area were only approximately 0.8 tons per year in 2011, the Commonwealth concludes that there are no potential emission reduction measures that would advance attainment by one year or more. EPA has reviewed the RACM portion of Kentucky's February 22, 2016, SIP revision and preliminarily agrees with the Commonwealth's determination that it was not necessary to adopt or implement additional SO<sub>2</sub> control measures in the Area to satisfy section 172(c)(1).

B. Emission Inventory

Section 172(c)(3) of the CAA requires states to submit a comprehensive, accurate, and current inventory of actual emissions from all sources of the relevant pollutant or pollutants in each nonattainment area. This inventory can be submitted for a year that contributed to the three-year design value used for the original nonattainment designation and should be consistent with the emissions inventory data requirements in 40 CFR part 51, subpart A.

Kentucky submitted a base year emissions inventory for 2011 to satisfy section 172(c)(3). This base year is one of the three years of ambient data used to designate the Area as a nonattainment area and therefore represents emissions associated with nonattainment conditions. The emissions inventory is based on data developed and submitted by Kentucky to EPA's 2011 National Emissions Inventory (NEI), and it contains data elements consistent with the detail required by 40 CFR part 51, subpart A. Kentucky's base year emissions inventory for its portion of the Area provides 2011 emissions data for SO<sub>2</sub> for the following general source categories: electric generating unit (EGU) point, non-EGU point, area, non-road mobile, and on-road mobile. All

base year emissions data are taken from the NEI with the exception of point source emissions which were obtained from Kentucky's Emission Inventory database and mobile emissions which were generated by the Ohio-Kentucky-Indiana Regional Council of Governments (OKI). Projections were developed for each sector as follows:

- Area source emissions were compiled from the 2011 NEI and projections were developed by Kentucky. Kentucky developed its inventory according to the current EPA emissions inventory guidance for area sources.
- Mobile source emissions were calculated from MOVES2014b-produced emission factors. As performed by OKI, mobile source emission projections are based on the EPA MOVES model. The analysis is described in more detail in Appendix E of Kentucky's February 22, 2016, SIP submission. Kentucky developed its inventory according to the current EPA emissions inventory guidance for on-road mobile sources using MOVES version 2014.
- Non-EGU point source information was compiled from Kentucky's 2011 Emissions Inventory Database, while Ohio's EGU point source information was compiled from the 2011 data in the CAMD database. Projections were developed by Kentucky as described in Appendix C of Kentucky's February 22, 2016, SIP submission.
- Non-road emissions were compiled from the 2011 NEI and projections were developed by Kentucky.
- Biogenic emissions are negligible and are not included in these summaries.

A detailed discussion of the inventory development is located in Appendices C and E to Kentucky's February 22, 2016, SIP submittal which is provided in the docket for this proposed action. Table 1, below, provides a summary of the base year emissions inventory.

TABLE 1—2011 EMISSIONS INVENTORY FOR THE KENTUCKY PORTION OF THE CAMPBELL-CLERMONT, KY-OH AREA (TPY)

County	EGU point	Non-EGU point	Non-road mobile	Area	On-road mobile	Total
Campbell County .....	0	0.78	0.20	6.03	1.55	8.56

For the reasons discussed above, EPA has preliminarily determined that Kentucky's 2011 base year emissions inventory meets the requirements under CAA section 172(c)(3). Approval of Kentucky's redesignation request is contingent upon EPA's final approval of the base year emissions inventory for the 2010 1-hour SO<sub>2</sub> NAAQS.

C. Redesignation Request and Maintenance Demonstration

The five redesignation criteria provided under CAA section 107(d)(3)(E) are discussed in greater detail for the Area in the following paragraphs.

Criteria (1)—The Campbell-Clermont, KY-OH Area Has Attained the 2010 1-Hour SO<sub>2</sub> NAAQS

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the area has attained the applicable NAAQS (CAA section 107(d)(3)(E)(i)). The two primary methods for evaluating ambient air

quality impacted by SO<sub>2</sub> emissions are through dispersion modeling and air quality monitoring. For SO<sub>2</sub>, an area may in some circumstances be considered to be attaining the 2010 1-hour SO<sub>2</sub> NAAQS if it meets the NAAQS as determined in accordance with 40 CFR 50.17 and Appendix T of part 50, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain the NAAQS based on monitoring, the 3-year average of the annual 99th percentile (fourth highest value) of 1-hour daily maximum concentrations measured at each monitor within an area must be less than or equal to 75 parts per billion (ppb). The data must be collected and quality-assured in

accordance with 40 CFR part 58 and recorded in the EPA Air Quality System (AQS).

