

TABLE 4—EPA-APPROVED CHATTANOOGA REGULATIONS—Continued

State section	Title/subject	Adoption date	EPA approval date	Explanation
Section 4–10	Records	10/3/2017	4/6/2020, [Insert citation of publication].	EPA's approval includes the corresponding sections of the Air Pollution Control Regulations/Ordinances for the remaining jurisdictions within the Chattanooga-Hamilton County Air Pollution Control Bureau, which were locally effective as of the relevant dates below: Hamilton County—Section 8 (9/6/17); City of Collegedale—Section 14–308 (10/16/17); City of East Ridge—Section 8–8 (10/26/17); City of Lakesite—Section 14–8 (11/2/17); Town of Lookout Mountain—Section 8 (11/14/17); City of Red Bank—Section 20–8 (11/21/17); City of Ridgeside—Section 8 (1/16/18); City of Signal Mountain—Section 8 (10/20/17); City of Soddy-Daisy—Section 8–8 (10/5/17); and Town of Walden—Section 8 (10/16/17).  Except paragraph 4–10(b) approved 5/10/90, with a 7/20/89 local adoption date.  EPA's approval includes the corresponding sections of the Air Pollution Control Regulations/Ordinances for the remaining jurisdictions within the Bureau, which were locally effective as of the relevant dates below: Hamilton County—Section 10 (9/6/17); City of Collegedale—Section 14–310 (10/16/17); City of East Ridge—Section 8–10 (10/26/17); City of Lakesite—Section 14–10 (11/2/17); Town of Lookout Mountain—Section 10 (11/14/17); City of Red Bank—Section 20–10 (11/21/17); City of Ridgeside—Section 10 (1/16/18); City of Signal Mountain—Section 10 (10/20/17); City of Soddy-Daisy—Section 8–10 (10/5/17); and Town of Walden—Section 10 (10/16/17).
Section 4–17	Enforcement of chapter; procedure for adjudicatory hearings.	10/3/2017	4/6/2020, [Insert citation of publication].	EPA's approval includes the corresponding sections of the Air Pollution Control Regulations/Ordinances for the remaining jurisdictions within the Bureau, which were locally effective as of the relevant dates below: Hamilton County—Section 17 (9/6/17); City of Collegedale—Section 14–17 (10/16/17); City of East Ridge—Section 8–17 (10/26/17); City of Lakesite—Section 14–17 (11/2/17); Town of Lookout Mountain—Section 17 (11/14/17); City of Red Bank—Section 20–17 (11/21/17); City of Ridgeside—Section 17 (1/16/18); City of Signal Mountain—Section 17 (10/20/17); City of Soddy-Daisy—Section 8–17 (10/5/17); and Town of Walden—Section 17 (10/16/17).

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 52 and 81**

[EPA–R06–OAR–2019–0213; FRL–10006–97–Region 6]

**Air Plan Approval; Texas; Dallas-Fort Worth Area Redesignation and Maintenance Plan for Revoked Ozone National Ambient Air Quality Standards**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA or Agency) is approving revisions to the Texas State Implementation Plan (SIP)

that pertain to the Dallas-Fort Worth (DFW) area and the 1979 1-hour and 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS or standard). The EPA is approving the plan for maintaining the 1-hour and 1997 ozone NAAQS through the year 2032 in the DFW area. The EPA is determining that the DFW area continues to attain the 1979 1-hour and 1997 8-hour ozone NAAQS and has met the five CAA criteria for redesignation. Therefore, the EPA is terminating all anti-backsliding obligations for the DFW area for the 1-hour and 1997 ozone NAAQS.

**DATES:** This rule is effective on May 6, 2020.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2019–0213. 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 and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <https://www.regulations.gov> or in hard copy at the EPA Region 6 Office, 1201 Elm Street, Suite 500, Dallas, Texas 75270.

**FOR FURTHER INFORMATION CONTACT:** Robert Todd, EPA Region 6 Office, Infrastructure & Ozone Section, 1201 Elm Street, Suite 500, Dallas, TX 75270, 214–665–2156, [todd.robert@epa.gov](mailto:todd.robert@epa.gov). To inspect the hard copy materials, please schedule an appointment with Mr. Todd or Mr. Bill Deese at 214–665–7253.

**SUPPLEMENTARY INFORMATION:** Throughout this document “we,” “us,” and “our” means the EPA.

## I. Background and Summary of Final Action

The background for this action is discussed in detail in our June 24, 2019 Proposal (84 FR 29471, "Proposal"). In that document we proposed to: (1) Approve the plan for maintaining both the revoked 1979 1-hour and 1997 8-hour ozone NAAQS<sup>1</sup> through 2032 in the DFW area; (2) Determine that the DFW area is continuing to attain both the revoked 1-hour and 1997 ozone NAAQS; (3) Determine that Texas ("the State") has met the CAA criteria for redesignation of the DFW area for the 1-hour and 1997 8-hour ozone NAAQS; and, (4) Terminate all anti-backsliding obligations for the DFW area for both the 1-hour and 1997 ozone NAAQS.

In this final action, we are approving the plan for maintaining both the 1-hour and 1997 ozone NAAQS through the year 2032 in the DFW area. We are also determining that the DFW area continues to attain both the 1-hour and 1997 ozone NAAQS and has met the five criteria in CAA section 107(d)(3)(E) for redesignation for these Standards. The EPA revoked the 1-hour and 1997 ozone NAAQS along with associated designations and classifications (69 FR 23951, April 30, 2004; and, 80 FR 12264, March 6, 2015), and thus, the DFW area has no designation under both the 1-hour or 1997 ozone NAAQS that can be changed through redesignation as governed by CAA section 107(d)(3)(E). Therefore, we are not promulgating a redesignation of the DFW area under CAA section 107(d)(3)(E). However, because the DFW area has met the five criteria in section 107(d)(3)(E) for redesignation, we are terminating all anti-backsliding obligations for the DFW area for both the revoked 1-hour and 1997 ozone NAAQS.

To determine the criteria under CAA section 107(d)(3)(E) are met, we determine: (1) That the area has attained the NAAQS; (2) that we have fully approved the applicable implementation plan for the area under CAA section 110(k); (3) that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and Federal air pollutant control regulations and other permanent and enforceable reductions; (4) that the area has a fully approved maintenance plan meeting the requirements of CAA section 175A; and,

(5) that the state containing such area has met all requirements applicable to the area under CAA section 110 (Implementation plans) and part D (Plan Requirements for Nonattainment Areas).

As discussed in our Proposal, the Technical Support Document (TSD), and in the remainder of this preamble, the five criteria listed above have been met. In past actions, we have determined that the area has attained the 1-hour and 1997 ozone NAAQS due to permanent and enforceable measures (Criteria 1 and 3). As discussed in the Proposal and in this final action, air quality in the DFW area has been meeting the 1-hour standard since 2006 and the 1997 ozone standard since 2014. As documented in the Proposal and the TSD, numerous State, Federal and local measures have been adopted and implemented including, but not limited to, nitrogen oxide (NO<sub>x</sub>) limits on all Portland cement kilns in Ellis County, and federal on- and off-road emissions control programs. These programs have resulted in significant reductions and resulted in attainment of the 1-hour and 1997 ozone standards.

We are also finding that the area has met all requirements under CAA section 110 and part D that are applicable for purposes of redesignation, and all such requirements have been fully approved (Criteria 2 and 5). As discussed in the Proposal, for the revoked ozone standards at issue here, over the past three decades the State has submitted numerous SIPs for the DFW area to implement those standards, improve air quality with respect to those standards, and address anti-backsliding requirements for those standards. The TSD documents many of these actions and EPA approvals. However, EPA has consistently held the position that not every requirement to which an area is subject is "applicable" for purposes of redesignation. *See, e.g.*, September 4, 1992, Memorandum from John Calcagni ("Calcagni Memorandum").<sup>2</sup> As described in this memo, some of the Part D requirements, such as demonstrations of reasonable further progress, are designed to ensure that nonattainment areas continue to make progress toward attainment. EPA has interpreted these requirements as not "applicable" for purposes of redesignation under CAA section

107(d)(3)(E)(ii) and (v) because areas that are applying for redesignation to attainment are already attaining the standard.

Finally, we are fully approving the maintenance plan for the DFW area. As discussed in the Proposal, we agree that Texas has provided a plan that demonstrates that the DFW area will maintain attainment of the revoked 1-hour and 1997 standards until 2032. The plan also includes contingency measures that would be implemented in the DFW area should the area monitor a violation of these standards in the future.

## II. Response to Comments

We received comments from Earthjustice (on behalf of Downwinders at Risk and the Sierra Club); and the Texas Commission on Environmental Quality (TCEQ or State). These comments are available for review in the docket for this rulemaking. Our responses to all relevant comments follow. Any other comments received were either deemed irrelevant or beyond the scope of this action, but are also included in the docket for this action.

We proposed to find that the DFW area met all five redesignation criteria in CAA section 107(d)(3)(E) for the revoked ozone standards, and consistent with 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) ("*South Coast II*"),<sup>3</sup> that the anti-backsliding obligations for the DFW area associated with these standards should therefore be terminated. In the alternative, we proposed to redesignate the DFW area to attainment for the revoked ozone standards, taking comment on whether we had authority to do so. In this action, based upon comments received, we are finalizing the first option.

*Comment:* Earthjustice states that ozone is a serious health problem in Dallas.

