

Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 6, 2021. Filing a petition for reconsideration by the Administrator of this final rule does not affect the

finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

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

Environmental protection, Air pollution control, Incorporation by Reference, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 29, 2021.

**John Blevins,**

*Acting Regional Administrator, Region 4.*

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

■ 1. The authority citation for part 52 continues to read as follows:

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

**Subpart S—Kentucky**

■ 2. Section 52.920(c) is amended in Table 2 under “Reg 2—Permit Requirements” by revising the entry for “2.03” to read as follows:

**§ 52.920 Identification of plan.**

\* \* \* \* \*  
(c) \* \* \*

TABLE 2—EPA-APPROVED JEFFERSON COUNTY REGULATIONS FOR KENTUCKY

Reg	Title/subject	EPA approval date	Federal Register notice	District effective date	Explanation
*	*	*	*	*	*
<b>Reg 2—Permit Requirements</b>					
2.03	Permit Requirements—Non-Title V Construction and Operating Permits and Demolition/Renovation Permits.	10/23/01	66 FR 53660.	12/15/93	Except for paragraphs 1.3, 5.3 and 5.6 regarding asbestos demolition, which were removed from the federally approved SIP by EPA on 5/7/21.
*	*	*	*	*	*

\* \* \* \* \*  
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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA–R03–OAR–2020–0488; FRL–10022–88–Region 3]

**Air Plan Approval; Pennsylvania; 1997 8-Hour Ozone National Ambient Air Quality Standard Second Maintenance Plan for the Clearfield/Indiana Area**

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the Commonwealth of

Pennsylvania. The revision pertains to the Commonwealth’s plan, submitted by the Pennsylvania Department of Environmental Protection (PADEP), for maintaining the 1997 8-hour ozone national ambient air quality standard (NAAQS) (referred to as the “1997 ozone NAAQS”) in the Clearfield/Indiana, Pennsylvania area (“Clearfield/Indiana Area”). EPA is approving these revisions to the Pennsylvania SIP in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** This final rule is effective on June 7, 2021.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2020–0488. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information

whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Serena Nichols, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2053. Ms. Nichols can also be reached via electronic mail at [Nichols.Serena@epa.gov](mailto:Nichols.Serena@epa.gov).

**SUPPLEMENTARY INFORMATION:**

## I. Background

On February 9, 2021 (86 FR 8729), EPA published a notice of proposed rulemaking (NPRM). In the NPRM, EPA proposed approval of Pennsylvania's plan for maintaining the 1997 ozone NAAQS in the Clearfield/Indiana Area through April 20, 2029, in accordance with CAA section 175A. The formal SIP revision was submitted by PADEP on February 27, 2020.

## II. Summary of SIP Revision and EPA Analysis

On March 19, 2009 (74 FR 11674, effective April 20, 2009), EPA approved a redesignation request (and maintenance plan) from PADEP for the Clearfield/Indiana Area. In accordance with CAA section 175A(b), at the end of the eighth year after the effective date of the redesignation, the State must also submit a second maintenance plan to ensure ongoing maintenance of the standard for an additional 10 years, and in *South Coast Air Quality Management District v. EPA*,<sup>1</sup> the D.C. Circuit held that this requirement cannot be waived for areas, like the Clearfield/Indiana Area, that had been redesignated to attainment for the 1997 8-hour ozone NAAQS prior to revocation and that were designated attainment for the 2008 ozone NAAQS. CAA section 175A sets forth the criteria for adequate maintenance plans. In addition, EPA has published longstanding guidance that provides further insight on the content of an approvable maintenance plan, explaining that a maintenance plan should address five elements: (1) An attainment emissions inventory; (2) a maintenance demonstration; (3) a commitment for continued air quality monitoring; (4) a process for verification of continued attainment; and (5) a contingency plan.<sup>2</sup> PADEP's February 27, 2020 submittal fulfills Pennsylvania's obligation to submit a second maintenance plan and addresses each of the five necessary elements.

As discussed in the February 9, 2021 NPRM, EPA allows the submittal of a limited maintenance plan (LMP) to meet the statutory requirement that the area will maintain for the statutory period. Qualifying areas may meet the maintenance demonstration by showing that the area's design value<sup>3</sup> is well

below the NAAQS and that the historical stability of the area's air quality levels indicates that the area is unlikely to violate the NAAQS in the future. EPA evaluated PADEP's February 27, 2020 submittal for consistency with all applicable EPA guidance and CAA requirements. EPA found that the submittal met CAA section 175A and all CAA requirements, and proposed approval of the LMP for the Clearfield/Indiana Area as a revision to the Pennsylvania SIP. Other specific requirements of PADEP's February 27, 2020 submittal and the rationale for EPA's proposed action are explained in the NPRM and will not be restated here.

