

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

DOWNWINDERS AT RISK, SIERRA)
CLUB, TEXAS ENVIRONMENTAL)
JUSTICE ADVOCACY SERVICES,)
and AIR ALLIANCE HOUSTON,)

Petitioners,)

v.)

No.)

U.S. ENVIRONMENTAL)
PROTECTION AGENCY and SCOTT)
PRUITT, Administrator, U.S.)
Environmental Protection Agency,)

Respondents.)

PETITION FOR REVIEW

Pursuant to Clean Air Act § 307(b)(1), 42 U.S.C. § 7607(b)(1), Rule 15 of the Federal Rules of Appellate Procedure, and Fifth Circuit Rule 15, Downwinders at Risk, Sierra Club, Texas Environmental Justice Advocacy Services, and Air Alliance Houston (collectively, “Petitioners”) hereby petition this Court for review of the final actions taken by Respondents U.S. Environmental Protection Agency and Administrator Scott Pruitt in the Federal Register notices published at 80 FR 63,429 (Oct. 20, 2015) and titled “Clean Air Act Redesignation Substitute for the Houston-Galveston-Brazoria 1-Hour Ozone Nonattainment Area; Texas, Final Rule” (Attachment 1); 81 FR 78,691 (Nov. 8, 2016) and titled “Clean Air Act

Redesignation Substitute for Houston-Galveston-Brazoria 1997 8-Hour Ozone Nonattainment Area; Texas, Final Rule” (Attachment 2); and 81 FR 78,688 (Nov. 8, 2016) and titled “Clean Air Act Redesignation Substitute for the Dallas-Fort Worth 1-Hour Ozone and 1997 8-Hour Ozone Nonattainment Areas; Texas, Final Rule” (Attachment 3).

This petition for review is based on after-arising grounds: the decision of the U.S. Court of Appeals for the District of Columbia Circuit in *South Coast Air Quality Management District v. EPA*, 882 F.3d 1138 (D.C. Cir. 2018) (decided Feb. 16, 2018), which for the first time held unlawful and vacated the “redesignation substitute” regulation Respondents invoked in the actions challenged herein.

DATED: April 17, 2018

Respectfully submitted,

/s/ Emma C. Cheuse
Emma C. Cheuse
Seth L. Johnson*
Earthjustice
1625 Massachusetts Ave., NW
Suite 702
Washington, DC 20036-2243
(202) 667-4500
echeuse@earthjustice.org
sjohnson@earthjustice.org

*Counsel for Petitioners Downwinders
at Risk, Sierra Club, Texas
Environmental Justice Advocacy
Services, and Air Alliance Houston*

* application for admission to
Fifth Circuit forthcoming

Sierra Club is a national non-profit organization organized and existing under the laws of the State of California. Sierra Club has no parent corporation, and no publicly held company has 10% or greater ownership in Sierra Club.

- Texas Environmental Justice Advocacy Services (Petitioner)

Texas Environmental Justice Advocacy Services is a non-profit corporation organized and existing under the laws of the state of Texas. It has no parent corporation, and no publicly held company has 10% or greater ownership in Texas Environmental Justice Advocacy Services.

- Air Alliance Houston (Petitioner)

Air Alliance Houston is a non-profit corporation organized and existing under the laws of the State of Texas. It has no parent corporation, and no publicly held company has 10% or greater ownership in Air Alliance Houston.

- Emma C. Cheuse, Earthjustice (Counsel for Downwinders at Risk, Sierra Club, Texas Environmental Justice Advocacy Services, and Air Alliance Houston)

- Seth L. Johnson, Earthjustice (Counsel for Downwinders at Risk, Sierra Club, Texas Environmental Justice Advocacy Services, and Air Alliance Houston)

- United States Environmental Protection Agency (Respondent)

- Scott Pruitt, Administrator, United States Environmental Protection Agency (Respondent)

- Jeff Sessions, Attorney General, U.S. Department of Justice (Counsel for Respondents)

- Jeffrey Wood, Acting Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice (Counsel for Respondents)

- Matthew Z. Leopold (General Counsel for Respondent United States Environmental Protection Agency)

DATED: April 17, 2018

Respectfully submitted,

/s/ Emma C. Cheuse
Emma C. Cheuse
Seth L. Johnson*
Earthjustice
1625 Massachusetts Ave., NW
Suite 702
Washington, DC 20036-2243
(202) 667-4500
echeuse@earthjustice.org
sjohnson@earthjustice.org

*Counsel for Petitioners Downwinders
at Risk, Sierra Club, Texas
Environmental Justice Advocacy
Services, and Air Alliance Houston*

* application for admission to
Fifth Circuit forthcoming

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing **Petition for Review** and **Certificate of Interested Persons** on Respondents by certified mail, return receipt requested to each of the following addresses on this 17th day of April, 2018.

Scott Pruitt
EPA Headquarters 1101A
United States Environmental Protection
Agency
William Jefferson Clinton Federal Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Jeff Sessions
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Correspondence Control Unit
Office of General Counsel (2311)
United States Environmental Protection
Agency
William Jefferson Clinton Federal Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460


Robyn Winz
Earthjustice

Attachment 1



available at <http://www.regulations.gov>. Type the docket number in the "SEARCH" box and click "SEARCH". Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Mr. Joe Arca, Project Officer, First Coast Guard District, telephone (212) 514-4336, email joe.m.arca@uscg.mil.

SUPPLEMENTARY INFORMATION: The AK Railroad Bridge, across Arthur Kill, mile 11.6, between Staten Island, New York and Elizabeth, New Jersey has a vertical clearance in the closed position of 31 feet at MHW and 35 feet at MLW. The existing drawbridge operation regulations are listed at 33 CFR 117.702.

The waterway supports both commercial and recreational navigation of various vessel sizes. The operator of the bridge, Conrail, requested a temporary deviation to facilitate scheduled maintenance, tie and miter rail replacement at the bridge. The bridge must remain in the closed position to perform this maintenance.

Under this temporary deviation the draw may remain in the closed position as follows:

On October 23, 2015 from 6 a.m. to 10:26 a.m. and from 12:26 p.m. to 4:11 p.m.

On October 24, 2015 from 7:00 a.m. to 11:22 a.m. and from 1:32 p.m. to 5:13 p.m.

On October 25, 2015 from 7:46 a.m. to 12:17 p.m. and from 2:17 p.m. to 6:09 p.m.

On October 30, 2015 from 5:51 a.m. to 9:58 a.m. and from 11:58 a.m. to 4:36 p.m.

On October 31, 2015 from 6:41 a.m. to 10:56 a.m. and from 12:56 p.m. to 5:28 p.m.

On November 1, 2015 from 6:30 a.m. to 10:54 a.m. and from 12:54 p.m. to 5:25 p.m.