*Response:* We agree that ozone is a significant health issue in the DFW area, but we also recognize that significant progress has been made in reducing ozone levels in the area. This action recognizes that the DFW area has attained both the revoked 1-hour and 1997 ozone NAAQS. We also recognize that further air quality improvement is necessary in the area to meet the two current 2008 and 2015 ozone NAAQS and to protect public health. The DFW area was designated as nonattainment

<sup>2</sup> As referenced in our Proposal, see "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992. To view the memo, please visit [https://www.epa.gov/sites/production/files/2016-03/documents/calcagni\\_memo\\_-\\_procedures\\_for\\_processing\\_requests\\_to\\_redesignate\\_areas\\_to\\_attainment\\_090492.pdf](https://www.epa.gov/sites/production/files/2016-03/documents/calcagni_memo_-_procedures_for_processing_requests_to_redesignate_areas_to_attainment_090492.pdf).

<sup>1</sup> Throughout this document, we refer to the 1979 1-hour ozone NAAQS as the "1-hour ozone NAAQS" and the 1997 8-hour ozone NAAQS as the "1997 ozone NAAQS."

<sup>3</sup> "*South Coast I*" refers to *South Coast Air Quality Management District v. EPA*, 472 F.3d 882 (D.C. Cir. 2006).

for both the revoked 1-hour and 1997 ozone NAAQS and is designated as nonattainment for the two current (2008 and 2015) 8-hour ozone NAAQS.<sup>4</sup> As a result, the State and DFW area—including local governments, business and industry—have implemented measures to reduce emissions of NO<sub>x</sub> and volatile organic compounds (VOC) that form ozone (see, e.g., State Submittal, Section 2.4: Permanent and Enforceable Measures Reductions and the TSD for this action). Accordingly, the DFW area has seen its 1-hour ozone design values decrease from 147 parts per billion (ppb) in 1992 to 98 ppb in 2018. Likewise, the DFW area design values for the 8-hour ozone NAAQS have decreased from 100 ppb in 2003 to 76 ppb in 2018.<sup>5</sup> Because the area has attained the revoked 1-hour and 1997 ozone NAAQS, and has also met the other CAA statutory requirements for redesignation for these standards, we believe it is appropriate to terminate the anti-backsliding requirements associated with these revoked NAAQS.

The area will remain designated nonattainment for the 2008 and 2015 ozone NAAQS. The DFW area was recently reclassified as a Serious nonattainment area for the 2008 ozone NAAQS, and therefore the State must submit SIP revisions and implement controls to satisfy the statutory and regulatory requirements for a Serious nonattainment area for the 2008 ozone standard.<sup>6</sup>

*Comment:* Earthjustice states that EPA cannot lawfully or rationally apply the criteria at CAA section 107(d)(3)(E) to terminate anti-backsliding protections for the DFW area, because that statutory provision provides only minimum criteria that must be satisfied before a designated nonattainment area may be redesignated to attainment. Earthjustice states that the provision provides no authority to terminate anti-backsliding on the basis of an area meeting its criteria for a revoked standard. The commenter also states that EPA does not and cannot identify a source of

authority for its application of the statutory provision for the purposes of terminating anti-backsliding provisions and has not purported to create regulations here under its general rulemaking authority of CAA section 301(a) to do so. Further, the commenter alleges that the EPA's reliance on *South Coast II* to support its authority to terminate DFW's anti-backsliding requirements for the two revoked ozone NAAQS is unlawful and arbitrary. Earthjustice argues that the D.C. Circuit in *South Coast II* held only that the redesignation substitute was unlawful because it fell short of certain statutory requirements and did not address any other reasons why the regulation was unlawful and arbitrary. The commenter alleges that *South Coast II* "says nothing" about whether EPA could lawfully authorize termination of anti-backsliding requirements in the circumstance addressed here, where the area continues to violate the 2008 and 2015 ozone NAAQS, and where termination "weakens protections in the area." Earthjustice states that the *South Coast II* court's holding with respect to the EPA's authority to reclassify areas after revocation is irrelevant to the question of the EPA's authority to change an area's designation after revocation.

*Response:* We disagree that the EPA lacks authority to terminate an area's anti-backsliding requirements for a revoked NAAQS and that we may not do so here for the DFW area with respect to the two revoked ozone NAAQS in question. The commenter's suggestion that the EPA may not look to the statutory redesignation criteria in CAA section 107(d)(3)(E) for authority to terminate the DFW area's anti-backsliding requirements is contradicted by the D.C. Circuit's decision in *South Coast II*. In that decision, the court faulted the redesignation substitute, one of the EPA's mechanisms for terminating anti-backsliding, but only because it had addressed only some, and not all, of the statutory redesignation criteria:

The redesignation substitute request 'is based on' the Clean Air Act's 'criteria for redesignation to attainment' under [CAA section 107(d)(3)(E)], 80 FR at 12,305, but it does not require full compliance with all five conditions in [CAA section 107(d)(3)(E)]. The Clean Air Act unambiguously requires nonattainment areas to satisfy all five of the conditions under [CAA section 107(d)(3)(E)] before they may shed controls associated with their nonattainment designation. The redesignation substitute lacks the following requirements of [CAA section 107(d)(3)(E)]: (1) The EPA has 'fully approved' the [CAA section 110(k)] implementation plan; (2) the area's maintenance plan satisfies all the

requirements under [CAA section 175A]; and (3) the state has met all relevant [CAA section 110 and Part D] requirements. 80 FR at 12,305. Because the 'redesignation substitute' does not include all five statutory requirements, it violates the Clean Air Act. 882 F.3d at 1152.

We disagree that the D.C. Circuit, as commenters suggest, said nothing with respect to how anti-backsliding controls could be lawfully terminated for areas under a revoked NAAQS. The court stated that the Act "unambiguously" requires that all five statutory redesignation criteria be met before anti-backsliding controls (*i.e.*, controls associated with the nonattainment designation for a revoked NAAQS) could be shed. *Id.* The court's express basis for vacating the redesignation substitute was that the mechanism failed to incorporate all of the statutory criteria as preconditions. *Id.* ("Because the 'redesignation substitute' does not include all five statutory requirements, it violates the Clean Air Act."). We do not agree with the commenter's suggestion that the EPA may not rely on the court's plain interpretation of the Act and act in accordance with it. The EPA had previously approved redesignation substitutes for the DFW area for the 1-hour ozone NAAQS and the 1997 ozone NAAQS. As discussed in our Proposal, this final action replaces our previous approvals of the DFW area redesignation substitutes for the 1-hour and 1997 ozone NAAQS.

Furthermore, we reject the commenter's suggestion that nonattainment of the newer, current NAAQS is a unique set of circumstances that would reasonably alter the EPA's ability to either redesignate an area or terminate anti-backsliding requirements for a prior NAAQS. Nothing in CAA section 107(d)(3) suggests that the EPA's approval of a redesignation or termination of anti-backsliding for one NAAQS should include evaluation of attainment of another newer NAAQS. It is common practice that areas designated nonattainment for an earlier, less stringent NAAQS come into compliance with that NAAQS, meet the requirements for redesignation for that NAAQS, and are redesignated to attainment for that NAAQS, while remaining nonattainment for a newer more stringent standard for the same pollutant. Indeed, with Congress' directive that the EPA review and revise the NAAQS as appropriate no less frequently than every five years, it would be nearly impossible for areas to be redesignated to attainment for an older NAAQS if nonattainment of a newer (often more stringent) standard barred EPA from approving

<sup>4</sup> For the 1-hour ozone NAAQS the DFW nonattainment area consists of Collin, Dallas, Denton, and Tarrant Counties (56 FR 56694, November 6, 1991). For the 1997 ozone NAAQS, the DFW nonattainment area included the four counties already listed, plus Ellis, Johnson, Kaufman, Parker, and Rockwall Counties (69 FR 23858, April 30, 2004). For the 2008 ozone NAAQS, the DFW nonattainment area included the nine counties already listed, plus Wise County (77 FR 30088, May 21, 2012). For the 2015 8-hour ozone NAAQS the DFW nonattainment area consists of Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Tarrant, and Wise Counties (83 FR 25776, June 4, 2018).

<sup>5</sup> See the TCEQ ozone reports posted at <https://www.tceq.texas.gov/airquality/monops/ozone>.

<sup>6</sup> See (83 FR 25776, June 4, 2018), and (84 FR 44238, August 23, 2019).

redesignation requests for the older standard.

We also disagree that this action's effects terminating anti-backsliding requirements are in any way "unique." Areas that are redesignated to attainment are permitted to stop applying nonattainment area New Source Review offsets and thresholds and transition to the Prevention of Significant Deterioration program, which the EPA does not agree is an unwarranted "weakening" of protections. In this case, because the DFW area remains nonattainment for the newer ozone NAAQS, it will continue to be subject to nonattainment new source review (NNSR) emissions offsets and threshold requirements, tailored to the current classifications that apply to the area. EPA does not agree with commenter's suggestion that areas that have reached attainment should be subject to a more stringent process to shed obligations under a revoked NAAQS than the process required to shed obligations for a current NAAQS. We do not agree that it is arbitrary or unlawful to hold areas that were nonattainment for a revoked NAAQS to the same standards that apply to areas that are nonattainment for the current NAAQS.

Finally, with respect to Earthjustice's comment that the *South Coast II* court's holding regarding reclassification does not support an interpretation that the EPA has the authority to alter designations, the EPA is not finalizing a change in designation for the area for the two revoked NAAQS. Because we are not redesignating the DFW area to attainment no further response to this specific comment is required.

*Comment:* Earthjustice states that EPA cannot lawfully or rationally change DFW's designation under revoked standards.

*Response:* The EPA is not changing the designation for the DFW area under the 1-hour or 1997 ozone NAAQS in this action. As noted above, the designations for these areas were revoked when the NAAQS were revoked. In this action, EPA is terminating the anti-backsliding requirements associated with the two revoked NAAQS in this area.