## III. EPA's Response to Comments Received

EPA received one comment on the February 9, 2021 NPRM. This comment is in the docket for this rulemaking action. A summary of the comment and EPA's response are provided herein.

*Comment:* The commenter asserts that the LMP should not be approved because "Pennsylvania identifies no actual contingency measures." According to the commenter, a "contingency measure is supposed to be a known measure that can be quickly implemented by a state in order to prevent the violation of the NAAQS." The comment asserts that current contingency measures are defective because they allegedly will not be evaluated and determined until after an exceedance of the NAAQS has occurred. The comment claims that EPA is aware Pennsylvania has a history of not meeting its CAA requirements on time, and that it can take Pennsylvania more than two years to implement a regulation, which would be too long to prevent a violation of the NAAQS.

*Response:* The commenter asserts that Pennsylvania identifies no actual contingency measures because the measures are not yet "evaluated" and "determined" and cannot be implemented before a violation of the NAAQS occurs. Because Pennsylvania identifies two regulatory and six non-regulatory contingency measures in general terms, EPA understands the comment's use of the term "evaluated" and "determined" must mean something like the specific measures identified by PADEP have not been fully promulgated and are not in effect at this time. If EPA's understanding is correct, EPA agrees with this fact, but does not agree that this has any bearing on the approvability of the particular

contingency measures or of the overall LMP.

PADEP identifies six non-regulatory measures and two regulatory measures. The two regulatory measures are "additional controls" on consumer products and portable fuel containers. The six non-regulatory measures are: Voluntary diesel engine "chip reflash;" diesel retrofit for public or private local onroad or offroad fleets; idling reduction technology for Class 2 yard locomotives; idling technologies or strategies for truck stops, warehouses, and other freight-handling facilities; accelerated turnover of lawn and garden equipment; additional promotion of alternative fuel for home heating and agriculture use. As stated in the Calcagni memo, EPA's long-standing interpretation is that contingency measures for maintenance of the NAAQS are not required to be fully adopted in order to be approved. The commenter refers to a recent court case vacating, among other things, the contingency measure provisions in EPA's rule for implementing the 2015 ozone NAAQS, *Sierra Club v. EPA*, No. 15-1465 (D.C. Cir. January 29, 2021). It is possible that the commenter has conflated the contingency measure provisions at issue in that case, which pertained to attainment plans, and those at issue in this LMP, which pertain to maintenance plans. The contingency measure provisions for maintenance and attainment are found in two different sections of the CAA, with substantially different wording and requirements. The attainment plan contingency measures provisions in CAA section 172(c)(9) require that the attainment plan have "specific measures" that can "take effect in any such case without further action by the State or the Administrator" if the area fails to make reasonable further progress or attain the NAAQS. 42 U.S.C. 7502(c)(9). Section 175A of the CAA sets forth the contingency measure requirements for maintenance areas. Section 175A(d) requires that the maintenance plan contain "such contingency provisions as the Administrator deems necessary to assure that the State will promptly correct any violation of the standard which occurs after the redesignation of the area as an attainment area". 42 U.S.C. 7505a(d). Unlike section 172(c)(9) there is no requirement under section 175A that the contingency measures be set forth with specificity or that they be able to take effect without further action by EPA or the State.

With this statutory background in mind, EPA does not agree that the plan should be disapproved due to PADEP's alleged inability to promulgate a

<sup>1</sup> 882 F.3d 1138 (D.C. Cir. 2018).

<sup>2</sup> "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (Calcagni Memo).

<sup>3</sup> The ozone design value for a monitoring site is the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations. The design value for an ozone nonattainment area

is the highest design value of any monitoring site in the area.

contingency measure in sufficient time to avert a violation of the NAAQS. As noted previously, CAA section 175A(d) mandates that a maintenance plan must contain “such contingency provisions as the Administrator deems necessary to assure that the State will promptly *correct any violation* of the standard which occurs after the redesignation of the area as an attainment area” (emphasis added). The statute therefore does not include any requirement that a maintenance plan’s contingency measures *prevent* a violation of the NAAQS, but rather only that those selected measures be available to address a violation of the NAAQS after it already occurs. Pennsylvania also elected to adopt a “warning level response,” which states that PADEP will consider adopting contingency measures if, for two consecutive years, the fourth highest eight-hour ozone concentrations at any monitor in the area are above 84 parts per billion (ppb). But this warning level response is not required under the CAA, and therefore we do not agree with the commenter that the plan should be disapproved based on the commenter’s concern over the timeliness of the warning level response implementation.