On November 6, 2015, 5:17 a.m. to 9:28 a.m. and from 11:28 a.m. to 3:32 p.m.

On November 7, 2015, from 6:07 a.m. to 10:15 a.m. and from 12:15 p.m. to 4:21 p.m.

On November 8, 2015 from 6:51 a.m. to 11:00 a.m. and from 1:00 p.m. to 5:06 p.m.

On November 13, 2015, from 3:49 a.m. to 7:40 a.m., from 9:40 a.m. to 2:28 p.m., and from 4:28 p.m. to 8:04 p.m.

On November 14, 2015, from 4:24 a.m. to 8:11 a.m. and from 10:11 a.m. to 3:07 p.m.

On November 15, 2015, from 4:59 a.m. to 8:50 a.m. and from 10:50 a.m. to 3:48 p.m.

On November 20, 2015 from 3:24 a.m. to 8:07 a.m., from 10:07 a.m. to 1:42 p.m., and from 3:42 p.m. to 8:36 p.m.

On November 21, 2015 from 4:27 a.m. to 9:09 a.m. and from 11:09 a.m. to 2:49 p.m.

On November 22, 2015 from 5:29 a.m. to 10:06 a.m. and from 12:06 p.m. to 3:53 p.m.

On December 4, 2015 from 3:07 a.m. to 7:23 a.m., from 9:23 a.m. to 1:14 p.m., and from 3:14 p.m. to 7:54 p.m.

On December 5, 2015 from 3:54 a.m. to 8:20 a.m. and from 10:20 a.m. to 2:06 p.m.

On December 6, 2015 from 4:48 a.m. to 9:10 a.m. and from 11:10 a.m. to 3:00 p.m.

On December 11, 2015 from 2:45 a.m. to 6:44 a.m., from 8:44 a.m. to 1:26 p.m., and from 3:26 p.m. to 7:08 p.m.

On December 12, 2015 from 3:26 a.m. to 7:17 a.m. and from 9:17 a.m. to 2:07 p.m.

On December 13, 2015 from 4:06 a.m. to 7:54 a.m. and from 9:54 a.m. to 2:48 p.m.

Vessels able to pass through the bridge in the closed positions may do so at anytime.

There are no alternate routes for vessel traffic. The bridge can be opened in an emergency.

The Coast Guard will also inform the users of the waterway through our Local Notices to Mariners of the change in operating schedule for the bridge so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: October 7, 2015.

C.J. Bisignano,
Supervisory Bridge Management Specialist,
First Coast Guard District.

[FR Doc. 2015-26609 Filed 10-19-15; 8:45 am]

BILLING CODE 9110-04-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2014-0259; FRL-9935-68-Region 6]

Clean Air Act Redesignation Substitute for the Houston-Galveston-Brazoria 1-Hour Ozone Nonattainment Area; Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a redesignation substitute demonstration provided by the State of Texas that the Houston-Galveston-Brazoria 1-hour ozone nonattainment area (HGB area) has attained the revoked 1-hour ozone National Ambient Air Quality Standards (NAAQS) due to permanent and enforceable emission reductions, and that it will maintain that NAAQS for ten years from the date of the EPA's approval of this demonstration.

DATES: This final rule is effective on November 19, 2015.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2014-0259. All documents in the docket are listed on the <http://www.regulations.gov> Web site. 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 and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733.

FOR FURTHER INFORMATION CONTACT: Tracie Donaldson, (214) 665-6633, Donaldson.tracie@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," or "our" is used, we mean the EPA.

I. Background

The background for today's action is discussed in detail in our August 18, 2015 proposal (80 FR 49970). In that notice, we proposed to approve the "Redesignation Substitute Report for the Houston-Galveston-Brazoria One-Hour Standard Nonattainment Area" (redesignation substitute report) submitted by TCEQ to EPA on July 22, 2014, that demonstrated attainment with the revoked 1-hour ozone standard. We did not receive any comments regarding our proposal.

II. Final Action

Based on the Clean Air Act's criteria for redesignation to attainment (CAA section 107(d)(3)(E)) and the regulation for a redesignation substitute (40 CFR 51.1105(b)), EPA is finding that Texas has successfully demonstrated it has met the requirements for a redesignation substitute. In this final action we are

approving the redesignation substitute for the HGB area based on our evaluation that the demonstration provided by the State of Texas that shows that the HGB area has attained the revoked 1-hour ozone NAAQS due to permanent and enforceable emission reductions, and that it will maintain that NAAQS for ten years from the date of this final action. In addition, this final action is based on the proposal¹ and the accompanying Technical Support Document (TSD).

With this final action, Texas is no longer required to adopt any additional applicable 1-hour ozone NAAQS requirements for the area which have not already been approved into the SIP. Generally, final action would also allow the state to remove or revise the 1-hour ozone NAAQS nonattainment NSR provisions in the SIP and, upon a showing of consistency with the anti-backsliding checks in CAA sections 110(1) and 193 (if applicable), shift 1-hour ozone NAAQS requirements which are contained in the active portion of the SIP to the contingency measures portion of the SIP. We note that because the HGB area was classified as severe nonattainment for the 1997 ozone NAAQS the severe classification NSR requirement would still apply (October 1, 2008, 73 FR 56983).

III. Statutory and Executive Order Reviews

Under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011), this action is not a “significant regulatory action” and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001). This action merely approves a demonstration provided by the State of Texas and finds that the HGB area is no longer subject to the anti-backsliding obligations for additional measures for the revoked 1-hour ozone NAAQS; and imposes no additional requirements. Accordingly, I certify that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule does not impose any additional enforceable duties, it 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). This rule also does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a demonstration provided by the State of Texas and finds that the HGB area is no longer subject to the anti-backsliding obligations for additional measures for the revoked 1-hour ozone NAAQS; and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

The rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Additionally, this rule does not involve establishment of technical standards, and thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA has determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The rulemaking does not affect the level of protection provided to human health or the environment because approving the demonstration provided by Texas and finding that the HGB area is no longer subject to the anti-backsliding

obligations for additional measures for the revoked 1-hour ozone NAAQS does not alter the emission reduction measures that are required to be implemented in the HGB area, which was classified as Severe nonattainment for the 1997 8-hour ozone standard. See 73 FR 56983, October 1, 2008, and 40 CFR 51.1105. Additionally, the rule is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

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 December 21, 2015. 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, Ozone.

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

Dated: September 30, 2015.

Ron Curry,

Regional Administrator, Region 6.

40 CFR part 52 is amended 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.*

¹ Proposal, Redesignation Substitute for Houston 1 hour ozone Standard, (80 FR 49970), August 18, 2015 and normally we would include in our basis for the final action comments and Comment Response Summary, but we received no comments on the cited proposal.

Subpart SS—Texas

■ 2. Section 52.2275 is amended by adding paragraph (j) to read as follows:

§ 52.2275 Control strategy and regulations: Ozone.

