include loans made to market rates and terms such as refinances, borrower retention actions, or new loans.[20]

[FR Doc. 2012–2206 Filed 1–31–12; 8:45 am]

BILLING CODE 7535–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2011–0775; FRL–9625–6]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Determination of Failure to Attain the One-Hour Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to determine that the Houston/Galveston/Brazoria (HGB) area did not attain the one-hour ozone national ambient air quality standard (NAAQS) by its applicable attainment date, November 15, 2007. This determination is based on three years of complete, quality-assured and certified ambient air quality monitoring data for the period preceding the applicable attainment deadline.

DATES: Written comments must be received on or before March 2, 2012.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2011–0775, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *EPA Region 6 Contact Us Web site: http://epa.gov/region6/r6coment.htm.* Please click on ''6PD'' (Multimedia) and select ''Air'' before submitting comments.
- *Email:* Mr. Guy Donaldson at *donaldson.guy@epa.gov.* Please also send a copy by email to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.
- *Fax:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), at fax number 214–665–7263.
- *Mail:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.
- *Hand or Courier Delivery:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R06–OAR–2011–0775. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214–665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

FOR FURTHER INFORMATION CONTACT: Kenneth W. Boyce, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone 214–665–7259; fax number 214–665–7263; email address *boyce.kenneth@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, whenever ''we'' ''us'' or ''our'' is used, we mean the EPA

Table of Contents

I. What actions is EPA taking?

The EPA is proposing to determine that, under the Clean Air Act (CAA or ''Act''), the HGB area failed to attain the NAAQS for one-hour ozone by its applicable one-hour NAAQS attainment date of November 15, 2007.

II. Background

Regulatory Context

The Act requires us to establish NAAQS for certain widespread pollutants that cause or contribute to air pollution that is reasonably anticipated to endanger public health or welfare (sections 108 and 109 of the Act). In 1979, we promulgated the revised one-hour ozone standard of 0.12 parts per million (ppm) (44 FR 8202, February 8, 1979).[1]

An area is considered to have attained the one-hour ozone standard if there are no violations of the standard, as determined in accordance with the regulation codified at 40 CFR section 50.9, based on three consecutive calendar years of complete, quality-assured and certified monitoring data. A

[20] There may be instances where a workout loan is not a TDR even though the borrower is experiencing financial hardship. For example, a workout loan would not be a TDR if the fair value of cash or other assets accepted by a credit union from a borrower in full satisfaction of its receivable is at least equal to the credit union's recorded investment in the loan, *e.g.,* due to charge-offs.

[1] For ease of communication, many reports of ozone concentrations are given in parts per billion (ppb); ppb = ppm × 1000. Thus, 0.12 ppm becomes 120 ppb (or between 120 to 124 ppb, when rounding is considered).

violation occurs when the ambient ozone air quality monitoring data show greater than one (1.0) ''expected number'' of exceedances per year at any site in the area, when averaged over three consecutive calendar years.[2] An exceedance occurs when the maximum hourly ozone concentration during any day exceeds 0.124 ppm. For more information, please see ''National 1-hour primary and secondary ambient air quality standards for ozone'' (40 CFR 50.9) and ''Interpretation of the 1-Hour Primary and Secondary National Ambient Air Quality Standards for Ozone'' (40 CFR part 50, appendix H).

The Act, as amended in 1990, required EPA to designate as nonattainment any area that was violating the one-hour ozone standard, generally based on air quality monitoring data from the 1987 through 1989 period (section 107(d)(4) of the Act; 56 FR 56694, November 6, 1991). The Act further classified these areas, based on the severity of their nonattainment problem, as Marginal, Moderate, Serious, Severe, or Extreme.

The control requirements and date by which attainment of the one-hour ozone standard was to be achieved varied with an area's classification. Marginal areas were subject to the fewest mandated control requirements and had the earliest attainment date, November 15, 1993, while Severe and Extreme areas were subject to more stringent planning requirements and were provided more time to attain the standard. Two measures that are triggered if a Severe or Extreme area fails to attain the standard by the applicable attainment date are contingency measures [section 172(c)(9)] and a major stationary source fee provision [sections 182(d)(3) and 185)] (''major source fee program'' or ''section 185 fee program'').

