

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[EPA–R06–OAR–2022–0311; FRL–12123–02–R6]

Finding of Failure To Attain the Primary 2010 One-Hour Sulfur Dioxide Standard; Texas; Rusk and Panola Counties Nonattainment Area**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is making a determination that the Rusk and Panola Counties, Texas nonattainment area (Rusk-Panola area)¹ failed to attain the 2010 one-hour primary sulfur dioxide (SO₂) national ambient air quality standard (NAAQS) by the Clean Air Act (CAA or the Act) applicable attainment date of January 12, 2022. This determination is based upon consideration of and review of air quality information for the Rusk-Panola area leading up to the area's attainment date of January 12, 2022. The EPA proposed this finding of failure to attain on August 2, 2024, as part of a larger action that included proposed action on the attainment plan. EPA will be taking final action on our proposed limited approval and limited disapproval of Texas' attainment plan for the Rusk-Panola area in a separate action.

DATES: This rule is effective on January 16, 2025.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2022–0311. 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: Andrew Lee, EPA Region 6 Office, Air and Radiation Division, Ozone and Infrastructure section, tel. 214–665–6750, lee.andrew.c@epa.gov. Please call or email the contact listed if you need alternative access to material indexed but not provided in the docket. Modeling files and other files related to the alternative model review are

available upon request. Copyrighted materials are available for review in person at EPA Region 6 office located at 1201 Elm Street, Suite 500, Dallas, Texas 75270.

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 August 2, 2024, proposal.² In that document, we proposed to determine that the Rusk-Panola area failed to attain the 2010 1-hour SO₂ NAAQS by the statutory attainment date of January 12, 2022. This proposed determination is based on the air quality, as evidenced by emissions and monitoring data, in the Rusk-Panola nonattainment area as of the January 12, 2022, attainment date.

In response to the August 2, 2024, proposal, we received several comments concerning our proposed finding of failure to attain by the January 12, 2022, attainment date. This final notification will only address comments on the finding of failure to attain by the attainment date portion of the proposal. Other comments on the August 2, 2024, proposal, including comments addressing the limited approval and limited disapproval, will be addressed in a future document. After careful consideration of public comments, the EPA is finalizing our proposed finding that the Rusk-Panola area has failed to attain the 2010 1-hour SO₂ NAAQS by the January 12, 2022, attainment date. In the following section, the EPA is providing responses to the relevant comments received on the proposal pertaining to the finding of failure to attain for the Rusk-Panola area.

II. Response to Comments

Comment: The commenter, Texas Commission on Environmental Quality, requested that, upon finalization of the EPA's finding of failure to attain for the Rusk-Panola area, the deadline for the resulting SIP submittal requirement should be no earlier than 18 months from the effective date of the finding.

Response: CAA section 179(d)(1) explicitly states that if the EPA determines that an area did not attain the NAAQS by the applicable attainment date, “[w]ithin 1 year after the Administrator publishes the notice . . . relating to notice of failure to attain,” the responsible State “shall submit a revision to the applicable implementation plan” that meets the requirements of CAA section 179(d)(2) (i.e., a SIP for the area that demonstrates

attainment and shall include any additional measures that the EPA may reasonably prescribe, including all measures that can be feasibly implemented in the area in light of technological achievability, costs, and any non-air quality and other air quality-related health and environmental impacts as required).

The request from the commenter to extend the 12-month deadline for Texas to submit a revised SIP for the Rusk-Panola area is not permissible under the plain text of the CAA.

Comment: The commenter, Luminant Generation Company LLC, owner of the major source—Martin Lake facility (Luminant), claims that the EPA's proposed finding of failure to attain the 2010 1-hour SO₂ NAAQS is unsupported and should not be finalized. The commenter states that the Agreed Order containing the emissions limitations for the Martin Lake facility requires compliance by the attainment date and “simply phases in one additional control measure after the attainment date.” The commenter states that the EPA provided no evidence that the provisions implemented by the attainment date were insufficient to provide for attainment.

Another commenter, Sierra Club, offered support for EPA's finding and supporting evidence, stating that the EPA must determine attainment based on the area's design value as of the attainment date, and whether the area attained the standard by that date. The commenter references support for the EPA's finding in Texas's own monitoring data for 2019–2021—the time period with three full calendar years of data before the January 12, 2022, attainment date. The commenter then references EPA's proposal for this action, arguing the data in that proposal makes clear that the Martin Lake area did not meet the 2010 1-hour SO₂ NAAQS by the January 12, 2022, statutory attainment date.

