



## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R06-OAR-2018-0716; FRL-10012-88-Region 6]**

### **Air Plan Approval; Texas; Beaumont-Port Arthur Area Second Maintenance Plan for 1997 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) is approving a revision to the Texas State Implementation Plan (SIP). The EPA is approving a second ten-year maintenance plan for maintaining the 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS or standard) through 2032 in the Beaumont-Port Arthur (BPA) 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-2018-0716. All documents in the docket are listed on the <https://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. Publicly available docket materials are available electronically through <https://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Jeff Riley, EPA Region 6 Office, Infrastructure and Ozone Section, 214-665-8542, [riley.jeffrey@epa.gov](mailto:riley.jeffrey@epa.gov). Out of an abundance of

caution for members of the public and our staff, the EPA Region 6 office will be closed to the public to reduce the risk of transmitting COVID-19. Please call or e-mail the contact listed above if you need alternative access to material indexed but not provided in the docket.

**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 June 8, 2020 Proposal (85 FR 35041, “Proposal”). In that document we proposed to approve, as a revision to the Texas SIP, an updated (second) 1997 ozone NAAQS maintenance plan for the BPA area. On February 5, 2019, the Texas Commission on Environmental Quality (TCEQ) submitted the second maintenance plan for the BPA area. The maintenance plan is designed to keep the area in attainment of the 1997 ozone NAAQS through the end of the second 10-year maintenance period (2032).

Our June 8, 2020 Proposal provided a detailed description of the revisions<sup>1</sup> and the rationale for EPA’s proposed action, together with a discussion of the opportunity to comment. The public comment period for the action closed on July 8, 2020. See the docket for this rulemaking for a copy of the public comments received and our Proposal at 85 FR 35041 for more information.

We received comments on our proposal from two commenters: TCEQ and an anonymous citizen. Our responses to the comments are below.

## **II. Response to Comments**

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<sup>1</sup> The revision included motor vehicle emissions budgets (MVEBs) for the last year of the maintenance plan (in this case 2032). Since EPA's current transportation conformity regulation requires a regional emissions analysis only during the time period beginning one year after a nonattainment designation for a particular NAAQS until the effective date of revocation of that NAAQS (40 CFR 93.109(c)), a regional emissions analysis using MVEBs is not required for conformity determinations for the 1997 ozone NAAQS because that NAAQS has been revoked (80 FR 12264).

*Comment 1:* TCEQ expressed support of EPA’s proposed approval of the BPA area’s second 10-year maintenance plan under the 1997 8-hour ozone NAAQS, and stated its intent to withdraw from EPA’s consideration both the request to redesignate the BPA area to attainment for the revoked 1-hour ozone standard and the 10-year maintenance plan for the 1-hour ozone standard.

*Response 1:* EPA appreciates TCEQ’s support of our June 8, 2020 Proposal, and informing us of their plans to withdraw the 1-hour ozone standard redesignation request and 10-year maintenance plan for the BPA area.

*Comment 2:* The Commenter argues that EPA cannot approve maintenance plans which rely on emission reductions attributable to Federal mobile source control strategies which EPA is actively attempting to roll back.

*Response 2:* We disagree with the assertion that EPA is taking steps to roll back Federal mobile source control strategies. The Commenter appears to reference the final rulemaking entitled “The Safer Affordable Fuel Efficient (SAFE) Vehicles Final Rule for Model Years 2021-2026” (SAFE Rule Part Two). This is the sole example given by the Commenter of EPA’s alleged rollback of Federal mobile source control strategies. This rulemaking was developed by the National Highway Traffic Safety Administration (NHTSA) and EPA to finalize updated Corporate Average Fuel Economy (CAFE) and greenhouse gas (GHG) emissions standards for passenger cars and light trucks and establish new standards, covering model years 2021 through 2026. See 85 FR 24174 (April 30, 2020). We note that CAFE and GHG standards are separate and distinct from EPA standards for control of criteria pollutants from motor vehicles, such as those in the Tier 3 motor vehicle emission and fuel standards.<sup>2</sup> As such, auto manufacturers

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<sup>2</sup> See 79 FR 23414 (April 28, 2014).

must simultaneously comply with unique requirements under both of these sets of standards, as well as any other Federal standards applicable to specific vehicle types. The SAFE Rule Part Two does not weaken or affect the regulatory framework for any of the Federal mobile source control strategies the State of Texas relied upon (e.g. Tier 1, Tier 2, and Tier 3 light-duty and medium-duty passenger vehicle standards; heavy-duty vehicle standards; low sulfur gasoline and diesel standards; National Low Emission Vehicle standards; and gasoline volatility standards) for nitrogen oxides (NO<sub>x</sub>) and volatile organic compound (VOC) ozone precursor emissions reductions in developing the BPA area's second 10-year maintenance plan for the 1997 8-hour ozone NAAQS, and therefore the state's reliance upon these standards as valid Federal control measures is appropriate for this SIP action.

