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ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

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Rebecca Goodman
SECRETARY

Anthony R. Hatton
COMMISSIONER

January 26, 2024

Ms. Jeaneanne Gettle
Acting Regional Administrator
U.S. EPA, Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, Georgia 30303

RE: Submittal of the Kentucky State Implementation Plan revision, satisfying the Nonattainment New Source Review Requirements for the Partial Counties of Henderson and Webster Located within the Kentucky 2010 1-Hour Sulfur Dioxide Nonattainment Area.

Dear Ms. Gettle:

The Kentucky Energy and Environment Cabinet (Cabinet) submits this letter concurrent with a final revision to the Kentucky State Implementation Plan (SIP) for the Nonattainment New Source Review (NNSR) requirements of the partial counties of Henderson and Webster located within the Kentucky 2010 1-Hour SO₂ nonattainment area (hereinafter “the Area”). Specifically, the Cabinet has provided a submittal that satisfies the NNSR requirements for the Area as outlined in Clean Air Act (CAA) Section 172(c)(5); thus, the Cabinet formally requests EPA approve this revision to Kentucky’s SIP.

In accordance with 40 CFR 51.102, the proposed SIP revision was available for public review and comment from June 7, 2023 until July 13, 2023. If you have any questions or comments regarding this matter, please contact Mr. Michael Kennedy, Director of the Division for Air Quality at (502) 782-6997, or Michael.Kennedy@ky.gov.

Sincerely,

Rebecca W. Goodman,
Secretary

**Nonattainment New Source Review Requirements for the Partial
Counties of Henderson and Webster
Located within the Kentucky
2010 1-Hour Sulfur Dioxide Nonattainment Area**



Prepared by:
Kentucky Energy and Environment Cabinet
Division for Air Quality
January 2024

EXECUTIVE SUMMARY

The Kentucky Energy and Environment Cabinet (Cabinet) is submitting a final revision to the Commonwealth of Kentucky's State Implementation Plan (SIP) under the federal Clean Air Act (CAA). In the fourth and final set of actions to designate areas of the U.S. for the 2010 sulfur dioxide (SO₂) National Ambient Air Quality Standards (NAAQS), EPA formally designated a small portion of Henderson and Webster counties as a single nonattainment area based on relevant quality-assured monitoring data that indicated violations of the 1-hour SO₂ standard. The final area designations were published on March 26, 2021, and became effective April 30, 2021.¹ The designation of the Henderson-Webster nonattainment area (hereinafter "the Area") was included in this action.

Pursuant to Section 172(a)(2)(A) of the CAA, the attainment date for an area designated nonattainment with respect to a national primary ambient air quality standard shall be the date by which attainment can be achieved as expeditiously as practicable, but no later than 5 years from the date such area was designated nonattainment. Thus, the attainment date for the Area is April 30, 2026.

Kentucky is submitting three separate SIP revisions to address the nonattainment planning requirements for the Area. These SIP revisions will address three separate requirements of the CAA: 1) nonattainment new source review (NNSR) requirements (172(c)(5)); 2) an accurate base year emissions inventory of current emissions for all sources of SO₂ within the nonattainment area (172(c)(3)); and 3) an attainment demonstration that includes a modeling analysis showing that the enforceable emissions limitations and other control measures taken by the Division for Air Quality (Division) will provide for expeditious attainment of the NAAQS for SO₂ (172(c)).

As described below, this SIP revision addresses the NNSR requirements.

¹ 86 FR 16055

Nonattainment New Source Review (§172(c)(5))

CAA section 172(c)(5) mandates that nonattainment plan provisions shall require permits for the construction and operation of new or modified major stationary sources anywhere in the nonattainment area.

Part D of Title I of the CAA provides the requirements for new source review (NSR) in an area designated nonattainment for any criteria pollutant. NNSR requirements are to be submitted to EPA as part of a nonattainment SIP. EPA's 2014 SO₂ Nonattainment Guidance states that air agencies that already have an NNSR permitting program applicable to areas previously designated nonattainment on the basis of the previous SO₂ NAAQS (annual, 24-hour or 3-hour averaging periods) may be able to use that existing program to authorize the construction and modification of major stationary sources of SO₂ that would locate in a new 2010 SO₂ nonattainment area.² Therefore, the Division's existing NNSR permitting program, which was established on September 22, 1982, applies to the Area.

Through this SIP revision, the Division is confirming and certifying that its existing rules meet the requirements for an NNSR permitting program for the 2010 SO₂ NAAQS. Kentucky's NNSR permitting program is addressed in 401 Kentucky Administrative Regulations (KAR) 51:052, *Review of new sources in or impacting upon nonattainment areas*. 401 KAR 51:052 includes requirements for the construction or modification of stationary sources within, or impacting upon, areas where the NAAQS have not been attained. 401 KAR 51:052 establishes that, for sources of SO₂, a determination whether or not a new major source or major modification will cause or contribute to a violation of a NAAQS shall be made on a case-by-case basis using the source's allowable emissions in an approved atmospheric simulation model listed in 40 C.F.R. Part 51, Appendix W, "Guideline on Air Quality Models".

On September 23, 2011, the Division submitted a SIP revision to EPA that updated Kentucky's regulations at 401 KAR 51:052. The Division's SIP revision was approved by EPA effective November 9, 2015.³ The Division continues to operate the NNSR permitting program under 401 KAR 51:052 and the provisions approved by EPA. The regulation provides for appropriate NNSR as required by CAA sections 172(c)(5) and 173 and 40 CFR 51.165 for SO₂ sources undergoing construction or major modification in the Area; therefore, there is no need for modification of the approved regulation.

