on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Regulatory Flexibility Act Certification

The Secretary certifies that the proposed waiver and extension of the project period would not have a significant economic impact on a substantial number of small entities. The only entities that would be affected by the proposed waiver and extension of the project period are the seven current ALN 84.263C grantees.

The Secretary certifies that the proposed waiver and extension would not have a significant economic impact on these entities, because the extension of an existing project period imposes minimal compliance costs, and the activities required to support the additional year of funding would not impose additional regulatory burdens or require unnecessary Federal supervision.

Paperwork Reduction Act of 1995

This notice of proposed waiver and extension of the project period does not contain any information collection requirements.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

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Glenna Wright-Gallo,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2023–21852 Filed 9–29–23; 11:15 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2022–0309; FRL–10903–02–R6]

Air Plan Disapproval; Texas; Contingency Measures for the Dallas–Fort Worth and Houston–Galveston–Brazoria Ozone Nonattainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is disapproving revisions to the Texas State Implementation Plan (SIP) for the Dallas–Fort Worth (DFW) and Houston–Galveston–Brazoria (HGB) Serious ozone nonattainment areas for the 2008 ozone National Ambient Air Quality Standard (NAAQS). Specifically, EPA is disapproving the portion of these SIP revisions that the state intended to address contingency measure requirements. Contingency measures are control requirements in a nonattainment area SIP that would take effect should the area fail to meet Reasonable Further Progress (RFP) emissions reductions requirements or fail to attain the NAAQS by the applicable attainment date.

DATES: This rule is effective on November 2, 2023.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2022–0309. 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 or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet. Publicly available docket materials are available electronically through *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Jeff Riley, EPA Region 6 Office, Infrastructure & Ozone Section, 214–665–8542, *riley.jeffrey@epa.gov.* Please call or email 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

The background for this action is discussed in detail in our April 21, 2023, proposal (88 FR 24522).[1] In the April 2023 document, we proposed to disapprove portions of the May 13, 2020, Texas SIP revisions addressing requirements for the 2008 8-hour ozone NAAQS for the two Serious ozone nonattainment areas in Texas—the DFW and HGB areas. As Serious ozone nonattainment areas, the DFW Area (Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise counties) and the HGB Area (Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller counties) were both subject to CAA section 172(c)(9) for contingency measures as well as CAA 182(c)(9) for the Serious ozone nonattainment area requirements. As such, the state must adopt and submit contingency measures for implementation should the area fail to meet RFP requirements or fail to attain the 2008 ozone NAAQS by the applicable attainment date. The May 13, 2020, SIP submissions included provisions intended to satisfy the contingency measures requirement for both the DFW and HGB areas. For each area, the Texas Commission on Environmental Quality (TCEQ or State) identified the emission reductions from already-implemented mobile source measures resulting from the incremental turnover of the motor vehicle fleet each year to meet the contingency measures requirements.

As explained in the April 2023 proposal, the U.S. Court of Appeals for the District of Columbia Circuit (''D.C. Circuit'') issued a relevant decision in response to challenges to EPA's rule implementing the 2015 ozone NAAQS (83 FR 62998 (December 6, 2018)). *Sierra Club, et al.* v. *EPA,* 985 F.3d 1055 (D.C. Cir. 2021).[2] Among the rulings in this decision, the D.C. Circuit vacated EPA's interpretation of the CAA that had previously allowed states to rely on already-implemented control measures to meet the statutory requirements of CAA section 172(c)(9) or 182(c)(9) for

[1] Henceforth, we refer to this proposal as ''the April 2023 document'' or ''the April 2023 proposal''. This proposal is provided in the docket for this action.

[2] See *Bahr* v. *EPA,* 836 F.3d 1218 (9th Cir. 2016) and *Sierra Club* v. *EPA,* 985 F.3d 1055 (D.C. Cir. 2021) (applying the *Bahr* reasoning nationwide).

contingency measures in nonattainment plans for the ozone NAAQS (see 83 FR 62998, 63026–27). The Court's interpretation of the statute in the *Sierra Club* decision, which requires contingency measures be prospective and conditional, applies across the U.S.[3] EPA acknowledges that it had previously interpreted the requirement differently, but now agrees that the plain language of section 172(c)(9) and section 182(c)(9) require that contingency measures be both conditional and prospective. EPA's prior interpretation was premised on the theory that the statutory language is ambiguous, and that it was reasonable to interpret it to allow for other approaches.