As discussed in EPA's 2010 SO<sub>2</sub> Nonattainment Area Guidance, two components are needed to support an attainment determination: (1) A review of representative air quality monitoring data, and (2) a further analysis, generally requiring air quality modeling, to demonstrate that the entire area is attaining the standard, based on current actual emissions or the fully implemented control strategy. In EPA's action redesignating the Ohio portion of the Area, EPA determined that the Area has attained the 1-hour SO<sub>2</sub> NAAQS based on these two components. For EPA's full analysis underlying its final

attainment determination, see 81 FR 47144, 47145–47 (July 20, 2016). As part of that analysis, EPA reviewed 2012–2015 SO<sub>2</sub> monitoring data from the monitoring station in the Campbell-Clermont, KY-OH Area for the 2010 1-hour SO<sub>2</sub> NAAQS and preliminary data for 2016. The 2012–2015 data have been quality-assured, are recorded in Aerometric Information Retrieval System (AIRS–AQS), and the 3-year design values for 2012–2014 and 2013–2015 are below the NAAQS. The fourth-highest 1-hour SO<sub>2</sub> values at each monitor for 2012–2015, and the 3-year averages of these values (*i.e.*, design values), are summarized in Table 2, below.

TABLE 2—DESIGN VALUE CONCENTRATIONS FOR THE CAMPBELL-CLERMONT, KY-OH AREA

Location	Site	4th Highest 1-hour sulfur dioxide value (ppb)				3-Year design values (ppb)	
		2012	2013	2014	2015	2012–2014	2013–2015
Campbell County, KY ..	21–037–3002	85	71	61	18	72	50

Preliminary monitoring data for the Area for 2016 does not indicate a violation of the NAAQS.<sup>9</sup> EPA will not take final action to approve the redesignation if the 3-year design value exceeds the NAAQS prior to EPA finalizing the redesignation. As discussed in more detail below, the Commonwealth has committed to continue monitoring in this Area in accordance with 40 CFR part 58.

Criteria (2)—Kentucky Has a Fully Approved SIP Under Section 110(k) for the Kentucky Portion of the Campbell-Clermont, KY-OH Area; and Criteria (5)—Kentucky Has Met All Applicable Requirements Under Section 110 and Part D of Title I of the CAA

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the state has met all applicable requirements under section 110 and part D of title I of the CAA (CAA section 107(d)(3)(E)(v)) and that the state has a fully approved SIP under section 110(k) for the area (CAA section 107(d)(3)(E)(ii)). EPA proposes to find that Kentucky has met all applicable SIP requirements for the Kentucky portion of the Area under section 110 of the CAA (general SIP requirements) for purposes of redesignation. Additionally, EPA proposes to find that the Kentucky SIP satisfies the criterion that it meets

applicable SIP requirements for purposes of redesignation under part D of title I of the CAA in accordance with section 107(d)(3)(E)(v). Further, EPA proposes to determine that the SIP is fully approved with respect to all requirements applicable for purposes of redesignation in accordance with section 107(d)(3)(E)(ii). In making these determinations, EPA ascertained which requirements are applicable to the Area and, if applicable, that they are fully approved under section 110(k). SIPs must be fully approved only with respect to requirements that were applicable prior to submittal of the complete redesignation request.

a. The Kentucky Portion of the Campbell-Clermont, KY-OH Area Has Met All Applicable Requirements Under Section 110 and Part D of the CAA

*General SIP requirements.* General SIP elements and requirements are delineated in section 110(a)(2) of title I, part A of the CAA. These requirements include, but are not limited to, the following: Submittal of a SIP that has been adopted by the state after reasonable public notice and hearing; provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality; implementation of a source permit program; provisions for the implementation of part C requirements (Prevention of Significant Deterioration (PSD)) and provisions for the implementation of part D requirements

(NSR permit programs); provisions for air pollution modeling; and provisions for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address the interstate transport of air pollutants. The section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification in that state. EPA believes that the requirements linked with a particular nonattainment area's designation and classifications are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state. Thus, EPA does not believe that the CAA's interstate transport requirements should be construed to be applicable requirements for purposes of redesignation.

