



## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R06-OAR-2020-0300; FRL-10014-58-Region 6]**

### **Air Plan Approval; Texas; Reasonable Further Progress Plan for the Houston-Galveston-Brazoria Ozone Nonattainment Area**

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

**ACTION:** Proposed rule.

**SUMMARY:** Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is proposing to approve revisions to the Texas State Implementation Plan (SIP) to meet the Reasonable Further Progress (RFP) requirements for the Houston-Galveston-Brazoria (HGB) serious ozone nonattainment area for the 2008 ozone National Ambient Air Quality Standard (NAAQS). Specifically, EPA is proposing to approve the RFP demonstration and associated motor vehicle emission budgets, contingency measures should the area fail to make RFP emissions reductions or attain the 2008 ozone NAAQS by the applicable attainment date, and a revised 2011 base year emissions inventory for the HGB area.

**DATES:** Written comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Submit your comments, identified by Docket No. EPA-R06-OAR-2020-0300, at <https://www.regulations.gov> or via email to [paige.carrie@epa.gov](mailto:paige.carrie@epa.gov). Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions

(audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact Carrie Paige, 214-665-6521, [paige.carrie@epa.gov](mailto:paige.carrie@epa.gov). For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

*Docket:* The index to the docket for this action is available electronically at [www.regulations.gov](http://www.regulations.gov). While all documents in the docket are listed in the index, some information may not be publicly available due to docket file size restrictions or content (e.g., CBI).

**FOR FURTHER INFORMATION CONTACT:** Carrie Paige, EPA Region 6 Office, Infrastructure & Ozone Section, 214-665-6521, [paige.carrie@epa.gov](mailto:paige.carrie@epa.gov). Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office may be closed to the public to reduce the risk of transmitting COVID-19. We encourage the public to submit comments via <https://www.regulations.gov>, as there may be a delay in processing mail and courier or hand deliveries may not be accepted. 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 wherever “we,” “us,” or “our” is used, we mean the EPA.

## **I. Introduction**

On May 13, 2020, the Texas Commission on Environmental Quality (TCEQ or State) submitted to EPA a SIP revision addressing RFP requirements for the 2008 8-hour ozone NAAQS for the two serious ozone nonattainment areas in Texas (“the TCEQ submittal”). These two areas are the HGB and the Dallas-Fort Worth (DFW) areas. The TCEQ submittal also establishes motor vehicle emissions budgets (MVEBs) for the year 2020 and includes contingency measures for each of the HGB and DFW areas, should the areas fail to make reasonable further progress, or to attain the NAAQS by the applicable attainment date.

In this rulemaking action, we are addressing only that portion of the TCEQ submittal that refers to the HGB area. We are proposing to approve the RFP demonstration and associated contingency measures for RFP or failure-to-attain and MVEBs for the HGB area. We are also proposing to approve a revised 2011 base year emissions inventory (EI) for the HGB area. The portion of the TCEQ submittal that refers to the DFW area will be addressed in a separate rulemaking action.

## **II. Background**

In 2008, we revised the 8-hour ozone primary and secondary NAAQS to a level of 0.075 parts per million (ppm) to provide increased protection of public health and the environment (73 FR 16436, March 27, 2008).<sup>1</sup> The HGB area was classified as a marginal ozone nonattainment area for the 2008 ozone NAAQS<sup>2</sup> and initially given an attainment date of no later than

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<sup>1</sup> On October 1, 2015, the EPA promulgated a more protective 8-hour ozone standard of 0.070 ppm (80 FR 65292, October 26, 2015). On April 30, 2018, the EPA promulgated designations under the 2015 ozone standard (83 FR 25776, June 4, 2018) and in that action, the EPA designated Brazoria, Chambers, Fort Bend, Galveston, Harris, and Montgomery counties as a marginal ozone nonattainment area. The RFP plan is not required for a marginal nonattainment area under the 2015 ozone standard. The TCEQ submittal does not specifically address the 2015 ozone standard, but provides progress toward attaining the new standard. For more information on ozone, see our Technical Support Document (TSD) in the docket for this rulemaking and visit <https://www.epa.gov/ground-level-ozone-pollution>.

<sup>2</sup> Throughout this document, we refer to the 2008 8-hour ozone NAAQS as the “2008 ozone NAAQS.”

December 31, 2015 (77 FR 30088 and 77 FR 30160, May 21, 2012). The HGB area consists of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery and Waller counties.

