

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[EPA-R06-OAR-2020-0161; FRL-10428-02-R6]

**Air Plan Approval; Texas; Reasonable Further Progress Plan for the Dallas-Fort Worth Ozone Nonattainment Area****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 revisions to the State Implementation Plan (SIP) for Texas as proposed on October 9, 2020, and supplemented on December 20, 2022. The revisions were submitted by Texas on May 13, 2020, to meet the Reasonable Further Progress (RFP) requirements for the Dallas-Fort Worth Serious ozone nonattainment area (DFW area) for the 2008 ozone National Ambient Air Quality Standard (NAAQS). Specifically, EPA is approving the RFP demonstration and associated Motor Vehicle Emission Budgets (budgets). EPA is also notifying the public that EPA finds these RFP budgets for the DFW area adequate for the purpose of transportation conformity. As a result of such finding, the DFW area must use the budgets from the submitted DFW RFP SIP for future conformity determinations. The EPA is not finalizing a previous proposed approval of revisions to the SIP that address RFP contingency measure requirements for the DFW area in this action and that will be addressed in a separate action.

**DATES:** This rule is effective on May 24, 2023.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID EPA-R06-OAR-2020-0161. All documents in the docket are listed on the <https://www.regulations.gov> website. 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:** Ms. Carrie Paige, EPA Region 6 Office, Infrastructure and 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. Please call or email 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 October 9, 2020, proposal and December 20, 2022, supplemental proposal (85 FR 64084 and 87 FR 77770, respectively).<sup>1</sup> In the October 2020 document, we proposed to approve a portion of the May 13, 2020, Texas SIP revision addressing RFP requirements for the 2008 8-hour ozone NAAQS for the two Serious ozone nonattainment areas in Texas (“the Texas RFP submittal”). These two areas are the DFW and the Houston-Galveston-Brazoria (HGB) areas. The Texas RFP submittal also establishes budgets for the year 2020 and includes contingency measures for each of the DFW and HGB areas, should the areas fail to make reasonable further progress or fail to attain the NAAQS by the applicable attainment date. Our October 2020 proposal addressed only that portion of the Texas RFP submittal that refers to the DFW area. The portion of the Texas RFP submittal that refers to the HGB area was addressed in a separate rulemaking action.<sup>2</sup>

Our October 2020 proposal also provided information on ozone formation, the ozone standards, area designations, related SIP revision requirements under the CAA, and the EPA’s implementing regulations for the 2008 ozone NAAQS, referred to as the 2008 Ozone SIP Requirements Rule (“2008 Ozone SRR”).<sup>3</sup> The DFW area, comprising Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise counties was classified as Serious nonattainment for the 2008 ozone NAAQS and as such was subject to the Serious area requirements, one of which was to demonstrate RFP in reducing volatile organic compounds (VOC).<sup>4</sup> In demonstrating RFP, emission

reductions of nitrogen oxides (NO<sub>x</sub>) may be substituted for VOC reductions, if certain criteria are met.<sup>5</sup> As explained in our October 2022 proposal and TSD, because the State has already satisfied the 15 percent VOC emissions reduction requirement for the DFW area, all 10 counties in the DFW nonattainment area may substitute NO<sub>x</sub> reductions for VOC, consistent with the 2008 Ozone SRR (see 80 FR 12264, 12271), 40 CFR 51.1110, and EPA’s NO<sub>x</sub> Substitution Guidance.

The comment period on our October 2020 proposal closed on November 9, 2020. We received relevant supportive and adverse comments on our proposal from the North Central Texas Council of Governments (NCTCOG) and Air Law for All (ALFA) on behalf of the Center for Biological Diversity and the Sierra Club.<sup>6</sup> One commenter supported the proposed action and concurred with the on-road mobile source emission inventories and budgets for 2020. One commenter stated that our proposal did not address how the substitution of NO<sub>x</sub> emission reductions for VOC emission reductions in the DFW RFP plan is consistent with the CAA. Based on those comments, we published a supplemental proposal to address the NO<sub>x</sub> substitution issue raised. Our December 2022 supplemental proposal provided an overview of ozone chemistry and NO<sub>x</sub> substitution effects, discussed ozone chemistry in the DFW area, and described how Texas’s use of NO<sub>x</sub> substitution is warranted and appropriately implemented. Our December 2022 action also proposed to approve the NO<sub>x</sub> substitution provided in the Texas RFP submittal for the DFW area.