In addition, EPA believes that other section 110(a)(2) elements that are neither connected with nonattainment plan submissions nor linked with an area's attainment status are not applicable requirements for purposes of redesignation. The area will still be subject to these requirements after the

<sup>9</sup>This preliminary data is available at EPA's air data Web site: [http://aqsd1.epa.gov/aqsweb/aqstmp/airdata/download\\_files.html#Daily](http://aqsd1.epa.gov/aqsweb/aqstmp/airdata/download_files.html#Daily).

area is redesignated. The section 110(a)(2) and part D requirements which are linked with a particular area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. This approach is consistent with EPA's existing policy on applicability (*i.e.*, for redesignations) of conformity and oxygenated fuels requirements, as well as with section 184 ozone transport requirements. *See* Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176, October 10, 1996), (62 FR 24826, May 7, 2008); Cleveland-Akron-Loraine, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking at (60 FR 62748, December 7, 1995). *See also* the discussion on this issue in the Cincinnati, Ohio, redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh, Pennsylvania, redesignation (66 FR 50399, October 19, 2001).

EPA has reviewed Kentucky's SIP and has concluded that it meets the general SIP requirements under section 110(a)(2) of the CAA to the extent they are applicable for purposes of redesignation. These requirements are statewide requirements that are not linked to the SO<sub>2</sub> nonattainment status of the Area. Therefore, EPA believes that these SIP elements are not applicable requirements for purposes of review of Kentucky's SO<sub>2</sub> redesignation request.

*Title I, Part D, applicable SIP requirements.* Subpart 1 of part D, comprised of CAA sections 171–179B, sets forth the basic nonattainment requirements applicable to all nonattainment areas, and subpart 5 of part D, which includes section 191 and 192 of the CAA, establishes additional plan deadline and attainment date requirements for SO<sub>2</sub>, nitrogen dioxide, and lead nonattainment areas. A thorough discussion of the requirements contained in sections 172(c) can be found in the General Preamble for Implementation of Title I (57 FR 13498).

*Subpart 1 Section 172 Requirements.* Under section 172, states with nonattainment areas must submit plans providing for timely attainment and meeting a variety of other requirements. As discussed in section V.A, above, EPA's longstanding interpretation of the attainment-related 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 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. *Id.* This interpretation was also set forth in the Calcagni Memo. EPA's understanding of section 172 also forms the basis of its Clean Data Policy, articulated with regard to the 2010 1-hour SO<sub>2</sub> NAAQS in the 2010 SO<sub>2</sub> NAA Guidance, which 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). However, as discussed above, EPA is proposing to approve Kentucky's RACM determination into the SIP in response to the Sixth Circuit's decision that section 172(c)(1) RACM is an applicable requirement under 107(d)(3)(E)(ii) and must be approved into the SIP before EPA can redesignate an area that is subject to section 172(c)(1) requirements.

Because attainment has been reached in the Area, the section 172(c)(2) requirement that nonattainment plans contain provisions promoting reasonable further progress toward attainment is not relevant for purposes of redesignation. In addition, because the Area has attained the standard and is no longer subject to a RFP requirement, the requirement to submit the section 172(c)(9) contingency measures is not applicable for purposes of redesignation. Section 172(c)(6) requires the SIP to contain control measures necessary to provide for attainment of the NAAQS. Because attainment has been reached, no additional measures are needed to provide for attainment.

Section 172(c)(3) requires submission and approval of a comprehensive, accurate, and current inventory of actual emissions. As noted above, Kentucky submitted a 2011 base year emissions inventory for the Kentucky portion of the Area, and EPA is proposing to approve that inventory as satisfying the requirements of section 172(c)(3). Kentucky's section 172(c)(3) inventory must be approved before EPA can take final action to approve the Commonwealth's redesignation request for the Kentucky portion of the Area.

