ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2018–0715; FRL–12462–01–R6]

Air Plan Disapproval; Texas; Houston-Galveston-Brazoria Area Section 185 Fee Program; Cessation of Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is proposing to disapprove revisions to the Texas State Implementation Plan (SIP). The revisions were submitted by the Texas Commission on Environmental Quality (TCEQ or State) on November 27, 2018, to address CAA requirements for the Houston-Galveston-Brazoria (HGB) area relevant to the 1979 1-hour ozone national ambient air quality standard (NAAQS or standard). The EPA approved most portions of this submission on February 14, 2020. In this current action, we are proposing to disapprove the remaining portions not addressed in the February 14, 2020 action. This submission, titled ''Severe Ozone Nonattainment Area Failure to Attain Fee,'' addresses the CAA section 185 requirement for fee collection programs, which applies to ozone nonattainment areas classified as Severe or Extreme that fail to attain by the required attainment date.

DATES: Written comments must be received on or before January 21, 2025.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2018–0715, at *https://www.regulations.gov* or via email to *riley.jeffrey@epa.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact Jeff Riley, 214–665–8542, *riley.jeffrey@epa.gov.* For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

Docket: The index to the docket for this action is available electronically at *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.,* CBI).

FOR FURTHER INFORMATION CONTACT: Jeff Riley, EPA Region 6 Office, Infrastructure & Ozone Section, 214–665–8542, *riley.jeffrey@epa.gov.* We encourage the public to submit comments via *https://www.regulations.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 wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

I. Background

The background for this proposed action is discussed in detail in two preceding EPA rulemaking actions: our May 16, 2019 Proposed Rule (84 FR 22093) and our February 14, 2020 Final Rule (85 FR 8411, ''Final Rule'') to approve revisions to the Texas SIP pertaining to the HGB area and the revoked 1979 1-hour and 1997 8-hour ozone NAAQS.[1] [2] In EPA's Final rule, we: (1) Approved the State's December 14, 2018 maintenance plan for maintaining both the 1-hour and 1997 ozone NAAQS through the year 2032 in the HGB area; (2) Determined that the HGB area continues to attain both the 1-hour and 1997 ozone NAAQS; (3) Determined that the HGB area met the five criteria in CAA section 107(d)(3)(E) for redesignation with respect to both the 1-hour and 1997 ozone NAAQS; (4) Terminated the anti-backsliding obligations for the HGB area with respect to the revoked 1-hour and 1997 ozone NAAQS; and, (5) Approved sufficient provisions of the State's November 27, 2018 SIP submission titled ''Severe Ozone Nonattainment Area Failure to Attain Fee'' such that there was as an equivalent alternative 185 fee program to address CAA section 185 requirements for the HGB 1-hour ozone NAAQS nonattainment area.[3]

In our February 14, 2020 Final Rule, EPA did not act on two provisions of the State's submitted 185 fee program for the 1-hour ozone NAAQS for the HGB area: Title 30 of the Texas Administrative Code (30 TAC) sections 101.118(a)(2) and 101.118(b). The Final Rule stated that the provisions that were approved at the time were sufficient to fulfill the requirement to have an equivalent alternative section 185 fee program for the HGB nonattainment area with respect to the 1-hour ozone standard. However, the two not acted-upon provisions have not been withdrawn by Texas, and therefore remain pending before the Agency for consideration as SIP submissions. These two outstanding 185 fee program provisions are the focus of this proposed rule.

II. The EPA's Evaluation

1. Statutory and Regulatory Requirements

CAA section 185 (Enforcement for Severe and Extreme ozone nonattainment areas for failure to attain) requirements apply to ozone nonattainment areas classified as Severe or Extreme that fail to attain by the required attainment date. It requires each major stationary source of Volatile Organic Compounds (VOC) located in an area that fails to attain by its attainment date to pay a fee to the State for each ton of VOC the source emits in excess of 80 percent of a baseline amount. CAA section 182(f) extends the application of this provision to major stationary sources of nitrogen oxides (NO_X). States with ozone nonattainment areas classified as Severe or Extreme must submit a SIP revision that includes procedures for assessment and collection of such fees should the area fail to attain the standard by its attainment date. Under the 1-hour ozone standard, the HGB area, consisting of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties, was designated as nonattainment and classified as Severe–17 with an attainment deadline of November 15, 2007 (56 FR 56694, November 6, 1991). Because the HGB

[1] Throughout this document, we refer to the 1979 1-hour ozone NAAQS as the ''1-hour ozone NAAQS'' and the 1997 8-hour ozone NAAQS as the ''1997 ozone NAAQS.''