On December 23, 2014, the DC Circuit Court issued a decision rejecting, among other things, our attainment deadlines for the 2008 ozone nonattainment areas, finding that we did not have statutory authority under the CAA to extend those deadlines to the end of the calendar year. *NRDC v. EPA*, 777 F.3d 456, 464–69 (DC Cir. 2014). Consistent with the court’s decision we modified the attainment deadlines for all nonattainment areas for the 2008 ozone NAAQS and set the attainment deadline for all 2008 ozone marginal nonattainment areas, including the HGB area as July 20, 2015 (80 FR 12264, March 6, 2015). The HGB area qualified for a 1-year extension of the attainment date and we revised the attainment date to July 20, 2016 (81 FR 26697, May 4, 2016). The HGB area did not meet the revised attainment deadline and we reclassified the area to moderate with an attainment date no later than July 20, 2018 (81 FR 90207, December 14, 2016). Subsequently, the HGB area did not meet the moderate attainment date and was reclassified as a serious ozone nonattainment area (84 FR 44238, August 23, 2019).<sup>3</sup> Accordingly, the State was required to submit revisions to the HGB SIP to meet serious area requirements.

The CAA requires that areas designated as nonattainment for ozone and classified as moderate or worse demonstrate RFP by reducing emissions of ozone precursors (nitrogen oxides or NO<sub>x</sub> and volatile organic compounds or VOC).<sup>4</sup> On March 6, 2015 (80 FR 12264), EPA published the final rule to implement the 2008 ozone standard (the “SIP Requirements Rule” or “SRR”) that addressed, among other things, the RFP control and planning obligations as they

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<sup>3</sup> For more on the history of ozone in the HGB area, see our TSD in the docket for this rulemaking and visit <https://www.tceq.texas.gov/airquality/sip/hgb/hgb-ozone-history>.

<sup>4</sup> See CAA sections 172(c)(2) and 182(b)(1) and 40 CFR 51.1110.

apply to areas designated nonattainment for the 2008 ozone standard. In the SRR, RFP was defined (for the purposes of the 2008 ozone standard) as meaning the progress reductions required under sections 172(c)(2) and 182(b)(1) and (c)(2)(B) and (c)(2)(C) of the CAA (80 FR 12264, 12313).<sup>5</sup> RFP plans must also include a MVEB, which provides the allowable on-road mobile emissions an area can produce and continue to demonstrate RFP (57 FR 13498, 13558, April 16, 1992).

The RFP plan for the HGB moderate ozone nonattainment area for the 2008 ozone NAAQS was approved on February 13, 2019 (84 FR 3708) and it demonstrated required emissions reductions through the end of calendar year 2017. Because the HGB area was reclassified as a serious ozone nonattainment area, pursuant to CAA section 182(c)(2) and 40 CFR 51.1110, the RFP SIP for the HGB area must demonstrate NO<sub>x</sub> and/or VOC emissions reductions of at least an average of 3 percent per year for the calendar years 2018, 2019, and 2020 for a total of 9 percent and an additional 3 percent for contingency measures in 2021, should the area fail to meet RFP or fail to attain the 2008 ozone NAAQS by the July 20, 2021 attainment date. Finally, the emissions reductions must occur within the HGB area.

### **III. EPA's Evaluation of the TCEQ Submittal**

We reviewed the TCEQ submittal for consistency with the requirements of the CAA and EPA regulations and guidance. A summary of our analysis and findings are provided below. For a more detailed discussion of our evaluation, please see our TSD in the docket for this rulemaking action.

#### *A. Revised 2011 Base Year Emissions Inventory*

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<sup>5</sup> See 40 CFR 51.1110.

An emissions inventory (EI) is a collection of data that lists, by source, the amount of air pollutants discharged into the atmosphere, during a year or other time period. The EI includes estimates of the emissions associated with the air quality problems in the area (in this case, NO<sub>x</sub> and VOC) from various pollution sources. The State submitted a 2011 base year EI for the 2008 ozone NAAQS, which we approved for the HGB area (80 FR 9204).<sup>6</sup> The State later revised the 2011 base year EI for the HGB area, which we approved (84 FR 3708). In the TCEQ submittal, the State further refined the 2011 base year EI for the HGB area. Pursuant to 40 CFR 51.1110(b), the values in the submitted 2011 base year EI are actual ozone season day emissions. Pursuant to CAA sections 172(c)(3) and 182(b)(1), the submitted 2011 base year EI consists of NO<sub>x</sub> and VOC emissions from all sources inside the nonattainment area. Compared with that approved at 84 FR 3708, the submitted 2011 base year NO<sub>x</sub> emissions decrease by 17.02 tons per day (tpd) and VOC emissions increase by 3.66 tpd. The revised 2011 base year EI was developed using EPA-approved guidelines for point, mobile, and area emission sources. Point source emissions data for 2011 were pulled from the State of Texas Air Reporting System (STARS) database – these data also include all authorized/planned Startup, Shutdown and Maintenance emissions.<sup>7</sup> On-road and nonroad mobile source emissions were calculated using the EPA’s MOVES2014a model<sup>8</sup> combined with local activity inputs including vehicle miles traveled (VMT) and average speed data, as well as local fleet, age distribution, and fuels information. Area sources include