*Comment:* Earthjustice states that EPA arbitrarily fails to consider the consequences of terminating anti-backsliding protections. The commenter asserts that the EPA is not legally obligated to redesignate an area that meets criteria of CAA section 107(d)(3)(E), and that additionally, the EPA must also determine whether it *should* redesignate the area. Earthjustice states that finalization of this Proposal

would ratify termination of key anti-backsliding protections, particularly the Serious area NNSR protections that would otherwise apply to proposed new and modified stationary sources and work to impose more stringent limits on harmful ozone-forming pollution attributable to those new and modified stationary sources. By authorizing DFW to have weaker protections than it otherwise would, while still having severely harmful levels of ozone air pollution, Earthjustice claims that the EPA's action irrationally deprives DFW communities of CAA public health protections intended to bring the area expeditiously into compliance with health-based ozone standards.

*Response:* As stated previously, we are not in this action redesignating the DFW area for the revoked NAAQS. Rather, we find that all five CAA statutory criteria for redesignation are met, and therefore anti-backsliding obligations for the revoked NAAQS are appropriately terminated.

We note that we have considered the consequence of terminating anti-backsliding protections specifically raised by the commenter, *i.e.*, the Serious classification requirements for NNSR. The commenter submitted their comments in a July 24, 2019 letter. In a final rule published August 23, 2019 we reclassified the area to Serious for the 2008 ozone standard (84 FR 44238). Thus, the Serious NNSR and other Serious ozone nonattainment requirements apply now and will continue to apply after this final rule.<sup>7</sup>

*Comment:* Earthjustice states that unhealthy levels of ozone and other air pollutants disproportionately affect communities of color in the DFW nonattainment area. Specifically, Earthjustice expressed concern about disproportionate impacts on the historic freedman town of Joppa, which is located southeast of downtown Dallas. Earthjustice includes a document with their submitted comments titled, "EJSCREEN Report (Version 2017)," dated March 05, 2018. The report shows

<sup>7</sup> The NNSR requirements in the existing Texas SIP contain 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. The EPA approved Texas SIP includes 30 TAC Section 116.12 (Nonattainment and Prevention of Significant Deterioration Review Definitions) and 30 TAC Section 116.150 (New Major Source or Major Modification in Ozone Nonattainment Area). These provisions require new major sources or major modifications at existing sources in the DFW area to comply with the lowest achievable emission rate and obtain emission offsets at the Serious classification ratio of 1.2 to 1.

environmental and demographic raw data (e.g., the estimated concentration of ozone in the air), and shows what percentile each raw data value represents. These percentiles provide perspective on how the selected block group (Joppa) compares to the entire State, EPA region, and nation. For example, if Joppa is at the 95th percentile nationwide, this means that only 5 percent of the US population has a higher block group value than the average person in Joppa. The variables included in the report are particulate matter (PM), ozone, diesel PM, several categories within the National Air Toxics Assessment (NATA),<sup>8</sup> lead paint, wastewater discharge, and proximity to the following: traffic and traffic volume; Superfund sites; and Risk Management Plan facilities (potential chemical accident management plan). Earthjustice states that the weakened NNSR requirements will allow more VOC emissions and emissions of listed hazardous air pollutants than otherwise would be permitted, and the community of Joppa would bear a disproportionate burden of these emissions.

*Response:* The EPA appreciates the work the commenter has performed to evaluate potential disproportionate impacts in vulnerable communities; in this final action, however, we are addressing only the determination that the DFW area is attaining the revoked standards and meets the five criteria for redesignation, which leads to the termination of anti-backsliding measures. We note that emissions of PM and all other variables in the Commenter's EJSCREEN Report, with the exception of ground-level ozone, are outside the scope of this action.

The EJSCREEN Report provided by the commenter examined the geographic distribution of several pollutants and other variables and whether the community in Joppa is disproportionately impacted by these pollutants and variables. The approvability of this action is based on requirements for ozone and the revoked standards being considered here. As discussed elsewhere, because EPA reclassified the DFW area to Serious for the 2008 ozone NAAQS in 2019, new sources built in the DFW area must meet NNSR requirements consistent with the Serious area classification (84 FR

<sup>8</sup> NATA is EPA's ongoing review of air toxics in the United States. EPA developed NATA as a screening tool for state, local and tribal air agencies. NATA's results help these agencies identify which pollutants, emission sources and places they may wish to study further to better understand any possible risks to public health from air toxics. For more information see <https://www.epa.gov/national-air-toxics-assessment>.

44238), just as they were required to do prior to the approval of the redesignation substitute for the 1997 ozone NAAQS. Therefore, terminating the NNSR requirements for either of the revoked NAAQS for the DFW area has no impact, much less a disproportionate impact. Texas will continue to have to work to reduce ozone precursors to meet the 2008 and 2015 ozone standards. Finally, we note that monitors throughout the DFW area have recorded concentrations meeting both the 1-hour and 1997 ozone standards for some time.<sup>9</sup>

*Comment:* Earthjustice states that EPA arbitrarily concludes that relevant statutory and executive order reviews are not required for this rule and EPA wrongly asserts that the proposed action would only accomplish a revision to the Texas SIP that EPA can only approve or disapprove. Earthjustice states that through this rule, EPA proposes to change and adopt national positions regarding its authority to redesignate areas under CAA section 107(d)(3)(E) and terminate anti-backsliding protections for revoked standards. Earthjustice states these actions are not SIP revisions and thus necessitate the statutory and executive order reviews EPA avoids by citing only a portion of the actions it is taking in this rulemaking. Earthjustice states that, in addition to the environmental justice concerns relevant to the review required by Executive Order 12898, EPA ignores other important considerations that are a part of rational decision-making like effects on children's health and other public health factors.

*Response:* As stated previously, we are not in this action redesignating the DFW area for the two revoked NAAQS. Earthjustice has not provided much detail regarding which statutory and executive order reviews it believes are applicable and that the EPA has not addressed. In section V of this notice, we discuss EPA's assessment of each statutory and executive order that potentially applies to this action. We note that the introductory paragraph to section V of the Proposal preamble contains a typographical error that may have caused some of the commenter's concern. The last sentence of that paragraph appears to indicate that the reason for EPA's proposed assessment that the action is exempt from the enumerated statutory and executive orders is solely that the action is a review of a SIP. However, that sentence was intended to be inclusive of all the reasons stated in the introductory

paragraph, including that the approval of the request to terminate anti-backsliding does not impose new requirements on sources (*i.e.*, "For that reason" more appropriately would have read "For these reasons").

With respect to the commenter's concern that EPA has not adequately addressed environmental justice, we do not agree that Executive Order 12898 applies to this action because this action does not affect the level of protection provided to human health or the environment. In this action the level of protection is provided by the ozone NAAQS and this action does not revise the NAAQS. As noted earlier in this final action, the DFW area will remain designated nonattainment for the 2008 and 2015 ozone NAAQS. The DFW area was recently reclassified as a Serious nonattainment area for the 2008 ozone NAAQS, and therefore the State must submit SIP revisions and implement controls to satisfy the statutory and regulatory requirements for a Serious area for the 2008 ozone standard.<sup>10</sup>

With respect to commenter's concern that we have not adequately addressed executive orders regarding children's health, we do not agree that Executive Order 13045 applies to this action. Executive Order 13045 applies to "economically significant rules under E.O. 12866 that concern an environmental health or safety risk that EPA has reason to believe may disproportionately affect children." See 62 FR 19885, April 23, 1997. As noted in the Proposal and below in section V of this preamble, this rule is not "economically significant" under E.O. 12866 because it will not have "an annual effect on the economy of \$100 million or more or adversely affecting in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities." 62 FR 19885.<sup>11</sup>

*Comment:* Earthjustice states that EPA should not revise the attainment designations in 40 CFR 81 because it has failed to consider the consequences of doing so, including whether changes in the designations listing will affect remaining maintenance plan and other requirements after redesignation.

*Response:* In this action, we are not revising the designations for the DFW

area for the two revoked ozone NAAQS, and therefore the comments regarding consequences of changing the area's designation are beyond the scope of this final action. We are revising the 40 CFR part 81 tables for the DFW area, which currently reflect the approvals of the area's redesignation substitute from 2016. For revoked standards, the sole purpose of the part 81 table is to help identify applicable anti-backsliding obligations. Therefore, we are revising the part 81 tables to reflect that the DFW area has met all the redesignation criteria for the two revoked ozone NAAQS and therefore anti-backsliding obligations associated with those two revoked NAAQS are terminated.

*Comment:* Earthjustice states the DFW area did not attain by its Serious area attainment date for the 1997 8-hour ozone NAAQS and EPA didn't reclassify the area to Severe nonattainment, as required by CAA section 181(b)(2). Earthjustice states that EPA thus has overdue legal obligations to reclassify the DFW area to Severe under the 1997 ozone standard in line with the D.C. Circuit's *South Coast II* decision. Earthjustice states that our Proposal cannot proceed without the programs for the DFW area to address the CAA section 185 failure to attain fee program<sup>12</sup> and the CAA section 182(d)(1) vehicle miles traveled (VMT) program.<sup>13</sup> Earthjustice also states that EPA has an overdue legal obligation to promulgate a Federal Implementation Plan (FIP) for these programs in the DFW area.