Moreover, as a general matter, we do not agree that the schedules for implementation of contingency provisions in the LMP are insufficient. As noted, the CAA provides some degree of flexibility in assessing a maintenance plan’s contingency measures—requiring that the plan contain such contingency provisions “as the Administrator deems necessary” to assure that any violations of the NAAQS will be “promptly” corrected. EPA’s longstanding guidance for redesignations, the Calcagni Memo, also does not provide precise parameters for what strictly constitutes “prompt” implementation of contingency measures, noting that, for purposes of CAA section 175A, “a state is not required to have fully adopted contingency measures that will take effect without further action by the state in order for the maintenance plan to be approved.” Calcagni memo at 12. However, the guidance does state that the plan should ensure that the measures are adopted “expeditiously” once they are triggered, and should provide “a schedule and procedure for adoption and implementation, and a specific time limit for action by the state.” *Id.* We think Pennsylvania’s plan, which provides specific lists of regulatory and non-regulatory measures that Pennsylvania would consider after evaluating and assessing what it

believed to be the cause of increased ozone concentrations, and the specific timeframes it would use to expediently implement the various measures, meets the requirements of CAA section 175A.

#### IV. Final Action

EPA is approving PADEP’s second maintenance plan for the Clearfield/Indiana Area for the 1997 ozone NAAQS as a revision to the Pennsylvania SIP.

#### V. Statutory and Executive Order Reviews

##### A. General Requirements

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, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

##### B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

##### C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 6, 2021. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action, approving PADEP’s second maintenance plan for the Clearfield/Indiana Area for the 1997 ozone NAAQS, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 26, 2021.

Diana Esher,

Acting Regional Administrator, Region III.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

■ 1. The authority citation for part 52 continues to read as follows:

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

**Subpart NN—Pennsylvania**

■ 2. In § 52.2020, the table in paragraph (e)(1) is amended by adding the entry

“Second Maintenance Plan for the Clearfield/Indiana 1997 8-Hour Ozone Nonattainment Area” at the end of the table to read as follows:

**§ 52.2020 Identification of plan.**

- \* \* \* \* \*
- (e) \* \* \*
- (1) \* \* \*

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
Second Maintenance Plan for the Clearfield/Indiana 1997 8-Hour Ozone Nonattainment Area.	Clearfield/Indiana Area.	2/27/20	5/7/21, [insert Federal Register citation].	The Clearfield/Indiana area consists of Clearfield and Indiana Counties.

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**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 73**

[MB Docket No. 21-55; RM-11880; DA 21-476; FR ID 24746]

**Television Broadcasting Services Kearney, Nebraska**

AGENCY: Federal Communications Commission.

ACTION: Final rule.

**SUMMARY:** On February 12, 2021, the Media Bureau, Video Division (Bureau) issued a notice of proposed rulemaking in response to a petition for rulemaking filed by KHGI Licensee, LLC (Licensee), the licensee of KHGI, channel 13 (ABC), Kearney, Nebraska, requesting the substitution of channel 18 for channel 13 at Kearney in the DTV Table of Allotments. For the reasons set forth in the *Report and Order* referenced below, the Bureau amends FCC regulations to substitute channel 18 for channel 13 at Kearney.

**DATES:** Effective May 7, 2021.

**FOR FURTHER INFORMATION CONTACT:** Joyce Bernstein, Media Bureau, at (202) 418-1647 or [Joyce.Bernstein@fcc.gov](mailto:Joyce.Bernstein@fcc.gov).

**SUPPLEMENTARY INFORMATION:** The proposed rule was published at 86 FR 12161 on March 2, 2021. The Licensee filed comments in support of the petition reaffirming its commitment to applying for channel 18. No other comments were received. In support, the Licensee stated that the channel

substitution will permit KHGI to better serve its viewers, who have experienced reception problems with VHF channel 13. The Bureau believes the public interest would be served by the channel substitution because it will result in improved service. In addition, operation on channel 18 will not result in any predicted loss of service and will increase the number of people served.

This is a synopsis of the Commission’s *Report and Order*, MB Docket No. 21-55; RM-11880; DA 21-476, adopted April 26, 2021, and released April 26, 2021. The full text of this document is available for download at <https://www.fcc.gov/edocs>. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden “for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601-612, do not apply to this proceeding.

The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional review Act, *see* 5 U.S.C. 801(a)(1)(A).

**List of Subjects in 47 CFR Part 73**

Television.

Federal Communications Commission.

**Thomas Horan,**

Chief of Staff, Media Bureau.

**Final Rule**

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

**PART 73—RADIO BROADCAST SERVICE**

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 2. In § 73.622, in paragraph (i), amend the Post-Transition Table of DTV Allotments, under Nebraska, by revising the entry for Kearney to read as follows:

**§ 73.622 Digital television table of allotments.**

- \* \* \* \* \*
- (i) \* \* \*

	Community	Channel No.
* * * * *	* * * * *	* * * * *
<b>NEBRASKA</b>		
Kearney .....		18
* * * * *	* * * * *	* * * * *

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