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<sup>6</sup> See also the EI regulations at 40 CFR 51.1115.

<sup>7</sup> States are not obligated to include malfunction emissions in the base year inventory for RFP plans. See the discussion beginning on page 83 of Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations EPA-454/B-17-003, available at [https://www.epa.gov/sites/production/files/2017-07/documents/ei\\_guidance\\_may\\_2017\\_final\\_rev.pdf](https://www.epa.gov/sites/production/files/2017-07/documents/ei_guidance_may_2017_final_rev.pdf) (hereinafter referred to as “EPA’s EI Guidance”) (July 2017).

<sup>8</sup> EPA’s Motor Vehicle Emission Simulator (MOVES) is a state-of-the-science emission modeling system that estimates emissions for mobile sources at the national, county, and project level for criteria air pollutants, greenhouse gases, and air toxics. See <https://www.epa.gov/moves>.

many categories of emissions. The EPA finds that these sources were adequately accounted for in the revised 2011 base year EI. The methodology used to calculate emissions for each respective category followed relevant EPA EI guidance<sup>9</sup> and was sufficiently documented in the TCEQ Submittal.<sup>10</sup> We are proposing to approve the revised 2011 base year EI. Table 1 summarizes the revised EI for the HGB area. See our TSD for more detail.

**Table 1: HGB RFP 2011 Base Year EI**

<b>2011 Base Year Inventory, reported in tpd</b>				
<b>Source Type</b>	<b>NO<sub>x</sub></b>		<b>VOC</b>	
	Approved at 84 FR 3708	Revised inventory	Approved at 84 FR 3708	Revised inventory
Point	108.33	108.33	95.99	95.97
Area	21.15	21.15	304.90	308.53
Non-road Mobile	142.44	144.84	49.78	50.11
On-road Mobile	188.02	168.60	80.73	80.45
<b>Total</b>	<b>459.94</b>	<b>442.92</b>	<b>531.40</b>	<b>535.06</b>

*B. Reasonable Further Progress Demonstration*

To calculate the required RFP emission reductions, CAA section 182 and 40 CFR 51.1110(b) require that the percent reduction be calculated from the base year EI. The required reductions are then subtracted from the 2011 base year EI to provide the RFP emissions target numbers. See our TSD and the TCEQ submittal for more detail. The RFP calculations are shown in Table 2.

**Table 2: Calculation of RFP Target Emission Reductions through 2020 (tpd)**

<b>Description</b>	<b>NO<sub>x</sub></b>	<b>VOC</b>
a. 2011 Emissions Inventory (totals from Table 1)	442.92	535.06
b. Percent of NO <sub>x</sub> and VOC to meet 15% reduction <sup>11</sup> (percentages must total 15, and 10 + 5 = 15)	10.0%	5.0%
c. Percent of NO <sub>x</sub> and VOC to meet 9% reduction (percentages must total 9, and 6.2 + 2.8 = 9)	6.2%	2.8%
d. 15% NO <sub>x</sub> and VOC reduction, 2011-2017	44.29	26.75

<sup>9</sup> In addition to EPA’s EI Guidance, see MOVES2014 and MOVES2014a Technical Guidance: Using MOVES to Prepare Emission Inventories for State Implementation Plans and Transportation Conformity, EPA-420-B-15-093, available at <https://nepis.epa.gov/Exe/ZyPDF.cgi/P100NN9L.PDF?Dockey=P100NN9L.pdf> (Nov. 2015).

<sup>10</sup> See our TSD and the TCEQ submittal with appendices in the docket for this rulemaking.

<sup>11</sup> To account for the reductions required and taken under the moderate area RFP plan, we reduce emissions by 15% between 2011 and 2017. See 84 FR 3708.