*Response:* To respond to this comment, it is useful to recount the complicated history leading up to this action. The attainment deadline for the DFW Serious area for the 1997 ozone NAAQS was June 15, 2013 (*see* 75 FR 79302 (December 20, 2010)). EPA proposed to determine that the DFW area failed to attain by the June 15, 2013 attainment date and to reclassify the

<sup>12</sup> The CAA section 185 fee program requirements apply to ozone nonattainment areas classified as Severe or Extreme that fail to attain by the required attainment date. It requires each major stationary source of VOC or NO<sub>x</sub> located in an area that fails to attain by its attainment date to pay an annual fee to the state for each ton of VOC or NO<sub>x</sub> the source emits in excess of 80 percent of a baseline amount. The fees are paid until the area is redesignated to attainment or in the case of a revoked ozone standard, until the anti-backsliding obligations for the revoked standard area terminated.

<sup>13</sup> The 182(d)(1) VMT program (CAA section 182(d)(1)(A)) applies to ozone nonattainment areas classified as Severe or Extreme. It requires such areas to offset growth in emissions due to growth in VMT, reduce motor vehicle emissions as necessary to comply with RFP requirements, and choose from among and implement transportation control strategies and transportation control measures as necessary to demonstrate NAAQS attainment.

<sup>10</sup> See 83 FR 25576 and 84 FR 44238.

<sup>11</sup> See also "Guide to Considering Children's Health When Developing EPA Actions: Implementing Executive Order 13045 and EPA's Policy on Evaluating Health Risks to Children." <https://www.epa.gov/children/guide-considering-childrens-health-when-developing-epa-actions-implementing-executive-order>.

<sup>9</sup> See <https://www.epa.gov/air-trends/air-quality-design-values>.

DFW area to Severe under the 1997 ozone NAAQS based upon monitoring data for 2010–2012 (80 FR 8274, February 17, 2015). Less than a month later, EPA revoked the 1997 8-hour ozone standard along with the associated designations and classifications effective on April 6, 2015 (80 FR 12264, 12296; March 6, 2015). It was EPA's interpretation at the time that we could not revise the classification of an area under a revoked ozone NAAQS and reclassification of an area upon its failure to attain by the attainment date was not retained as a regulatory anti-backsliding measure (80 FR 12264, 12297; March 6, 2015). Therefore, EPA did not finalize the February 2015 reclassification proposal. Beginning with the time period 2012–2014, monitored levels in the DFW area have met the revoked 1997 ozone standard. We proposed to make a clean data determination on April 28, 2015 (80 FR 23487) and we finalized that clean data determination in September 2015 (see 80 FR 52630), based upon the 2012–2014 monitoring data. A clean data determination suspends the requirement to submit SIPs that are designed to help an area achieve attainment, such as demonstrations of how an area will attain (attainment demonstrations) and showings of reasonable further progress to attainment, because the stated purpose of those elements will have already been fulfilled for an area that is attaining the standard. The current preliminary 2017–2019 design value for the area is 77 ppb as air quality has continued to improve in the DFW area.

On February 16, 2018, in the *South Coast II* decision, the D.C. Circuit determined that EPA erred in waiving the obligation to reclassify an area to a higher classification for the 1997 ozone NAAQS based on a failure to meet the 1997 attainment deadlines and as such EPA should continue to reclassify areas if they fail to attain the revoked 1997 standard. The court also vacated the portion of the rule that provided for the “redesignation substitute” approach to terminating anti-backsliding measures. As discussed elsewhere, the court made clear that anti-backsliding measures could only be terminated if all five criteria for redesignation under CAA section 107(d)(3)(E) have been met. At the time of the *South Coast II* decision, the DFW area had been monitoring attainment of the revoked 1997 ozone standard for four years, and had obtained redesignation substitutes for both revoked ozone NAAQS in 2016 (81 FR 78688, November 8, 2016).

In response to the court decision, Texas moved quickly to address the court's concerns regarding the

redesignation substitutes that had been approved for the DFW area. Within 13 months of the *South Coast II* decision, Texas proposed and finalized at the state-level a demonstration that all five statutory criteria for redesignation for each of the revoked NAAQS had been met, including the preparation of a SIP revision to address maintenance of both NAAQS for the area through 2032. In this action, we are determining the DFW area has met the five CAA criteria for redesignation for both NAAQS and therefore we are terminating all anti-backsliding obligations for those NAAQS.

The commenter discusses two specific anti-backsliding measures associated with a Severe classification, the CAA section 185 failure to attain fee program and the CAA section 182(d)(1) VMT program. Earthjustice states that this proposal cannot proceed without such programs for the DFW area, because in commenter's view, the programs are required because EPA “still has never addressed its failure to reclassify the area to severe.” To require these programs at this time, however, when the area has met the 1997 standard for more than five years and the State has provided a demonstration that all five criteria for redesignation have been met, including a maintenance plan demonstrating that the area will continue to meet the standard for 10 more years, would be an unnecessary and unproductive exercise. The D.C. Circuit's rationale in requiring EPA to continue to reclassify areas under a revoked NAAQS and consequently impose more stringent emission controls, like those cited by commenters, was in service of “constrain[ing] ozone pollution” in order to attain that NAAQS. *South Coast II*, 882 F.3d at 1147 (“If EPA were allowed to remove the [attainment] deadlines \* \* \* a state could go unpenalized *without ever attaining the NAAQS.*”) (emphasis added).

Moreover, even if EPA were to make a determination *today* that the DFW area failed to attain by its 2013 Serious area attainment date and to reclassify the DFW area to Severe, that determination alone would not immediately render Texas in default of the section 185 fee program and the section 182 VMT requirements, as commenters suggest. When EPA makes a determination that an area has failed to attain and reclassifies that area, the Act prescribes that the Administrator may establish new deadlines for the submission of SIPs to meet the requirements of the new classification. CAA section 182(i). So were EPA to make such a determination, we would establish some

period of time for Texas to submit the section 185 fee program and the VMT programs. Under EPA's longstanding interpretation of the CAA 107(d)(3)(E) criteria, states requesting redesignation to attainment must meet only the applicable requirements of the Act that come due prior to the submittal of a complete redesignation request. See September 4, 1992 Calcagni memorandum at 2. (“For purposes of redesignation, a State must meet all requirements of section 110 and Part D that were applicable prior to submittal of the complete redesignation request. When evaluating a redesignation request, Regions should not consider whether the State has met requirements that come due under the Act after submittal of a complete redesignation request.”); September 17, 1993 Michael Shapiro memorandum.<sup>14</sup> (“Specifically, before EPA can act favorably upon any State redesignation request, the statutorily-mandated control programs of section 110 and part D (*that were due prior to the time of the redesignation request*) must have been adopted by the State and approved by EPA into the SIP”) (emphasis added). Given that for a revoked NAAQS EPA is using the five statutory redesignation criteria to determine whether anti-backsliding should be terminated, we think it is reasonable to apply the same interpretations that we would in the redesignation context. Here, EPA never finalized a reclassification of the DFW area to Severe and never established SIP submission deadlines for Texas to submit a 185 program or a VMT program. Even if we were to do so now, because Texas has already submitted its demonstration that it is meeting all five statutory redesignation criteria and its request to terminate the area's anti-backsliding for the 1997 ozone NAAQS, under EPA's long-standing interpretation of the 107(d)(3)(E) criteria, those SIP programs are not within the scope of requirements considered by EPA in evaluating whether the criteria have been met.

Other states have faced somewhat similar situations in the past. One analogous example is the St. Louis area, which was designated as a Moderate ozone nonattainment area for the 1979 1-hour ozone NAAQS. This area failed to attain by its attainment date, and EPA

<sup>14</sup> See the September 17, 1993 memorandum from Michael Shapiro, “State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992” at [https://www3.epa.gov/ttn/naaqs/aqmguide/collection/cp2\\_old/19930917\\_shapiro\\_sips\\_redesignation\\_ozone\\_co\\_ana.pdf](https://www3.epa.gov/ttn/naaqs/aqmguide/collection/cp2_old/19930917_shapiro_sips_redesignation_ozone_co_ana.pdf).

did not timely issue its determination of that fact. Petitioners challenging EPA's eventual determination that the area did not attain attempted to argue that EPA had de facto made the determination years earlier than its actual 2001 rulemaking, via statements made in a letter to the Governor suggesting that air quality problems remained after the area's attainment date or by the negative implication of not having included the St. Louis area on a list of areas that had attained by the attainment date. The D.C. Circuit ruled that neither of these actions constituted the requisite determination of whether the area attained, agreeing with the Agency that "if there has not been a rulemaking there has not been an attainment determination." See *Sierra Club v. Whitman*, 285 F.3d 63, 66 (D.C. Cir. 2002). Nor did the court endorse environmental petitioners' claim that EPA's 2001 determination that St. Louis failed to attain should be "converted to the date the statute envisioned [*i.e.*, 1997], rather than the actual date of EPA's action." *Id.* at 68. The court ruled that the Administrative Procedure Act prohibits retroactive rulemaking, that there is no indication that Congress intended the CAA to be an exception to that prohibition, and that back-dating the effective date of EPA's determination of failure to attain would be arbitrary. See *id.* Specifically, the court stated, "Although EPA failed to make the nonattainment determination within the statutory time frame, Sierra Club's proposed solution only makes the situation worse. Retroactive relief would likely impose large costs on the States, which would face fines and suits for not implementing air pollution prevention plans in 1997, even though they were not on notice at the time." *Id.*

The situation faced in the St. Louis 1-hour ozone nonattainment area resembles the current situation in the DFW area in another way. That is, after EPA issued the determination that St. Louis had failed to attain by the Moderate attainment deadline and reclassified the area to Serious, the St. Louis area came into attainment of the NAAQS and submitted its request to be redesignated *prior to the deadlines* to submit the Serious area requirements associated with the reclassification. In evaluating Missouri's request to redesignate St. Louis, EPA followed its longstanding interpretation of CAA section 107(d)(3)(E) and evaluated the redesignation based on whether the state had all of its required Moderate SIPs approved, but not based on whether the state had submitted and EPA had approved Serious area plans.