* * * * *

(j) *Approval of Redesignation Substitute for the Houston-Galveston-Brazoria 1-hour Ozone Nonattainment Area.* EPA has approved the redesignation substitute for the Houston-Galveston-Brazoria 1-hour ozone nonattainment area submitted by the State of Texas on July 22, 2014. The State is no longer being required to adopt any additional applicable 1-hour ozone NAAQS requirements for the area.

[FR Doc. 2015-26302 Filed 10-19-15; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[EPA-R06-OAR-2013-0614; FRL-9935-53-Region 6]

Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Albuquerque/Bernalillo County; Revisions to State Boards and Conflict of Interest Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving revisions to the Albuquerque/Bernalillo County, New Mexico State Implementation Plan (SIP). These revisions add administrative updates and clarifying changes to the state board and conflict of interest provisions in Albuquerque/Bernalillo County. The EPA is approving these revisions pursuant to section 110 of the Clean Air Act (CAA).

DATES: This rule is effective on December 21, 2015 without further notice unless EPA receives relevant adverse comments by November 19, 2015. If EPA receives such comments, EPA will publish a timely withdrawal in the *Federal Register* informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R06-OAR-2013-0614, by one of the following methods:

- www.regulations.gov. Follow the on-line instructions.
- Email: Mr. John Walser at walser.john@epa.gov. Please also send a copy by email to the person listed in the

FOR FURTHER INFORMATION CONTACT section below.

- Mail or Delivery: Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.

Instructions: Direct your comments to Docket ID No. EPA-R06-OAR-2013-0614. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through www.regulations.gov or email, information that you consider to be CBI or otherwise protected. The www.regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through www.regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at www.epa.gov/epahome/dockets.htm.

Docket: All documents in the docket are listed in the www.regulations.gov index and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI).

FOR FURTHER INFORMATION CONTACT: Mr. John Walser (6PD-L), (214) 665-7128, walser.john@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document, "we," "us," and "our" means EPA.

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I. Background**A. What is a SIP?**

Section 110 of the CAA requires states to develop air pollution regulations and control strategies to ensure that air quality meets the National Ambient Air Quality Standards (NAAQS) established by EPA. The NAAQS are established under section 109 of the CAA and currently address six criteria pollutants: Carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide. A SIP is a set of air pollution regulations, control strategies, other means or techniques, and technical analyses developed by the state, to ensure that air quality in the state meets the NAAQS. It is required by section 110 and other provisions of the CAA. A SIP protects air quality primarily by addressing air pollution at its point of origin. SIPs can be extensive, containing state regulations or other enforceable documents, and supporting information such as city and county ordinances, monitoring networks, and modeling demonstrations. Each state must submit any SIP revision to EPA for approval and incorporation into the federally-enforceable SIP.

The New Mexico SIP includes a variety of control strategies, including the regulations that outline general provisions applicable to Albuquerque/Bernalillo County Air Quality Control Board (AQCB) regulations and state boards/conflict of interest requirements.

B. State Boards

The Act, section 128(a) entitled State Boards, requires each SIP to contain provisions which ensure that: (1) Any board or body which approves permits or enforcement orders under the Act shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits or enforcement orders under the Act, and (2) any potential conflicts of interest by members of such board or body, or the head of an executive agency with similar powers, be adequately disclosed.

A state may adopt any requirements respecting conflicts of interest for such boards or bodies or heads of executive agencies, or any other entities which are more stringent than the requirements of

Attachment 2



TEXAS—1997 8-HOUR OZONE NAAQS
[Primary and secondary]

| Designated area | Designation ^a | | Category/classification | |
|--------------------------------|--------------------------|---------------|-------------------------|--------------------|
| | Date ¹ | Type | Date ¹ | Type |
| Dallas-Fort Worth, TX: | | | | |
| Collin County ^{5,6} | | Nonattainment | (5) | Subpart 2/Serious. |
| Dallas County ^{5,6} | | Nonattainment | (5) | Subpart 2/Serious. |
| Denton County ^{5,6} | | Nonattainment | (5) | Subpart 2/Serious. |
| Ellis County ^{5,6} | | Nonattainment | (5) | Subpart 2/Serious. |
| Johnson County ^{5,6} | | Nonattainment | (5) | Subpart 2/Serious. |
| Kaufman County ^{5,6} | | Nonattainment | (5) | Subpart 2/Serious. |
| Parker County ^{5,6} | | Nonattainment | (5) | Subpart 2/Serious. |
| Rockwall County ^{5,6} | | Nonattainment | (5) | Subpart 2/Serious. |
| Tarrant County ^{5,6} | | Nonattainment | (5) | Subpart 2/Serious. |

^a Includes Indian Country located in each county or area, except as otherwise specified.

¹ This date is June 15, 2004, unless otherwise noted.

⁵ Effective January 19, 2011.

⁶ A Redesignation Substitute was approved on November 8, 2016.

* * * * *

[FR Doc. 2016-26585 Filed 11-7-16; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R06-OAR-2015-0609; FRL-9953-89-Region 6]

Clean Air Act Redesignation Substitute for the Houston-Galveston-Brazoria 1997 8-Hour Ozone Nonattainment Area; Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a redesignation substitute and making a finding of attainment for the revoked 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS) for the Houston-Galveston-Brazoria ozone nonattainment area (HGB area).

DATES: This rule is effective on December 8, 2016.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2015-0609. All documents in the docket are listed on the <http://www.regulations.gov> Web site. 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 and will be

publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733.

FOR FURTHER INFORMATION CONTACT: Tracie Donaldson, 214-665-6633, Donaldson.tracie@epa.gov.

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 May 25, 2016 proposal (81 FR 33166). In that document we proposed to approve a redesignation substitute and make a finding of attainment for the 1997 8-hour ozone NAAQS for the Houston-Galveston-Brazoria ozone nonattainment area (HGB area). The redesignation substitute demonstration indicates that the area has attained the revoked 1997 8-hour ozone NAAQS due to permanent and enforceable emission reductions and that it will maintain that NAAQS for ten years from the date of the EPA’s approval of this demonstration. Final approval of the redesignation substitute results in the area no longer being subject to any remaining applicable anti-backsliding requirements, including nonattainment new source review, associated with the revoked NAAQS. In general, final approval of the redesignation substitute allows Texas to seek to revise the Texas SIP for the area to remove anti-backsliding measures from the active

portion of its SIP if it can demonstrate, pursuant to CAA section 110(1), that such revision would not interfere with attainment or maintenance of any applicable NAAQS, or any other requirement of the CAA. Because the EPA believes Texas does not need to revise its SIP to alter certain provisions for NNSR effective in the HGB area, the offset and threshold requirements applicable in the HGB area for NNSR will be automatically altered upon finalization of the redesignation substitute.