The SAFE Rule Part Two is a component of a larger proposed rulemaking<sup>3</sup> which also yielded the final action entitled "The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule Part One: One National Program" (One National Program). See 84 FR 51310 (September 27, 2019). The One National Program negates the ability of California and states that adopted California's zero emissions vehicle (ZEV) sales mandate and/or GHG emissions standards to enforce such standards. Neither the State of Texas nor the BPA area have adopted local tailpipe GHG emissions standards or local ZEV mandates; therefore, the One National Program rulemaking also does not affect any of the Federal mobile source control strategies relied upon by the State

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<sup>3</sup> On August 24, 2018, the EPA and the NHTSA jointly published in the Federal Register a notice of proposed rulemaking entitled, "The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks." In the NPRM, EPA proposed new GHG standards and NHTSA proposed new CAFE standards for model year 2021 to 2026 light duty vehicles. EPA also proposed to withdraw the waiver it had previously provided to California for that State's model year 2021 to 2025 GHG and ZEV standards under section 209 of the Clean Air Act. See 83 FR 42986.

of Texas in developing the BPA area's second 10-year maintenance plan for the 1997 8-hour ozone NAAQS.

SAFE Rule Part Two will not result in on-road emissions increases of NO<sub>x</sub> or VOCs in the BPA area; however, there may be some small NO<sub>x</sub> and VOC emissions increases in area and point source emissions due to potential increases in sales, transport and production of gasoline. As was noted by the Commenter, the maintenance plan has projected some growth in emissions from these categories. Even if this growth is slightly underestimated due to SAFE Rule Part Two changes or other reasons, EPA is confident that any such underestimate would be substantially less than the overall decreases in NO<sub>x</sub> and VOC emissions that are projected to occur between 2014 and 2032, which are discussed in the notice of proposed rulemaking for this action.

Contrary to the assertion that EPA is taking steps to roll back Federal mobile source control strategies, on January 6, 2020, the Administrator signed an Advanced Notice of Proposed Rulemaking soliciting pre-proposal comments on the Clean Truck Initiative (CTI), which, if finalized, would tighten NO<sub>x</sub> emissions standards for heavy-duty vehicles for the first time since 2001.

Finally, we note that Texas has adopted a contingency plan, as part of the maintenance plan for the BPA area, to address possible future ozone air quality problems, as required by section 175A of the CAA. As explained in our June 8, 2020 Proposal, this contingency plan includes such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation of the area to attainment of the NAAQS. The maintenance plan provides that a monitored and certified violation of the NAAQS triggers the requirement to consider, adopt, and implement the plan's contingency measures. Additionally, in the event that any of the Federal measures upon which the State has relied are

repealed or weakened, the EPA has Clean Air Act authority, pursuant to 42 U.S.C. 7410(k)(5), to require a state to revise an approved SIP if it finds that it has become substantially inadequate to maintain the NAAQS. Moreover, CAA section 175A provides the EPA discretion to require the state to submit a revised SIP should the area fail to maintain the NAAQS.

## **II. Final Action**

We are approving the second maintenance plan for the 1997 ozone NAAQS for the BPA area, submitted by TCEQ on February 5, 2019, as a revision to the Texas SIP. This maintenance plan is designed to keep the area in attainment of the 1997 ozone NAAQS through the second 10-year maintenance period. As further explained in our Proposal, we are not approving the submitted 2032 NO<sub>x</sub> and VOC motor vehicle emissions budgets (MVEBs) for transportation conformity purposes because a regional emissions analysis using MVEBs is not required for conformity determinations for the 1997 ozone NAAQS because that NAAQS has been revoked. We are finding that the projected emissions inventory which reflects these budgets is consistent with maintenance of the revoked 1997 ozone standard. This action is being taken under section 175A of the Act.

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

Under the CAA, 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, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, 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 SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 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).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[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 in**

**40 CFR Part 52**

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

Dated: August 3, 2020.

**Kenley McQueen,**  
*Regional Administrator, Region 6.*

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as follows:

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

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

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

**Subpart SS – Texas**

2. In §52.2270, in paragraph (e), amend the table “EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP” by adding an entry for “Beaumont-Port Arthur Second 10-Year Maintenance Plan for the 1997 8-hour Ozone Standard.” at the end of the table to read 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 submittal/effective date	EPA approval date	Comments
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Beaumont-Port Arthur Second 10-Year Maintenance Plan for the 1997 8-hour Ozone Standard.	Hardin, Jefferson and Orange Counties	2/5/2019	[Insert date of publication in the Federal Register] [Insert Federal Register citation]	

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