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 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 the Nichols Memo. Kentucky has demonstrated that the Area will be able to maintain the NAAQS without part D NSR in effect, and therefore Kentucky need not have fully approved part D NSR programs prior to approval of the redesignation request. Kentucky's PSD program will become effective in Campbell County 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 the Kentucky SIP meets the requirements of section 110(a)(2) applicable for purposes of redesignation.

*Section 176 Conformity Requirements.* 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.

EPA believes that it is reasonable to interpret the conformity SIP requirements<sup>10</sup> as not applying for purposes of evaluating the redesignation request under section 107(d) because

<sup>10</sup>CAA Section 176(c)(4)(E) requires states to submit revisions to their SIPs to reflect certain federal criteria and procedures for determining transportation conformity. Transportation conformity SIPs are different from the motor vehicle emission budgets that are established in control strategy SIPs and maintenance plans.

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 (upholding this interpretation) (6th Cir. 2001); *See* 60 FR 62748 (December 7, 1995). Furthermore, due to the relatively small, and decreasing, amounts of sulfur in gasoline and on-road diesel fuel, the EPA's transportation conformity rules provide that they do not apply to SO<sub>2</sub> unless either the EPA Regional Administrator or the director of the state air agency has found that transportation-related emissions of SO<sub>2</sub> as a precursor are a significant contributor to a fine particulate matter (PM<sub>2.5</sub>) nonattainment problem, or if the SIP has established an approved or adequate budget for such emissions as part of the RFP, attainment, or maintenance strategy. *See* 40 CFR 93.102(b)(1), (2)(v); 2010 SO<sub>2</sub> Nonattainment Area Guidance. Neither of these conditions have been met; therefore, the EPA's transportation conformity rules do not apply to SO<sub>2</sub> for the Area.

For these reasons, EPA proposes to find that Kentucky has satisfied all applicable requirements for purposes of redesignation of the Campbell-Clermont, KY-OH Area under section 110 and part D of title I of the CAA.

**b. The Kentucky Portion of the Campbell-Clermont, KY-OH Area Has a Fully Approved Applicable SIP Under Section 110(k) of the CAA**

EPA has fully approved the Commonwealth's SIP for the Kentucky portion of the Campbell-Clermont, KY-OH Area under section 110(k) of the CAA for all requirements applicable for purposes of this proposed redesignation with the exception of the Subpart 1 RACM and emissions inventory requirements. In today's proposed action, EPA is proposing to approve the Commonwealth's Subpart 1 RACM determination and the Subpart 1 emissions inventory for the Kentucky portion of the Area into the Kentucky SIP.

As indicated above, EPA believes that the section 110 elements that are neither connected with nonattainment plan submissions nor linked to an area's nonattainment status are not applicable requirements for purposes of redesignation. If EPA finalizes approval of the Commonwealth's Subpart 1 RACM determination and Subpart 1 emissions inventory, EPA has approved all part D requirements applicable under the 2010 1-hour SO<sub>2</sub> NAAQS, as identified above, for purposes of this proposed redesignation pursuant to the Sixth Circuit's decision.

**Criteria (3)—The Air Quality Improvement in the Campbell-Clermont, KY-OH Area Is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions**

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the air quality improvement in the area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, applicable Federal air pollution control regulations, and other permanent and enforceable reductions (CAA section 107(d)(3)(E)(iii)). EPA has preliminarily determined that Kentucky has demonstrated that the observed air quality improvement in the Area is due to permanent and enforceable reductions in emissions primarily resulting from the permanent shutdown of the Beckjord Facility.

When EPA designated the Campbell-Clermont, KY-OH Area as a nonattainment area for the 2010 1-hour SO<sub>2</sub> NAAQS, EPA determined that operations at the Beckjord Facility were the primary cause of the 2010 1-hour SO<sub>2</sub> NAAQS violations in the Area. *See* 78 FR 47191.<sup>11</sup> As mentioned above, operations at the Beckjord Facility ceased in 2014. Specifically, its six coal-fired EGUs were permanently shut down and removed from service by October 1, 2014, and its four oil-fired EGUs were permanently shut down and removed from service by the end of 2014.<sup>12</sup> These units are no longer authorized to operate by the state of Ohio and cannot restart without new air permits. The shutdown reduced SO<sub>2</sub> emissions in the Area by approximately 90,835 tpy (based on 2011 emissions) and resulted in a significant improvement in SO<sub>2</sub> air quality. There are no other large point sources of SO<sub>2</sub> emissions located in the Campbell-Clermont, KY-OH Area.

