

PRE-PUBLICATION NOTICE. The EPA Region 6 Regional Administrator, Ken McQueen, signed the following final rule on July 28, 2020, and EPA is submitting it for publication in the *Federal Register* (FR). EPA is providing this document solely for the convenience of interested parties. This document is not disseminated for purposes of EPA's Information Quality Guidelines and does not represent an Agency determination or policy. While we have taken steps to ensure the accuracy of this version of the rule, it is not the official version of the rule for purposes of compliance or effectiveness. Please refer to the official version in a forthcoming FR publication, which will appear on the Government Printing Office's govinfo website (<https://www.govinfo.gov/app/collection/fr>) and on Regulations.gov (<https://www.regulations.gov>) in Docket No. EPA-R06-OAR-2020-0363. Notwithstanding the fact that EPA is providing a pre-publication version, the final rule will not be promulgated until published in the *Federal Register*.

6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2020-0363; FRL-10012-84-Region 6]

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)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to find that Texas has failed to submit State Implementation Plans (SIPs) to satisfy certain nonattainment area planning requirements of the Clean Air Act (CAA) for the 2010 1-hour primary Sulfur Dioxide (SO₂) National Ambient Air Quality Standard (NAAQS). The purpose for the development and implementation of a nonattainment area SIP is to provide for attainment of the NAAQS as expeditiously as practicable following the designation of an area as nonattainment. This action establishes certain CAA deadlines for the EPA to impose sanctions if Texas does not submit a complete SIP for each nonattainment area addressing the outstanding requirements and

This document is a pre-publication version, signed by the EPA Region 6 Regional Administrator, Ken McQueen, on 7/28/2020. EPA is submitting it for publication in the *Federal Register*. We have taken steps to ensure the accuracy of this version, but it is not the official version. Notwithstanding the fact that EPA is sharing a pre-publication version, the final rule will not be promulgated until published in the *Federal Register*.

for the EPA to promulgate a Federal Implementation Plan (FIP) to address any outstanding SIP requirements.

EFFECTIVE DATE: This action is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: General questions concerning this document should be addressed to Robert Imhoff, EPA Region 6, Air and Radiation Division, by telephone (214) 665-7262 or by email at Imhoff.Robert@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Notice and Comment under the Administrative Procedure Act (APA)

Section 553 of the APA, Title 5 United States Code (U.S.C.) Section 553(b)(3)(B), provides that, when an agency for good cause finds that notice and public procedures are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. The EPA has determined that there is good cause for making this final agency action without prior proposal and opportunity for comment because no significant EPA judgment is involved in making findings of failure to submit SIPs, or elements of SIPs, required by the CAA, where states have made no submission to meet the requirement. Thus, notice and public procedures are unnecessary to take this action. The EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(3)(B).

B. How can I get copies of this document and other related information?

This document is a pre-publication version, signed by the EPA Region 6 Regional Administrator, Ken McQueen, on 7/28/2020. EPA is submitting it for publication in the *Federal Register*. We have taken steps to ensure the accuracy of this version, but it is not the official version. Notwithstanding the fact that EPA is sharing a pre-publication version, the final rule will not be promulgated until published in the *Federal Register*.

The EPA has established a docket for this action under Docket ID No. **EPA-R06-OAR-2020-0363**. Publicly available docket materials are available electronically through <http://www.regulations.gov>. Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office will be closed to the public to reduce the risk of transmitting COVID-19. Please call or e-mail the contact listed above if you need alternative access to material indexed but not provided in the docket.