We previously approved a HGB area redesignation substitute for the revoked 1-hour ozone standard (80 FR 63429). In this action, we are also finalizing a non-substantive technical correction to 40 CFR 81.344 to reflect this approval.

We received comments on the proposal from five commenters. Our response to the comments are below.

II. Response to Comments

Comment: Three commenters recognized the progress of the area and the work of TCEQ in making such significant air quality improvements in the HGB area and urged the EPA to finalize this action to reflect the changes in the area.

Response: We agree with the commenters that HGB area has made progress in meeting air quality standards. No changes were made to the final action based on these comments.

Comment: One of the supportive commenters urged the EPA to approve revisions to the Texas SIP to reflect changes to certain provisions for the NNSR program effective in the HGB area as a result of the EPA’s approval of the

redesignation substitute. The commenter also asserted that approval of the redesignation substitute will result in the area no longer being subject to any remaining applicable anti-backsliding requirements.

Response: Due to the drafting of the Texas SIP, no revision is necessary to alter NNSR requirements applicable in the HGB area following finalization of this redesignation substitute. The NNSR provisions in the existing Texas SIP contains a provision that cross-references the designation of the area to 40 CFR part 81. See 30 TAC section 101.1(71). Because of the structure of this provision, the identification of an area's classification, and thus the related major source thresholds and offset ratios, is updated without any additional revision to the SIP. Therefore, the EPA's approval of the redesignation substitute automatically updates the applicable NNSR requirements. Following finalization of this rule, the NNSR requirements applicable in the HGB area will be in accordance with the HGB area's current classification for the 2008 ozone NAAQS for newly permitted sources.¹ We note that approval of this redesignation substitute does not relieve sources in the area of their obligations under previously established permit conditions.² 81 FR 33161, 33165. The Texas SIP includes a suite of approved permitting regulations for the Minor and Major NSR, which will continue to apply after approval of the redesignation substitute in the HGB area. Each of these programs has been evaluated and approved by EPA as consistent with the requirements of the CAA and protective of air quality, including the requirements at 40 CFR 51.160 whereby the TCEQ cannot issue a permit or authorize an activity that will result in a violation of applicable portions of the control strategy or that will interfere with attainment or maintenance of a national standard. So moving forward to a time when the HGB area has a marginal designation as the only applicable nonattainment designation, new sources and modifications will continue to be permitted and authorized under the existing SIP requirements if they are determined to be protective of air quality. We would also note that EPA has proposed to reclassify Houston from marginal to moderate for the 2008

ozone NAAQS. 81 FR 66240, September 27, 2016.

The EPA agrees that approval of the redesignation substitute will result in the HGB area no longer being subject to the regulatory anti-backsliding requirements for the 1997 ozone standard established pursuant to the principles of CAA section 172(e). However, if an anti-backsliding provision is in the Texas SIP and needs to be changed to reflect the change in this area's status, such change is subject to the SIP revision process, which in turn is subject to review under CAA sections 110 and 193, if applicable. To date, Texas has not submitted a SIP revision concerning any anti-backsliding provisions for the EPA's consideration.

Comment: One commenter also recognized the progress and supported the action but wanted the EPA to clarify that the redesignation substitute will permanently eliminate the anti-backsliding requirements for the revoked ozone NAAQS.

Response: Following finalization of a redesignation substitute, an area is no longer subject to any remaining applicable anti-backsliding requirements associated with the specific revoked NAAQS, including the major source thresholds and offset ratios associated with the area's classification under those standards. However, as noted previously, any changes to a SIP are subject to consistency checks with CAA sections 110(l) and 193, if applicable. Because the 1997 ozone NAAQS has been revoked, no new requirements associated with that NAAQS would come due at any future date.

Comment: One commenter objected to the use of the redesignation substitute mechanism and the implications of such an action. The commenter incorporates by reference the relevant portions of a brief filed in a petition challenging the EPA's promulgation of the redesignation substitute. See *South Coast Air Quality Mgmt. Dist. v. EPA*, No. 15–1115 (D.C. Cir.). They contend that the HGB area continues to have unhealthy levels of ozone pollution, therefore, raising the NNSR thresholds and lowering the offset requirements for the area is inappropriate. The commenter further states that our action will result “in great expense and inefficiency: because some sources will not prevent pollution, they and other sources may have to retrofit at greater expense.” The commenter asks the EPA to either disapprove the redesignation substitute or delay action until the underlying litigation is resolved.

Response: The EPA disagrees with the commenter that it is inappropriate to approve redesignation substitutes for the Houston-Galveston-Brazoria area for the 1997 ozone standard. As the commenter noted, the EPA created the redesignation substitute in the 2008 ozone SIP Requirements Rule as one of two acceptable procedures through which a state may demonstrate that it is no longer required to adopt any additional applicable requirements for an area which have not already been approved into the SIP for a revoked ozone NAAQS. 80 FR 12264, 12304 (March 6, 2015).

The EPA acknowledges that this rule has been challenged in the D.C. Circuit by the commenter. However, the rule has not been stayed pending resolution of the litigation, and as such, it is appropriate to continue to implement the 2008 ozone SIP Requirements Rule during the pendency of the litigation.

The EPA believes the redesignation substitute is an appropriate mechanism because it serves as a successor to a redesignation to attainment, for which these areas would have been eligible if the EPA had not revoked the 1-hour and 1997 ozone standards. For a more detailed description of why the EPA has determined the HGB area has met the redesignation criteria for the revoked 1997 ozone standard, see 81 FR 33166 for the proposal and Technical Support Document. Upon approval of a redesignation substitute, a state may request to revise its SIP to shift regulatory anti-backsliding requirements contained in the active portion of the SIP to the contingency measures portion of the SIP, subject to a showing of consistency with the general anti-backsliding checks in CAA sections 110(l) and 193 (if applicable). The EPA approval of the redesignation substitute has the same effect on these areas' nonattainment regulatory anti-backsliding requirements as would a redesignation to attainment for the revoked standard. The EPA believes that, under any view of anti-backsliding for a revoked standard, it should not mean imposing requirements greater than those that would apply if the standard had not been revoked.

An approvable redesignation substitute must include more than a determination of attainment of the prior NAAQS, and show that it addresses redesignation criteria for that NAAQS. Moreover, the state remains subject to ongoing requirements to meet the new more stringent 2008 ozone standard in that area. In this context, the EPA believes finalizing this action is appropriate—it recognizes and supports Texas's progress in having attained the

¹ See Section D of the TSD for this action in the docket for this rulemaking for additional information.

² See Final Implementation Rule for 2008 Ozone Standard, 80 FR 12264, at 12299, footnote 83 and at 12304, footnote 91.

prior standards in the HGB area due to permanent and enforceable emissions reductions, and reinforces continued attainment by demonstrating that the HGB area can maintain the revoked standard. See 80 FR 12264, 12305.

