



BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2020-0343; FRL-10016-31-Region 6]

Air Plan Approval; Texas; Clean Air Act Requirements for Enhanced Vehicle

Inspection and Maintenance and Nonattainment New Source Review

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 portions of two State Implementation Plan (SIP) revisions submitted by the State of Texas for the 2008 8-hour ozone National Ambient Air Quality Standard (NAAQS). The SIP revisions proposed for approval describe how CAA requirements for vehicle Inspection and Maintenance (I/M) and Nonattainment New Source Review (NNSR) are met in the Dallas-Fort Worth (DFW) and Houston-Galveston-Brazoria (HGB) serious ozone nonattainment areas.

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-2020-0343, at <https://www.regulations.gov> or via email to 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. 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. 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: Ms. Carrie Paige, EPA Region 6 Office, Infrastructure and Ozone Section, 214-665-6521, 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 will be a delay in processing mail and no courier or hand deliveries will 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. Background

On March 12, 2008, the EPA revised both the primary and secondary NAAQS for ozone 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).¹ The 2008 ozone NAAQS retains the same general form and averaging time as the 0.08 ppm NAAQS set in 1997 but is set at a more protective level. Specifically, the 2008 ozone NAAQS is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.075 ppm. *See* 40 CFR 50.15.²

Both the DFW and HGB areas were designated as nonattainment for the 2008 ozone NAAQS (77 FR 30088, May 21, 2012). The DFW area consists of Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant and Wise counties. The HGB area consists of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery and Waller counties.

On December 23, 2014, the D.C. 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 (D.C. Cir. 2014).

¹ For a history of the ozone NAAQS, please visit <https://www.epa.gov/ground-level-ozone-pollution/table-historical-ozone-national-ambient-air-quality-standards-naaqs>. For information on EPA’s periodic review of the ozone NAAQS, please visit <https://www.epa.gov/naaqs/ozone-o3-air-quality-standards>.

² The current NAAQS for ozone is an 8-hour standard of 0.070 ppm, finalized in 2015 (October 26, 2015, 80 FR 65292). This action does not address the 2015 ozone NAAQS.

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 moderate ozone nonattainment areas, including the DFW area as July 20, 2018, and the HGB area (initially classified as marginal) as July 20, 2015 (80 FR 12264, March 6, 2015). The HGB area qualified for a 1-year extension of the attainment deadline and we revised the attainment deadline to July 20, 2016 (81 FR 26697, May 4, 2016). The HGB area did not meet the revised attainment deadline of July 20, 2016, and we reclassified the area to moderate (81 FR 90207, December 14, 2016). The DFW and HGB areas did not meet the moderate area attainment deadline and were accordingly reclassified as serious (84 FR 44238, August 23, 2019).³ Section 182 of the CAA outlines SIP requirements applicable to ozone nonattainment areas in each classification category. The serious area classification triggers additional requirements, including NNSR and enhanced vehicle I/M. *See* CAA section 182(c) and 40 CFR 51.350.

On May 13, 2020, the Texas Commission on Environment Quality (TCEQ or State) submitted to EPA a SIP revision for each of the DFW and HGB serious ozone nonattainment areas. In those SIP revisions, the State describes how the DFW and HGB areas meet the enhanced vehicle I/M program and NNSR requirements for serious ozone nonattainment areas using existing measures already approved into the SIP. These two SIP revisions are available in the docket for this action, at www.regulations.gov, docket number EPA-R06-OAR-2020-0343.

II. The TCEQ Submittals and EPA's Evaluation

³ The attainment deadline for a serious area classification is 9 years after the initial designation as nonattainment, which in this case is July 20, 2021. *See* 40 CFR 51.1103 and 84 FR 44238.

The two Texas SIP revisions include a statement certifying that the DFW and HGB areas meet the serious area requirements for enhanced I/M and nonattainment NSR for the 2008 eight-hour ozone NAAQS. In addition, the SIP revisions provide a brief history of the enhanced I/M and NNSR programs in the Texas SIP. The SIP revisions also state that, 1) the vehicle I/M program in the DFW and HGB ozone nonattainment areas meet the federal requirements for areas classified as serious or above; and 2) because the Texas SIP includes nonattainment NSR requirements, the requirements for nonattainment NSR are met for the DFW and HGB serious ozone nonattainment areas.

Enhanced Vehicle Inspection and Maintenance

Section 182(c)(3) of the CAA requires states with ozone nonattainment areas classified as serious or worse to implement an enhanced program to reduce hydrocarbon emissions and nitrogen oxides (NO_x)⁴ emissions from in-use motor vehicles registered in each urbanized area in the nonattainment area. The Federal rules addressing I/M program requirements are provided at 40 CFR part 51, subpart S and further defined at 40 CFR 51.350 (Applicability). Under these requirements, serious ozone nonattainment areas in urbanized areas with 1980 Census-defined urbanized populations of 200,000 or more are required to adopt enhanced I/M programs (40 CFR 51.350(a)(2) and (4)).