Our April 2023 document proposed disapproval of the contingency measure element of the May 13, 2020 SIP submissions for the DFW and HGB areas for purposes of the 2008 ozone NAAQS because the contingency measures identified by the State consisted entirely of emission reductions from measures that would occur regardless of whether the nonattainment area would fail to meet RFP or to attain by the applicable attainment date. As such, these measures do not satisfy the requirements of CAA sections 172(c)(9) and 182(c)(9) that contingency measures be both prospective and conditional, and thus go into effect only upon one of the statutory triggering events.

The comment period on our April 2023 proposal closed on May 22, 2023. We received one relevant supportive comment from the Harris County Attorney's Office (HCAO), and one set of relevant adverse comments from the TCEQ.[4] HCAO supported EPA's proposed disapproval of the HGB area contingency measures and emphasized the need for additional emissions reductions in the face of the area's continuing ozone pollution challenges. TCEQ disagreed with EPA's interpretation of the CAA contingency measure requirement and Federal case law, arguing that our proposed disapproval was inconsistent with past Agency decisions on Texas nonattainment SIP elements. Our responses to the comments follow.

[3] Citing previous caselaw, the Court stated that contingency measures that are to take effect upon failure to satisfy standards are likewise not measures that have been implemented before such failure occurs (internal quotations omitted). *Sierra Club, et al.* v. *EPA,* 985 F.3d 1055, 1067–68 (D.C. Cir. 2021).

[4] Henceforth, we refer to the HCAO and the TCEQ as ''the commenter(s)''. These comments are provided in the docket at *https://www.regulations.gov* under docket ID: EPA–R06–OAR–2022–0309.

II. Response to Comments

Comment: The commenter supports EPA's proposal to disapprove the contingency measures element of the May 13, 2020 Texas SIP revisions for the HGB 2008 8-hour ozone NAAQS Serious nonattainment area, claiming that the SIP submission fails to protect the public's health and welfare by failing to provide emission reductions from contingency measures that would have been triggered by EPA's October 7, 2022, determination that the HGB Serious nonattainment area failed to attain the 2008 ozone NAAQS by the applicable attainment date.[5] The commenter states that emissions reductions from Texas sources would assist in mitigating the public health impacts caused by ozone in the HGB area, and describes the health effects of exposure to ozone, including the effects on children and disadvantaged communities in the HGB area. The commenter includes numerous health studies in support of these statements.

Response: The EPA acknowledges the commenter's views and submission of the studies regarding exposure to ground level ozone. We agree with the commenter that the HGB area faces significant challenges in attaining the applicable ozone standards, and that additional control measures, including contingency measures, would provide meaningful emission reductions towards improving local air quality. EPA agrees that the purpose of contingency measures is to provide for additional emission reductions that will go into effect in areas in the event of a failure to meet RFP or failure to attain, to help to mitigate the problem during the period that the state is developing a new SIP submission to impose additional requirements as required by the applicable nonattainment classification.

Comment: The commenter states that the EPA should withdraw its proposed disapproval of the DFW and HGB 2008 ozone NAAQS contingency measures because the action is inconsistent with EPA's past practice of taking no action on SIP elements for Texas nonattainment areas that have already been reclassified.

Response: To support the idea that EPA's April 2023 proposal is inconsistent with past practice, and that the contingency measures SIP element for the DFW and HGB 2008 eight-hour ozone NAAQS nonattainment areas under the Serious classification are now moot, the commenter cites a single memo dated August 23, 2019.[6] EPA has included the 2019 memo in the docket for this rulemaking action. Upon review, this memo is incorrect, and should not have been understood to be an official agency policy statement or interpretation of the statute concerning the contingency measures requirement. The EPA employee who signed this memo did not have the authority to speak on behalf of the Agency regarding these matters. Furthermore, because the 2019 memo does not accurately reflect the views of the EPA and is not evidence of any previous position, EPA has never relied on the 2019 memo to support any action. EPA is accordingly taking this opportunity to officially retract the 2019 memo.