III. Final Action

We find that Texas has successfully demonstrated it has met the requirements for approval of a redesignation substitute for the revoked 1997 8-hour ozone NAAQS for the HGB area. We are approving the redesignation substitute for the HGB area based on our determination that the demonstration provided by the State of Texas shows that the HGB area has attained the revoked 1997 8-hour ozone NAAQS due to permanent and enforceable emission reductions, and that it will maintain that NAAQS for ten years from the date of the EPA's approval of this demonstration. As we no longer redesignate nonattainment areas to attainment for the revoked 1997 8-hour ozone NAAQS, approval of the demonstration serves as a redesignation substitute under the EPA's implementing regulations. As a result of this action, Texas is no longer required to adopt any additional applicable 1997 8-hour ozone NAAQS requirements for the area which have not already been approved into the SIP (40 CFR 51.1105(b)(1)). It also allows the state to request that the EPA approve the shifting of planning and control requirements implemented pursuant to the 1997 ozone NAAQS from the active portion of the SIP to the contingency measures portion of the SIP, upon a showing of consistency with CAA sections 110(l) and 193 (if applicable) (40 CFR 51.1105(b)(2)).

We are also finalizing a non-substantive technical correction to 40 CFR 81.344 (Section 107 Attainment Status Designations for Texas) to reflect our previous approval of a HGB area redesignation substitute demonstration for the revoked 1-hour ozone standard.

IV. Statutory and Executive Order Reviews

Under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves a demonstration provided by the State of Texas and finds that the HGB area is

no longer subject to the regulatory anti-backsliding requirements under the principles of CAA section 172(e) for the revoked 1997 8-hour ozone NAAQS; and imposes no additional requirements. Accordingly, I certify that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule does not impose any additional enforceable duties, it 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). This rule also does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a demonstration provided by the State of Texas and find that the HGB area is no longer subject to the regulatory anti-backsliding requirements under the principles of CAA section 172(e) for the revoked 1997 8-hour ozone NAAQS; and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

The rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Additionally, this rule does not involve establishment of technical standards, and thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority

populations and low-income populations in the United States. The EPA has determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment.

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 January 9, 2017. 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

40 CFR Part 52

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

40 CFR Part 81

Environmental protection, Air pollution control.

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

Dated: October 27, 2016.

Samuel Coleman,

Acting Regional Administrator, Region 6.

40 CFR parts 52 and 81 are amended 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 52.2275 is amended by adding paragraph (n) to read as follows:

§ 52.2275 Control strategy and regulations: Ozone.

* * * * *

(n) *Approval of Redesignation Substitute for the Houston-Galveston-Brazoria 1997 Ozone Nonattainment Area.* EPA has approved the redesignation substitute for the Houston-Galveston-Brazoria 1997 ozone NAAQS nonattainment area submitted by the State of Texas on August 18,

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2015. The State is no longer being required to adopt any additional applicable 1997 ozone NAAQS requirements for the area.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 3. The authority citation for part 81 continues to read as follows:

- Authority:** 42 U.S.C. 7401, *et seq.*
- 4. Section 81.344 is amended:
- a. In the table for “Texas—Ozone (1-Hour Standard)” by revising the entries for “Houston-Galveston-Brazoria, TX” and revising footnote 4; and
- b. In the table for “Texas—1997 8-Hour Ozone NAAQS (Primary and Secondary)” by revising the entries for

“Houston-Galveston-Brazoria, TX” and adding footnote 7.

The revisions and additions read as follows:

§ 81.344 Texas.
* * * * *

TEXAS—OZONE²
[11-Hour standard]

| Designated area | Designation | | Classification | |
|--------------------------------------|-------------------|---------------------|-------------------|------------|
| | Date ¹ | Type | Date ¹ | Type |
| * * * | * | * | * | * |
| Houston-Galveston-Brazoria Area, TX: | | | | |
| Brazoria County ⁴ | | Nonattainment | 11/15/90 | Severe-17. |
| Chambers County ⁴ | | Nonattainment | 11/15/90 | Severe-17. |
| Fort Bend County ⁴ | | Nonattainment | 11/15/90 | Severe-17. |
| Galveston County ⁴ | | Nonattainment | 11/15/90 | Severe-17. |
| Harris County ⁴ | | Nonattainment | 11/15/90 | Severe-17. |
| Liberty County ⁴ | | Nonattainment | 11/15/90 | Severe-17. |
| Montgomery County ⁴ | | Nonattainment | 11/15/90 | Severe-17. |
| Waller County ⁴ | | Nonattainment | 11/15/90 | Severe-17. |
| * * * | * | * | * | * |

¹ This date is October 18, 2000, unless otherwise noted.
² The 1-hour ozone standard is revoked effective June 15, 2005 for all areas in Texas except the San Antonio area where it is revoked effective April 15, 2009.
⁴ A Redesignation Substitute was approved on October 20, 2015.

* * * * *

TEXAS—1997 8-HOUR OZONE NAAQS
[Primary and secondary]

| Designated area | Designation ^a | | Classification | |
|--------------------------------------|--------------------------|---------------------|-------------------|----------------------|
| | Date ¹ | Type | Date ¹ | Type |
| * * * | * | * | * | * |
| Houston-Galveston-Brazoria, TX: | | | | |
| Brazoria County ⁷ | | Nonattainment | (⁴) | Subpart 2/Severe 15. |
| Chambers County ⁷ | | Nonattainment | (⁴) | Subpart 2/Severe 15. |
| Fort Bend County ⁷ | | Nonattainment | (⁴) | Subpart 2/Severe 15. |
| Galveston County ⁷ | | Nonattainment | (⁴) | Subpart 2/Severe 15. |
| Harris County ⁷ | | Nonattainment | (⁴) | Subpart 2/Severe 15. |
| Liberty County ⁷ | | Nonattainment | (⁴) | Subpart 2/Severe 15. |
| Montgomery County ⁷ | | Nonattainment | (⁴) | Subpart 2/Severe 15. |
| Waller County ⁷ | | Nonattainment | (⁴) | Subpart 2/Severe 15. |
| * * * | * | * | * | * |

^a Includes Indian Country located in each county or area, except as otherwise specified.
¹ This date is June 15, 2004, unless otherwise noted.
⁴ Effective October 31, 2008.
⁷ A Redesignation Substitute was approved on November 8, 2016.

* * * * *

Attachment 3



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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R06-OAR-2015-0721; FRL-9953-93-Region 6]

Clean Air Act Redesignation Substitute for the Dallas-Fort Worth 1-Hour Ozone and 1997 8-Hour Ozone Nonattainment Areas; Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a redesignation substitute and making finding of attainment for both the revoked 1-hour and the revoked 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS) for the Dallas-Fort Worth ozone nonattainment areas (DFW area).