The comment period on our December 2022 supplemental proposal closed on January 19, 2023. We received one comment from an anonymous source that addresses the fossil fuel industry. However, such comments do not raise NO<sub>x</sub> substitution in the DFW area, which is the subject of the December 2022 supplemental proposal and thus, are beyond the scope of the action and do not require a response below.<sup>7</sup>

NAAQS by the area’s attainment date is outside the scope of this action (87 FR 60926, October 7, 2022).

<sup>5</sup> See 80 FR 12264, 12271 for an explanation of criteria. NO<sub>x</sub> and VOC are precursors to ozone formation.

<sup>6</sup> Henceforth, we refer to the NCTCOG and ALFA as “the commenter(s)”. These comments are provided in the docket at <https://www.regulations.gov> under docket ID: EPA-R06-OAR-2020-0161.

<sup>7</sup> All comments received on this action are provided in the docket at <https://www.regulations.gov>.

<sup>1</sup> Henceforth we refer to these proposals as “the October 2020 document” or “the October 2020 proposal” and “the December 2022 action” or “the December 2022 supplemental proposal.” These proposals and our Technical Support Document (TSD) are provided in the docket for this action.

<sup>2</sup> Our final action to approve the RFP plan for the HGB area was published on May 10, 2021 (86 FR 24717).

<sup>3</sup> See 80 FR 12264 (March 6, 2015).

<sup>4</sup> Our final determination that the DFW Serious nonattainment area failed to attain the 2008 ozone

Our responses to comments received on the October 2020 proposal follow.

## II. Response to Comments

*Comment:* The commenter states that emissions reductions from Texas sources would assist in mitigating the public health impacts caused by ozone in the DFW area. The commenter describes the health effects of exposure to ozone, including the effects on children and disadvantaged communities in the DFW area. The commenter mentions that reducing ozone levels below the 2008 ozone NAAQS of 75 parts per billion (ppb) would have large and immediate health benefits in Texas. The commenter includes numerous health studies in support of these statements.

*Response:* The EPA appreciates the commenter's views and studies submitted regarding exposure to ground level ozone. This action addresses certain requirements for the DFW area under the 2008 ozone NAAQS; however, a more stringent ozone standard of 70 ppb was promulgated in 2015.<sup>8</sup> Because the DFW area is also designated as nonattainment for the 2015 ozone NAAQS, the Texas Commission on Environmental Quality (TCEQ or State) is working on additional measures to assist the DFW nonattainment area in attaining the 2015 ozone NAAQS.<sup>9</sup>

*Comment:* Citing specific statutory provisions and excerpts from the EPA's implementation rules for the 1997 and 2008 ozone NAAQS, the commenter asserts that the RFP demonstration for the DFW Serious area must meet both the general RFP requirements in CAA section 172(c)(2) that are tied to attainment of the ozone standards and the specific RFP requirements in CAA section 182(c)(2)(B) for reductions in emissions of VOCs from baseline emissions. The commenter contends that the RFP "targets" cannot be severed from the attainment demonstration and control strategy and independently approved. The commenter asserts that because the EPA has not proposed to approve the attainment demonstration and control strategy for the DFW area, there is no basis to propose that the RFP demonstration for the DFW area meets the general RFP requirements in CAA section 172(c)(2).<sup>10</sup>

*Response:* We disagree with the commenter's assertion that the RFP demonstration does not satisfy RFP

requirements because it does not ensure attainment, which is inconsistent with the EPA's existing interpretation of RFP requirements established in implementing regulations for the 2008 ozone NAAQS. As the commenter notes, Serious ozone nonattainment areas are subject to the general requirements for nonattainment plans in CAA subpart 1 and the specific requirements for ozone areas in CAA subpart 2, including the requirements related to RFP and attainment. This is consistent with the structure of the CAA as modified under the 1990 amendments, which introduced additional subparts to part D of title I of the CAA to address requirements for specific NAAQS pollutants, including ozone (subpart 2), carbon monoxide (subpart 3), particulate matter (subpart 4), and sulfur oxides, nitrogen dioxide, and lead (subpart 5).