Petitioners challenged this precise issue, arguing that Missouri was required to have submitted the Serious area requirements for the St. Louis area before it was permitted to move on to redesignation. See *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004). The court flatly rejected petitioners' position. The 7th Circuit recognized that St. Louis was required to have been bumped up and treated as a Serious nonattainment area, and therefore subject to the more stringent requirements of that classification such as requiring sources of more than 50 tons (rather than 100 tons) of precursor chemicals to install control measures, but that there would be "some lead time" for covered sources to limit their emissions. *Id.* And, "[b]efore that time arrived, St. Louis met the national ozone standard," and the court viewed this as a critical point. See *id.* It agreed with EPA that a reasonable interpretation of CAA section 107(d)(3)(E) was to adjudge St. Louis' redesignation request based on "whatever actually was in the plan and already implemented *or due at the time of attainment.*" *Id.* At the heart of the court's disagreement with petitioners was the petitioners' view that reclassification "was some sort of punishment;" whereas the court interpreted Congress' reclassification requirements as an instruction to reclassified areas "to take additional steps . . . to achieve an adequate reduction in ozone, [so] it would be odd to require them even when they turned out to be unnecessary." *Id.* In the court's view, "[r]eclassification was a combination of (a) goad (clean up or suffer expensive measures), and (b) palliative (sterner measures expedite compliance). Once an area has met [*sic*] the national air quality standard, neither rationale calls for extra stringency; indeed the statutory system would not be much of a goad if the tighter controls must continue even after attainment." *Id.* at 542.

The St. Louis example is therefore informative to the current DFW situation in two ways. First, it suggests that the section 185 fee program SIP and the VMT SIP are not required submissions until EPA promulgates a rulemaking finding that the DFW area failed to attain by its attainment date and reclassifies the area and that such finding cannot be inferred without actual agency action. See *Sierra Club v. Whitman*, 285 F.3d at 66. Second, the St. Louis history indicates that even if EPA were to promulgate a finding today that the DFW area failed to attain by its 2013 attainment date, the evaluation being undertaken in this current action

of whether the DFW area has met the statutory criteria for redesignation would not include the section 185 fee program or the VMT requirements, because the deadlines to submit those requirements would necessarily be established in the future, and Texas' March 29, 2019 request to terminate its anti-backsliding obligations for the DFW area under the 1997 ozone NAAQS would therefore pre-date any such deadlines.

Additionally, with respect to 185 fees, we note that the Act is explicit that the program begins if a Severe or Extreme area is found to have failed to attain by the applicable attainment deadline for those classifications. See CAA § 185(a) (noting that the program will apply "if the area . . . has failed to attain the [NAAQS] for ozone by the applicable attainment date"). The earliest possible Severe attainment deadline under the Act would have been June 15, 2019. As the DFW area attained the 1997 ozone standard long before any Severe attainment deadline, fees would never be collected for failure to attain the 1997 ozone standard. To require the State to submit a program that could never be triggered does not serve the ultimate goal of the CAA, which is to have areas attain the various NAAQS that EPA establishes as expeditiously as practicable, not to create unnecessary paperwork exercises that could never achieve any environmental benefit.

With respect to the CAA section 182(d)(1)(A) VMT requirements, we note that such programs generally contain three elements: (1) Specific enforceable transportation control strategies and transportation control measures to offset any growth in emissions from growth in vehicle miles traveled or numbers of vehicle trips in the Severe nonattainment area, (2) reduction in motor vehicle emissions as necessary (in combination with other emission reduction requirements) to comply with the reasonable further progress requirements of the Act, and (3) adoption and implementation of measures specified in section 108(f) of the Act as necessary to demonstrate attainment of the NAAQS. Even if EPA had promulgated a final determination that the DFW area failed to attain in 2013, or if EPA were to promulgate such a determination today, the Agency's action in 2015 clean data determination finding that the DFW area was attaining the NAAQS<sup>15</sup> would have the effect of

<sup>15</sup> 80 FR 52630, 52631 (September 1, 2015) ("Finalizing the CDD suspends the requirements for the TCEQ to submit an attainment demonstration or other SIPs related to attainment of the 1997 ozone NAAQS in the DFW area for so long as the area is attaining the standard (40 CFR 51.1118)").

suspending the second and third elements—the RFP and attainment elements of the section 182(d)(1)(A) VMT SIP requirements.<sup>16</sup> As noted above, a clean data determination suspends the requirement to submit attainment-related planning SIPs for so long as the area continues to attain, and those requirements are permanently terminated when EPA finds that the redesignation criteria have been met. Therefore, even if we had reclassified the DFW area to Severe for the 1997 ozone NAAQS or were to do so now, and the first element of the VMT SIP at that point became or would become a required submission, these latter two VMT elements would not have been required to be submitted due to the clean data determination for the 1997 ozone NAAQS, and they are terminated now because the DFW area has met the CAA five criteria for redesignation.

If the State were now required to address section 182(d)(1)(A)'s first element, the requirement to offset any growth in emissions from growth in VMT or numbers of vehicle trips, following a bump up to a Severe classification, the first step would be to determine if there had been an increase in motor vehicle emissions in the area due to growth in VMT or vehicle trips between the base year used in SIP planning and 2014, the area's attainment year. As EPA has explained in its guidance on the VMT offset element,<sup>17</sup> it would only be necessary to adopt and implement a program of offsetting transportation control measures or other transportation control strategies if it is determined that there had been an increase in motor vehicle emissions due to increase in VMT or vehicle trips during that period. Again, however, because the area has not been reclassified as a Severe nonattainment area, no analysis of whether there has been such an increase in emissions from growth in VMT is required under the Act, no determination regarding such an analysis has been made or is required,

and consequently no requirement to offset any such undetermined growth in emissions through implementation of TCMs has been triggered. Therefore, it is flatly incorrect for the commenter to assert that a Severe area VMT program must be implemented before EPA can take final action in this rule.

The commenter additionally argues that EPA has an overdue legal obligation to promulgate a FIP for the 185 fee and VMT programs. EPA has no authority to issue a FIP for these Severe area requirements. We have authority to promulgate a FIP only after we (1) find that a State has failed to make a required SIP submission or find that the SIP submission does not satisfy the minimum criteria found in 40 CFR 51, Appendix V (a "finding of failure to submit") or (2) disapprove a SIP submission in whole or in part. After making such a finding or disapproving a SIP submission we are required to promulgate a FIP within 2 years unless we approve a SIP submission that corrects the deficiency. See CAA section 110(c)(1). We have not made a finding of failure to submit for a 185 fee or VMT program nor have we disapproved a SIP revision addressing either of these programs for the DFW area. Thus, we do not have the authority to promulgate a FIP for these programs in the DFW area.<sup>18</sup>

*Comment:* Earthjustice states that EPA arbitrarily flouts important considerations relevant to this rulemaking, and states that this action's consequences on interstate and intrastate ozone transport are not considered. Earthjustice states that EPA failed to consider how redesignation will affect Texas' interstate ozone transport obligations under existing regulations and how redesignation of the DFW area will affect attainment in other Texas areas, such as San Antonio and Houston, both of which struggle with existing ozone pollution and are in nonattainment for several standards. Earthjustice states EPA must consider the interstate and intrastate consequences of redesignating and relaxing anti-backsliding controls in the DFW area.

<sup>18</sup> Although the commenter does not explicitly argue for this, they seem to suggest that EPA should consider the VMT and 185 fee programs as having already been due in the past and Texas to be delinquent in submitting such programs, even though EPA never finalized a reclassification for the DFW area. Because of the complexity of the CAA's SIP provisions and the interrelationship between federal and state action, the EPA believes it is inappropriate to impose any retroactive effect on decisions in a manner that would create deadlines that have long passed. EPA has historically refused to do this, and courts have supported this position. See, e.g., *Sierra Club v. Whitman*, 285 F.3d 63 (D.C. Cir. 2002).

*Response:* We are not redesignating the DFW area for the revoked 1-hour and 1997 ozone NAAQS. We disagree that EPA is required under the CAA to consider the effect of this action on interstate and intrastate ozone transport before it may terminate the DFW area's anti-backsliding requirements with respect to the two revoked ozone NAAQS in question, and we do not agree that such considerations are relevant to this rulemaking. At the outset, we note that the State is projecting DFW area ozone precursor emissions will decrease, reducing the DFW area's impact on other areas.

Interstate ozone transport is addressed under CAA section 110(a)(2),<sup>19</sup> and Texas' interstate transport obligations under the Act are not in any way altered by this action. To the extent that Texas has outstanding interstate ozone transport obligations under CAA section 110(a)(2)(D), they remain obligated to address those statutory requirements after finalization of this action.

The TCEQ has also adopted Serious Area attainment plans for the Houston and DFW areas for the 2008 8-hour ozone standard, and those submittals—including any obligation to address intrastate transport as necessary to attain the NAAQS—will also be evaluated in separate actions.

*Comment:* Earthjustice states that EPA's Proposal leaves important modeling questions unaddressed. Earthjustice states EPA predicts that point source NO<sub>x</sub> emissions will increase slightly between 2014 and 2020, then expects these NO<sub>x</sub> emissions to remain identical until 2032. In its TSD, EPA does not explain how it arrived at its modeling prediction and given the tremendous growth of industrial facilities in the Dallas area due, in part, to oil and gas extraction activities it is difficult to see how this prediction holds. Similarly, EPA fails to explain how VOC emissions from point sources will remain essentially identical between 2014 and 2032. Earthjustice also questions whether these predictions are technically sound or with a "margin of error" that might result in putting the Dallas area in nonattainment for either or both standards if future relaxed new source review permit controls are put in place.