DATES: This rule is effective on December 8, 2016.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2015-0721. All documents in the docket are listed on the <http://www.regulations.gov> Web site. 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 and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733.

FOR FURTHER INFORMATION CONTACT: Tracie Donaldson, 214-665-6633, Donaldson.tracie@epa.gov.

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 May 25, 2016 proposal (81 FR 33161). In that document we proposed to approve a redesignation substitute and make a finding of attainment for both the 1-hour and the 1997 8-hour ozone NAAQS for the Dallas-Fort Worth 1-hour and 1997 8-hour ozone nonattainment areas (DFW areas). The redesignation substitute demonstration indicates that the area has attained the revoked 1-hour and the revoked 1997 8-hour ozone NAAQS due to permanent and enforceable emission

reductions and that it will maintain those NAAQS for ten years from the date of the EPA’s approval of this demonstration. Final approval of the redesignation substitute results in the area no longer being subject to any remaining applicable anti-backsliding requirements, including nonattainment new source review associated with the revoked NAAQS. In general, final approval of the redesignation substitute allows Texas to seek to revise the Texas State Implementation Plan (SIP) for the area to remove anti-backsliding measures from the active portion of its SIP if it can demonstrate, pursuant to CAA section 110(1), that such revision would not interfere with attainment or maintenance of any applicable NAAQS, or any other requirement of the CAA. Because the EPA believes Texas does not need to revise its SIP to alter certain provisions for NNSR effective in the DFW area, the offset and threshold requirements applicable in the DFW area for NNSR will be automatically altered upon finalization of the redesignation substitute.

We received comments on the proposal from three commenters. Our response to the comments is below.

II. Response to Comments

Comment: Two commenters recognized the progress of the area and the work of TCEQ in making such significant air quality improvements in the DFW area and urged the EPA to finalize this action to reflect the changes in the area.

Response: We agree with the commenters that DFW area has made progress in meeting air quality standards. No changes were made to the final action based on these comments.

Comment: One of the supportive commenters urged the EPA to approve revisions to the Texas SIP to reflect changes to certain provisions for the NNSR program effective in the DFW area as a result of the EPA’s approval of the redesignation substitute. The commenter also asserted that approval of the redesignation substitute will result in the area no longer being subject to any remaining applicable anti-backsliding requirements.

Response: Due to the drafting of the Texas SIP, no revision is necessary to alter NNSR requirements applicable in the DFW area following finalization of this redesignation substitute. The NNSR provisions in the existing Texas SIP contains a provision that cross-references the designation of the area to 40 CFR part 81. See 30 TAC section 101.1(71). Because of the structure of this provision the identification of an area’s classification, and thus the related

major source thresholds and offset ratios, is updated without any additional revision to the SIP. Therefore, the EPA’s approval of the redesignation substitute automatically updates the applicable NNSR requirements. Following finalization of this rule, the NNSR requirements applicable in the DFW area will be in accordance with the DFW area’s current classification for the 2008 ozone NAAQS for newly permitted sources.¹ We note that approval of this redesignation substitute does not relieve sources in the area of their obligations under previously established permit conditions.² 81 FR 33161, 33165. The Texas SIP includes a suite of approved permitting regulations for the Minor and Major NSR, which will continue to apply after approval of the redesignation substitute in the DFW area. Each of these programs has been evaluated and approved by EPA as consistent with the requirements of the CAA and protective of air quality, including the requirements at 40 CFR 51.160 whereby the TCEQ cannot issue a permit or authorize an activity that will result in a violation of applicable portions of the control strategy or that will interfere with attainment or maintenance of a national standard. So moving forward to a time when the DFW area has a moderate designation as the only applicable nonattainment designation, new sources and modifications will continue to be permitted and authorized under the existing SIP requirements if they are determined to be protective of air quality.

The EPA agrees that approval of the redesignation substitute will result in the DFW area no longer being subject to the regulatory anti-backsliding requirements for the 1997 ozone standard established pursuant to the principles of CAA section 172(e). However if an anti-backsliding provision is in the Texas SIP and needs to be changed to reflect the change in this area’s status, such change is subject to the SIP revision process, which in turn is subject to review under CAA sections 110 and 193, if applicable. To date, Texas has not submitted a SIP revision concerning any anti-backsliding provisions for the EPA’s consideration.

Comment: One commenter objected to the use of the redesignation substitute mechanism and the implications of such an action. The commenter incorporates

¹ See Section D of the TSD for this action in the docket for this rulemaking for additional information.

² See Final Implementation Rule for 2008 Ozone Standard, 80 FR 12264, at 12299, footnote 83 and at 12304, footnote 91.

by reference the relevant portions of a brief filed in a petition challenging the EPA's promulgation of the redesignation substitute. See *South Coast Air Quality Mgmt. Dist. v. EPA*, No. 15–1115 (D.C. Cir.). They contend that the DFW area continues to have unhealthy levels of ozone pollution, therefore, raising the NNSR thresholds and lowering the offset requirements for the area is inappropriate. The commenter further states that our action will result “in great expense and inefficiency: because some sources will not prevent pollution, they and other sources may have to retrofit at greater expense.” The commenter asks the EPA to either disapprove the redesignation substitute or delay action until the underlying litigation is resolved.

Response: The EPA disagrees with the commenter that it is inappropriate to approve redesignation substitutes for the DFW area for the 1-hour and the 1997 8-hour ozone standards. As the commenter noted, the EPA created the redesignation substitute in the 2008 ozone SIP Requirements Rule as one of two acceptable procedures through which a state may demonstrate that it is no longer required to adopt any additional applicable requirements for an area which have not already been approved into the SIP for a revoked ozone NAAQS. 80 FR 12264, 12304 (March 6, 2015).

The EPA acknowledges that this rule has been challenged in the D.C. Circuit by the commenter. However, the rule has not been stayed pending resolution of the litigation, and as such, it is appropriate to continue to implement the 2008 ozone SIP Requirements Rule during the pendency of the litigation.

The EPA believes the redesignation substitute is an appropriate mechanism because it serves as a successor to a redesignation to attainment, for which these areas would have been eligible if the EPA had not revoked the 1-hour and 1997 ozone standards. For a more detailed description of why the EPA has determined the DFW area has met the redesignation criteria for the revoked 1997 ozone standard, see 81 FR 33161 for the proposal and Technical Support Document. Upon approval of a redesignation substitute, a state may request to revise its SIP to shift regulatory anti-backsliding requirements contained in the active portion of the SIP to the contingency measures portion of the SIP, subject to a showing of consistency with the general anti-backsliding checks in CAA sections 110(l) and 193 (if applicable). The EPA approval of the redesignation substitute has the same effect on these areas' nonattainment regulatory anti-

backsliding requirements as would a redesignation to attainment for the revoked standard. The EPA believes that, under any view of anti-backsliding for a revoked standard, it should not mean imposing requirements greater than those that would apply if the standard had not been revoked.