Because the Beckjord Facility which was the primary SO<sub>2</sub> emissions source that caused the monitored exceedances is permanently shut down, and cannot reopen without applying for a new operating permit, EPA proposes to find that the improvement in air quality in the Campbell-Clermont, KY-OH Area is

due to permanent and enforceable reductions in SO<sub>2</sub> emissions.

**Criteria (4)—The Kentucky Portion of the Campbell-Clermont, KY-OH Area Has a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA**

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the area has a fully approved maintenance plan pursuant to section 175A of the CAA. *See* CAA section 107(d)(3)(E)(iv). In conjunction with its request to redesignate the Kentucky portion of the Campbell-Clermont, KY-OH Area to attainment for the 2010 1-hour SO<sub>2</sub> NAAQS, KDAQ submitted a SIP revision to provide for the maintenance of the 2010 1-hour SO<sub>2</sub> NAAQS for at least 10 years after the effective date of redesignation to attainment. EPA is proposing to determine that this maintenance plan meets the requirements for approval under section 175A of the CAA.

**a. What is required in a maintenance plan?**

Section 175A of the CAA 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 10 years after the Administrator approves a redesignation 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 10 years following the initial 10-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 2010 1-hour SO<sub>2</sub> violations. The Calcagni Memorandum provides further guidance on the content of a maintenance plan, explaining that a maintenance plan should address five requirements: the attainment emissions inventory, maintenance demonstration, monitoring, verification of continued attainment, and a contingency plan. As is discussed more fully below, EPA is proposing to determine that Kentucky's maintenance plan includes all the necessary components and is thus proposing to approve it as a revision to the Kentucky SIP.

**b. Attainment Emissions Inventory**

On November 21, 2016, EPA determined that the Campbell-Clermont, KY-OH Area has attained the 2010 1-hour SO<sub>2</sub> NAAQS based on quality-

<sup>11</sup> *See* Final Technical Support Document, July 2013, Kentucky First Round of Nonattainment Area Designations for the 2010 SO<sub>2</sub> Primary NAAQS, Prepared by EPA Region 4. Available in Docket EPA-HQ-OAR-2012-0233.

<sup>12</sup> The letters from Duke Energy notifying Ohio of the shutdowns are located in the appendices to Kentucky's February 22, 2016 redesignation request and SIP submittal.



assured monitoring data for the 3-year period from 2013–2015. Kentucky began development of the attainment inventory by first generating a baseline emissions inventory for the Commonwealth’s portion of the Campbell-Clermont, KY-OH Area. The Commonwealth selected 2011 as the base year and 2014 as the attainment emissions inventory year for developing a comprehensive emissions inventory for SO<sub>2</sub>. To evaluate maintenance through 2027 and satisfy the 10-year interval required in CAA section 175A, Kentucky prepared projected emissions inventories for 2017–2027. The emissions inventories are composed of the following general source categories: EGU point, non-EGU point, area, non-

road mobile, and on-road mobile. The emissions inventories were developed consistent with EPA guidance and are summarized in Tables 3 through 5 of the following subsection discussing the maintenance demonstration. For additional information regarding inventory development, please see section V.B., above, and Appendices C and E to Kentucky’s February 22, 2016, SIP submittal.

c. Maintenance Demonstration

Maintenance of the SO<sub>2</sub> standard is demonstrated either by showing that future emissions will not exceed the level of the attainment emissions inventory year or by modeling to show that the future mix of sources and

emission rates will not cause a violation of the NAAQS. KDAQ determined that a modeling analysis of maximum concentration location was not warranted given the unique circumstances of this specific redesignation request. Therefore, Kentucky compared the final year of the maintenance plan (2027) to the attainment emissions inventory year (2014) and compared interim years to the attainment emissions inventory year to demonstrate continued maintenance of the 2010 1-hour SO<sub>2</sub> standard. See Tables 3 through 6, below. After the shutdown of the Beckjord Facility in 2014, there are no significant point sources of SO<sub>2</sub> emissions located in the Area.