*Response:* As described in our Proposal and TSD, EPA evaluated the

<sup>19</sup> See "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act sections 110(a)(1) and 110(a)(2)," Memorandum from Stephen D. Page, September 13, 2013. This document is available at [https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance\\_on\\_Infrastructure\\_SIP\\_Elements\\_Multipollutant\\_FINAL\\_Sept\\_2013.pdf](https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance_on_Infrastructure_SIP_Elements_Multipollutant_FINAL_Sept_2013.pdf).

<sup>16</sup> "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard" Memorandum from John Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995. To view the memo please visit <https://www.epa.gov/ground-level-ozone-pollution/reasonable-further-progress-attainment-demonstration-and-related>.

<sup>17</sup> See page 7 of "Implementing Clean Air Act Section 182(d)(1)(A): Transportation Control Measures and Transportation Control Strategies to Offset Growth in Emissions Due to Growth in Vehicle Miles Travelled", Office of Transportation and Air Quality, EPA-420-B-12-053, August 2012. This guidance is available at <https://nepis.epa.gov/Exe/ZyPDF.cgi/P100EZ4X.PDF?Dockey=P100EZ4X.PDF>.



emission inventories (EIs) submitted by the State in its Maintenance Plan and we found the State's approach and methods of calculating the base year and future year EIs appropriate.<sup>20</sup> We disagree that we or the State did not provide an explanation for holding the point source VOC emissions constant for the projection years for the purposes of demonstrating that the standard would be maintained. As TCEQ explains in its SIP, it was following EPA guidance (noting that emissions trends for ozone precursors have generally declined) and thus, for planning purposes, TCEQ found it reasonable to hold point source emissions constant, rather than show such emissions as declining.<sup>21</sup> For projection year EIs, TCEQ designated the 2016 EI as the baseline from which to project future-year emissions because using the most recent point source emissions data would capture the most recent economic conditions and any recent applicable emissions controls. As TCEQ further describes in its SIP, TCEQ noticed that the 2014 attainment year VOC emissions are higher than future-year emissions projected from the sum of the 2016 baseline emissions plus available emission credits.<sup>22</sup> Therefore, future point source VOC emissions were projected by using the 2014 values as a conservative estimate for all future interim years. This approach is consistent with EPA's EI Guidance document at 21.

For point source NO<sub>x</sub> emissions, TCEQ took a different approach that is also conservative and fully explained in the SIP submittal. We disagree that there is any disparity. As explained in the SIP submittal, TCEQ held the most recent year (2016) emissions constant and accounted for growth through adjustments for cement kilns.<sup>23</sup> Each of

the interim year NO<sub>x</sub> EIs were adjusted to account for available, unused emissions credits. TCEQ also assumed that additional emissions would occur based on the possible use of emission credits, which are banked emissions reductions that may return to the DFW area in the future through the use of emission reduction credits (ERCs) and discrete emissions reduction credits (DERCs). All banked (*i.e.*, available for use in future years) and recently-used ERCs and DERCs were added<sup>24</sup> to the future year inventories. We believe this is a conservative estimate because historical use of the DERC has been less than 10 percent of the projected rate—including all the banked ERCs and DERCs in the 2020 inventory assumes a scenario where all available banked credits would be used in 2020, which is inconsistent with past credit usage.

Despite the conservative assumptions for point source growth, the total emissions estimated by the State for all anthropogenic sources of NO<sub>x</sub> and VOC in the DFW area for 2020, 2026, and 2032 are lower than those estimated for 2014 (the attainment inventory year). Consistent with the Calcagni Memorandum regarding a Maintenance Demonstration, “[a] State may generally demonstrate maintenance of the NAAQS by either showing that future emissions of a pollutant or its precursors will not exceed the level of the attainment inventory or by modeling to show that the future mix of sources and emission rates will not cause a violation of the NAAQS.” Calcagni memorandum at 2. Because the State's estimated future EIs for the DFW area do not exceed the 2014 attainment year EI, we do not expect the area to have emissions sufficient to cause a violation of the 1-hour or 1997 ozone NAAQS.

In addition, NNSR offsets will continue to be required in the DFW area addressed in this action because all nine counties are also designated nonattainment, and currently classified as Serious, under the 2008 ozone NAAQS.<sup>25</sup> The required NNSR offset for the DFW area at this time is 1.2:1 for sources emitting at least 50 tons per year, consistent with the Serious area requirements provided in CAA section

182(c)(10). Whether a new or modified major source in the DFW area chooses to offset NO<sub>x</sub> or VOC or a combination of the two, the offsets must be made in the same ozone nonattainment area.

Finally, despite population and economic growth, emissions of NO<sub>x</sub> and VOC in the DFW area have been decreasing since 1990. Emissions of NO<sub>x</sub> in the DFW area have dropped from approximately 587.93 tons per day (tpd) (1990 base year under the 1-hour ozone NAAQS) to 442.08 tpd (2011 base year under the 2008 ozone NAAQS) and emissions of VOC have dropped from approximately 771.02 tpd (1990 base year) to 475.65 tpd (2011 base year)<sup>26</sup> See 59 FR 55586, November 8, 1994, and 80 FR 9204, February 20, 2015.<sup>27</sup> The DFW SIP must be further revised to meet the emission reductions required by CAA section 182(c)(2)(B) for the Serious ozone nonattainment classification under the 2008 ozone NAAQS.<sup>28</sup> This progress reflects efforts by the State, area governments and industry, federal measures, and others.<sup>29</sup>

*Comment:* Earthjustice states the DFW area did not meet its Moderate attainment date under the 2008 NAAQS and EPA will reclassify the area to Serious nonattainment. Commenter states that once EPA completes that action, “the new source review requirements will snap back to serious area level and other serious areas requirements will again apply.” This will cause the area's NSR requirements to “roller coaster” to no purpose. The commenter adds that if EPA insists on finalizing the proposal, it should wait to do so until after it reclassifies the DFW area.

*Response:* EPA appreciates the commenter's attention to this process detail. We reclassified the DFW area to Serious under the 2008 8-hour ozone

<sup>20</sup> See <https://www.epa.gov/moves/emissions-models-and-other-methods-produce-emission-inventories#locomotive>.

<sup>21</sup> See EPA's “Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations” published May 2017, EPA-454/b-17-002. Section 5, beginning on p. 119 of this Guidance document addresses *Developing Projected Emissions Inventories*. This Guidance document is available on EPA's website at <https://www.epa.gov/air-emissions-inventories/air-emissions-inventory-guidance-documents>.

<sup>22</sup> Not to be confused with the 2016 baseline and as noted earlier in this action, the 2014 base year EIs for NO<sub>x</sub> and VOC represent the first year in which the DFW area is attaining both the 1-hour and 1997 ozone NAAQS and thus, the 2014 EI is also called the attainment inventory. The 2014 attainment inventory provides a starting point against which to evaluate the EI levels estimated for future years.

<sup>23</sup> Recently authorized emission limits from permits, consent decrees, and agreed orders were used to project emissions, which is a representative and conservative approach to emissions growth.

<sup>24</sup> The ERCs were divided by 1.15 before being added to the future year EIs to account for the NNSR permitting offset ratio for Moderate ozone nonattainment areas. Since the area is now classified as a Serious ozone nonattainment area however, any ERCs actually used will have to be divided by 1.2. See the SIP submittal for more specific detail on how Texas assumed and calculated the ERC and DERC use for the future EI years.

<sup>25</sup> Wise County is also included in the DFW Serious nonattainment area under the 2008 ozone NAAQS (84 FR 44238).

<sup>26</sup> The 1990 base year includes 126.09 tpd in biogenic VOC emissions. Biogenic emissions, *i.e.*, emissions from natural sources such as plants and trees, are not required to be included in the 2011 base year.

<sup>27</sup> We approved the area's Reasonable Further Progress (RFP) plan for the Moderate ozone NAAQS under the 2008 ozone NAAQS showing 15% emission reductions from 2011 through the attainment year (2017), plus an additional 3% emission reductions to meet the contingency measure requirement.

<sup>28</sup> The State recently adopted a SIP revision to meet RFP Serious area requirements for the DFW area with an additional average of 3% emission reductions from 2017 through the attainment year (2020), plus an additional 3% emissions reductions to meet the contingency measure requirement (see <https://www.tceq.texas.gov/airquality/sip/dfw/dfw-latest-ozone> for the State's Serious area RFP). See also 84 FR 44238.

<sup>29</sup> See also <https://www.epa.gov/clean-air-act-overview/progress-cleaning-air-and-improving-peoples-health>.

NAAQS effective September 23, 2019 (84 FR 44238). Therefore, the commenter's concern that we should wait to finalize our proposal until the area is reclassified under the 2008 NAAQS is satisfied.

*Comment:* Earthjustice asserts that EPA must either create regulations to authorize termination of anti-backsliding protections when certain conditions are met or reverse its duly adopted, nationally applicable position that EPA lacks authority to redesignate areas under revoked standards. Earthjustice states that either action would be reviewable exclusively in the D.C. Circuit. Earthjustice further asserts that even if aspects of EPA's action constitute a locally or regionally applicable action that overbears the nationally applicable aspects of the action, Earthjustice believes that EPA's action would still be "based on a determination of nationwide scope and effect" (citing CAA section 307(b)(1)). Earthjustice asserts that "EPA expressly proposed in its FR publication to base action on that determination (via either pathway)," but also states that if a more specific finding and publication were necessary, that EPA is obligated to make the finding and publish it because EPA's action here is a determination of nationwide scope and effect. The commenter concludes that the venue for judicial review of this action therefore necessarily lies in the D.C. Circuit.