An approvable redesignation substitute must include more than a determination of attainment of the prior NAAQS, and show that it addresses redesignation criteria for that NAAQS. Moreover, the state remains subject to ongoing requirements to meet the new more stringent 2008 ozone standard in that area. In this context, the EPA believes finalizing of this action is appropriate—it recognizes and supports Texas's progress in having attained the prior standards in the DFW area due to permanent and enforceable emissions reductions, and reinforces continued attainment by demonstrating that the DFW area can maintain the revoked standard. See 80 FR 12264, 12305.

III. Final Action

We find that Texas has successfully demonstrated it has met the requirements for approval of a redesignation substitute for the revoked 1-hour and the revoked 1997 8-hour ozone NAAQS for the DFW area. We are approving the redesignation substitute for the DFW area based on our determination that the demonstration provided by the State of Texas shows that the DFW area has attained the revoked 1-hour and the revoked 1997 8-hour ozone NAAQS due to permanent and enforceable emission reductions, and that it will maintain these NAAQS for ten years from the date of the EPA's approval of this demonstration. As we no longer redesignate nonattainment areas to attainment for the revoked 1-hour and the revoked 1997 8-hour ozone NAAQS, approval of the demonstration serves as a redesignation substitute under the EPA's implementing regulations. As a result of this action, Texas is no longer required to adopt any additional applicable 1-hour and 1997 8-hour ozone NAAQS requirements for the area which have not already been approved into the SIP (40 CFR 51.1105(b)(1)). It also allows the state to request that the EPA approve the shifting of planning and control requirements implemented pursuant to the 1-hour and the 1997 8-hour ozone NAAQS from the active portion of the SIP to the contingency measures portion of the SIP, upon a showing of consistency with CAA sections 110(l) and 193 (if applicable) (40 CFR 51.1105(b)(2)).

IV. Statutory and Executive Order Reviews

Under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011), this action is not a “significant regulatory action” and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001). This action merely approves a demonstration provided by the State of Texas and finds that the DFW area is no longer subject to the regulatory anti-backsliding requirements under the principles of CAA section 172(e) for the revoked 1-hour ozone and the revoked 1997 8-hour ozone NAAQS; and imposes no additional requirements. Accordingly, I certify that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule does not impose any additional enforceable duties, it 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). This rule also does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a demonstration provided by the State of Texas and find that the DFW area is no longer subject to the regulatory anti-backsliding requirements under the principles of CAA section 172(e) for the revoked 1-hour ozone and the revoked 1997 8-hour ozone NAAQS; and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

The rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Additionally, this rule does not involve establishment of technical standards, and thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. The EPA has determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment.

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 January 9, 2017. 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

40 CFR Part 52

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

40 CFR Part 81

Environmental protection, Air pollution control.

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

Dated: October 27, 2016.

Samuel Coleman,

Acting Regional Administrator, Region 6.

40 CFR parts 52 and 81 are amended 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 52.2275 is amended by adding paragraph (m) to read as follows:

§ 52.2275 Control strategy and regulations: Ozone.

* * * * *

TEXAS—OZONE²
[1-Hour standard]

(m) *Approval of Redesignation Substitute for the Dallas-Fort Worth 1-hour Ozone and 1997 Ozone Nonattainment Areas.* EPA has approved the redesignation substitute for the Dallas-Fort Worth 1-hour ozone and 1997 ozone nonattainment areas submitted by the State of Texas on August 18, 2015. The State is no longer being required to adopt any additional applicable to 1-hour ozone and 1997 ozone NAAQS requirements for the area.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 3. The authority citation for part 81 continues to read as follows:

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

■ 4. Section 81.344 is amended:

■ a. In the table entitled “Texas—Ozone (1-Hour Standard)” by revising the entries for “Dallas-Fort Worth Area” and adding footnote 3; and

■ b. In the table titled “Texas—1997 8-Hour Ozone NAAQS (Primary and Secondary)” by revising the entries for “Dallas-Fort Worth, TX” and adding footnotes 5 and 6.

The revisions and additions read as follows:

§ 81.344 Texas.

* * * * *

| Designated area | Designation | | Classification | |
|-----------------------------------|-------------------|---------------------|-------------------|----------|
| | Date ¹ | Type | Date ¹ | Type |
| * * * * * | | | | |
| Dallas-Fort Worth Area: | | | | |
| Collin County ³ | 11/15/90 | Nonattainment | 3/20/98 | Serious. |
| Dallas County ³ | 11/15/90 | Nonattainment | 3/20/98 | Serious. |
| Denton County ³ | 11/15/90 | Nonattainment | 3/20/98 | Serious. |
| Tarrant County ³ | 11/15/90 | Nonattainment | 3/20/98 | Serious. |
| * * * * * | | | | |

¹ This date is October 18, 2000, unless otherwise noted.

² The 1-hour ozone standard is revoked effective June 15, 2005 for all areas in Texas except the San Antonio area where it is revoked effective April 15, 2009.

³ A Redesignation Substitute was approved on November 8, 2016.

* * * * *

TEXAS—1997 8-HOUR OZONE NAAQS
[Primary and secondary]

| Designated area | Designation ^a | | Category/classification | |
|--------------------------------|--------------------------|---------------|-------------------------|--------------------|
| | Date ¹ | Type | Date ¹ | Type |
| Dallas-Fort Worth, TX: | | | | |
| Collin County ^{5,6} | | Nonattainment | (5) | Subpart 2/Serious. |
| Dallas County ^{5,6} | | Nonattainment | (5) | Subpart 2/Serious. |
| Denton County ^{5,6} | | Nonattainment | (5) | Subpart 2/Serious. |
| Ellis County ^{5,6} | | Nonattainment | (5) | Subpart 2/Serious. |
| Johnson County ^{5,6} | | Nonattainment | (5) | Subpart 2/Serious. |
| Kaufman County ^{5,6} | | Nonattainment | (5) | Subpart 2/Serious. |
| Parker County ^{5,6} | | Nonattainment | (5) | Subpart 2/Serious. |
| Rockwall County ^{5,6} | | Nonattainment | (5) | Subpart 2/Serious. |
| Tarrant County ^{5,6} | | Nonattainment | (5) | Subpart 2/Serious. |

^a Includes Indian Country located in each county or area, except as otherwise specified.

¹ This date is June 15, 2004, unless otherwise noted.

⁵ Effective January 19, 2011.

⁶ A Redesignation Substitute was approved on November 8, 2016.