Response: We disagree with the commenter Luminant on the claim that the finding of failure to attain is unsupported, and we agree with commenter Sierra Club that monitoring showing a violating design value for this area as of the attainment date is a sufficient basis for the EPA to find that the area failed to attain by its attainment date. The attainment date for the area was January 12, 2022. The EPA may only determine an area attained based on air quality monitoring data when the design value, based on complete, quality assured monitored air quality data from three consecutive calendar years (here, 2019–2021), at each eligible monitoring site is equal or less than the 75 ppb

¹ The Rusk-Panola nonattainment area encompasses portions of Rusk and Panola County in the vicinity of the Martin Lake Power Station.

² See 89 FR 63117.

NAAQS. The Martin Creek monitoring site located within the Rusk-Panola area shows a 2019–2021 design value of 93 ppb in violation of the 2010 1-hour SO₂ NAAQS, and thus, the EPA is making the determination that the Rusk-Panola area did not attain by its statutory attainment date of January 12, 2022.³ We also note that the 2020–2022 monitoring period (which goes beyond the attainment date) produced a design value of 81 ppb, also a violation of the 2010 1-hour SO₂ NAAQS.

The commenter Luminant's claims regarding the timing of the controls in the Agreed Order are therefore irrelevant to EPA's finding that the Rusk-Panola area failed to attain by the attainment date. The monitoring data evaluated prior to the attainment date is sufficient to support a finding of failure to attain.

While not determinative in light of the ambient monitoring data discussed above, we note that, regardless of the text of the Agreed Order, the Order was not entered into by the parties or enforceable until one month after the attainment date of January 12, 2022.⁴ In fact, one provision of the Agreed Order included a compliance deadline set for six months after the attainment date.

Commenter Luminant claims that a delay in compliance past the attainment date for the "additional control measure" (*i.e.* the lb/MMBtu limits discussed in the preceding paragraph) established in the Agreed Order would not have a negative effect on the area attaining the standard. However, the modeling demonstration and statements made by TCEQ in the SIP refute Luminant's contention; both the modeling demonstration and TCEQ's statements establish that meeting these limits is necessary to ensure no modeled exceedances of the NAAQS.⁵ Further, the commenter offers no evidence, modeling, or demonstration to support their claims that compliance with all of the SIP requirements (as provided for in the attainment demonstration modeling) was not necessary, and, monitoring data from the time period in question directly refutes commenter's position. Between January 12, 2022, and July 11,

2022, four exceedances of the standard were measured at the Martin Creek monitor in Rusk County,⁶ suggesting that the area could not attain without the limits that had not yet taken effect.

Comment: One commenter, Sierra Club, stated that in addition to the EPA's finding of failure to attain by the attainment date for the Rusk-Panola area, the EPA should also prescribe additional measures that Texas must implement as expeditiously as practicable for the area to attain the standard.

Response: In accordance with CAA section 179(d), issuance of this finding of failure to attain triggers the requirement for the State of Texas to submit a SIP revision for the Rusk-Panola area within one year of the publication date of this document. The required SIP revision for the area must, among other elements, demonstrate attainment of the SO₂ NAAQS as expeditiously as practicable, but no later than 5 years from the date of this document. CAA section 179(d) also grants authority to the Administrator to reasonably prescribe additional measures that must be addressed, including all measures that can be feasibly implemented in the area in light of technological achievability, costs, and any non-air quality and other air quality-related health and environmental impacts. We are not prescribing additional measures for the SO₂ SIP revisions under CAA section 179(d)(2) in this document.

III. Final Action

Under CAA section 179(c)(1)–(2), the EPA is making a determination that the Rusk-Panola area has failed to attain the 2010 1-hour SO₂ NAAQS of 75 ppb by the applicable statutory attainment date of January 12, 2022. In accordance with CAA section 179(d), issuance of this finding of failure to attain triggers the requirement for the State of Texas to submit a SIP revision for the Rusk-Panola area within one year of the publication date of this document. The required SIP revision for the area must, among other elements, demonstrate attainment of the 2010 1-hour SO₂ NAAQS as expeditiously as practicable, but no later than 5 years from the date of this document and shall include such additional measures as the Administrator may reasonably prescribe, including all measures that can be feasibly implemented in the area in light of technological achievability, costs, and any non-air quality and other

air quality-related health and environmental impacts. At this time, we are not prescribing additional measures for the SO₂ SIP revisions under CAA section 179(d)(2). In addition to triggering requirements for a new SIP submittal, a final determination that a nonattainment area failed to attain the NAAQS by the attainment date triggers the implementation of contingency measures adopted under 172(c)(9).