Designations and Classifications

The HGB area consists of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery and Waller counties in Texas. Upon the date of enactment of the 1990 CAA Amendments, the HGB area was classified as a severe ozone nonattainment area for the one-hour ozone NAAQS. As noted above, severe and extreme areas are subject to more stringent planning requirements but were provided more time to attain the ozone standard. HGB one-hour ozone nonattainment area was classified as severe 17. As a result the attainment date for the HGB area was November 15, 2007. [3]

On January 13, 2011, the Sierra Club filed a complaint in the U.S. District Court for the District of Columbia alleging EPA failed in its mandatory duties to make a determination of attainment by the applicable attainment date for certain one hour ozone nonattainment areas. The Houston/Galveston/Brazoria was one of the nonattainment areas listed in Sierra Club's complaint. On September 12, 2011, EPA signed a Settlement Agreement with the Sierra Club which, in relevant part to this rulemaking, committed EPA by January 31, 2012 to sign a proposed notice to be published in the **Federal Register** as to whether Houston/Galveston/Brazoria has attained the 1 hour ozone standard by its attainment date and by May 31, 2012, to sign a final notice to be published in the **Federal Register** determining whether Houston/Galveston/Brazoria has attained the 1 hour ozone standard by its attainment date.

Transition From One-Hour Ozone Standard to Eight-Hour Ozone Standard

In 1997, EPA promulgated a new, more protective standard for ozone based on an eight-hour average concentration (the 1997 eight-hour ozone standard). In 2004, EPA published the 1997 eight-hour ozone designations and classifications and a rule governing certain facets of implementation of the eight-hour ozone standard (Phase 1 Rule) (69 FR 23858 and 69 FR 23951, respectively, April 30, 2004).

Although EPA revoked the one-hour ozone standard (effective June 15, 2005), to comply with anti-backsliding requirements of the Act, eight-hour ozone nonattainment areas remain subject to certain requirements based on their one-hour ozone classification. Initially, in our rules to address the transition from the one-hour to the eight-hour ozone standard, EPA did not include contingency measures or the section 185 fee program among the measures retained as one-hour ozone anti-backsliding requirements.[4] However, on December 23, 2006, the United States Court of Appeals for the District of Columbia Circuit determined that EPA should not have excluded these requirements from its anti-backsliding requirements. *South Coast Air Quality Management District* v. *EPA,* 472 F.3d 882 (DC Cir. 2006) reh'g denied 489 F.3d 1245 (clarifying that the vacatur was limited to the issues on which the court granted the petitions for review).

Thus, the Court vacated the provisions that excluded these requirements. As a result, States must continue to meet the obligations for one-hour ozone NAAQS contingency measures and, for Severe and Extreme areas, major source fee programs. EPA has issued a proposed rule that would remove the vacated provisions of 40 CFR 51.905(e), and that addresses contingency measures for failure to attain or make reasonable further progress toward attainment of the one-hour standard. See 74 FR 2936, January 16, 2009 (proposed rule); 74 FR 7027, February 12, 2009 (notice of public hearing and extension of comment period).

Rationale for Today's Proposed Action

After revocation of the one-hour ozone standard, EPA must continue to provide a mechanism to give effect to the one-hour anti-backsliding requirements. See *SCAQMD* v. *EPA,* 47 F.3d 882, at 903. In keeping with this responsibility with respect to one-hour anti-backsliding contingency measures and section 185 fee programs for the HGB area, EPA proposes to determine that the area failed to attain the one-hour ozone standard by its applicable attainment date. See CAA section 301(a) and the relevant portion of section 181(b)(2).

III. What is EPA's analysis?

A determination of whether an area's air quality meets the one-hour ozone standard is generally based upon three years of complete [5], quality-assured and certified air quality monitoring data gathered at established State and Local Air Monitoring Stations (''SLAMS'') in the nonattainment area and entered into the EPA's Air Quality System (AQS) database. Data from air monitors operated by state/local agencies in compliance with EPA monitoring requirements must be submitted to the AQS database. Monitoring agencies annually certify that these data are

[2] An ''expected number'' of exceedances is a statistical term that refers to an arithmetic average. An ''expected number'' of exceedances may be equivalent to the number of observed exceedances plus an increment that accounts for incomplete sampling. See 40 CFR part 50, appendix H. Because, in this context, the term ''exceedances'' refers to days (during which the daily maximum hourly ozone concentration exceeded 0.124 ppm), the maximum possible number of exceedances in a given year is 365 (or 366 in a leap year).

[3] 56 FR 56694, November 6, 1991 and CAA section 181(a)(1).