(row a multiplied by row b) (442.92 x 0.1 = 44.29) and (535.06 x 0.05 = 26.75)		
e. 9% NOx and VOC reduction, 2018-2020 (row a multiplied by row c) (442.92 x 0.062 = 27.46) and (535.06 x 0.028 = 14.98)	27.46	14.98
f. Total emissions reductions for 2011-2020 (row d plus row e)	71.75	41.73
g. 2020 Target Level of Emissions (row a minus row f)	371.17	493.33

To determine whether the area is able to meet the RFP target, the State must establish the future year (2020) EI and subtract any control measures that will be applied to sources in the HGB area. Section 182(b)(1)(A) of the Act requires that states provide sufficient control measures in their RFP plans to offset growth in emissions. The controls identified by the State to achieve RFP are listed in Table 3. For more detail on these controls, see our TSD and the TCEQ submittal.

**Table 3. HGB Area Control Measures and Projected Emission Reductions (tpd), 2011-2020**

Control Strategy Description	NOx	VOC
Federal Motor Vehicle Control Program (FMVCP)	561.84	245.62
Reformulated Gasoline (RFG) <sup>12</sup> /Low Sulfur Gasoline/Ultra-Low Sulfur Diesel (ULSD)	101.55	16.96
Inspection and Maintenance (I/M) (66 FR 57261, 11/14/2001)	5.13	7.39
On-road Texas Low-Emission Diesel (TxLED) <sup>13</sup>	2.39	0.00
Tier I and II locomotive NOx standards	21.02	0.81
Small non-road spark-ignition (SI) engines (Phase I)	-3.17	25.60
Heavy duty non-road engines	26.71	13.71
Tiers 2 and 3 non-road diesel engines	30.22	2.62
Small non-road SI engines (Phase II)	2.22	23.67
Large non-road SI and recreational marine	37.37	16.51
Non-road TxLED	1.36	0.00
Non-road RFG	0.01	0.73
Tier 4 non-road diesel engines	17.70	0.78
Small SI (Phase III)	2.16	15.43
Drilling rigs: federal engine standards and TxLED	0.43	0.09

<sup>12</sup> The RFG program is implemented in all 8 counties identified elsewhere in this proposal as the HGB area. For more information on the RFG program, visit <https://www.epa.gov/gasoline-standards/reformulated-gasoline>.

<sup>13</sup> The TxLED fuel rules apply to highway (on-road) and non-road vehicles and were approved into the Texas SIP on November 14, 2001 (66 FR 57196). Subsequent revisions were approved April 6, 2005 (70 FR 17321), October 6, 2005 (70 FR 58325), October 24, 2008 (73 FR 63378), and May 6, 2013 (78 FR 26255).

Commercial Marine Vessel engine certification standards and fuel programs	14.76	0.12
<b>Total Projected Emission Reductions:</b>	821.70	370.04

To determine whether the area will meet the RFP targets, we subtract the projected emission reductions (Table 3) from the projected EI of uncontrolled emissions for 2020. This projected EI will reflect emissions resulting from anticipated changes in activity from 2011 to 2020, such as emissions increases due to growth in population and VMT. NOx emissions from sites with equipment applicable to the Mass Emissions Cap and Trade (MECT) Program were projected using the MECT cap. Major stationary sources of VOC emissions were projected by adding emissions growth allowed under the nonattainment New Source Review NSR major modification thresholds. The projected EI was also adjusted to account for available (unused) emissions credits.<sup>14</sup> For more detail on the projected EI, please see our TSD and the TCEQ submittal. The methodology used to forecast the 2020 emissions for each respective category followed relevant EPA EI guidance and was sufficiently documented in the TCEQ submittal. The projected EI data in Table 4 are labeled as “uncontrolled” emissions. To achieve RFP, the amount of emissions remaining after subtracting the emissions reductions from the control measures must be equal to or less than the target inventories calculated in Table 2.

**Table 4: Summary of RFP Demonstration for the HGB Area through 2020 (tpd)**

<b>Description</b>	<b>NOx</b>	<b>VOC</b>
a. 2020 Uncontrolled emissions	1165.66	854.65
b. Projected emissions reductions through 2020 (total from Table 3)	821.70	370.04
c. Projected Emissions after Reductions (subtract line b from line a)	343.96	484.61
d. 3% reductions reserved for prior (2017-2018) RFP milestone contingency measures	13.29	
e. Projected emissions, including prior contingency requirement	357.25	484.61

<sup>14</sup> Emissions credits are banked emissions reductions that may return to the air shed in the future when these emissions credits are used either to modify existing facilities, construct new facilities, or demonstrate compliance with source-specific emissions limit obligations where provided for in Texas SIP rules.