* * * * *
[FR Doc. 2016-26585 Filed 11-7-16; 8:45 am]
BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R06-OAR-2015-0609; FRL-9953-89-Region 6]

Clean Air Act Redesignation Substitute for the Houston-Galveston-Brazoria 1997 8-Hour Ozone Nonattainment Area; Texas

AGENCY: Environmental Protection Agency (EPA).
ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a redesignation substitute and making a finding of attainment for the revoked 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS) for the Houston-Galveston-Brazoria ozone nonattainment area (HGB area).

DATES: This rule is effective on December 8, 2016.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2015-0609. All documents in the docket are listed on the <http://www.regulations.gov> Web site. 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 and will be

publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733.

FOR FURTHER INFORMATION CONTACT: Tracie Donaldson, 214-665-6633, Donaldson.tracie@epa.gov.

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 May 25, 2016 proposal (81 FR 33166). In that document we proposed to approve a redesignation substitute and make a finding of attainment for the 1997 8-hour ozone NAAQS for the Houston-Galveston-Brazoria ozone nonattainment area (HGB area). The redesignation substitute demonstration indicates that the area has attained the revoked 1997 8-hour ozone NAAQS due to permanent and enforceable emission reductions and that it will maintain that NAAQS for ten years from the date of the EPA’s approval of this demonstration. Final approval of the redesignation substitute results in the area no longer being subject to any remaining applicable anti-backsliding requirements, including nonattainment new source review, associated with the revoked NAAQS. In general, final approval of the redesignation substitute allows Texas to seek to revise the Texas SIP for the area to remove anti-backsliding measures from the active

portion of its SIP if it can demonstrate, pursuant to CAA section 110(1), that such revision would not interfere with attainment or maintenance of any applicable NAAQS, or any other requirement of the CAA. Because the EPA believes Texas does not need to revise its SIP to alter certain provisions for NNSR effective in the HGB area, the offset and threshold requirements applicable in the HGB area for NNSR will be automatically altered upon finalization of the redesignation substitute.

We previously approved a HGB area redesignation substitute for the revoked 1-hour ozone standard (80 FR 63429). In this action, we are also finalizing a non-substantive technical correction to 40 CFR 81.344 to reflect this approval.

We received comments on the proposal from five commenters. Our response to the comments are below.

II. Response to Comments

Comment: Three commenters recognized the progress of the area and the work of TCEQ in making such significant air quality improvements in the HGB area and urged the EPA to finalize this action to reflect the changes in the area.

Response: We agree with the commenters that HGB area has made progress in meeting air quality standards. No changes were made to the final action based on these comments.

Comment: One of the supportive commenters urged the EPA to approve revisions to the Texas SIP to reflect changes to certain provisions for the NNSR program effective in the HGB area as a result of the EPA’s approval of the

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE
NEW ORLEANS, LA 70130

April 19, 2018

Mr. Avi S. Garbow
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
William Jefferson Clinton Building
Washington, DC 20460

Mr. Scott Pruitt
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
William Jefferson Clinton Building
Mail Code 1101A
Washington, DC 20460-0000

No. 18-60290 Downwinders at Risk, et al v. EPA, et al
Agency No. 80 Fed. Reg. 63,429

Dear Counsel,

You are served with the following document(s) under FED. R. APP. P. 15:

Petition for Review.

Special Guidance for Filing the Administrative Record: Pursuant to 5th Cir. R. 25.2, Electronic Case Filing (ECF) is mandatory for all counsel. Agencies responsible for filing the administrative record with this court are requested to electronically file the record via CM/ECF using one or more of the following events as appropriate:

Electronic Administrative Record Filed;
Supplemental Electronic Administrative Record Filed;
Sealed Electronic Administrative Record Filed; or
Sealed Supplemental Electronic Administrative Record Filed.

Electronic records must meet the requirements listed below. Records that do not comply with these requirements will be rejected.

- Max file size 20 megabytes per upload.
- Where multiple uploads are needed, describe subsequent files as "Volume 2", "Volume 3", etc.

- Individual documents should remain intact within the same file/upload, when possible.
- Supplemental records must contain the supplemental documents only. No documents contained within the original record should be duplicated.

Electronic records are automatically paginated for the benefit of counsel and the court and provide an accurate means of citing to the record in briefs. A copy of the paginated electronic record is provided to all counsel at the time of filing via a Notice of Docket Activity (NDA). Upon receipt, counsel should save a copy of the paginated record to their local computer.

Agencies unable to provide the administrative record via docketing in CM/ECF may instead provide a copy of the record on a flash drive or CD which we will use to upload and paginate the record.

If the agency intends to file a certified list in lieu of the administrative record, it is *required* to be filed electronically. Paper filings will not be accepted. See FED. R. APP. P. 16 and 17 as to the composition and time for the filing of the record.

ATTENTION ATTORNEYS: Attorneys are required to be a member of the Fifth Circuit Bar and to register for Electronic Case Filing. The "Application and Oath for Admission" form can be printed or downloaded from the Fifth Circuit's website, www.ca5.uscourts.gov. Information on Electronic Case Filing is available at www.ca5.uscourts.gov/cmecf/.

We recommend that you visit the Fifth Circuit's website, www.ca5.uscourts.gov and review material that will assist you during the appeal process. We especially call to your attention the Practitioner's Guide and the 5th Circuit Appeal Flow Chart, located in the Forms, Fees, and Guides tab.

Counsel who desire to appear in this case must electronically file a "Form for Appearance of Counsel" within 14 days from this date. You must name each party you represent, see FED. R. APP. P. and 5TH CIR. R. 12. The form is available from the Fifth Circuit's website, www.ca5.uscourts.gov. If you fail to electronically file the form, we will remove your name from our docket.

Sealing Documents on Appeal: Our court has a strong presumption of public access to our court's records, and the court scrutinizes any request by a party to seal pleadings, record excerpts, or other documents on our court docket. Counsel moving to seal matters must explain in particularity the necessity for sealing in our court. Counsel do not satisfy this burden by simply stating that the originating court sealed the matter, as the circumstances that justified sealing in the originating court may have changed or may not apply in an appellate proceeding. It is the obligation of counsel to justify a request to file under seal, just as it is their obligation to notify the court whenever sealing is no longer necessary. An unopposed motion to seal does not obviate a counsel's obligation to justify the motion to seal.

Sincerely,

LYLE W. CAYCE, Clerk

 *Shea E. Pertuit*

By:

Shea E. Pertuit, Deputy Clerk

504-310-7666

Enclosure(s)

cc w/encl:

Ms. Emma C. Cheuse

Provided below is the court's official caption. Please review the parties listed and advise the court immediately of any discrepancies. If you are required to file an appearance form, a complete list of the parties should be listed on the form exactly as they are listed on the caption.

Case No. 18-60290

DOWNWINDERS AT RISK; SIERRA CLUB; TEXAS ENVIRONMENTAL JUSTICE
ADVOCACY SERVICES; AIR ALLIANCE HOUSTON,

Petitioners

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY; SCOTT PRUITT,

Respondents