[2] The EPA revoked both the 1-hour and 1997 ozone NAAQS along with associated designations and classifications (69 FR 23951, April 30, 2004; and 80 FR 12264, March 6, 2015).

[3] The following elements of the November 27, 2018 submission were approved as an equivalent alternative 185 fee program to address CAA section 185: 30 TAC sections 101.100–101.102, 101.104, 101.106–101.110, 101.113, 101.116, 101.117, 101.118(a)(1), 101.118(a)(3), and 101.120–101.122. When this approval was subsequently challenged, EPA took a voluntary remand without vacatur of this approval. *See Sierra Club* v. *EPA,* D.C. Circuit Docket No. 20–1121 (January 11, 2022).

area was classified as a Severe area, Texas was required to submit a SIP revision addressing the CAA section 185 requirement. The HGB area subsequently failed to attain the 1-hour ozone NAAQS by the applicable attainment deadline of November 15, 2007 (77 FR 36400, June 19, 2012).

Since 2010,[4] the EPA has taken the position that the Agency can approve SIPs that include an equivalent alternative program to the section 185 fee program specified in the CAA when addressing anti-backsliding for a revoked ozone standard under the principles of section 172(e). Section 172(e) requires EPA to develop regulations to ensure that controls in a nonattainment area are ''not less stringent'' than those that applied to the area before EPA revised a NAAQS to make it less stringent. Although section 172(e) does not directly apply where EPA has strengthened the NAAQS, as it did in 1997, 2008, and 2015, EPA has applied the principles in section 172(e) when revoking less stringent ozone standards.[5] EPA allows a State to adopt an alternative to CAA section 185 if the State demonstrates that the proposed alternative program is ''not less stringent'' than the direct application of CAA section 185. EPA has previously stated that one way to demonstrate this is to show that the alternative program provides equivalent or greater fees and/or emissions reductions than those directly attributable to the application of CAA section 185. EPA has approved equivalent alternative 185 fee equivalent programs in addition to the Final Rule. *See* 84 FR 12511 (April 2, 2019) (approving an equivalent alternative 185 fee program in New York), 77 FR 74372 (Dec. 14, 2012) (approving an equivalent alternative program for South Coast Air Quality Management District).

The TCEQ adopted the Severe Ozone Nonattainment Area Failure to Attain Fee program for the 1-hour ozone NAAQS (alternative section 185 fee equivalent program) on May 22, 2013 (38 Tex. Reg. 3610, June 7, 2013). However, the program was not submitted to EPA as a SIP revision until November 27, 2018. EPA's May 16, 2019 Proposed Rule evaluated the State's alternative section 185 fee equivalent program against the language of CAA sections 172(e) and 185 to determine whether the State had demonstrated that the proposed alternative program was ''not less stringent'' than the direct application of CAA section 185. EPA's February 14, 2020 Final Rule approved sufficient provisions of the SIP submission to determine that the State had met applicable requirements to have a section 185 fee program, or equivalent.

2. Summary of the State's Submission

The November 27, 2018 alternative section 185 fee equivalent program SIP revision for the 1-hour ozone standard included Subchapter B (Failure to Attain Fee) in Chapter 101 (General Air Quality Rule) of 30 TAC. The two remaining provisions that EPA has not yet acted on in this submission are 30 TAC sections 101.118(a)(2) and 101.118(b). Under 30 TAC section 101.118 (Cessation of Program), the State's 185 fee equivalent program would be terminated following EPA action to: redesignate the area to attainment (101.118(a)(1)); make a finding of attainment (101.118(a)(2)); or otherwise end the Failure to Attain fee (101.118(a)(3)). 30 TAC section 101.118(b) provides that fees would be calculated but not invoiced, and fee collection may be placed in abeyance by the TCEQ, pending EPA action on quality-assured data showing the area's design value meets the 1-hour ozone standard, or a demonstration indicating that the area would have attained by the attainment date but for emissions emanating from outside the United States.

3. The EPA's Review of the State's Submission

EPA's February 14, 2020 Final Rule approved sufficient provisions of the SIP submittal to determine that there was an operative alternative section 185 fee equivalent program for the HGB area. This prior approval included 30 TAC sections 101.118(a)(1) and 101.118(a)(3). EPA determined these provisions provided mechanisms for terminating the program, through either EPA action to redesignate the area to attainment or other EPA action to terminate the anti-backsliding requirements, that are consistent with section 185 equivalent programs as allowed through the anti-backsliding principles of CAA section 172(e).