(add lines c and d)		
f. 2020 Target (from Table 2)	371.17	493.33
If the projected emissions (line e) are less than the RFP target (line f), the area demonstrates RFP. Is line e less than line f?	Yes	Yes
g. Subtract line e from line f for surplus	13.92	8.72

In Table 4, we see that the projected emissions in row e, after accounting for reductions from controls and the 2017-2018 contingency measures, are less than the 2020 RFP target emissions and thus, demonstrate RFP. We are proposing that the emissions reductions projected for 2020 are sufficient to meet the 2020 RFP targets.

### *C. Contingency Measures*

As noted earlier, RFP plans for moderate and above nonattainment areas must include contingency measures, which, consistent with CAA section 172(c)(9), “shall provide for the implementation of specific measures to be undertaken if the area fails to make reasonable further progress, or to attain the national primary ambient air quality standard by the attainment date applicable under this part.” EPA has long interpreted the contingency measures provision to allow states to rely on measures already in place and implemented so long as those reductions are beyond those relied on for purposes of the attainment or RFP planning SIP.<sup>15</sup> In addition, the April 16, 1992 General Preamble provided the following guidance: “States must show that their contingency measures can be implemented with minimal further action on their part and with no additional rulemaking actions such as public hearings or legislative review. In general, EPA will expect all actions needed to affect full implementation of the measures to occur within 60 days after EPA notifies the State of its failure.” (57 FR 13512).

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<sup>15</sup> This interpretation has been upheld by the Fifth Circuit Court of Appeals (and the State of Texas is within the Fifth Circuit jurisdiction). See *LEAN v. EPA*, 382 F.3d 575 (5th Cir. 2004).

While the CAA does not specify the type of measures or quantity of emissions reductions required, EPA interprets the CAA to mean that implementation of these contingency measures would provide additional emissions reductions of up to 3 percent of the adjusted base year inventory (or a lesser percentage that will make up the identified shortfall) in the year following the missed milestone, whether it be RFP or attainment.<sup>16</sup>

The TCEQ submittal provides NO<sub>x</sub> reductions for the HGB contingency measures. These contingency measure reductions for the HGB area are not relied upon for RFP or for attainment. The TCEQ submittal includes but is not limited to surplus emissions reductions from the 2020 RFP demonstration (see Table 4, line g) for the HGB area contingency measure demonstration. The TCEQ submittal also includes emission reductions that will take place during calendar year 2021 for the HGB area contingency measure demonstration - these contingency measures consist of State mobile source measures that are already approved in the SIP (I/M, RFG, and TxLED)<sup>17</sup> and federal measures (FMVCP and ULSD). Thus, the contingency measures for 2021 are reliable, permanent, and enforceable. The contingency measures are listed in Table 5.

**Table 5. Demonstration for 2021 for the HGB Area RFP Contingency Measures (tpd)**

<b>Description</b>	<b>NO<sub>x</sub></b>	<b>VOC</b>
a. 2011 Base year Emissions Inventory (from Table 1)	442.92	535.06
b. Percent of NO <sub>x</sub> and VOC to meet contingency measure requirement (total must equal 3%)	3%	0
c. 3% NO <sub>x</sub> reduction for 2021 (row a multiplied by row b) (442.92 x 0.03 = 13.29)	13.29	0
<b>Excess reductions to meet contingency requirement</b>	<b>NO<sub>x</sub></b>	<b>VOC</b>
d. Surplus RFP reductions (from Table 4)	13.92	8.72
e. Subtract 2020 RFP MVEB safety margin <sup>18</sup>	-8.21	-5.49
f. 2020 to 2021 emission reductions (FMVCP, I/M, RFG, 2017 low sulfur gasoline standard on-road TxLED, and ULSD)	24.19	13.05

<sup>16</sup> See the April 16, 1992 General Preamble section III.A.3.c (57 FR 13498 at 13511).

<sup>17</sup> As noted earlier in this rulemaking, the I/M program was approved into the SIP in 2001 (66 FR 57261). See footnotes 14 and 15 regarding approval of RFG and TxLED in the SIP.

