

MEMORANDUM

SUBJECT: Attainment Determination Policy for Sulfur Dioxide Nonattainment Areas

FROM: Sally L. Shaver, Director
Air Quality Strategies and Standards Division (MD-15)

TO: Director, Air, Pesticides and Toxics Management
Division, Regions I and IV
Director, Air and Waste Management Division,
Region II
Director, Air, Radiation and Toxics Division,
Region III
Director, Air and Radiation Division,
Region V
Director, Air, Pesticides and Toxics Division,
Region VI
Director, Air and Toxics Division,
Regions VII, VIII, IX, and X

Purpose

In accordance with section 107(d)(1)(C) of the Clean Air Act, several areas that did not meet the primary or secondary national ambient air quality standards (NAAQS) for sulfur dioxide (SO₂) were designated as nonattainment areas under operation of law. These areas were listed in an April 22, 1991 Federal Register notice (56 FR 16274). In subsequent years, additional SO₂ nonattainment areas were designated in Federal Register notices dated December 21, 1993 (58 FR 67334) and March 10, 1994 (58 FR 11193).

November 15, 1995 marks the attainment deadline for the initial group of nonattainment areas. No later than six months after the attainment date, EPA must determine whether or not these nonattainment areas have achieved the SO₂ NAAQS. This memorandum summarizes key issues for consideration when attainment

determinations for SO₂ nonattainment areas are to be made.

Determining Attainment Deadlines

The deadlines for achieving the SO₂ NAAQS depend upon whether an area fails to meet the primary standard, the secondary standard, or both. Section 192 of the Act requires attainment of the primary NAAQS in nonattainment areas within five years of the date an area is designated (for areas designated nonattainment by operation of law, the attainment deadline would be November 15, 1995). Section 172(a)(2) requires the secondary NAAQS to be attained as expeditiously as practicable. If an area is nonattainment for both the primary and secondary NAAQS, the State still must achieve the primary standard within five years of redesignation - even if EPA has granted a State more than five years to attain the secondary standard. Once established, the deadlines for attaining the SO₂ NAAQS are fixed. No extensions can be granted beyond the initial established deadline for attaining the SO₂ NAAQS.

Under section 179(c)(1) of the Act, EPA has up to six months beyond the attainment date to determine if the area in question has attained the standard. If EPA determines the area has attained the NAAQS, EPA will publish a Federal Register notice to this effect, and provide opportunity for public comment before a final determination is made. If EPA determines the NAAQS was not attained by the attainment date, the EPA will notify the State in writing, and publish a Federal Register notice documenting the failure to attain. These determinations will be made at the Regional office level.

Guidance for Determining Attainment Status

The EPA will determine whether or not a nonattainment area has attained the NAAQS based on air quality data (when available), dispersion modeling for that area, and a demonstration that the control strategy in the SIP has been fully implemented. A special or additional SIP submittal from the State is not required if the State has previously submitted a modeled attainment demonstration. If air quality data is used in the attainment determination, it will be data gathered from air quality monitoring sites that has been entered into the Aerometric Information Retrieval System (AIRS) data base.

The EPA will begin processing and analyzing data related to the attainment of the SO₂ NAAQS immediately after the applicable attainment date for the affected areas. Current EPA policy (pursuant to 40 CFR part 58) requires air quality data to be submitted to the AIRS data base no later than 90 days after the end of the first calendar quarter following the attainment date for the area. Because EPA must make the attainment determination no later than six months from the attainment date, States should submit the required air quality data as expeditiously as practicable, but no later than 90 days after the end of the first calendar quarter following the attainment date for

Summary

As stated in the beginning, this memorandum provides an overview of EPA's policy for making attainment determinations for SO₂ nonattainment areas. While section 107 (d)(3)(E) of the Clean Air Act lists other criteria that a State must meet before a nonattainment area can be redesignated to attainment, the demonstration of attainment is the most fundamental criteria each State is expected to meet.

The Clean Air Act, along with the pertinent parts of the Code of Federal Regulations are the basis for this policy. Additional guidance may also be found in the SO₂ Guideline Document (EPA-452/R-94-008, February 1994). If you or your staff have any additional questions or SO₂ program issues needing further discussion, contact Eric Crump at (919) 541-4719, or Laura McKelvey at (919) 541-5497.

cc: Joe Paisie, MD-15
Laura McKelvey, MD-15
Eric Crump, MD-15
Mike Thrift, OGC (2344)
Brian Hennessey, Region I (APO)
Kirk Wieber, Region II (2AWM-APB)
Dave Campbell, Region III (3AM10)
Steve Scofield, Region IV
Mary Onishack, Region V (AR-18J)
Tom Diggs, Region VI (6T-AP)
Wayne Kaiser, Region VII
Laurie Ostrand, Region VIII
Wally Woo, Region IX (A-2-3)
Kelly Huynh, Region X

I urge Regions to coordinate closely with OAQPS' Air Quality Standards and Strategies Division in determining whether SO2 redesignation requests may be subject to this policy and to ensure that states' submissions adequately address this and the previous policies' criteria for redesignating SO2 nonattainment areas to attainment.

cc: Lydia Wegman, AQSSD
David Mobley, EMAD
Joe Paisie, IPSP
Rich Ossias, OGC

the area. States should identify any issues concerning the validity of the data or discrepancies related to the data during this time period. The EPA will address these issues on a case-by-case basis, in accordance with 40 CFR part 50.

In any attainment determination, modeling will generally be necessary to (1) develop a comprehensive evaluation of source impacts in a given area, and (2) to determine areas of expected high SO₂ concentrations based on current conditions. As a general rule, areas designated nonattainment based on modeling will not be redesignated to attainment unless dispersion modeling indicates attainment has been achieved. Regional offices should consult with the Office of Air Quality Planning and Standards for guidance on the need for modeling in particular circumstances.

Section 179(c)(2) of the Act states that EPA may at any time revise or supplement the attainment determination if more complete information or analysis concerning the area's air quality as of the attainment date is obtained. The EPA interprets this to include cases where there are discrepancies concerning the validity of the data, or discrepancies revealed subsequent to an attainment determination.

Even if EPA determines that an area may be meeting the SO₂ NAAQS for a given period of time, this does not relieve the State of its responsibility to fulfill the administrative requirements listed in section 107(d)(3)(A) of the act. Even if EPA determines that an area has attained the NAAQS, the area will remain nonattainment until (1) the State has requested redesignation, and (2) EPA approves the State's request.

Consequences for Failure to Attain

If an area fails to attain the NAAQS by the attainment date, EPA will inform the State by letter, and publish a notice in the Federal Register. The EPA would then expect the State to implement contingency measures in the SIP in accordance with section 172(c)(9) of the Act. The EPA generally expects that all actions needed to implement these measures will occur within the time frame stated in the approved SIP.

Furthermore, Section 179(d) requires the State to submit a SIP revision within one year after the notice of failure to attain the NAAQS is published in the Federal Register. The revised SIP must meet all the requirements of sections 110 and 172, and also include "additional measures as the Administrator may reasonably prescribe, including all measures that can be feasibly implemented in the area in light of technological achievability, costs, and any non-air quality and other air quality related health and environmental impacts." One additional measure that could be required is to incorporate the contingency plan elements developed for the current SIP into the control strategy of the revised SIP. A new contingency plan would then have to be submitted with the SIP revision. The attainment date applicable to the revised SIP would be five years from the date of the notice of the failure to attain.