



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2020-0166; FRL-10017-19-Region 6]

Air Plan Approval; Texas; Clean Air Act Requirements for Nonattainment New Source Review and Emission Statements for the 2015 Ozone National Ambient Air Quality Standards

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 the portions of a State Implementation Plan (SIP) revision submitted by the State of Texas that describes how CAA requirements for Nonattainment New Source Review (NNSR) and emission statements are met in the Dallas-Fort Worth (DFW), Houston-Galveston-Brazoria (HGB), and Bexar County ozone nonattainment areas for the 2015 ozone National Ambient Air Quality Standards (NAAQS).

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-2020-0166, at <https://www.regulations.gov> or via email to young.carl@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 Carl Young, 214-665-6645, young.carl@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: Carl Young, EPA Region 6 Office, Infrastructure and Ozone Section, 214-665-6645, young.carl@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. 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

Ground-level ozone is a gas that is formed by the reaction of Volatile Organic Compounds (VOC) and Oxides of Nitrogen (NO_x) in the atmosphere in the presence of sunlight. These precursors (VOC and NO_x) are emitted by many types of pollution sources, including point sources such as power plants and industrial emissions sources; on-road and off-road mobile sources (motor vehicles and engines); and smaller residential and commercial sources, such as dry cleaners, auto body shops, and household paints, collectively referred to as area sources. Ozone is predominately a summertime air pollutant (83 FR 25777, June 4, 2018).

On October 1, 2015, we revised the ozone NAAQS to a level of 0.070 parts per million (ppm) (annual fourth-highest daily maximum 8-hour average concentration, averaged over 3 years). *See* 80 FR 65296, October 26, 2015; and 40 CFR 50, appendix U for more information on the revised 2015 ozone NAAQS, including a detailed explanation of the calculation of the 3-year 8-hour average. The revised 2015 ozone NAAQS provide greater protection of public health and the environment than the previous ozone NAAQS of 0.075 ppm, set in 2008. Although the 2015 ozone NAAQS retain the same general form and averaging time as the NAAQS set in 2008, the lower level is more protective.

The DFW and HGB areas were classified as Marginal ozone nonattainment areas for the 2015 ozone NAAQS with an attainment deadline of August 3, 2021 (83 FR 25776, June 4, 2018). Bexar County (which includes the City of San Antonio) was also classified as a Marginal ozone nonattainment area with an attainment deadline of September 24, 2021 (83 FR 35136, July 25, 2018). The DFW area consists of Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Tarrant, and Wise Counties. The HGB area consists of Brazoria, Chambers, Fort Bend, Galveston, Harris, and Montgomery Counties.

On June 24, 2020, Texas submitted a SIP revision for the DFW, HGB and Bexar County areas. The SIP revision included a description of how provisions previously approved by EPA meet the 2015 ozone NAAQS Marginal area CAA requirements for (1) NNSR and (2) Emission Statements from stationary point sources. A copy of the SIP revision is available online at www.regulations.gov, Docket number EPA-R06-OAR-2020-0166. In the SIP revision submittal, Texas determined that the NNSR SIP requirements of CAA section 182(a)(2)(C) are met for the 2015 NAAQS as the 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). Texas also determined that 30 TAC Section 101.10 (Emissions Inventory Requirements) of the Texas SIP, which requires

that stationary sources report NO_x and VOC emissions, continues to address the emissions statements requirement of CAA section 182(a)(3)(B) for the 2015 ozone NAAQS.

II. The EPA's Evaluation

A. CAA Requirements for NNSR

A NNSR permitting program for ozone nonattainment areas is required by the CAA section 182(a)(2)(C). The NNSR requirements are further defined in 40 CFR 51 Subpart I (Review of New Sources and Modifications). NNSR permits for ozone authorize construction of new major sources or major modifications of existing sources of NO_x or VOC in an area that is designated nonattainment for the ozone NAAQS. Emissions thresholds and pollutant offset requirements under the NNSR program are based on the nonattainment area's classification. 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 for emissions of NO_x or VOC. For Marginal ozone nonattainment areas, major sources are 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 100 tons per year of NO_x or VOC (CAA sections 182(c) and 182(f)). The NNSR offset ratio for Marginal ozone nonattainment areas must be at least 1.1 to 1 (CAA section 182(a)(4)). As noted by the State, the 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). For the Bexar County area these provisions require new major sources or major modifications at existing sources, that emit or has the potential to emit, at least 100 tons per year of NO_x or VOC, to comply with the lowest achievable emission rate (LAER) and obtain emission offsets at the Marginal classification ratio of 1.1 to 1.

More stringent NNSR requirements apply to the counties in the DFW and HGB areas as they are also classified as Serious nonattainment for the 2008 ozone standard of 0.075 ppm (40 CFR

81.344). For the DFW and HGB areas, these provisions require new major sources or major modifications at existing sources, that emit or has the potential to emit, at least 50 tons per year of NO_x or VOC, to comply with the LAER and obtain emission offsets at the Serious classification ratio of 1.2 to 1. In 1995, we approved Texas' NNSR program for ozone, which includes Marginal and Serious classification requirements under CAA section 182 (60 FR 49781, September 27, 1995). Most recently, we approved revisions to the Texas SIP to address NNSR requirements in 2012 (77 FR 65119, October 25, 2012) and 2014 (79 FR 66626, November 10, 2014). Therefore, since the Texas SIP includes approved provisions addressing the CAA NNSR requirements for ozone nonattainment areas classified as Marginal, we are proposing to approve this portion of the SIP revision.

B. CAA Requirements for Emissions Statements

CAA section 182(a)(3)(B) calls for SIPs for all ozone nonattainment areas to require that the owner or operator of each stationary source of NO_x or VOC provide the State with an annual statement of emissions along with a certification that the information is accurate to the best knowledge of the individual certifying the statement. As noted by the State, the Texas SIP includes 30 TAC Section 101.10 (Emissions Inventory Requirements). The certification for emission statements is found at 30 TAC Section 101.10(d) (Certifying statement). We initially approved this certification as meeting the CAA emission statement requirement in 1994 (59 FR 44036, August 26, 1994). Most recently we approved revisions to 30 TAC Section 101.10 in 2017 (82 FR 26598, June 8, 2017). The most recently EPA-approved Texas regulation continues to include appropriate provisions so that the owner or operator of each stationary source must provide the State with a statement with each emissions inventory attesting that the information contained in the inventory is true and accurate to the best knowledge of the certifying official (30 TAC Section 101.10(d)(1)). Therefore, since the Texas SIP includes approved provisions addressing the CAA emission statement requirement, we are proposing to approve this portion of the SIP revision.

III. Proposed Action

We are proposing to approve portions of a SIP revision submitted by the State of Texas on June 24, 2020, that describes how CAA requirements for NNSR and emission statements are met in the DFW, HGB, and Bexar County ozone nonattainment areas for the 2015 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 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 (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, Reporting and record keeping 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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