30 TAC section 101.118(a)(2), however, allows for the alternative section 185 fee equivalent program to be terminated upon an EPA finding of attainment. The language of CAA section 185(a) clearly specifies redesignation as an attainment area as the only means by which an area's fee program obligation may be terminated. Allowing for cessation of the fee program through a finding of attainment by EPA is therefore contrary to the statutory requirement. While the 1-hour ozone standard has been revoked, as explained earlier EPA can only approve alternative 185 programs that are equivalent to a statutory 185 program. Texas has provided no explanation as to how 185 program termination upon a finding of attainment could be equivalent to the statutory language in section 185, and EPA has not identified any such explanation either. Here, the equivalent mechanism is a functional redesignation, which terminates an area's anti-backsliding requirements for a revoked standard. As explained earlier, the Final Rule approved a mechanism to terminate the HGB equivalent alternative program upon EPA terminating the area's anti-backsliding requirements. EPA has identified no basis to propose approval of the remaining SIP provisions. EPA accordingly proposes to disapprove 30 TAC section 101.118(a)(2).

30 section TAC 101.118(b) allows for placing fee payment into abeyance if the State submits to EPA three consecutive years of quality-assured data resulting in a design value that does not exceed the 1-hour ozone standard, or a demonstration indicating that the area would have attained by the attainment date but for emissions emanating from outside the United States. Under CAA section 185(a), the relevant sources shall ''pay a fee to the state . . . for each calendar year beginning after the attainment date, until the area is redesignated as an attainment area for ozone'' by EPA. As noted previously, the language of CAA section 185(a) clearly specifies redesignation as an attainment area as the only means by which an area's fee program obligation may be terminated. Thus, provisions that allow the fee obligation to be terminated prior to an EPA redesignation of the area as attainment are inconsistent with the relevant statutory language, and EPA has not

[4] See ''Guidance on Developing Fee Programs Required by Clean Air Act Section 185 for the 1-hour Ozone NAAQS.'' *https://www.epa.gov/sites/production/files/2015-09/documents/1hour_ozone_nonattainment_guidance.pdf.* Although the 2010 guidance was vacated and remanded by the D.C. Circuit on procedural grounds, the court did not prohibit alternative programs, stating ''neither the statute nor our case law obviously precludes that alternative.'' *NRDC* v. *EPA*, 643 F.3d 311 (D.C. Cir. 2011).

[5] In 2008, we revised the primary and secondary ozone NAAQS to 0.075 parts per million (ppm), averaged over an 8-hour period (73 FR 16436, March 27, 2008). In 2015, we again revised the primary and secondary ozone NAAQS to 0.070 ppm, averaged over an 8-hour period (80 FR 65292, October 26, 2015). However, EPA has not revoked the 2008 standard, so section 172(e) would not apply to requirements under this standard. On November 7, 2022, the HGB area and the Dallas-Fort Worth (DFW) area were reclassified from Serious to Severe–15 nonattainment for the 2008 ozone NAAQS (87 FR 60926). As such, Texas is subject to a requirement to provide a new CAA section 185 failure to attain fee program for both the DFW and HGB areas.

identified any basis to say that such provisions are equivalent to the statutory language. EPA accordingly proposes to disapprove 30 section TAC 101.118(b).

EPA is proposing to disapprove 30 sections TAC 101.118(a)(2) and 101.118(b), as discussed. However, EPA notes that our February 14, 2020 Final Rule terminated anti-backsliding requirements with respect to the 1-hour standard ozone standard for the HGB area. While that action was challenged, the case was ultimately dismissed,[6] and the termination of those anti-backsliding requirements was effective. As such, the State is no longer required to have a section 185 fee program in place for the HGB area with respect to the 1-hour ozone standard. Therefore, while we are proposing to disapprove the relevant provisions of the State's alternative section 185 fee equivalent program for the reasons discussed in this notice, EPA is also proposing to find that these provisions are part of a SIP submission that is no longer required. Accordingly, we are proposing to find that the State does not have an obligation to correct the deficiencies identified in this proposed disapproval, and that this disapproval, if finalized, would not trigger mandatory sanctions under CAA section 179(b), or the EPA's obligation to promulgate a Federal Implementation Plan under CAA section 110(c).

III. Proposed Action

We are proposing to disapprove the 30 TAC sections 101.118(a)(2) and 101.118(b) of Texas's alternative section 185 fee equivalent program with respect to the 1-hour ozone NAAQS for the HGB area as submitted in the State's November 27, 2018 SIP revision. EPA proposes this disapproval with respect to the failure to attain fee program requirements under CAA sections 182 and 185 for the reasons discussed above. The effect of this proposal, if finalized, is that 30 sections TAC 101.118(a)(2) and 101.118(b) will not become part of Texas's State Implementation Plan. As our February 14, 2020 Final Rule terminated the anti-backsliding requirements with respect to the 1-hour standard for the HGB area, Texas has no obligation to have this alternative section 185 fee program in place. Accordingly, we are proposing to find that Texas does not have an obligation to correct these deficiencies in its rules, and that this proposed disapproval, if finalized, would not trigger mandatory sanctions under CAA section 179(b). As previously noted, Texas is required to provide a CAA section 185 failure to attain fee program for both the DFW and HGB areas with respect to the 2008 ozone standard, and this proposed action does not impact that requirement.