TABLE 3—KENTUCKY PORTION SO<sub>2</sub> EMISSION INVENTORY TOTALS FOR BASE YEAR 2011, ATTAINMENT 2014, PROJECTED 2017 & 2022, 2020 INTERIM, AND 2027 MAINTENANCE (TPY)

Sector	2011 Base	2014 Attainment	2017 Projected	2020 Interim	2022 Projected	2027 Maintenance
EGU Point .....	0	0	0	0	0	0
Non-EGU .....	0.78	0.78	0.79	0.79	0.78	0.78
Non-road .....	0.20	0.20	0.20	0.20	0.20	0.20
Area .....	6.03	6.04	6.06	6.08	6.03	6.02
On-road .....	1.55	1.51	1.44	1.40	1.37	1.26
<b>Total .....</b>	<b>8.56</b>	<b>8.53</b>	<b>8.49</b>	<b>8.47</b>	<b>8.38</b>	<b>8.26</b>

TABLE 4—OHIO PORTION SO<sub>2</sub> EMISSION INVENTORY TOTALS FOR BASE YEAR 2011, ATTAINMENT 2014, PROJECTED 2017 & 2022, INTERIM 2020, AND 2027 MAINTENANCE (TPY)

Sector	2011 Base	2014 Attainment	2017 Projected	2020 Interim	2022 Projected	2027 Maintenance
EGU Point .....	90,834.50	32,602.44	0	0	0	0
Non-EGU .....	0	0	0	0	0	0
Non-road .....	0.17	0.18	0.18	0.18	0.18	0.19
Area .....	7.51	7.63	7.75	7.88	7.86	8.00
On-road .....	0.34	0.33	0.32	0.31	0.30	0.28
<b>Total .....</b>	<b>90,842.52</b>	<b>32,610.58</b>	<b>8.25</b>	<b>8.37</b>	<b>8.34</b>	<b>8.47</b>

TABLE 5—COMBINED CAMPBELL-CLERMONT, KY-OH AREA SO<sub>2</sub> EMISSION INVENTORY TOTALS FOR BASE YEAR 2011, ATTAINMENT 2014, PROJECTED 2017 & 2022, INTERIM 2020, AND 2027 MAINTENANCE (TPY)

SO <sub>2</sub>	2011 Base	2014 Attainment	2017 Projected	2020 Interim	2022 Projected	2027 Maintenance
Ohio Portion .....	90,842.52	32,610.58	8.25	8.37	8.34	8.47
Kentucky Portion .....	8.56	8.53	8.49	8.47	8.38	8.26
<b>Combined SO<sub>2</sub> Total .....</b>	<b>90,851.08</b>	<b>32,619.11</b>	<b>16.74</b>	<b>16.84</b>	<b>16.72</b>	<b>16.73</b>

TABLE 6—CAMPBELL-CLERMONT, KY-OH AREA COMPARISON OF 2014 ATTAINMENT YEAR AND 2020 AND 2027 PROJECTED EMISSION ESTIMATES (TPY)

	2014 Attainment	2020 Interim	2020 Projected decrease	2027 Maintenance	2027 Projected decrease
SO <sub>2</sub> .....	32,619.11	16.84	– 32,602.27	16.73	– 32,602.38



As shown in the tables above, the closure of the Beckjord Facility in 2014 resulted in a reduction of 90,835 tpy based on the Facility's 2011 emissions and a reduction of 32,602 tpy based on the Facility's 2014 emissions. After the shutdown, total SO<sub>2</sub> emissions in the Area remain relatively constant through 2027. Therefore, EPA is proposing to determine that the maintenance plan demonstrates continued maintenance through 2027.

