



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 52 and 81**

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

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

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

**ACTION:** Final rule.

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

**DATES:** This rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2015-0721. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, *e.g.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733.

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

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

## **I. Background**

The background for this action is discussed in detail in our May 25, 2016 proposal (81 FR 33161). In that document we proposed to approve a redesignation substitute and make a finding of attainment for both the 1-hour and the 1997 8-hour ozone NAAQS for the Dallas-Fort Worth 1-hour and 1997 8-hour ozone nonattainment areas (DFW areas). The redesignation substitute demonstration indicates that the area has attained the revoked 1-hour and the revoked 1997 8-hour ozone NAAQS due to permanent and enforceable emission reductions and that it will maintain those NAAQS for ten years from the date of the EPA’s approval of this demonstration. Final approval of the redesignation substitute results in the area no longer being subject to any remaining applicable anti-backsliding requirements, including nonattainment new source review associated with the revoked NAAQS. In general, final approval of the redesignation substitute allows Texas to seek to revise the Texas State Implementation Plan (SIP) for the area to remove anti-backsliding measures from the active portion of its SIP if it can demonstrate, pursuant to CAA section 110(1), that such revision would not interfere with attainment or maintenance of any applicable NAAQS, or any other requirement of the CAA. Because the EPA believes Texas does not need to revise its SIP to alter certain provisions for NNSR effective in the DFW area, the offset and threshold requirements applicable in the DFW area for NNSR will be automatically altered upon finalization of the redesignation substitute.

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

## **II. Response to Comments**

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

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

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

*Response:* Due to the drafting of the Texas SIP, no revision is necessary to alter NNSR requirements applicable in the DFW area following finalization of this redesignation substitute. The NNSR provisions in the existing Texas SIP contains a provision that cross-references the designation of the area to 40 CFR part 81. See 30 TAC section 101.1(71). Because of the structure of this provision the identification of an area's classification, and thus the related major source thresholds and offset ratios, is updated without any additional revision to the SIP. Therefore, the EPA's approval of the redesignation substitute automatically updates the applicable NNSR requirements. Following finalization of this rule, the NNSR requirements applicable in the DFW area will be in accordance with the DFW area's current classification for

the 2008 ozone NAAQS for newly permitted sources.<sup>1</sup> We note that approval of this redesignation substitute does not relieve sources in the area of their obligations under previously established permit conditions.<sup>2</sup> 81 FR 33161, 33165. The Texas SIP includes a suite of approved permitting regulations for the Minor and Major NSR, which will continue to apply after approval of the redesignation substitute in the DFW area. Each of these programs has been evaluated and approved by EPA as consistent with the requirements of the CAA and protective of air quality, including the requirements at 40 CFR 51.160 whereby the TCEQ cannot issue a permit or authorize an activity that will result in a violation of applicable portions of the control strategy or that will interfere with attainment or maintenance of a national standard. So moving forward to a time when the DFW area has a moderate designation as the only applicable nonattainment designation, new sources and modifications will continue to be permitted and authorized under the existing SIP requirements if they are determined to be protective of air quality.

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

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

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

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

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

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

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

The EPA believes the redesignation substitute is an appropriate mechanism because it serves as a successor to a redesignation to attainment, for which these areas would have been eligible if the EPA had not revoked the 1-hour and 1997 ozone standards. For a more detailed description of why the EPA has determined the DFW area has met the redesignation criteria for

the revoked 1997 ozone standard, see 81 FR 33161 for the proposal and Technical Support Document. Upon approval of a redesignation substitute, a state may request to revise its SIP to shift regulatory anti-backsliding requirements contained in the active portion of the SIP to the contingency measures portion of the SIP, subject to a showing of consistency with the general anti-backsliding checks in CAA sections 110(l) and 193 (if applicable). The EPA approval of the redesignation substitute has the same effect on these areas' nonattainment regulatory anti-backsliding requirements as would a redesignation to attainment for the revoked standard. The EPA believes that, under any view of anti-backsliding for a revoked standard, it should not mean imposing requirements greater than those that would apply if the standard had not been revoked.