Second, to the extent that the 2019 memo may have inadvertently suggested that Texas' contingency measures SIP submittal from May 13, 2020, is somehow moot upon reclassification of these areas to Severe ozone nonattainment, that does not represent EPA's position. EPA does not agree with such an interpretation of section 172(c)(9) and section 182(c)(9). EPA does not agree that the contingency measures SIP element is moot in this situation, because one of the specific events that requires the triggering of such provisions has in fact occurred (*i.e.,* failure to attain by the applicable attainment date). It is simply not logical to conclude that a reclassification to the next higher classification that is required by a failure to attain by the attainment date (see CAA 181(b)(2)) would moot the contingency measure requirement that is required to be triggered by the same failure to attain (see CAA 172(c)(9)). Such an approach would lead to absurd results that would effectively render the contingency measure requirement meaningless. Lastly, the commenter did not cite any other past EPA actions to support the claim that the April 2023 proposal conflicts with past EPA actions. EPA does not find this isolated, incorrect, and erroneously issued 2019 memo compelling evidence of precedent or practice on the matter of contingency measures.

A reclassification occurs upon an EPA determination that an area failed to attain by its attainment date. That determination similarly triggers the requirement to implement contingency measures. Because the DFW and HGB areas did not attain by the applicable

[5] Note EPA's recent final determination that the DFW and HGB Serious nonattainment areas failed to attain the 2008 ozone NAAQS by the areas' attainment date. 87 FR 60926 (October 7, 2022).

[6] Memorandum to file with subject ''No EPA Action to be Taken on 3 Outstanding Texas Moderate Area Ozone State Implementation Plan Revisions (SIPs)'', dated August 23, 2019 (2019 memo).

Serious area attainment date, contingency measures should have already gone into effect, and should still go into effect as soon as reasonably possible. As discussed further below, the contingency measures submitted by the State for purposes of the Serious area attainment plan are not approvable, and the State should take action promptly to replace them.

As detailed in our April 2023 proposed action, the D.C. Circuit vacated EPA's prior interpretation of the CAA that allowed states to rely on already-implemented control measures to meet the statutory requirements of CAA section 172(c)(9) and 182(c)(9) for contingency measures in nonattainment plans for the ozone NAAQS. The effect of this decision is that the statutory requirement that contingency measures must be prospective and conditional applies across the U.S. Continued adherence to the now-invalidated prior interpretation, including agency policy statements to justify past practice, does not harmonize with the D.C. Circuit decision and is therefore not correct. In arguing that EPA's proposed disapproval is inconsistent with past practice, the commenter acknowledges the reclassification of the DFW and HGB areas to Severe nonattainment areas on the effective date of EPA's October 7, 2022, final action finding that these areas failed to attain the 2008 ozone NAAQS by the applicable attainment date for Serious areas (87 FR 60926, October 7, 2022). Such failure to attain by the applicable attainment date is explicitly identified in the language of CAA section 172(c)(9) as one of the events triggering implementation of contingency measures. The May 13, 2020, Texas SIP revisions did not establish prospective and conditional DFW and HGB area contingency measures whose implementation would be triggered by EPA's finding that the areas had failed to attain.

Per the statute and relevant court decisions, EPA must disapprove the contingency measures element of Texas' May 13, 2020, submittal for the DFW area because these measures are based upon emissions reductions from already-implemented measures that would occur regardless of whether there was a triggering event, and therefore they are not prospective and conditional as required by statute.[7]

On May 10, 2021 (86 FR 24717), EPA finalized its approval of the HGB area RFP demonstration and associated motor vehicle emissions budgets (budgets), and a revised 2011 base year emissions inventory. In that final rulemaking, we did not take final action on our October 29, 2020, proposed approval of the contingency measures submitted by the State in the May 13, 2020, SIP revision submission for the HGB area. EPA explained that it was reexamining the contingency measures element of the TCEQ submission for the HGB area in light of the D.C. Circuit decision, and that it would address those contingency measures in a separate future action. Consistent with our interpretation of the CAA contingency measures requirement for the DFW area subsequent to the D.C. Circuit decision, EPA must also disapprove the contingency measures element of Texas' May 13, 2020, submittal for the HGB area. Our April 2023 document proposed disapproval of the contingency measure element of the May 13, 2020 SIP submissions for the DFW and HGB areas for purposes of the 2008 ozone NAAQS.