The Texas SIP includes 30 TAC Section 114.2 (Inspection and Maintenance Definitions) and 30 TAC Section 114.50 (Vehicle Emissions Inspection Requirements) except for 30 TAC Section 114.50(b)(2).⁵ Under these provisions Brazoria, Fort Bend,

⁴ NO_x and Volatile Organic Compounds (VOC) are precursors to ozone formation.

⁵ We did not approve 30 TAC Section 114.50(b)(2) as part of the Texas SIP as (1) it placed an additional reporting burden upon commanders at Federal facilities regarding affected Federal vehicles that is not imposed upon any other affected non-federal vehicle; and (2) the additional reporting requirement is not an essential element for an approvable I/M program, since affected Federal vehicles are also subject to the same reporting requirements as other affected non-federal vehicles. See 66 FR 57261, 57262 (November 14, 2001).

Galveston, Harris, and Montgomery counties in the HGB area are included in the I/M program, and Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant counties in the DFW area are included in the I/M program. The program requires that gasoline powered light-duty vehicles, and light and heavy-duty trucks between two and twenty-four years old, that are registered or required to be registered in the I/M program area, including fleets, are subject to annual inspection and testing. These programs were adopted and approved as meeting the applicable requirements of the I/M rules in response to the area designations under the one-hour ozone standard and later the 1997 8-hour standard. The size of the HGB nonattainment area did not change with the implementation of the 2008 ozone standard. As a result, EPA's previous finding that the program covers the necessary vehicle population is still appropriate. See 70 FR 58119, 58132 (October 5, 2005) and 71 FR 52670 (September 6, 2006). Wise County was added to the DFW nonattainment area under the 2008 standard. Wise County, however, is not required to be included in the I/M program as the current I/M program in the DFW area sufficiently covers a non-urbanized area population greater than the urbanized area in Wise County. To verify, we evaluate the extent of area coverage for I/M, as defined at 40 CFR 51.350(b)(2): "Outside of ozone transport regions, programs shall nominally cover at least the entire urbanized area, based on the 1990 census.⁶ Exclusion of some urban population is allowed as long as an equal number of non-urban residents of the MSA containing the subject urbanized area are included to compensate for the exclusion." Based on the 1990 census, the urban population of the DFW area covered by the I/M program (which consisted of 9 counties: Collin, Dallas, Denton, Ellis, Johnson, Kaufman,

⁶ Texas is not included in the Ozone Transport Region (OTR), which is defined at CAA section 184(a).

Parker, Rockwall and Tarrant) was 3,198, 259 and the urban population of Wise County was 8,735. Thus, the population of the entire urbanized area was 3,206,994 (3,198, 259 + 8,735). The urban and non-urban population of the 9-county DFW area was 3,885,415. By subtracting the population of the entire urbanized area (3,206,994) from the urban and non-urban populations of the 9-county DFW I/M area (3,885,415 – 3,206,994 = 678,421), more than an equal number of non-urban residents in the 9-county DFW area are included in the I/M program to compensate for the exclusion of the urbanized population of 8,735 in Wise County.⁷ Thus, Wise County need not implement an I/M program.

Therefore, since the provisions in the Texas SIP already include the I/M requirements specified by the CAA for serious ozone nonattainment areas, we are proposing to approve this portion of the two SIP revisions.

Nonattainment NSR

The applicable NNSR requirements for the various ozone nonattainment classifications are described in CAA section 182 and further defined in 40 CFR part 51, subpart I (Review of New Sources and Modifications). Under these requirements new major sources or major modifications at existing sources in an ozone nonattainment area must comply with the lowest achievable emission rate and obtain sufficient emission offsets.⁸ For serious ozone nonattainment areas, major sources are defined as any stationary source or group of sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 50 tons per year (tpy) of NO_x or

⁷ All population data in this paragraph are from the 1990 Census. The 1990 Census report for Texas is in the docket for this rulemaking.

⁸ Offsets are the ratio of total emissions reductions of NO_x or VOC to the emissions increase of such air pollutant.

VOC (*see* CAA sections 182(c) and 182(f), and 40 CFR 51.165). The emission offset ratio required for serious ozone nonattainment areas is 1.2 to 1 (*see* CAA section 182(c)(10)).

The EPA-approved Texas SIP already 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).⁹ These provisions require new major sources or major modifications at existing sources in the DFW and HGB areas to comply with the lowest achievable emission rate and obtain emission offsets at the serious classification ratio of 1.2 to 1.

Therefore, since the provisions in the Texas SIP already include the NNSR requirements specified by the CAA for serious ozone nonattainment areas, we are proposing to approve this portion of the two SIP revisions.

III. Proposed Action

We are proposing to approve portions of two revisions to the Texas SIP submitted on May 13, 2020, that describe how CAA requirements for vehicle I/M and NNSR are met in the DFW and HGB serious ozone nonattainment areas for the 2008 ozone NAAQS.

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

⁹ *See* 60 FR 49781, September 27, 1995 and subsequent revisions at 77 FR 65119, October 25, 2012 and 79 FR 66626, November 10, 2014.

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);
- 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 (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).

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, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: February 5, 2021.

David Gray,

Acting Regional Administrator, Region 6.

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