[4] Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 1, 69 FR 23951 (April 30, 2004).

[5] Generally, a ''complete'' data set for determining attainment of the ozone is one that includes three years of data with an average percent of days with valid monitoring data greater than 90% with no single year less than 75%. See 40 CFR part 50, appendix I. There are less stringent data requirements for showing that a monitor has failed an attainment test and thus has recorded a violation of the standard.

accurate to the best of their knowledge. Accordingly, EPA relies primarily on data in its AQS database when determining the attainment status of an area. See 40 CFR section 50.9; 40 CFR part 50, appendix H; 40 CFR part 53; 40 CFR part 58, appendices A, C, D and E. All data are reviewed to determine the area's air quality status in accordance with 40 CFR part 50, appendix H.

Under EPA regulations at 40 CFR section 50.9, the one-hour ozone standard is attained at a monitoring site when the expected number of days per calendar year with maximum hourly average concentrations above 0.12 parts per million (235 micrograms per cubic meter) is equal to or less than 1, as determined by 40 CFR part 50, appendix H.[6] EPA proposes to determine that the HGB area failed to attain the one-hour ozone standard by its applicable attainment date; that is, the number of expected exceedances at sites in the nonattainment area was greater than one per year in the period prior to the applicable attainment date. This proposed determination is based on three years of complete, quality-assured and certified ambient air quality monitoring data in AQS for the 2005–2007 monitoring period for the HGB area.

Table 1 summarizes the ozone monitoring data from the various monitoring sites in the HGB area by showing the expected exceedances per year and 3-year expected exceedances averages over the 2005–2007 period. The data summarized in Table 1 below are considered complete for the purpose of determining if the standard is met. Review of the data in Table 1 shows that the average number of expected exceedances for the 2005–2007 period is greater than one for 12 of the ozone monitoring sites in the HGB area. Furthermore, the NW Harris County site had more than one expected exceedance in the attainment year, 2007, so the area could not qualify for a 1 year extension to the attainment date.

TABLE 1—ONE-HOUR OZONE DATA FOR THE HGB ONE-HOUR OZONE NONATTAINMENT AREA

Site name	AQS ID	Expected exceedances by year			Expected exceedances 3-yr average
		2005	2006	2007	
Brazoria County	.....	.....	.....	.....	.....
Manvel	480391004	2.1	3	1.1	2.1
Lake Jackson	480391016	0	0	0	0.0
Galveston County	.....	.....	.....	.....	.....
Galveston County Airport	481670014/1034	0	0	0	0.0
Harris County	.....	.....	.....	.....	.....
Aldine	482010024	2.1	0	0	0.7
Channelview	482010026	2	2	1	1.7
NW Harris County	482010029	2.1	2	2	2.0
Wayside	482010046	0	0	0	0.0
Lang	482010047	0	0	0	0.0
Croquet	482010051	4.1	1	0	1.7
Bayland Park	482010055	6.1	5.1	0	3.7
Monroe	482010062	5.1	3	0	2.7
Westhollow	482010066	1	4	1	2.0
Regional Office	482010070	3	2	0	1.7
Texas Avenue	482010075	0	1.1	1	0.7
Park Place	482010416	NA	8.2	0	*4.1
Lynchburg	482011015	6.2	1	0	2.4
Mae Drive	482011034	0	2.1	0	0.7
Clinton Drive	482011035	1	0	0	0.3
Deer Park	482011039	3.1	4.1	0	2.4
Seabrook	482011050	3.1	2	1	2.0
Montgomery County	.....	.....	.....	.....	.....
Conroe	483390078	1	2	0	1.0

Source: AQS Quicklook Report, September 26, 2011.
*Two-year average 2006–2007.