IV. Environmental Justice Considerations

Information on Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) and how EPA defines environmental justice (EJ) can be found in the section titled "V. Statutory and Executive Order Reviews." EPA provided analysis of environmental justice associated with this action solely for informational purposes, and the results of this analysis were presented in our proposal.

In accordance with section 179(c)(1)–(2) of the CAA, this final action formalizes EPA's determination that the Rusk and Panola Counties, Texas SO₂ nonattainment area has failed to attain the 2010 one-hour SO₂ NAAQS of 75 ppb by the applicable attainment date of January 12, 2022. This action provides notice to the public that the area has failed to attain the NAAQS and informs the State of Texas of CAA requirements the State needs to meet. After publishing this final rule, the State of Texas is required under CAA section 179(d) to submit revisions to the SIP for the Rusk-Panola area within one year of the publication of this document. The required SIP revision for the area must, among other elements, demonstrate attainment of the 2010 1-hour SO₂ NAAQS as expeditiously as practicable, but no later than 5 years. This final rule is not anticipated to have disproportionately high or adverse human health or environmental effects on communities with environmental justice concerns.

V. Statutory and Executive Order Reviews

This action finds that an area has failed to attain the NAAQS by the relevant attainment date and does not impose additional or modify existing requirements. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735,

³ As discussed in the proposed action, the monitoring site is not located in the area of maximum concentration; however, if any monitors were located in the area of maximum concentration, they would likely show concentrations greater than or equal to those recorded at the existing monitor at the Martin Creek site (EPA AQS Site ID 48–401–1082).

⁴ The Agreed Order between Luminant and Texas was entered on February 14, 2022.

⁵ See page 3–2 of Texas' Rusk-Panola Attainment Demonstration State Implementation Plan Revision for the 2010 SO₂ National Ambient Air Quality Standard.

⁶ On February 5, March 29, March 30, and April 13, the Martin Creek Monitor measured values at 119 ppb, 109 ppb, 95 ppb, and 77 ppb, respectively.

October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a State program;

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction. In those areas of Indian country, the rule does not have Tribal implications and will not impose substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 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.

TCEQ did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable

implementing regulations neither prohibit nor require such an evaluation. Consistent with EPA’s discretion under the CAA, EPA has evaluated the EJ considerations of this action, as is described in the proposed action at 89 FR 63117 (August 2, 2024) in the section titled, “EJ Considerations.” 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 inconsistent with the stated goal of E.O. 12898/14096 of achieving EJ for communities with EJ concerns.

This action is exempt from the Congressional Review Act because it is a rule of particular applicability. The rule makes factual determinations for an identified entity (the Rusk-Panola area of Texas), based on facts and circumstances specific to that entity. The determination of failure to attain the 2010 SO₂ NAAQS does not in itself create any new requirements beyond what is mandated by the CAA.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 18, 2025. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: December 9, 2024.

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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. Amend § 52.2277 by adding paragraph (c) to read as follows:

§ 52.2277 Control strategy and regulations: Sulfur Dioxide.

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(c) *Determination of failure to attain.* Effective January 16, 2025, the EPA has determined that the Rusk and Panola Counties, Texas nonattainment area failed to attain the 2010 1-hour primary sulfur dioxide (SO₂) national ambient air quality standards (NAAQS) by the applicable attainment date of January 12, 2022. This determination triggers the requirements of CAA section 179(d) for the State of Texas to submit a revision to the Texas SIP for the Rusk and Panola Counties nonattainment area to the EPA by December 17, 2025. The SIP revision must, among other elements, provide for attainment of the 1-hour primary SO₂ NAAQS in the Rusk and Panola Counties, Texas SO₂ nonattainment area as expeditiously as practicable but no later than December 17, 2029.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R10–OAR–2024–0371; FRL–12159–02–R10]

Designation of Areas for Air Quality Planning Purposes; Redesignation Request and Associated Maintenance Plan for Whatcom County, WA 2010 SO₂ Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On July 25, 2024, the State of Washington (WA) submitted a request for the Environmental Protection Agency (EPA) to redesignate to attainment a portion of Whatcom County immediately surrounding the now permanently closed aluminum smelter, Intalco Aluminum LLC, which the EPA designated nonattainment for the 2010 1-hour primary sulfur dioxide (SO₂) National Ambient Air Quality Standard (NAAQS). Washington also submitted a request for the EPA to approve a State Implementation Plan (SIP) revision containing a maintenance plan for the area. The EPA is taking the following final actions: we have determined that the Whatcom County (partial) SO₂ nonattainment area (Whatcom County area or area) is