C. How is the preamble organized?

Table of Contents

- I. General Information
 - A. Notice and Comment under the Administrative Procedure Act (APA)
 - B. How can I get copies of this document and other related information?
 - C. How is the preamble organized?
- II. Background
- III. Consequences of Findings of Failure to Submit
- IV. Findings of Failure to Submit for State that Failed to Make a Nonattainment Area SIP Submittal
- V. Environmental Justice Considerations
- VI. Statutory and Executive Order Reviews
 - A. Executive Order 12866: Regulatory Planning and Executive Order 13563: Improving Regulation and Regulatory Review
 - B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs
 - C. Paperwork Reduction Act (PRA)
 - D. Regulatory Flexibility Act (RFA)
 - E. Unfunded Mandates Reform Act of 1995 (UMRA)
 - F. Executive Order 13132: Federalism
 - G. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
 - H. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks
 - I. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use
 - J. National Technology Transfer and Advancement Act (NTTAA)

This document is a pre-publication version, signed by the EPA Region 6 Regional Administrator, Ken McQueen, on 7/28/2020. EPA is submitting it for publication in the *Federal Register*. We have taken steps to ensure the accuracy of this version, but it is not the official version. Notwithstanding the fact that EPA is sharing a pre-publication version, the final rule will not be promulgated until published in the *Federal Register*.

- K. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority and Low Income Populations
- L. Congressional Review Act (CRA)
- M. Judicial Review

II. Background

In June 2010, the EPA promulgated a new 1-hour primary SO₂ NAAQS of 75 parts per billion (ppb), which is met when the 3-year average of the annual 99th percentile of daily maximum 1-hour average concentrations does not exceed 75 ppb, as determined in accordance with Appendix T of Title 40 Code of Federal Regulations (40 CFR) part 50. *See* 40 CFR 50.17(a)-(b). On June 30, 2016, the EPA signed the final action designating 61 areas as part of the second round of area designations for the 2010 SO₂ NAAQS (published at 81 FR 45039, July 12, 2016).¹ On November 29, 2016, the EPA supplemented its Round 2 designations by signing a supplemental final action that included nonattainment designations for the 2010 1-hour primary SO₂ NAAQS for portions of Rusk and Panola Counties, portions of Freestone and Anderson Counties, and a portion of Titus County (“Round 2 Supplement”) (81 FR 89870, December 13, 2016). These latter area designations had an effective date of January 12, 2017.

Areas designated as nonattainment for the SO₂ NAAQS are subject to the general nonattainment area planning requirements of CAA section 172 and to the SO₂-specific planning requirements of subpart 5 of part D of Title I of the CAA (sections 191 and 192). All

¹ The EPA completed its first round of initial area designations for the 2010 1-hour primary SO₂ NAAQS on August 5, 2013, with an effective date of October 4, 2013. Under a court order issued on March 2, 2015, the EPA is required to complete designations in three additional rounds of designations. The EPA must complete the final, Round 4 designations for the remaining undesignated areas of the country by no later than December 31, 2020. The findings in this document apply only to those areas that were designated as part of Round 2 on December 13, 2016, and where, as of signature of this action, Texas failed to submit required complete plans.

This document is a pre-publication version, signed by the EPA Region 6 Regional Administrator, Ken McQueen, on 7/28/2020. EPA is submitting it for publication in the *Federal Register*. We have taken steps to ensure the accuracy of this version, but it is not the official version. Notwithstanding the fact that EPA is sharing a pre-publication version, the final rule will not be promulgated until published in the *Federal Register*.

components of the SO₂ part D nonattainment area SIP, including the emissions inventory, attainment demonstration, reasonably available control measures (RACM) including reasonably available control technology (RACT), enforceable emission limitations and control measures, reasonable further progress (RFP) plan, nonattainment new source review (NNSR), and contingency measures, are due to the EPA within 18 months of the effective date of designation of an area under CAA section 191. Thus, the nonattainment area SIPs for the Texas areas designated effective January 12, 2017, were due on July 13, 2018. These SIPs were required to demonstrate that their respective areas will attain the NAAQS as expeditiously as practicable, but no later than 5 years from the effective date of designation, or by January 12, 2022.

III. Consequences of Findings of Failure to Submit

If the EPA finds that a state has failed to make the required SIP submittal or that a submitted SIP is incomplete, then CAA section 179(a) establishes specific consequences, including the imposition of mandatory sanctions for the affected area, after a period of time, if within that period the state does not submit a complete SIP for the nonattainment area.

Additionally, such a finding also triggers an obligation under CAA section 110(c) for the EPA to promulgate a FIP no later than 2 years after the finding of failure to submit if the affected state has not submitted, and EPA has not approved, the required SIP submittal.