Comment: The commenter disagrees that EPA's disapproval of the DFW and HGB 2008 ozone NAAQS Serious area contingency measures would provide the basis for imposition of a transportation conformity freeze in these areas upon the effective date of EPA's final action and therefore states it was not necessary for EPA to discuss the possibility of a protective finding.[8]

Response: EPA agrees with TCEQ on the limited ground that it was not necessary to discuss the possibility of a transportation conformity freeze or the eligibility of the Dallas-Fort Worth and Houston-Galveston-Brazoria areas for protective findings (as defined in 40 CFR 93.101) under the transportation conformity regulations in the action proposing the disapproval of contingency measures for these areas for the 2008 ozone NAAQS. Thus, EPA is not taking final action on the protective finding discussed in the proposal and a transportation conformity freeze will not occur. A transportation conformity freeze would not occur in either of these areas under these circumstances because EPA is only disapproving contingency measures. Moreover, the State did not submit the contingency measures to provide emission reductions included in the areas' approved RFP plans and the associated motor vehicle emissions budgets.[9] As such EPA's disapproval of the contingency measures would not impact the approval of the RFP plans and motor vehicle emissions budgets. Therefore, the approved motor vehicle emissions budgets would continue to be used in transportation conformity determinations by the metropolitan planning organizations for the Dallas and Houston areas after the effective date of the disapproval of the contingency measures.

Comment: The commenter asserts that EPA's prior allowance of already-implemented control measures that obtain future emission reductions was an appropriate interpretation of the CAA contingency measure requirement, and one that states are capable of achieving.

Response: We disagree with the commenter's assertion that EPA's prior interpretation of the CAA contingency measure requirement remains valid. Courts have now ruled, and EPA now acknowledges, that the prior interpretation was invalid. *Sierra Club, et al.* v. *EPA,* 985 F.3d 1055 (D.C. Cir. 2021). The express statutory language of CAA section 172(c)(9) requires that contingency measures be both prospective and conditional. Thus, reliance on emission reductions from existing implemented measures, that will occur regardless of whether there is a triggering event, simply does not meet this requirement for contingency measures. TCEQ appears to disagree with the D.C. Circuit's decision and reasoning in *Sierra Club.* EPA cannot disregard this decision. The Agency's actions, including this rulemaking, must comport with applicable caselaw, which in this situation includes the D.C. Circuit's decision in *Sierra Club.* EPA Region 6 recognizes the DFW and HGB areas face significant challenges in attaining the applicable ozone standards. We are available to assist the State with case-by-case questions regarding situations specific to each nonattainment area in the development of approvable contingency measures for ozone reductions, consistent with the statute and relevant court decisions.

Comment: The commenter contends that because Texas developed and submitted the DFW and HGB 2008 ozone NAAQS Serious area contingency measures in accordance with the requirements and statutory interpretation applicable at the time of

[7] See *Bahr* v. *EPA,* 836 F.3d 1218 (9th Cir. 2016) and *Sierra Club* v. *EPA,* 985 F.3d 1055 (D.C. Cir. 2021) (applying the *Bahr* reasoning nationwide).

[8] The transportation conformity regulation defines a ''protective finding'' as a determination by EPA that a submitted control strategy implementation plan revision contains adopted control measures or written commitments to adopt enforceable control measures that fully satisfy the emissions reductions requirements relevant to the statutory provision for which the implementation plan revision was submitted, such as reasonable further progress or attainment. (See 40 CFR 93.101.)

[9] See, 86 FR 24717 (May 10, 2021) (final rule approving Reasonable Further Progress Plan for the Houston-Galveston-Brazoria Ozone Nonattainment Area); 88 FR 24693 (April 24, 2023) (final rule approving Reasonable Further Progress Plan for the Dallas-Fort Worth Ozone Nonattainment Area).

submittal, EPA should have finalized its proposed approvals of the contingency measures.