<sup>18</sup> The safety margin allows for unanticipated growth in vehicle miles traveled, changes, and uncertainty in vehicle mix assumptions, etc., that will influence the emission estimates.

g. 2020 to 2021 emission reductions (federal non-road mobile new vehicle certification standards, non-road RFG, and non-road TxLED)	4.59	2.29
h. Total projected emissions, accounting for contingency measures (add lines d, e, f, and g)	34.49	18.57
<b>Total surplus or shortfall</b>		
Line h is greater than line c. Subtract line c from line h for surplus	21.20	18.57
Is the contingency measure requirement met?	Yes	Yes

In Table 5, we see that the contingency measures provided for the HGB area, after accounting for the MVEB safety margin, are more than sufficient to meet the 3 percent contingency requirement. Indeed, if the HGB area relied only on the contingency measures scheduled for implementation during 2021 (Table 5, lines f and g), after accounting for the MVEB safety margin, those contingency measures alone would be adequate to meet the 3 percent contingency requirement. In addition, the contingency measures that occur from 2020 to 2021 are State and Federal measures that are already approved into the Texas SIP and as such are expected to be implemented with no further action by the State and with no additional rulemaking actions. Our evaluation of these contingency measures finds that the full implementation of such measures within 60 days after EPA notifies the State of its failure is achievable as, the contingency measures that occur from 2020 to 2021 are State and Federal measures already approved into the Texas SIP and as such are expected to be implemented with no further action by the State. We are proposing to approve the contingency measures for the HGB area.

#### *D. Motor Vehicle Emission Budgets*

The MVEB is the mechanism to determine if future transportation plans conform to the SIP. Transportation conformity is required by CAA section 176(c) and mandates that future transportation plans must not produce new air quality violations, worsen existing violations, delay RFP milestones, or delay timely attainment of the NAAQS. Thus, pursuant to CAA section

176(c), the RFP plan must include MVEBs for transportation conformity purposes. The MVEB is the maximum amount of emissions allowed in the SIP for on-road motor vehicles. The HGB RFP SIP contains VOC and NO<sub>x</sub> MVEBs for RFP milestone year 2020 (see Table 6). On-road emissions must be shown in future transportation plans to be less than the MVEBs for 2020 and subsequent years.

EPA is evaluating the adequacy of the submitted MVEBs in parallel to this proposed approval action. Once EPA finds the submitted MVEBs are adequate for transportation conformity purposes, those MVEBs must be used by State and Federal agencies in determining whether proposed transportation projects conform to the SIP as required by section 176(c) of the CAA. EPA's criteria for determining adequacy of a MVEB are set out in 40 CFR 93.118(e)(4). The process for determining adequacy is described in our TSD.

EPA intends to make its determination on the adequacy of the 2020 RFP MVEBs for the HGB area for transportation conformity purposes soon, by completing the adequacy process that was started on June 3, 2020.<sup>19</sup> After EPA finds the 2020 MVEBs adequate or approves them, the new MVEBs for NO<sub>x</sub> and VOC must be used for future transportation conformity determinations. For required regional emissions analysis years 2020 and beyond, the applicable budgets will be the new 2020 MVEBs. We are proposing to approve the 2020 MVEBs for the HGB area.

**Table 6. RFP Motor Vehicle Emissions Budgets for HGB (tpd)**

<b>Year</b>	<b>NO<sub>x</sub></b>	<b>VOC</b>
2020	87.69	57.70

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<sup>19</sup> On June 3, 2020, EPA posted the HGB area NO<sub>x</sub> and VOC MVEBs on EPA's Web site for the purpose of soliciting public comments, as part of the adequacy process. The comment period closed on July 3, 2020, and we received no comments. For more information, visit <https://www.epa.gov/state-and-local-transportation/state-implementation-plans-sip-submissions-currently-under-epa#houston-texas-rea>.

### **III. Proposed Action**

We are proposing to approve revisions to the Texas SIP that address the RFP requirements for the HGB serious ozone nonattainment area for the 2008 ozone NAAQS. Specifically, we are proposing to approve the RFP demonstration and associated MVEBs, contingency measures for RFP or failure-to-attain, and the revised 2011 base year EI for the HGB area. Further, as part of today's action, EPA is describing the status of its adequacy determination for the NO<sub>x</sub> and VOC MVEBs for 2020 in accordance with 40 CFR 93.118(f)(2). Within 24 months from the effective date of EPA's adequacy determination for the MVEBs or the publication date for the final rule for this action, whichever is earlier, the transportation partners will need to demonstrate conformity to the new NO<sub>x</sub> and VOC MVEBs pursuant to 40 CFR 93.104(e)(3).

### **IV. 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 proposes to approve 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 proposed 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).

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

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

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

Dated: September 16, 2020.

**Kenley McQueen,**

*Regional Administrator, Region 6.*

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