*Response:* First, as noted earlier, the EPA is not in this action changing DFW's designation, so Earthjustice's comments on that point are beyond the scope of this final action. Second, we disagree that promulgation of a regulation authorizing the action taken here is necessary or being undertaken in this notice. As mentioned earlier in this final action, we believe the D.C. Circuit's decision in *South Coast II* regarding the vacatur of the redesignation substitute mechanism made clear that under the CAA, areas may shed anti-backsliding controls where all five redesignation criteria are met. Through this final action, we are replacing our previous approvals of the redesignation substitutes for the DFW area for the revoked 1979 1-hour and 1997 ozone NAAQS, because that mechanism was rejected by the D.C. Circuit for its failure to include all five statutory redesignation criteria. Per the D.C. Circuit's direction, this action examines all five criteria, finds them to be met in the DFW area, and terminates the relevant anti-backsliding obligations for the DFW area, thereby replacing the prior invalid approvals for the DFW area. We do not agree that given the circumstances here, the parties must

wait for EPA to promulgate a national regulation codifying what the D.C. Circuit has already indicated the CAA allows before we may replace the redesignation substitutes for the DFW area.

As such, we do not agree that this action is reviewable exclusively in the D.C. Circuit. See CAA section 307(b)(1). To the extent the commenter is asserting otherwise, we do not agree that this is a "nationally applicable" action under CAA section 307(b)(1). This final action approves a request from the State of Texas to find that the State has met all five of the statutory criteria for redesignation under CAA section 107(d)(3)(E) for the DFW area and it approves the submitted CAA section 175A(d) maintenance plan for the DFW area into the Texas SIP. The legal and immediate effect of the action terminates anti-backsliding controls for only the DFW area with respect to two revoked NAAQS and amends the 40 CFR part 81 tables accordingly for only the DFW area. Nothing in this action has legal effects in any area of the country outside of the DFW area or Texas on its face. See *Dalton Trucking, Inc. v. EPA*, 808 F.3d 875, 881 (D.C. Cir. 2015) ("To determine whether a final action is nationally applicable, 'this Court need look only to the face of the rulemaking, rather than to its practical effects.'" (internal citations omitted)). The fact that this is the second area in the country for which EPA will have approved termination of anti-backsliding per CAA requirements after *South Coast II* does not entail that the action itself is "nationally applicable."

Earthjustice next contends that even if it is true that EPA's final action is not nationally applicable but is locally or regionally applicable, that judicial review of this action should still reside in the D.C. Circuit because EPA's action is based on a determination of nationwide scope or effect. The commenter alleges that "EPA has expressly proposed in its FR publication to base action on that determination (via either pathway)." This is plainly untrue. Nowhere in the Proposal or in this final action did EPA make a finding that the action is based on a determination of nationwide scope or effect. The requirements under CAA section 307(b)(1) that would allow for review of a locally or regionally applicable action in the D.C. Circuit—*i.e.*, that EPA makes a finding that the action is based on a determination of nationwide scope or effect and that EPA publishes such a finding—have not been met. See *Dalton Trucking*, 808 F.3d at 882.

*Comment:* The TCEQ states that our past failure to provide for a legally valid

mechanism for termination of anti-backsliding obligations for revoked standards has created uncertainty and our reluctance to redesignate for the revoked standards creates severe economic consequences for the public, regulated industry, and states. TCEQ added that (1) certainty on the issue of how the EPA must act to remove anti-backsliding requirements is an absolute necessity for states, potentially impacted regulated businesses, and citizens and (2) continued implementation of programs required for revoked, less stringent standards is costly and takes resources away from states and localities that are necessary to meet more stringent standards.

*Response:* We understand the value of regulatory certainty. We also understand that there is a cost for implementing required programs for revoked, less stringent standards. We have endeavored to provide flexibility to states on implementation approaches and control measures. The D.C. Circuit has upheld our revocation of previous ozone standards as long as sufficient anti-backsliding measures are maintained. In *South Coast II*, the court was clear that anti-backsliding measures could be shed if all five requirements for redesignation in CAA section 107(d)(3)(E) had been met. We are finding here that Texas has met all redesignation criteria necessary for termination of the anti-backsliding measures.

*Comment:* TCEQ states that (1) we continue to have authority to redesignate areas from "nonattainment" to "attainment" post-revocation of a NAAQS and (2) if we determine we do not have authority to redesignate areas to attainment post-revocation, we clearly have authority to determine that an area has met all redesignation requirements necessary for termination of anti-backsliding requirements. TCEQ states that EPA should redesignate the DFW area to attainment under the revoked 1-hour and 1997 ozone NAAQS. TCEQ states that EPA has the authority to, and should, revise the listings in Part 81 of the Code of Federal Regulations to show the DFW area as an attainment area under the revoked 1-hour and 1997 ozone NAAQS and make clarifying changes to the Part 81 tables to promote public understanding of what measures are required for areas under revoked standards.

*Response:* EPA disagrees with Commenter regarding our authority to redesignate an area under the revoked 1-hour and 1997 ozone NAAQS. As explained above, in revoking both the 1-hour and 1997 ozone standards, EPA revoked the associated designations

under those standards and stated we had no authority to change designations. See 69 FR 23951, April 30, 2004, 80 FR 12264, March 6, 2015, and *NRDC v. EPA*, 777 F.3d 456 (D.C. Cir. 2014) (explaining that EPA revoked the 1-hour NAAQS “in full, including the associated designations” in the action at issue in *South Coast Air Quality Management District v. EPA*, 472 F.3d at 882 (D.C. Cir. 2006 (“*South Coast I*”). The recent D.C. Circuit decision addressing reclassification under a revoked NAAQS did not address EPA’s interpretation that it lacks the ability to alter an area’s designation post-revocation of a NAAQS. Moreover, the court’s reasoning for requiring EPA to reclassify areas under revoked standards was that a reclassification to a higher classification is a control measure that constrains ozone pollution by imposing stricter measures associated with the higher classification. The same logic does not apply to redesignations, because redesignations do not impose new controls and can provide areas the opportunity to shed nonattainment area controls, provided doing so does not interfere with maintenance of the NAAQS. Therefore, we do not think it follows that the EPA is required to statutorily redesignate areas under a revoked standard simply because the court held that the Agency is required to continue to reclassify areas to a higher classification when they fail to attain. However, consistent with the *South Coast II* decision, we do have the authority to determine that an area has met all the applicable redesignation criteria for a revoked ozone standard and terminate the remaining anti-backsliding obligations for that standard. We are therefore revising the tables in 40 CFR part 81 to reflect that the DFW area has attained the revoked 1979 1-hour and revoked 1997 8-hour NAAQS, and that all anti-backsliding obligations with respect to those two NAAQS are terminated.

*Comment:* TCEQ stated that when we began stating that we no longer make findings of failure to attain or reclassify areas for revoked standards, we provided no rationale supporting why we would no longer do so.

*Response:* As noted above, in the Phase I rule to implement the 1997 ozone standard, we revoked the 1-hour NAAQS and designations for that standard (see 69 FR 23951, 23969–70, April 30, 2004). Accordingly, there was neither a 1-hour standard against which to make findings for failure to attain nor 1-hour nonattainment areas to reclassify. We also explained that it would be counterproductive to continue to impose new obligations with respect

to the revoked 1-hour standard given on-going implementation of the newer 8-hour 1997 NAAQS. *Id.* at 23985. We recognize that subsequent court decisions, such as the *South Coast II* decision, have affected our view. The *South Coast II* decision vacated our waiver of the statutory attainment deadlines associated with the revoked 1997 ozone NAAQS, for areas that fail to meet an attainment deadline for the 1997 ozone standard, and we are determining how to implement that decision going forward.

*Comment:* TCEQ commented that if we interpreted revocation of ozone standards as limiting our authority to implement all statutory rights and obligations, including the rights of states to be redesignated to attainment, it would cause an absurd result: *i.e.*, implementing anti-backsliding measures in perpetuity. The commenter added that it would subvert one of the foundational principles of the CAA—restricting the right of states to be freed from obligations that apply to nonattainment areas upon the states achieving the primary purpose of Title I of the CAA—to attain the NAAQS.

*Response:* The “absurd result” noted by the commenter is that an area would need to implement anti-backsliding measures in perpetuity. Through this action we are terminating anti-backsliding controls for the DFW area upon a determination that the five statutory criteria of CAA section 107(d)(3)(E) have been met. Therefore, although we are not redesignating the DFW area to attainment for the revoked ozone standards, the “absurd result” noted by the commenter does not remain.

The EPA does believe it is appropriate for states to be freed from anti-backsliding requirements in place for the revoked NAAQS in certain circumstances, and we believe the court in *South Coast II* was clear that this could be done if all the CAA criteria for a redesignation had been met.

*Comment:* TCEQ commented that the CAA makes no distinction between revoked or effective standards regarding EPA’s authority to redesignate. TCEQ also commented that reading the CAA section granting authority for designations generally, it is apparent that Congress intended the same procedures be followed regardless of the status of the NAAQS in question. TCEQ added that nothing in CAA section 107 creates differing procedures when we revoke a standard or qualifies our mandatory duty to act on redesignation submittals from states.

*Response:* None of the substantive provisions of the CAA make distinctions

between revoked and effective NAAQS and the redesignation provision in section 107 is no different. Nonetheless, as noted above, at the time that we revoked the ozone NAAQS in question, we also revoked all designations associated with that NAAQS. We therefore do not think a statutory redesignation is available for an area that no longer has a designation. However, in *South Coast II*, the D.C. Circuit found that the CAA allows areas under a revoked NAAQS to shed anti-backsliding controls if the statutory redesignation criteria are met.