Response: We acknowledge TCEQ's development and timely May 13, 2020 submittal of the DFW and HGB contingency plans to meet EPA's August 3, 2020, submittal deadline for the 2008 ozone Serious SIP revisions, and that these submissions were consistent with past EPA approvals of already-implemented contingency measures.[10] EPA must act upon SIP submissions in full consideration of the established requirements and statutory interpretations, including court rulings, that apply at the time of EPA's action. In this situation, the D.C. Circuit has made clear that EPA and Texas' prior statutory interpretation concerning contingency measures is not consistent with the CAA, and approval of contingency measures that are not prospective and conditional would be inconsistent with the CAA. Therefore, it was not possible for EPA to proceed with an approval after the D.C. Circuit's decision in *Sierra Club.* The SIP submissions at issue in this action were still pending before the Agency when the D.C. Circuit issued the relevant court decision, and EPA must now take action consistent with that decision.

The DFW RFP proposal comment period ended on November 9, 2020, and relevant adverse comments were received on EPA's proposed approval.[11] As a required part of the Agency's rulemaking process, EPA must review, evaluate, and respond to all relevant comments in the issuance of a final action. EPA was timely in conducting the review and evaluation of such comments in the development of our final action. EPA did not complete this process, and did not take final action, in advance of the January 2021 D.C. Circuit decision. Had it done so more quickly, however, this could potentially have led to a need for EPA to exercise its authority under section 110(k)(6) or section 110(k)(5) after such approval. But in this rulemaking, EPA must adhere to its obligations under section 110(k)(2), (3), and (4) to approve, disapprove, conditionally approve, in whole or in part, the contingency measures in the SIP submissions at issue. EPA may only approve those SIP provisions that actually meet applicable legal requirements, such as the requirement that contingency measures must be conditional and prospective. Similarly, EPA must also adhere to its obligations under section 110(l) which directs, inter alia, that the agency shall not approve a revision to a SIP unless it meets applicable requirements of the CAA.

Comment: The commenter argues that because the DFW and HGB areas have met the applicable Serious area RFP requirements for the 2008 ozone NAAQS, there is no need for contingency measures for failure to meet RFP. Therefore, the commenter argues that EPA should not have disapproved the contingency measures with respect to RFP requirements.

Response: We agree with the commenter that the DFW and HGB 2008 8-hour ozone NAAQS Serious nonattainment areas did meet RFP requirements, as was recognized by EPA's July 1, 2021 determination that the 2008 ozone NAAQS Milestone Compliance Demonstration for the 2020 Calendar Year adequately established that the January 1, 2021 RFP milestone emission reductions were met.[12] However, although the RFP contingency measures were not triggered by a failure of either area to meet RFP emission reductions requirements, the State relied on those same already-implemented mobile source fleet turnover reductions as contingency measures for purposes of a failure to attain the NAAQS. Thus, even if contingency measures were not needed for purposes of a failure to meet RFP, such measures were still needed in the event of a failure to attain. As previously noted, on October 7, 2022, EPA issued a final determination that the DFW and HGB Serious nonattainment areas failed to attain the 2008 8-hour ozone NAAQS by the applicable attainment dates. CAA section 172(c)(9) requires contingency measures to be implemented upon an area's failure to meet RFP requirements or failure to attain the NAAQS by the applicable attainment date.

The May 13, 2020, Texas SIP submissions did not include prospective and conditional contingency measures for the DFW or HGB areas that would be triggered by EPA's finding that the areas had failed to attain, as required by section 172(c)(9). Although the RFP contingency measures would not have been triggered by a failure to meet RFP emission reductions, those same measures would have been required for failure to attain and therefore triggered for implementation by EPA's October 7, 2022 final determination. Put another way, and assuming that the state had separate contingency measures triggered by failure to meet RFP and contingency measures triggered by failure to attain, EPA agrees with TCEQ that there is no longer a need for contingency measures triggered by failure to meet RFP for the DFW and HGB Serious nonattainment plan for purposes of the 2008 8-hour ozone NAAQS, because these areas met RFP for this specific classification. However, contingency measures are still required for the failure to attain (and indeed, noting the fact that areas failed to attain, should already have taken effect). The SIP submissions containing the deficient contingency measures are the basis for this disapproval. Even though the triggering event has occurred (the areas failed to attain), and even though these areas met RFP, the State must still meet the statutory requirement for contingency measures for these areas' Serious classification. This means the State must now adopt additional measures beyond those required under the Serious area plan.