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

### **III. Final Action**

We find that Texas has successfully demonstrated it has met the requirements for approval of a redesignation substitute for the revoked 1-hour and the revoked 1997 8-hour ozone NAAQS for the DFW area. We are approving the redesignation substitute for the DFW area based on our determination that the demonstration provided by the State of Texas shows that the DFW area has attained the revoked 1-hour and the revoked 1997 8-hour ozone NAAQS due to

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

#### **IV. Statutory and Executive Order Reviews**

Under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves a demonstration provided by the State of Texas and finds that the DFW area is no longer subject to the regulatory anti-backsliding requirements under the principles of CAA section 172(e) for the revoked 1-hour ozone and the revoked 1997 8-hour ozone NAAQS; and imposes no additional requirements. Accordingly, I certify that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule does not impose any additional enforceable duties, it does not

contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). This rule also does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a demonstration provided by the State of Texas and find that the DFW area is no longer subject to the regulatory anti-backsliding requirements under the principles of CAA section 172(e) for the revoked 1-hour ozone and the revoked 1997 8-hour ozone NAAQS; and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

The rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Additionally, this rule does not involve establishment of technical standards, and thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

**List of Subjects**

**40 CFR Part 52**

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

**40 CFR Part 81**

Environmental protection, Air pollution control.

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

Dated: October 27, 2016.

**Samuel Coleman,**  
*Acting Regional Administrator, Region 6.*

40 CFR parts 52 and 81 are amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

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

**Subpart SS – Texas**

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

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

\* \* \* \* \*

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

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

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

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

4. Section 81.344 is amended:

- a. In the table entitled “Texas – Ozone (1-Hour Standard)” by revising the entries for “Dallas-Fort Worth Area” and adding footnote 3; and
- b. In the table titled “Texas -- 1997 8-Hour Ozone NAAQS (Primary and Secondary)” by revising the entries for “Dallas-Fort Worth, TX” and adding footnotes 5 and 6.

The revisions and additions read as follows:

§ 81.344 Texas.

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**Texas—Ozone (1-Hour Standard)<sup>2</sup>**

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

<sup>1</sup>This date is October 18, 2000, unless otherwise noted.

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

<sup>3</sup>A Redesignation Substitute was approved on [Insert date of publication in the Federal Register].

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**Texas—1997 8-Hour Ozone NAAQS (Primary and Secondary)**

Designated area	Designation <sup>a</sup>		Category/classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
* * * * *				
Dallas-Fort Worth, TX:				
Collin County <sup>5,6</sup>		Nonattainment	( <sup>5</sup> )	Subpart 2/Serious.
Dallas County <sup>5,6</sup>		Nonattainment	( <sup>5</sup> )	Subpart 2/Serious.
Denton County <sup>5,6</sup>		Nonattainment	( <sup>5</sup> )	Subpart 2/Serious.
Ellis County <sup>5,6</sup>		Nonattainment	( <sup>5</sup> )	Subpart 2/Serious.
Johnson County <sup>5,6</sup>		Nonattainment	( <sup>5</sup> )	Subpart 2/Serious.
Kaufman County <sup>5,6</sup>		Nonattainment	( <sup>5</sup> )	Subpart 2/Serious.
Parker County <sup>5,6</sup>		Nonattainment	( <sup>5</sup> )	Subpart 2/Serious.

Rockwall County <sup>5,6</sup>		Nonattainment	( <sup>5</sup> )	Subpart 2/Serious.
Tarrant County <sup>5,6</sup>		Nonattainment	( <sup>5</sup> )	Subpart 2/Serious.
* * * * *				

<sup>a</sup>Includes Indian Country located in each county or area, except as otherwise specified.

<sup>1</sup>This date is June 15, 2004, unless otherwise noted.

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<sup>5</sup>Effective January 19, 2011.

<sup>6</sup>A Redesignation Substitute was approved on [**Insert date of publication in the Federal Register**].

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