² EPA, Guidance for 1-Hour SO₂ Nonattainment Area SIP Submissions (April 2014) ("2014 SO₂ Guidance"), p.42-43, available at: https://www.epa.gov/sites/default/files/2016-06/documents/20140423guidance_nonattainment_sip.pdf.

³ 80 FR 60805

**STATEMENT OF CONSIDERATION
Relating to Proposed SIP**

**Nonattainment New Source Review Requirements for the Partial
Counties of Henderson and Webster Located within the Kentucky 2010 1-Hour
Sulfur Dioxide Nonattainment Area**

**Energy and Environment Cabinet
Kentucky Department for Environmental Protection
Division for Air Quality**

From June 7, 2023, until July 13, 2023, the Cabinet provided an opportunity for comments on the proposed State Implementation Plan (SIP) revision requesting that nonattainment new source review (NNSR) requirements for the Henderson-Webster County, Kentucky 2010 1-hour SO₂ nonattainment area are satisfied. The public notice announcing the public comment period included an opportunity to request a public hearing. No request for a public hearing was received; therefore, the scheduled public hearing was cancelled.

During the public comment period, the only comments received were from the U.S. Environmental Protection Agency (U.S. EPA). The comments and responses are listed below.

Response to Comments for the proposed SIP revision satisfying NNSR requirements for the partial counties of Henderson and Webster located within the Kentucky 2010 1-hour SO₂ nonattainment area.

1. Comment: The EPA recommends Kentucky amend the third paragraph of the Executive Summary to only reference CAA section 172(c) and removing (c)(6). This citation update will account for the remaining nonattainment planning requirements included in the attainment demonstration (i.e., reasonable further progress, permanent and enforceable control measures, reasonably available control measures and contingency measures (see example language below)).

- Kentucky is submitting three separate SIP revisions to address the nonattainment planning requirements for the Area. These SIP revisions will address three separate requirements of the CAA: 1) nonattainment new source review (NNSR) requirements (172(c)(5)); 2) an accurate base year emissions inventory of current emissions for all sources of SO₂ within the nonattainment area (172(c)(3)); and 3) an attainment demonstration that includes a modeling analysis showing that the enforceable emissions limitations and other control measures taken by the Division will provide for expeditious attainment of the NAAQS for SO₂ (172(c) ~~and (c)(6)~~).

(Lynorae Benjamin, U.S. EPA)

Response: The Division acknowledges this comment. The Executive Summary has been amended and no longer contains the (c)(6) citation.

KENTUCKY DIVISION FOR AIR QUALITY
PUBLIC NOTICE FOR PROPOSED KENTUCKY STATE IMPLEMENTATION PLAN
REVISION NONATTAINMENT NEW SOURCE REVIEW REQUIREMENTS FOR THE
PARTIAL COUNTIES OF HENDERSON AND WEBSTER LOCATED WITHIN THE
KENTUCKY 2010 1-HOUR SULFUR DIOXIDE NONATTAINMENT AREA

The Kentucky Energy and Environment Cabinet (Cabinet) is requesting EPA's approval that the proposed State Implementation Plan (SIP) revision satisfies the requirements for nonattainment new source review (NNSR) for the Henderson-Webster County, Kentucky 2010 1-hour SO₂ nonattainment area. The draft SIP revision confirms that Kentucky's existing rules meet the requirements for an NNSR program as part of this SIP submittal.

In accordance with 40 CFR 51.102, the Cabinet is making this proposed plan available for public inspection and provides the opportunity for public comment concerning Kentucky's NNSR program in regard to the Henderson-Webster County, KY nonattainment area. The proposed plan can be found at <https://eec.ky.gov/Environmental-Protection/Air/Pages/Public-Notices.aspx>. The public comment period will be open from June 7, 2023 through July 13, 2023. Comments should be submitted in writing to the contact person by either mail or email.

The Cabinet will conduct a virtual public hearing on July 13, 2023, at 10:00 a.m. (Eastern Time). This hearing will be held to receive comments on the proposed SIP revision. This hearing is open to the public and all interested persons will be given the opportunity to present testimony. To ensure that all comments are accurately recorded, the Division requests that oral comments presented at the hearing also be provided in written form, if possible. It is not necessary that the hearing be held or attended in order for persons to comment on the proposed administrative regulation. If no request for a public hearing is received by July 6, 2023, the hearing will be cancelled, and notice of the cancellation will be posted at <https://eec.ky.gov/Environmental-Protection/Air/Pages/Public-Notices.aspx>. Written comments should be sent to the contact person and must be received by July 13, 2023, to be considered part of the public record.

Please note that registration is required to participate in this hearing. You must either email your name and mailing address to blake.borwig@ky.gov or mail this information to Blake Borwig, Division for Air Quality, 300 Sower Building, 2nd Floor, Frankfort, KY 40601. Please put "Registration for comment on the NNSR requirements for the partial counties of Henderson and Webster public hearing" as the subject line, and state in the body of the message if you plan to speak during the hearing.

CONTACT PERSON: Blake Borwig, Environmental Scientist II, Evaluation Section, Division for Air Quality, 300 Sower Boulevard, Frankfort, Kentucky 40601. Phone: (502) 782-2751; Email: blake.borwig@ky.gov.

The Energy and Environment Cabinet does not discriminate on the basis of race, color, national origin, sex, age, religion or disability and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford an individual with a disability an equal opportunity to participate in all services, programs and activities.