Lastly, it is worth noting that both DFW and HGB continue to be in violation of the 2008 ozone standards with 2022 Design values of 77 ppb and 78 ppb respectively. Preliminary 2023 data (not a full year of data and not certified for quality assurance/quality control) indicates these areas continue to violate the standard.

Comment: The commenter asserts that if the EPA's proposed disapproval is not withdrawn, EPA should provide actionable guidance on how to implement contingency measures for an RFP milestone and attainment year that has already passed.

Response: While EPA acknowledges the request to provide actionable guidance in this rulemaking, we do not agree that it is relevant to the question of whether to disapprove the present SIP submissions. The fact that the State did not provide approvable contingency measures in these SIP submissions, and thus cannot now adopt and implement new contingency measures in the original timeframe envisioned in the Act, does not excuse the State from meeting the requirement, even if late. Nevertheless, EPA's general advice on this matter following the *Sierra Club* decision is that the State should move expeditiously to adopt and implement contingency measures that meet the Act's requirements as interpreted in that decision. The contingency measures in the SIP submissions at issue in this action are inconsistent with statutory requirements, as reflected in that decision.

[10] *See* 84 FR 44238, August 23, 2019.

[11] Comments received on our October 9, 2020 proposed approval are provided in the docket for that action at *https://www.regulations.gov* under docket ID: EPA–R06–OAR–2020–0161.

[12] EPA's July 1, 2021, determination that TCEQ's 2020 Milestone Compliance Demonstration adequately established that the 2008 ozone NAAQS Serious RFP milestone emission reductions were met for the DFW and HGB nonattainment areas is provided in the docket for this action.

We recognize that the court decision requiring that contingency measures must be prospective and contingent measures, and thus cannot be (or cannot rely on emission reductions from) already implemented measures, came after Texas made this SIP submission but it is worth noting, if Texas had developed approvable contingency measures any time before EPA's October 2022 determination that the areas failed to attain, those measures could have been implemented timely. It is only because the attainment date has passed and the State's SIP submission is not approvable in light of the court decision, that timely adoption and implementation of other appropriate contingency measures is no longer possible. Situations in which a state and EPA would have to address deficient contingency measures after the state had already failed to meet RFP or failed to attain should generally not occur.

While EPA acknowledges the unusual circumstances of the *Sierra Club* decision having occurred after TCEQ's submittal, the appropriate course of action at this point is to address the deficiency by providing approvable contingency measures for the Serious area classifications as quickly as reasonably possible. Further, the state should implement the new measures as soon as reasonably possible because the statutory requirement for implementation of those contingency measures has already arisen as a result of the failure to attain in the DFW and HGB areas. Contrary to commenter's assertion, this is not retroactive implementation. EPA is not asking the State to accomplish an impossible task. The State should follow the applicable SIP-development process to develop and submit approvable contingency measures and should implement these measures as soon as reasonably possible. The measures would not apply in the past or be applied retroactively. The measures would apply prospectively in that they would achieve emissions reductions after being developed and implemented, and the State should develop and implement them as soon as possible because the failures to attain have already occurred (and thus the need for the measures has already been triggered).

EPA is not requiring the state to comply with the contingency measure requirement for the Serious area plan retrospectively. EPA does not expect the state to go back in time and impose such measures in the past. EPA does, however, expect the state to develop and submit additional measures now to get the emission reductions that the contingency measures should be achieving now, even if belatedly, to continue progress toward meeting the NAAQS. EPA emphasizes that requiring a state to meet a requirement in the present, even if late, does not equate to requiring a state to comply in the past. Moreover, to allow the passage of time due to delays in a state's SIP submission, or as in this case the submission being unapprovable, to obviate the need to submit contingency measures because implementation timeframes have passed, would be a clear circumvention of the Clean Air Act's requirements.

EPA Region 6 is available to assist Texas with case-by-case questions regarding situations specific to each nonattainment area in the development and implementation of approvable contingency plans for ozone reductions, consistent with the statute and relevant court decisions.