If the EPA has not affirmatively determined that a state has made the required complete SIP submittal for an area within 18 months of the effective date of this rulemaking, then, pursuant to CAA section 179(a) and (b) and 40 CFR 52.31, the offset sanction identified in CAA section 179(b)(2) will apply in the affected nonattainment area. If the EPA has not affirmatively

This document is a pre-publication version, signed by the EPA Region 6 Regional Administrator, Ken McQueen, on 7/28/2020. EPA is submitting it for publication in the *Federal Register*. We have taken steps to ensure the accuracy of this version, but it is not the official version. Notwithstanding the fact that EPA is sharing a pre-publication version, the final rule will not be promulgated until published in the *Federal Register*.

determined that the state has made a complete submission within 6 months after the offset sanction is imposed, then the highway funding sanction will apply in the affected nonattainment area, in accordance with CAA section 179(b)(1) and 40 CFR 52.31. The sanctions will not take effect if, within 18 months after the date of these findings, the EPA affirmatively determines that the affected state has made a complete SIP submittal addressing the deficiency for which the finding was made. Additionally, if the state makes the required SIP submittal and the EPA takes final action to approve the submittal within 2 years of the effective date of these findings, the EPA is not required to promulgate a FIP for the affected nonattainment area.

IV. Findings of Failure to Submit for State that Failed to Make a Nonattainment Area SIP Submittal

As of the date of signature of this action, Texas failed to make complete SIP submittals required under part D of Title 1 of the CAA by July 13, 2018, for the three areas designated nonattainment effective January 12, 2017. The EPA is, therefore, issuing Texas a finding of failure to submit for the following three nonattainment areas: portions of Anderson-Freestone Counties, Texas; portions of Rusk-Panola Counties Texas; and a portion of Titus County, Texas.

Table 1. 2010 1-Hour Primary SO₂ NAAQS Nonattainment Areas Affected by These Findings of Failure to Submit:

<u>State</u>	<u>Nonattainment Area</u>
Texas	Anderson-Freestone Counties(p)*, Rusk-Panola Counties (p), and Titus County (p)

*(p) indicates partial county

This document is a pre-publication version, signed by the EPA Region 6 Regional Administrator, Ken McQueen, on 7/28/2020. EPA is submitting it for publication in the *Federal Register*. We have taken steps to ensure the accuracy of this version, but it is not the official version. Notwithstanding the fact that EPA is sharing a pre-publication version, the final rule will not be promulgated until published in the *Federal Register*.

V. Environmental Justice Considerations

The EPA believes that the human health or environmental risks addressed by this action will not have disproportionately high or adverse human health or environmental effects on minority, low-income, or indigenous populations because it does not affect the level of protection provided to human health or the environment under the SO₂ NAAQS. The purpose of this rule is to make a finding that Texas failed to submit the required SIPs to provide for timely attainment of the 1-hour primary SO₂ NAAQS, which will result in certain CAA-required deadlines for actions to provide for such attainment. In finding that Texas failed to submit a complete SIP that satisfies the nonattainment area plan requirements under section 172 and subpart 5 of part D of Title I of the CAA (sections 191 and 192) for the 1-hour primary SO₂ NAAQS, this action does not adversely affect the level of protection provided for human health or the environment. Rather, it is intended that the actions and deadlines resulting from this notice will in fact lead to greater protection for United States citizens, including minority, low-income, or indigenous populations, by ensuring that states meet their statutory obligation to develop and submit SIPs to ensure that areas make progress toward attaining the 1-hour primary SO₂ NAAQS.

VI. Statutory and Executive Order Reviews

A. Executive Orders 12866: Regulatory Planning and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was, therefore, not submitted to the Office of Management and Budget (OMB) for review.

This document is a pre-publication version, signed by the EPA Region 6 Regional Administrator, Ken McQueen, on 7/28/2020. EPA is submitting it for publication in the *Federal Register*. We have taken steps to ensure the accuracy of this version, but it is not the official version. Notwithstanding the fact that EPA is sharing a pre-publication version, the final rule will not be promulgated until published in the *Federal Register*.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not an Executive Order 13771 regulatory action because it finds that Texas failed to meet the requirement in the CAA to submit SIPs under section 172 and subpart 5 of part D of Title I of the CAA (sections 191 and 192) for the SO₂ NAAQS.

C. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act. This final rule does not establish any new information collection requirement apart from what is already required by law. This rule relates to the requirement in the CAA for states to submit SIPs under section 172 and subpart 5 of part D of Title I of the CAA (sections 191 and 192) which address the statutory requirements that apply to areas designated as nonattainment for the SO₂ NAAQS.

D. Regulatory Flexibility Act (RFA)

I certify that this rule will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. The rule is a finding that Texas has not made the necessary SIP submission for certain nonattainment areas to meet the requirements of part D of title I of the CAA.

E. Unfunded Mandates Reform Act of 1995 (UMRA)

This action does not contain any 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 document is a pre-publication version, signed by the EPA Region 6 Regional Administrator, Ken McQueen, on 7/28/2020. EPA is submitting it for publication in the *Federal Register*. We have taken steps to ensure the accuracy of this version, but it is not the official version. Notwithstanding the fact that EPA is sharing a pre-publication version, the final rule will not be promulgated until published in the *Federal Register*.

This action does not have federalism implications. It will not have substantial direct effects on Texas, on the relationship between the national government and Texas, 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 rule finds that Texas has failed to complete the requirement in the CAA to submit SIPs under section 172 and subpart 5 of part D of Title I of the CAA (sections 191 and 192) for the SO₂ NAAQS. No tribe is subject to the requirement to submit an implementation plan under section 172 or under subpart 5 of part D of Title I of the CAA. Thus, Executive Order 13175 does not apply to this action.

H. Executive Order 13045: Protection of Children from Environmental Health and 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 is a finding that Texas has failed to submit a complete SIP that satisfies the nonattainment area plan requirements under section 172 and subpart 5 of part D of Title I of the CAA and does not directly or disproportionately affect children.

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

This document is a pre-publication version, signed by the EPA Region 6 Regional Administrator, Ken McQueen, on 7/28/2020. EPA is submitting it for publication in the *Federal Register*. We have taken steps to ensure the accuracy of this version, but it is not the official version. Notwithstanding the fact that EPA is sharing a pre-publication version, the final rule will not be promulgated until published in the *Federal Register*.

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 (NTTAA)

This rulemaking does not involve technical standards.

K. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority and Low-Income Populations

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income, or indigenous populations. In finding that Texas has failed to submit a complete SIP that satisfies the nonattainment area planning requirements under section 172 and subpart 5 of part D of Title I of the CAA, this action does not adversely affect the level of protection provided to human health or the environment.

L. Congressional Review Act (CRA)

This action is subject to the 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).

M. Judicial Review

This final action consists of a Finding of Failure to Submit certain required SIP provisions for the three identified areas in Texas designated nonattainment for the 2010 SO₂ NAAQS. In accordance with the CAA Section 307(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the 5th Circuit within 60 days from

This document is a pre-publication version, signed by the EPA Region 6 Regional Administrator, Ken McQueen, on 7/28/2020. EPA is submitting it for publication in the *Federal Register*. We have taken steps to ensure the accuracy of this version, but it is not the official version. Notwithstanding the fact that EPA is sharing a pre-publication version, the final rule will not be promulgated until published in the *Federal Register*.

the date this final action is published in the Federal Register. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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).)

This document is a pre-publication version, signed by the EPA Region 6 Regional Administrator, Ken McQueen, on 7/28/2020. EPA is submitting it for publication in the *Federal Register*. We have taken steps to ensure the accuracy of this version, but it is not the official version. Notwithstanding the fact that EPA is sharing a pre-publication version, the final rule will not be promulgated until published in the *Federal Register*.

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practice and procedures, Air pollution control, Approval and promulgation of implementation plans, Incorporation by reference, Intergovernmental relations, and Reporting and recordkeeping requirements.

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

Dated: July 28, 2020.

Kenley McQueen,
Regional Administrator, Region 6.