#### d. Monitoring Network

There is one SO<sub>2</sub> monitor located within the Kentucky portion of the Campbell-Clermont, KY-OH Area, and the 2010 1-hour SO<sub>2</sub> nonattainment designation was based on data collected from 2009–2011 at this monitor. There are no SO<sub>2</sub> monitors located in Clermont County, Ohio. The Kentucky monitor is operated by the KDAQ's, Florence Regional office. In its maintenance plan, Kentucky has committed to continue operation of the monitor in the Kentucky portion of the Campbell-Clermont, KY-OH Area in compliance with 40 CFR part 58 and has thus addressed the requirement for monitoring. KDAQ's monitoring network plan was submitted on July 1, 2015, and approved by EPA on October 28, 2015.<sup>13</sup>

#### e. Verification of Continued Attainment

The Commonwealth of Kentucky, through KDAQ, has the legal authority to enforce and implement the maintenance plan for the Kentucky portion of the Area. This includes the authority to adopt, implement, and enforce any subsequent emissions control contingency measures determined to be necessary to correct future SO<sub>2</sub> attainment problems. The Commonwealth has committed to track the progress of the maintenance plan by updating its emissions inventory at least once every three years and comparing these updated inventories to the 2011 base year and the 2027 projected maintenance year inventories to assess emission trends, as necessary, and to assure continued compliance with the standard.

Additionally, monitoring, recordkeeping, and reporting requirements are incorporated into permits to ensure ongoing compliance. Kentucky has an active enforcement program to address violations discovered by the field office. For all of the reasons discussed above, EPA is proposing to find that Kentucky's

maintenance plan meets the "Verification of Continued Attainment" requirement.

#### f. Contingency Measures in the Maintenance Plan

Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation, and a time limit for action by the state.<sup>14</sup> A state should also identify specific indicators to be used to determine when the contingency measures need to be implemented. The maintenance plan must include a requirement that a state will implement all measures with respect to control of the pollutant that were contained in the SIP before redesignation of the area to attainment in accordance with section 175A(d).

Kentucky will rely on enforcing the applicable requirements in source permits. All measures in the permits and the SIP are being implemented prior to redesignation of the Area to attainment. In the event that a monitored exceedance of the SO<sub>2</sub> NAAQS occurs in the future, the Commonwealth will expeditiously investigate and perform culpability analyses to determine the source that caused the exceedance and/or violation, and enforce any SIP or permit limit that is violated. Enforcement and compliance programs exist in the Commonwealth to identify sources of violations of the NAAQS and to follow-up for compliance and enforcement.

Further, if all sources are found to be in compliance with applicable SIP and permit emission limits, the Commonwealth will perform the necessary analysis to determine the cause of the exceedance, and determine what additional control measures are necessary to impose on the Area's stationary sources to continue to maintain attainment of the 2010 1-hour SO<sub>2</sub> NAAQS.

The Commonwealth will inform any affected stationary sources of SO<sub>2</sub> of the

potential need for additional control measures. If there is an exceedance of the NAAQS for SO<sub>2</sub>, it will notify the stationary source(s) that the potential exists for a NAAQS violation.

Within six months, the source(s) must submit a detailed plan of action specifying additional control measures to be implemented no later than 18 months after the notification. The additional control measures will be submitted to EPA for approval and incorporation into the SIP. Kentucky noted that, since the only source in the nonattainment area has shut down, it is not possible at this time to develop specific contingency measures until the cause of the elevated concentrations is known. EPA is proposing to find that Kentucky's maintenance plan meets the requirement for contingency measures.

EPA preliminarily concludes that the maintenance plan adequately addresses the five basic components of a maintenance plan: The attainment emissions inventory, maintenance demonstration, monitoring, verification of continued attainment, and a contingency plan. Therefore, EPA proposes that the maintenance plan SIP revision submitted by Kentucky for the Commonwealth's portion of the Area meets the requirements of section 175A of the CAA and is approvable.

#### VI. What is the effect of EPA's proposed actions?

EPA's proposed actions establish the basis upon which EPA may take final action on the issues being proposed for approval today. Approval of Kentucky's redesignation request would change the legal designation of the portion of Campbell County that is within the Campbell-Clermont, KY-OH Area, as found at 40 CFR part 81, from nonattainment to attainment for the 2010 1-hour SO<sub>2</sub> NAAQS. Approval of Kentucky's associated SIP revision would also incorporate a plan for maintaining the 2010 1-hour SO<sub>2</sub> NAAQS in the Campbell-Clermont, KY-OH Area through 2027 into the SIP as well as the State's section 172(c)(1) RACM determination. This maintenance plan includes an emissions inventory that satisfies the requirements of section 172(c)(3) and contingency measures to remedy any future violations of the 2010 1-hour SO<sub>2</sub> NAAQS.

