



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2022-0311; FRL-12956-01-R6]

Withdrawals of Findings of Failure To Submit State Implementation Plan and Finding of Failure To Attain for the Rusk and Panola Counties, Texas 2010 Sulfur Dioxide Primary National Ambient Air Quality Standard Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On May 16, 2025, the United States Court of Appeals for the Fifth Circuit (the Court) granted petitions for review of the EPA's nonattainment area designation for the Rusk and Panola Counties area, Texas for the 2010 SO₂ National Ambient Air Quality Standard (NAAQS). Accordingly, that nonattainment designation for the area has been vacated. The vacatur of the nonattainment designation necessarily requires the withdrawal of two contingent actions since the underlying designation is no longer valid: EPA's finding of failure to submit an attainment plan (FFS) issued on August 10, 2020, and EPA's finding of failure to attain the NAAQS by the attainment date (FFA) issued on December 17, 2024. The EPA is withdrawing these two final actions in accordance with the court's decision and finds that any requirements deriving from either the FFS or the FFA are no longer applicable.

DATES: This final rule is effective **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2022-0311, at <https://www.regulations.gov>.

Docket: The index to the docket for this action is available electronically at <https://www.regulations.gov>. While all documents in the docket are listed in the index,

some information may not be publicly available due to docket file size restrictions or content (e.g., Confidential Business Information (CBI)).

FOR FURTHER INFORMATION CONTACT: Andrew Lee, EPA Region 6 Office, Infrastructure and Ozone Section, telephone number: (214) 665-6750, email address: *lee.andrew.c@epa.gov*. Please call or e-mail the contact listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION: Throughout this document “we,” “us,” and “our” means the EPA.

I. Background

On June 22, 2010, the EPA published a new 1-hour primary SO₂ NAAQS of 75 parts per billion (ppb).¹ Subsequently, the EPA designated portions of Rusk and Panola Counties, Texas as nonattainment for this 2010 1-hour primary SO₂ NAAQS, effective January 12, 2017.² The primary major source of emissions in the area is the Martin Lake Steam Electric Station (Martin Lake), a coal-fired power plant owned by Luminant Generation Company LLC (Luminant), a subsidiary of Vistra Energy Corporation (Vistra). Under section 191 of the Clean Air Act (CAA), Texas was required to submit an SO₂ attainment plan to the EPA within 18 months of the effective date of the nonattainment designation, i.e., by no later than July 12, 2018, for the Rusk-Panola area. Under CAA section 179(c)(1), the EPA was required to determine whether the nonattainment area had attained the NAAQS by the applicable attainment date, in this case, January 12, 2022.

On August 10, 2020, the EPA published “Findings of Failure to Submit State Implementation Plans Required for Attainment of the 2010 1-Hour Primary Sulfur Dioxide (SO₂) National Ambient Air Quality Standard (NAAQS)” addressing

¹ See 75 FR 35520. See also 40 CFR 50.17(a)-(b).

² See 81 FR 89870 See also 40 CFR part 81, subpart C.

requirements for three SO₂ nonattainment areas, including the finding that Texas failed to submit the required SIP for the Rusk Panola nonattainment area by the July 12, 2018 CAA deadline.³ This finding, effective on September 9, 2020, triggered sanction clocks and the CAA section 110(c) requirement for the EPA to promulgate a federal implementation plan (FIP) for the area within two years of the finding (September 9, 2022) unless the state submitted and obtained EPA approval of a SIP revision correcting the deficiency. On February 28, 2022, the Texas Commission on Environmental Quality (TCEQ) submitted an attainment plan SIP for the Rusk Panola area. On August 24, 2022, the EPA determined that the submittal was complete under 40 CFR part 51, appendix V, which stopped the mandatory emissions offsets sanctions that were in effect and the 24-month sanction clock for the imposition of highway funding sanctions.⁴ However, this completeness determination did not eliminate the EPA's FIP obligation required by the FFS.

On December 17, 2024, the EPA published a “Finding of Failure To Attain the Primary 2010 One-Hour Sulfur Dioxide Standard” determining that Texas failed to attain the NAAQS for the Rusk Panola area by the January 12, 2022, CAA deadline. Under CAA section 179(d)(2), following a Finding of Failure to Attain, the responsible air agency has up to 12 months from the effective date of the determination to submit a revised SIP for the area demonstrating attainment. According to CAA section 179(d)(3), this revised SIP is to achieve attainment of the one-hour SO₂ NAAQS as expeditiously as practicable, but no later than 5 years from the effective date of the area's failure to attain.

II. Rationale for Withdrawals of the Finding of Failure To Submit and Finding of Failure to Attain for the Rusk Panola Area

³ See 85 FR 48111; this document also addressed another 2010 SO₂ nonattainment area.

⁴ Completeness Determination Letter from David Garcia, Air and Radiation Division Director—EPA Region 6 to Jon Niermann, Chairman, TCEQ, (August 24, 2022), available in the docket for this action.