III. Final Action

Based upon the statutory requirements of section 172(c)(9), the EPA is disapproving the contingency measures element of the May 13, 2020, Texas SIP revisions for Serious nonattainment areas under the 2008 8-hour ozone NAAQS. EPA is finalizing this disapproval with respect to the contingency measure requirements under CAA section 172(c)(9) for the reasons discussed above.

As a consequence of the disapproval of the contingency measure element, within 24 months of the effective date of this action, the EPA must promulgate a Federal implementation plan under CAA section 110(c) unless we approve subsequent SIP submissions that correct the plan deficiencies. In addition, under 40 CFR 52.31, the offset sanction in CAA section 179(b)(2) will be imposed 18 months after the effective date of this action, and the highway funding sanction in CAA section 179(b)(1) will be imposed six months after the offset sanction is imposed. A sanction will not be imposed if the EPA determines that a subsequent SIP submission corrects the identified deficiencies before the applicable deadline.

IV. Environmental Justice Considerations

As stated in our April 2023 proposal and for informational purposes only, EPA conducted screening analyses of the 10-county DFW and 8-county HGB Serious ozone nonattainment areas using EPA's EJScreen (Version 2.1) EJ screening and mapping tool.[13] The results of this analysis are provided for informational and transparency purposes, not as a basis of our proposed action. The EJScreen analysis reports are available in the docket for this rulemaking. The EPA found, based on the EJScreen analyses, that this final action will not have disproportionately high or adverse human health or environmental effects on a particular group of people, as EPA's disapproval of these contingency measures will require ongoing reductions of ozone precursor emissions, as required by the CAA. Specifically, this final rule would require that Texas submit plans for each area containing prospective and conditional contingency measures consistent with the D.C. Circuit decision, which would help to improve air quality in the affected nonattainment area. Information on ozone and its relationship to negative health impacts can be found at *https://www.epa.gov/ground-level-ozone-pollution*.[14]

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to review state choices, and approve those choices if they meet the minimum criteria of the Act. Accordingly, this final action disapproves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law.

Additional information about these statutes and Executive orders can be found at *https://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

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

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

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA, because this final SIP disapproval will not in-and-of itself create any new information collection burdens, but will simply disapprove certain State requirements for inclusion in the SIP.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities

[13] See *https://www.epa.gov/ejscreen.*

[14] See, also, 80 FR 65292 (October 26, 2015).

under the RFA. This action will not impose any requirements on small entities. This final SIP disapproval will not in-and-of itself create any new requirements but will simply disapprove certain State requirements for inclusion in the SIP.

D. Unfunded Mandates Reform Act (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. This action finalizes disapproval of certain pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. 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.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP revision that EPA is disapproving would not apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that 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 this final SIP disapproval will not in-and-of itself create any new regulations, but will simply disapprove certain State requirements for inclusion in the SIP.

H. 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.

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

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

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' The EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.'' [15]

The air agency did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA performed an environmental justice analysis, as is described above in the section titled ''Environmental Justice Considerations.'' The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. In addition, there is no information in the record upon which this decision is based inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

[15] See *https://www.epa.gov/environmentaljustice/learn-about-environmental-justice.*

K. Congressional Review Act (CRA)

This action is subject to the Congressional Review Act, 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).

L. 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 December 4, 2023. 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, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: September 25, 2023.

Earthea Nance,

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

■ 2. Section 52.2273 is amended by adding paragraph (f) to read as follows:

§ 52.2273 Approval status.

* * * * *

(f) The contingency measure element of the following Texas SIP revisions

submittals is disapproved, effective on November 2, 2023:

(1) The ''Dallas-Fort Worth and Houston-Galveston-Brazoria Serious Classification Reasonable Further Progress State Implementation Plan Revision for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard'' adopted March 4, 2020, and submitted May 13, 2020.

(2) The ''Dallas-Fort Worth Serious Classification Attainment Demonstration State Implementation Plan Revision for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard'' adopted March 4, 2020, and submitted May 13, 2020.