#### VII. Proposed Actions

EPA is taking five separate but related actions regarding Kentucky's request for a clean data determination, the redesignation request, and the SIP revision associated with the redesignation request for the Kentucky

<sup>13</sup> Kentucky's approved monitoring network plan can be accessed at [www.regulations.gov](http://www.regulations.gov) using Docket ID No. EPA-R04-OAR-2014-0426.

<sup>14</sup> In cases where attainment revolves around compliance of a single source or a small set of sources with emissions limits shown to provide for attainment, the EPA interprets "contingency measures" to mean that the state agency has a comprehensive program to identify sources of violations of the SO<sub>2</sub> NAAQS and to undertake aggressive follow-up for compliance and enforcement, including expedited procedures for establishing enforceable consent agreement pending the adoption of revised SIPs. See 2010 SO<sub>2</sub> Nonattainment Area Guidance.

portion of the Campbell-Clermont, KY-OH Area.

First, EPA is proposing to determine that the Commonwealth's Subpart 1 RACM determination for the Area meets the requirements of CAA section 172(c)(1) and to incorporate this RACM determination into the SIP.

Second, EPA is proposing to approve Kentucky's 2011 base year emissions inventory for the Kentucky portion of the Campbell-Clermont, KY-OH Area as meeting the requirements of 172(c)(3) and to incorporate this inventory into the SIP.

Third, EPA is proposing to approve Kentucky's March 31, 2015, request for the EPA to make a clean data determination for the Area.

Fourth, EPA is proposing to approve the maintenance plan for the Kentucky portion of the Area into the SIP. The maintenance plan demonstrates that the Area will continue to maintain the 2010 1-hour SO<sub>2</sub> NAAQS through 2027.

Finally, contingent upon EPA's final approval for Kentucky's RACM analysis pursuant to section 172(c)(1) and the Commonwealth's base year inventory pursuant to section 172(c)(3), EPA is proposing to determine that the Kentucky portion of the Campbell-Clermont, KY-OH Area has met the criteria under CAA section 107(d)(3)(E) for redesignation from nonattainment to attainment for the 2010 1-hour SO<sub>2</sub> NAAQS. On this basis, EPA is proposing to approve Kentucky's redesignation request for the Kentucky portion of the Area.

If finalized, approval of the redesignation request would change the official designation of the portion of Campbell County that is within the Campbell-Clermont, KY-OH Area, as found at 40 CFR part 81, from nonattainment to attainment for the 2010 1-hour SO<sub>2</sub> NAAQS.

### VIII. 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 proposed actions merely propose to approve state law as meeting Federal requirements and do not impose additional requirements beyond those imposed by state law. For this reason, these proposed 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);

- Do not impose an information collection burden 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 (Public Law 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).

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 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.

### 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.

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

Dated: November 21, 2016.

**Heather McTeer Toney,**

*Regional Administrator, Region 4.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

#### 49 CFR Parts 390 and 391

[Docket No. FMCSA-2016-0333]

RIN 2126-AB97

### Process for Department of Veterans Affairs (VA) Physicians To Be Added to the National Registry of Certified Medical Examiners

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** FMCSA proposes amendments to the Federal Motor Carrier Safety Regulations (FMCSRs) to establish an alternate process for qualified physicians employed in the Department of Veterans Affairs (VA) (qualified VA physicians) to be listed on the Agency's National Registry of Certified Medical Examiners (National Registry). After training and testing, they become certified VA medical examiners that can perform medical examinations of commercial motor vehicle (CMV) operators who are military veterans, and issue Medical Examiner's Certificates (MECs) to those same operators as required by the Fixing America's Surface Transportation (FAST) Act.

**DATES:** Comments on this notice must be received on or before January 3, 2017.

**ADDRESSES:** You may submit comments identified by Docket Number FMCSA-2016-0333 using any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.

- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12-