IV. Environmental Justice Considerations

Executive Order (E.O.) 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 communities with environmental justice (EJ) concerns to the greatest extent practicable and permitted by law. Executive Order 14096 (Revitalizing Our Nation's Commitment to Environmental Justice for All, 88 FR 25251, April 26, 2023) builds on and supplements E.O. 12898 and defines EJ as, among other things, ''the just treatment and meaningful involvement of all people, regardless of income, race, color, national origin, or Tribal affiliation, or disability in agency decision-making and other Federal activities that affect human health and the environment.''

The air agency did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this 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. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898/14096 of achieving EJ for communities with EJ concerns.

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 CAA 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 CAA. Accordingly, this proposed action to disapprove the remaining provisions of Texas' 185 fee program for 1-hour ozone NAAQS for the HGB area submitted to EPA on November 27, 2018, disapproves State law as not meeting Federal requirements and does not impose additional requirements beyond those imposed by State law.

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

This action is not a significant regulatory action as defined in Executive Order 12866 (58 FR 51735, October 4, 1993), as amended by E.O. 14094 (88 FR 21879, April 11, 2023), 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 (44 U.S.C. 3501 *et seq.*) because it does not contain any information collection activities.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*). This action will not impose any requirements on small entities.

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 imposes no enforceable duty on any State, local, or Tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have Federalism implications as specified in E.O. 13132 (64 FR 43255, August 10, 1999). 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 proposed action has no Tribal implications as specified in E.O. 13175 (65 FR 67249, November 9, 2000). This action will neither impose substantial direct compliance costs on Federally recognized Tribal governments, nor preempt Tribal law. This action will not impose substantial direct compliance costs on Federally recognized Tribal governments because no actions will be required of Tribal governments. This action will also not preempt Tribal law

[6] The United States Court of Appeals for the 5th Circuit dismissed the case on December 1, 2022 (see *Sierra Club* v. *EPA,* 5th Circuit docket no. 20–60303).

as it does not have applicable or related Tribal laws.

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

The EPA interprets E.O. 13045 as applying only to those regulatory actions that concern environmental 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. Therefore, this action is not subject to Executive Order 13045 because it merely proposes to disapprove SIP revisions. Furthermore, the EPA's Policy on Children's Health does not apply to this action.

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

This action is not subject to E.O. 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under E.O. 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. This action is not subject to the requirements of section 12(d) of the NTTAA (15 U.S.C. 272 note) 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 communities with environmental justice (EJ) concerns to the greatest extent practicable and permitted by law. Executive Order 14096 (Revitalizing Our Nation's Commitment to Environmental Justice for All, 88 FR 25251, April 26, 2023) builds on and supplements E.O. 12898 and defines EJ as, among other things, ''the just treatment and meaningful involvement of all people, regardless of income, race, color, national origin, or Tribal affiliation, or disability in agency decision-making and other Federal activities that affect human health and the environment.''

The air agency did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this 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. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898/14096 of achieving EJ for communities with EJ concerns.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: December 12, 2024.

Earthea Nance,

Regional Administrator, Region 6.

[FR Doc. 2024–29935 Filed 12–18–24; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2024–0459; FRL–12287–01–R9]

Partial Approval and Partial Disapproval of Air Quality Implementation Plans; California; Regional Haze State Implementation Plan for the Second Implementation Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to partially approve and partially disapprove the regional haze state implementation plan (SIP) revision submitted by California on August 9, 2022 (hereinafter the ''2022 California Regional Haze Plan'' or ''the Plan''), under the Clean Air Act (CAA) and the EPA's Regional Haze Rule for the program's second implementation period. California's SIP submission addresses the requirement that states must periodically revise their long-term strategies for making reasonable progress towards the national goal of preventing any future, and remedying any existing, anthropogenic impairment of visibility, including regional haze, in mandatory Class I Federal areas. The SIP submission also addresses other applicable requirements for the second implementation period of the regional haze program. The EPA is taking this action pursuant to CAA sections 110 and 169A.

DATES: Written comments must be received on or before February 3, 2025.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2024–0459 at *https://www.regulations.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* If you need assistance in a language other than English or if you are a person with a disability who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Laura Lawrence, Planning Section (ARD–2–1), Planning & Analysis Branch, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, 415–972–3407, or by email at *lawrence.laura@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us,'' and ''our'' refer to the EPA.

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