(3) The ''Houston-Galveston-Brazoria Serious Classification Attainment Demonstration State Implementation Plan Revision for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard'' adopted March 4, 2020, and submitted May 13, 2020.

[FR Doc. 2023–21757 Filed 10–2–23; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52

[EPA–R04–OAR–2022–0608; FRL–10387–02–R4]

Air Plan Approval; Florida; Noninterference Demonstrations for Removal of CAIR and Obsolete Rules in the Florida SIP

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a portion of a State Implementation Plan (SIP) revision submitted by the Florida Department of Environmental Protection (FDEP) on April 1, 2022, for the purpose of removing several rules from the Florida SIP. EPA is approving the removal of the State's Clean Air Interstate Rule (CAIR) rules from the Florida SIP as well as several Reasonably Available Control Technology (RACT) rules for particulate matter (PM) because these rules have become obsolete. The State has provided a non-interference demonstration to support the removal of these rules from the Florida SIP pursuant to the Clean Air Act (CAA or Act).

DATES: This rule is effective November 2, 2023.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2022–0608. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information may not be publicly available, *i.e.,* Confidential Business Information 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 either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Evan Adams, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9009. Mr. Adams can also be reached via electronic mail at *adams.evan@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On April 1, 2022, FDEP submitted a SIP revision to remove Rules 62–296.470, Florida Administrative Code (F.A.C.), *Implementation of Federal Clean Air Interstate Rule,* 62–296.701, F.A.C., *Portland Cement Plants,* 62–296.703, F.A.C., *Carbonaceous Fuel Burners,* 62–296.706, F.A.C., *Glass Manufacturing Process,* 62–296.709, F.A.C., *Lime Kilns,* and 62–296.710, F.A.C., *Smelt Dissolving Tanks* from the SIP.[1] Florida repealed Rule 62–296.470 on August 14, 2019, through a State regulatory action because CAIR has sunset and, under CSAPR, EPA determined that sources in Florida do not contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to the covered NAAQS. Because the Cross-State Air Pollution Rule (CSAPR) replaced CAIR, and EPA previously determined that CSAPR does not apply to Florida, neither of these rules have any applicability in Florida today. Similarly, Florida's PM RACT rules only apply to emission units that have been issued an air permit on or before May 30, 1988. There are no longer any units in the State still in operation covered by Rules 62–296.701, 62–296.703, 62–296.706, 62–296.709, and 62–296.710. Therefore, removal of these rules from the SIP will not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the CAA. *See* CAA section 110(l).

Through a notice of proposed rulemaking (NPRM) published on August 11, 2023 (88 FR 54534), EPA proposed to approve the portion of Florida's April 1, 2022, SIP submittal seeking removal of Florida Rules 62–296.470, 62–296.701, 62–296.703, 62–296.706, 62–296.709, and 62–296.710 from the SIP. The details of Florida's submission, as well as EPA's rational for removing these rules, are described in more detail in EPA's August 11, 2023, NPRM. Comments on the August 11, 2023, NPRM were due on or before September 11, 2023. No adverse comments were received on the August 11, 2023, NPRM.

II. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. EPA is finalizing the removal of Rules 62–296.470, F.A.C., *Implementation of Federal Clean Air Interstate Rule,* 62–296.701, F.A.C., *Portland Cement Plants,* 62–296.703, F.A.C., *Carbonaceous Fuel Burners,* 62–296.706, F.A.C., *Glass Manufacturing Process,* 62–296.709, F.A.C., *Lime Kilns,* and 62–296.710, F.A.C., *Smelt Dissolving Tanks* from the Florida SIP, which is incorporated by reference in accordance with the requirements of 1 CFR part 51, as discussed in Section I of this preamble. EPA has made and will continue to make the SIP generally available at the EPA Region 4 Office (please contact the person identified in the ''For Further Information Contact'' section of this preamble for more information).

III. Final Action

EPA is approving the portion of the April 1, 2022, Florida SIP revision that consists of the removal of Rules 62–296.470, 62–296.701, 62–296.703, 62–296.706, 62–296.709, and 62–296.710 from the Florida SIP.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission

[1] In FDEP's April 1, 2022, submission, the State requested several other approvals from EPA, and EPA is addressing those rules in a separate action.