*Comment:* The TCEQ suggests that the EPA should expand upon the rationale provided in our Proposal for our decision to take no action on the maintenance motor vehicle emission budgets (MVEBs) related to the 1-hour and 1997 ozone NAAQS.

*Response:* The conformity discussion in our May 21, 2012 rulemaking (77 FR 30160) to establish classifications under the 2008 ozone NAAQS explains that our revocation of the 1-hour standard under the 1997 ozone Phase I implementation rule and the associated anti-backsliding provisions were the subject of the *South Coast I* litigation (*South Coast Air Quality Management District v. EPA*, 472 F.3d at 882). The Court in *South Coast I* affirmed that conformity determinations need not be made for a revoked standard. Instead, areas would use adequate or approved MVEBs that had been established for the now revoked NAAQS in transportation conformity determinations for the new NAAQS until the area has adequate or approved MVEBs for the new NAAQS. As explained in our June 24, 2019 proposal, the DFW area already has NO<sub>x</sub> and VOC MVEBs for the 2008 ozone NAAQS, which are currently used to make conformity determinations for both the 2008 and 2015 ozone NAAQS for transportation plans, transportation improvement programs, and projects according to the requirements of the transportation conformity regulations at 40 CFR part 93.<sup>30</sup>

The TCEQ offers its own basis to expand the rationale for EPA’s action by citing the transportation conformity regulations at 40 CFR 93.109(c), which provides that a regional emissions analysis for conformity is only required for a nonattainment or maintenance area until the effective date of revocation of the applicable NAAQS. The TCEQ concludes that this sufficiently justifies

<sup>30</sup> *Transportation Conformity Guidance for the South Coast II Court Decision*, EPA-420-B-18-050. November 2018, available on EPA’s web page at <https://www.epa.gov/state-and-local-transportation/policy-and-technical-guidance-state-and-local-transportation>.

EPA's determination not to act on the MVEBs in this SIP submittal because the effective date of revocation for both the 1-hour and 1997 ozone NAAQS has passed, and therefore a regional emissions analysis for conformity is no longer required for these NAAQS in the DFW area. However, EPA notes that 40 CFR 93.109 represents the criteria and procedures for determining conformity *in cases where a determination is required*. As previously explained, the DFW area is not required to demonstrate conformity under the revoked 1-hour and 1997 ozone NAAQS, hence 40 CFR 93.109(c) is not an applicable rationale for the DFW area.

*Comment:* TCEQ stated that we have the authority to, and should, revise the designations listing in 40 CFR 81 to better reflect the status of applicable anti-backsliding obligations for the areas.

*Response:* We believe that we have the authority to revise the tables in 40 CFR 81 to better reflect the status of applicable anti-backsliding obligations, particularly because those tables currently reflect the invalid redesignation substitutes that this final action is replacing. We are making ministerial changes to the tables for the 1-hour and 1997 ozone standards in 40 CFR 81.344 to better reflect the status of applicable anti-backsliding obligations for the DFW area.

### III. Final Action

#### A. Plan for Maintaining the Revoked Ozone Standards

We are approving the maintenance plan for both the revoked 1-hour and 1997 ozone NAAQS in the DFW area because we find it demonstrates the two ozone NAAQS (1979 1-hour and 1997 8-hour) will be maintained for 10 years following this final action (in fact, the State's plan demonstrates maintenance of those two standards through 2032). As further explained in our Proposal and above, we are not approving the submitted 2032 NO<sub>x</sub> and VOC MVEBs for transportation conformity purposes because mobile source budgets for more stringent ozone standards are in place in the DFW area. We are finding that the projected emissions inventory which reflects these budgets is consistent with maintenance of the revoked 1-hour and 1997 ozone standards.

#### B. Redesignation Criteria for the Revoked Standards

We are determining that the DFW area continues to attain the revoked 1-hour and 1997 ozone NAAQS. We are also determining that all five of the redesignation criteria at CAA section

107(d)(3)(E) for the DFW area have been met for these two revoked standards.

#### C. Termination of Anti-Backsliding Obligations

We are terminating the anti-backsliding obligations for the DFW area with respect to the revoked 1-hour and 1997 ozone NAAQS. Consistent with the *South Coast II* decision, anti-backsliding obligations for the revoked ozone standards may be terminated when the redesignation criteria for those standards are met. This final action replaces the redesignation substitute rules that were previously promulgated for the revoked 1-hour and 1997 ozone NAAQS (81 FR 78688, November 8, 2016.).

### IV. Statutory and Executive Order Reviews

#### A. General Requirements

Under the CAA, redesignation of an area to attainment and the accompanying approval of the maintenance plan under CAA section 107(d)(3)(E) are actions that affect the air quality designation status of geographical areas and do not impose any additional regulatory requirements on sources beyond those required by state law. A redesignation to attainment does not in and of itself impose any new requirements. While we are not in this action redesignating any areas to attainment, we are approving the state's demonstration that all five redesignation criteria have been met. Similar to a redesignation, the termination of anti-backsliding requirements in this action does not impose any new requirements.

With regard to the SIP approval portions of this action, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, where EPA is acting on the SIPs in this action, we are merely approving State law as meeting Federal requirements and are not imposing additional requirements beyond those imposed by State law.

For these reasons, this action as a whole:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory

action because actions that are exempted under Executive Order 12866 are also exempted from Executive Order 13771;

- 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, 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 an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- 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 CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

#### B. Submission to Congress and the Comptroller General

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).

#### C. Petitions for Judicial Review

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 June 5, 2020. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by

reference, Nitrogen oxides, Ozone, Volatile organic compounds.

**List of Subjects in 40 CFR Part 81**

Dated: March 19, 2020.  
**Kenley McQueen,**  
*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.*

**Subpart SS—Texas**

■ 2. In § 52.2270(e), the second table titled “EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP” is amended by adding an entry at the end of the table for “Dallas-Fort Worth Redesignation Request and Maintenance Plan for the 1-hour and 1997 8-hour Ozone Standards”.

The addition reads as follows:

**§ 52.2270 Identification of plan.**

\* \* \* \* \*  
 (e) \* \* \*

**EPA-APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP**

Name of SIP provision	Applicable geographic or nonattainment area	State approval/ effective date	EPA approval date	Comments
Dallas-Fort Worth Redesignation Request and Maintenance Plan for the 1-hour and 1997 8-hour Ozone Standards.	Dallas Fort-Worth, TX	3/29/2019	4/6/2020, [Insert <b>Federal Register</b> citation].	

■ 3. Section 52.2275 is amended by revising paragraph (m) to read as follows:

**§ 52.2275 Control strategy and regulations: Ozone.**

(m) Termination of Anti-backsliding Obligations for the Revoked 1-hour and 1997 8-hour ozone standards. Effective May 6, 2020 EPA has determined that the Dallas-Fort Worth area has met the Clean Air Act criteria for redesignation. Anti-backsliding obligations for the

revoked 1-hour and 1997 8-hour ozone standards are terminated in the Dallas-Fort Worth area.

**PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES**

■ 4. The authority citation for Part 81 continues to read as follows:

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

■ 5. In § 81.344:

**TEXAS—OZONE**  
 [1-Hour standard]<sup>1</sup>

■ a. In the table titled “Texas—Ozone (1-Hour Standard)” revise the entry for “Dallas-Fort Worth Area” and footnote 3.

■ b. In the table titled “Texas—1997 8-Hour Ozone NAAQS (Primary and secondary)” revise the entry for “Dallas-Fort Worth, TX” and footnote 5 and remove footnote 6.

The revisions read as follows:

**§ 81.344 Texas**

\* \* \* \* \*

Designated area	Designation		Classification	
	Date <sup>2</sup>	Type	Date <sup>2</sup>	Type
Dallas-Fort Worth Area: ..... Collin County. <sup>3</sup> Dallas County. <sup>3</sup> Denton County. <sup>3</sup> Tarrant County. <sup>3</sup>	See footnote 3	See footnote 3	See footnote 3	See footnote 3.

<sup>3</sup>The Dallas-Fort Worth Area was designated and classified as Moderate nonattainment on November 15, 1990. The area was classified as Serious nonattainment on March 20, 1998 and was so designated and classified when the 1-hour ozone standard, designations and classifications were revoked. The area has since attained the 1-hour ozone standard and met all the Clean Air Act criteria for redesignation. All 1-hour ozone standard anti-backsliding obligations for the area are terminated effective May 6, 2020.

\* \* \* \* \*

TEXAS—1997 8-HOUR OZONE NAAQS  
 [Primary and secondary]<sup>1</sup>

Designated area	Designation <sup>a</sup>		Category/classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
* * * * *	*	*	*	*
Dallas-Fort Worth, TX: .....	See footnote 5 .....	See footnote 5 .....	See footnote 5 .....	See footnote 5.
Collin County. <sup>5</sup>				
Dallas County. <sup>5</sup>				
Denton County. <sup>5</sup>				
Ellis County. <sup>5</sup>				
Johnson County. <sup>5</sup>				
Kaufman County. <sup>5</sup>				
Parker County. <sup>5</sup>				
Rockwall County. <sup>5</sup>				
Tarrant County. <sup>5</sup>				
* * * * *	*	*	*	*
* * * * *	*	*	*	*

<sup>5</sup>The Dallas-Fort Worth, TX area was designated and classified as a Moderate nonattainment area effective June 15, 2004. The area was classified as Serious nonattainment effective January 19, 2011. The area has since attained the 1997 ozone standard and met all the Clean Air Act criteria for redesignation. All 1997 8-hour ozone standard anti-backsliding obligations for the area are terminated effective May 6, 2020.

\* \* \* \* \*

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