

EPA ORGANIZATION

Internal deliberative pre-decisional - FOR USE BY 2024 PRESIDENT-ELECT TRANSITION TEAM MEMBERS ONLY

TEXAS FINDING OF FAILURE TO SUBMIT ISSUE SUMMARY:

Texas failed to submit State Implementation Plan (SIP) revisions required by the January 1, 2023 Clean Air Act (CAA) deadline for the Dallas-Fort Worth (DFW), Houston-Galveston-Brazoria (HGB), and San Antonio nonattainment areas classified as Moderate for the 2015 ozone National Ambient Air Quality Standards (NAAQS). After missing the January 1, 2023 deadline, EPA published a Finding of Failure to Submit (FFS) on October 18, 2023.

KEY POINTS:

Ten other states are included in the October 2023 finding. The October 2023 finding triggers certain CAA deadlines for the imposition of sanctions if a state does not submit a complete SIP addressing the outstanding requirements and triggers EPA's duty to promulgate a Federal Implementation Plan (FIP) if the EPA does not approve a State's SIP revision addressing the outstanding requirements. For Texas, the sanctions would apply within the boundaries of the DFW, HGB, and San Antonio nonattainment areas. To date, Texas has not submitted the required SIP.

ONGOING/UPCOMING REVIEWS FOR FY2025:

Offset sanctions required to be implemented starting May 17, 2025, if EPA has not affirmatively determined that TX made the required complete SIP submittal for an area. Highway sanctions would begin November 17, 2025, if EPA has still not affirmatively determined that TX made the required complete SIP submittal within 6 months after the offset sanction is imposed. If TX makes the required SIP submittal and the EPA takes final action to approve the submittal within 2 years of the effective date of the FFS, the EPA duty to promulgate a FIP for the affected nonattainment areas is discharged.

For offset sanctions, the state, as the permitting authority, is required to apply to new or modified sources or emissions units for which a permit is required a ratio of emission reductions to increased emissions of at least 2 to 1. For highway sanctions, pursuant to CAA 179(b)(1), will result in a prohibition, applicable to a nonattainment area, on the approval by the Department of Transportation of any projects or the awarding by the DOT of any grants. There are some exceptions to the prohibition (including for safety, public transportation, and emissions-reducing projects), and a prohibition shall become effective November 17, 2025.

KEY EXTERNAL STAKEHOLDERS:

☐ Congress ☒ Industry ☒ States ☐ Tribes ☒ Media ☐ Other Federal Agency
☐ NGO ☐ Local Governments ☐ Public

MOVING FORWARD:

Texas filed suit in the U.S. Court of Appeals for the 5th Circuit challenging the Finding of Failure to Submit. Oral Argument was held on October 7, 2024 and we are awaiting a decision. EPA will support Texas in the development

of complete and approvable SIP revisions. When received, we will work expeditiously to review and make the necessary completeness determination.