IV. What is the effect of the proposed determination?

After revocation of the one-hour ozone standard, EPA must continue to provide a mechanism to give effect to the one-hour anti-backsliding requirements. See *SCAQMD* v. *EPA,* 47 F.3d 882, at 903. In keeping with this responsibility with respect to one-hour anti-backlsiding contingency measures and section 185 fee programs for the HGB one hour ozone area, EPA proposes to determine that the HGB area failed to attain the one-hour ozone standard by its applicable attainment date. Consistent with 40 CFR 51.905(e)(2) and the South Coast court decision, upon revocation of the one-hour ozone NAAQS for an area, EPA is no longer obligated to determine whether an area has attained the one-hour NAAQS by its applicable deadline, except insofar as it relates to effectuating the anti-backsliding requirements that are specifically retained. EPA's proposed determination here—that the area did not attain the one-hour ozone standard by the November 15, 2007 deadline (based on data for 2005–2007) is made pursuant to section (301)(a) and the relevant portion of section 181(b)(2), and is linked solely to two required one-hour anti-backsliding measures: i.e., one-hour contingency measures for failure to attain under section 172(c)(9), and fee programs under sections 182(d)(3) and 185. A final determination of failure to attain by the area's 2007 attainment date will not result in reclassification of the area under the revoked one-hour standard. As a severe one-hour nonattainment area, the HGB area is not subject to reclassification for the one-hour standard, and in any event

[6] The average number of expected exceedances is determined by averaging the expected exceedances of the one-hour ozone standard over a consecutive three calendar year period. See 40 CFR part 50 appendix H.

EPA is no longer required to reclassify any area to a higher classification for the one-hour ozone NAAQS based upon a determination that the area failed to attain that NAAQS by its attainment date. 40 CFR 51.905(e)(2)(i)(B).

The EPA's proposed determination that the area failed to attain the one-hour ozone standard by its applicable date, if finalized, would bear on the area's obligations with respect to two one-hour ozone anti-backsliding requirements whose implementation is triggered by a finding of failure to attain by the applicable attainment date: section 172(c)(9) contingency measures for failure to attain, and sections 182(d)(3) and 185 major stationary source fee programs.

With respect to the one-hour ozone anti-backsliding requirement for contingency measures, the Texas SIP included contingency measures to achieve an additional 3 percent reduction in NO_X and VOC emissions in 2008. The contingency measure reductions for 2008 were to be obtained from on-road and off-road mobile control measures already being implemented. EPA has previously approved the State's one-hour ozone attainment demonstration and Rate of Progress plans for the HGB area which included contingency measures. See: 71 FR 52670, 70 FR 7407, 66 FR 57195, and 66 FR 20750. Thus, the reductions from contingency measures have already been achieved and therefore a final determination of failure to attain by the area's one-hour ozone attainment date would not trigger additional emissions reductions.

With respect to the one-hour ozone anti-backsliding requirement for penalty fees, section 182(d)(3) requires SIPs to include provisions required by section 185. Section 185 requires one-hour ozone SIPs for severe areas to provide a program requiring each major stationary source of ozone precursors located in the area to pay fees to the State if the area has failed to attain by the attainment date. A final determination of failure to attain by the area's one-hour attainment date would trigger the one-hour anti-backsliding obligation to implement the penalty fee program under section 182(d)(3) and 185, unless that obligation is terminated.

V. Statutory and Executive Order Reviews

This action proposes to make a determination that this area did not attain the one-hour ozone standard based on air quality, and does not impose any requirements beyond those required by statute or regulation. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- 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 a 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 the 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 Clean Air Act; and
- Does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because it would not apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Oxides of nitrogen, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: January 24, 2012.

Al Armendariz,

Regional Administrator, Region 6.

[FR Doc. 2012–2199 Filed 1–31–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R03–OAR–2011–0680; FRL–9625–4]

Determination of Failure To Attain by 2005 and Determination of Current Attainment of the 1-Hour Ozone National Ambient Air Quality Standards in the Baltimore Nonattainment Area in Maryland

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to determine that the Baltimore severe 1-hour ozone nonattainment area failed to attain the 1-hour ozone National Ambient Air Quality Standards (NAAQS) by the applicable attainment date of November 15, 2005, based on three years of complete, quality-assured and certified ambient air quality monitoring data for 2003 through 2005. In addition, EPA is proposing to determine that the Baltimore area is currently attaining the 1-hour ozone NAAQS. This proposed determination is based upon the most recent three years, 2008–2010, of complete, quality-assured and certified ambient air monitoring data showing the area has monitored attainment of the 1-hour ozone NAAQS. EPA's review shows that the area has attained the 1-hour ozone NAAQS since the 2006–2008 monitoring period and that it continues to attain the 1-hour ozone NAAQS. If this latter proposed determination is made final, the requirement for the State of Maryland to submit contingency measures related to attainment of the 1-hour ozone NAAQS in the Baltimore severe 1-hour ozone nonattainment area shall be suspended.

DATES: Written comments must be received on or before March 2, 2012.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2011–0680 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *E-mail: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2011–0680, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such