Following the January 12, 2017, nonattainment designation of the Rusk Panola area, the State of Texas and industry petitioners (collectively, Petitioners) filed Petitions for Review challenging EPA’s final action. The Fifth Circuit initially denied the petitions for review and upheld the nonattainment designation on January 11, 2024. *Texas v. EPA*, 91 F.4th 280 (5th Cir. 2024), *vacated by*, 137 F.4th 353 (5th Cir. 2025). Subsequently, Petitioners filed a petition for rehearing en banc. On May 16, 2025, the Court, in a panel rehearing, issued a revised opinion granting the petitions for review. *Texas v. EPA*, 137 F.4th 353 (5th Cir. 2025). The Court’s mandate took effect on July 8, 2025, which vacated the nonattainment designation for the Rusk Panola area and remanded the designation of the area “...for EPA to consider the data that is available now” *Id.* at 375. As a result of the court’s decision in *Texas v. EPA*, the Rusk Panola area no longer retains a nonattainment designation and therefore the EPA is withdrawing the August 2020 FFS and December 2024 FFA. The August 2020 FFS was required under CAA section 179(a)(1) where the EPA “...finds that a state failed, for an area designated as nonattainment... to submit a plan...”. However, this finding is no longer appropriate in light of the court’s decision. The December 2024 FFA was required under CAA section 179(c) where the EPA must determine whether a nonattainment area has attained the NAAQS by the relevant attainment date. However, this finding is also no longer appropriate following the court’s vacatur of the designation. Pursuant to the court’s decision, the FFS for Rusk Panola must be withdrawn and the FFA for Rusk Panola must be withdrawn and removed from the Code of Federal Regulations (CFR).

III. Final Action

In accordance with the court’s decision in *Texas v. EPA*, the EPA is withdrawing the August 2020 finding that Texas failed to submit an attainment plan SIP for the Rusk Panola area. EPA is also withdrawing the December 2024 finding that the Rusk Panola area failed to attain the NAAQS by its applicable CAA attainment date. This action does

not impact the other areas addressed in the August 2020 FFS action. The requirements for the EPA to impose sanctions under CAA sections 179(a) and (b) and promulgate a FIP under CAA section 110(c) following an effective FFS are no longer applicable. The CAA requirement for Texas to submit a revised SIP for the Rusk Panola area demonstrating attainment under 179(d)(2) and the requirement for the Rusk Panola area to attain under an updated attainment date under 179(d)(3) following an effective FFA are no longer applicable.

The EPA is taking this action as a final rule without providing an opportunity for public comment or a public hearing because the EPA finds that the Administrative Procedure Act (APA) good cause exemption applies. In general, the APA requires that general notice of proposed rulemaking shall be published in the *Federal Register*. Such notice must provide an opportunity for public participation in the rulemaking process. However, the APA does provide an avenue for an agency to directly issue a final rulemaking in certain specific instances. This may occur when an agency for good cause finds (and incorporates the finding and a brief statement of reasons in the rule issued) that notice and public participation are impracticable, unnecessary, or contrary to the public interest. *See* 5 U.S.C. 553(b)(B). Because the court's mandate has already vacated the nonattainment area designation, EPA actions following are no longer valid and EPA must now reflect those changes. The EPA has determined that it is unnecessary to provide a public hearing or an opportunity for public comment on this action because the withdrawals of the August 2020 FFS as it applies to the Rusk Panola area and the December 2024 FFA are simply necessary ministerial acts to carry out the Fifth Circuit's judgment in *Texas v. EPA*. Because the court vacated the 2017 nonattainment designation for the Rusk Panola area, the EPA no longer has the authority to uphold findings relying on the former, now vacated designation. Therefore, in as much as this action to withdraw these findings merely implements the binding, nondiscretionary decision of the court, it

would serve no useful purpose to provide an opportunity for public comment or a public hearing on this issue as EPA no longer has authority to uphold those actions.

In addition, notice and comment would be contrary to the public interest because it would unnecessarily delay the withdrawal of the FFS and FFA and removal of the FFA from the CFR which could result in uncertainty for the state air agency and regulated industry about how the court's decision impacts the 2017 nonattainment designation, the 2020 and 2024 findings relying on this designation, and the sanctions and other requirements stemming from these findings. Promulgation of this rule soon after the court's decision serves to clarify that the vacatur of the nonattainment designation also serves to eliminate the basis for, and therefore requires a withdrawal of, the FFS and FFA. Given the potential costs and burdens on the State of Texas and industry associated with this uncertainty, it is in the public interest for the EPA to issue the withdrawals and amend the CFR without delay.

For those reasons, the EPA finds good cause to issue a final rulemaking pursuant to section 553 of the APA, 5 U.S.C. 553(b)(B).

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a significant regulatory action as defined in Executive Order 12866, as amended by Executive Order 14094, and was therefore not subject to a requirement for Executive Order 12866 review.

B. Executive Order 14192: Unleashing Prosperity Through Deregulation

This action is considered an Executive Order 14192 deregulatory action. This final rule provides burden reduction by withdrawing two rules that are no longer applicable to the State of Texas and associated industry.

C. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA.

This proposed action does not establish any new information collection requirements.

D. Regulatory Flexibility Act (RFA)

This rule is not subject to notice and comment requirements because the Agency has invoked the APA “good cause” exemption under 5 U.S.C. 553(b)(B).

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or Tribal governments or the private sector.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have Tribal implications as specified in Executive Order 13175. This action withdraws two rules impacting the State of Texas. No Tribe is subject to the requirement to submit an implementation plan under the findings of inadequacy relevant to this action. Thus, Executive Order 13175 does not apply to this action.

H. Executive Order: 13045 Protection of Children from Environmental Health & Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern health or safety risks that the EPA has reason to believe may

disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it withdraws two rules that are no longer applicable to the State of Texas and does not directly or disproportionately affect children

I. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act

This proposed action does not involve technical standards.

This action is subject to the Congressional Review Act (CRA), and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. 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 **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. 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, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: August 26, 2025.

Walter Mason,
Regional Administrator, Region 6.

For the reasons stated in the preamble, the Environmental Protection Agency 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 SS—Texas

§ 52.2277 [Amended]

2. Amend § 52.2277 by removing and reserving paragraph (c).

[FR Doc. 2025-17029 Filed: 9/4/2025 8:45 am; Publication Date: 9/5/2025]