These subparts apply tailored requirements for these pollutants, including those based on an area's designation and classification, in addition to and often in place of the generally applicable provisions retained in subpart 1. While CAA section 172(c)(2) of subpart 1 states only that nonattainment plans "shall require reasonable further progress," CAA sections 182(b)(1) and 182(c)(2)(B) of subpart 2 provide specific percent reduction targets for ozone nonattainment areas to meet the RFP requirement. Put another way, subpart 2 further defines RFP for ozone nonattainment areas by specifying the incremental amount of emissions reduction required by set dates for those areas.<sup>11</sup> For Moderate ozone nonattainment areas, CAA section 182(b)(1) defines RFP by setting a specific 15 percent VOC reduction requirement over the first six years of the plan. For Serious or higher ozone nonattainment areas, CAA section 182(c)(2)(B) defines RFP by setting specific annual percent reductions for the period following the first six-year period and allows averaging over a three-year period. With respect to the 1-hour ozone NAAQS, the EPA stated that, by meeting the specific percent reduction requirements in CAA sections

182(b)(1) and 182(c)(2)(B), the state will also satisfy the general RFP requirements of section 172(c)(2) for the time period discussed.<sup>12</sup>

We agree with the commenter that the EPA has adapted the RFP requirements under the CAA to implement the three 8-hour ozone NAAQS that have been promulgated since the 1990 CAA Amendments. In the "Phase 2" SIP Requirements Rule for the 1997 Ozone NAAQS (Phase 2 rule),<sup>13</sup> the EPA adapted the RFP requirements of CAA sections 172(c)(2) and 182(a)(1) so as to require plans to provide for the minimum required percent reductions and, for certain Moderate areas, to provide for the reductions as necessary for attainment. See, e.g., 40 CFR 51.910(a)(1)(ii)(A) and (b)(2)(ii)(C).

In 2015, the EPA replaced the regulations promulgated through the Phase 2 rule with the regulations promulgated through the 2008 Ozone SRR.<sup>14</sup> In the 2008 Ozone SRR, the EPA established RFP requirements for the 2008 ozone NAAQS that are similar, in most respects, to those in the Phase 2 rule for the 1997 ozone NAAQS but that do not define RFP for certain Moderate areas in terms of the reductions needed for attainment.<sup>15</sup> More explicitly, in the 2008 Ozone SRR, the EPA defined RFP as meaning both the "emissions reductions required under CAA section 172(c)(2) which the EPA interprets to be an average 3 percent per year emissions reductions of either VOC or NO<sub>x</sub> and CAA sections 182(c)(2)(B) and (c)(2)(C) and the 15 percent reductions over the first six years of the plan and the following three percent per year average under 40 CFR 51.1110."<sup>16</sup> Thus, under the 2008 Ozone SRR, the RFP emissions reductions required for Serious or higher ozone nonattainment areas under CAA section 172(c)(2) are based on a set annual percentage found in the CAA, not on the specific attainment needs for the area. In this regard, we have been even more explicit in our SRR for the 2015 ozone NAAQS:<sup>17</sup> "Reasonable further progress (RFP) means the emissions reductions required under CAA sections 172(c)(2), 182(c)(2)(B), 182(c)(2)(C), and § 51.1310. The EPA

<sup>12</sup> See 57 FR 13498 at 13510 (for Moderate areas) and at 13518 (for Serious areas) (April 16, 1992).

<sup>13</sup> See 70 FR 71612 (November 29, 2005).

<sup>14</sup> 80 FR 12264. Under 40 CFR 51.919 and 51.1119, the regulations promulgated in the 2008 Ozone SRR replaced the regulations promulgated in the Phase 2 rule, with certain exceptions not relevant here.

<sup>15</sup> Compare RFP requirements for the 1997 ozone NAAQS at 40 CFR 51.910(a)(1)(ii)(A) and (b)(2)(ii)(C) with the analogous provisions for the 2008 ozone NAAQS at 40 CFR 51.1110(a)(2)(i)(B).

<sup>16</sup> See 40 CFR 51.1100(t) (emphasis added).

<sup>17</sup> See 83 FR 62998 (December 6, 2018).

[www.regulations.gov](http://www.regulations.gov) under docket ID: EPA-R06-OAR-2020-0161.

<sup>8</sup> See 80 FR 65292 (October 26, 2015).

<sup>9</sup> See 87 FR 60897 (October 7, 2022).

<sup>10</sup> The RFP targets are also referred to as milestones.

<sup>11</sup> CAA section 171(1) defines RFP as "such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date." The words "this part" in the statutory definition of RFP refer to part D of title I of the CAA, which contains the general requirements in subpart 1 and the pollutant-specific requirements in subparts 2–5 (including the ozone-specific RFP requirements in CAA sections 182(b)(1) and 182(c)(2)(B) for Serious areas).

interprets RFP under CAA section 172(c)(2) to be an average 3 percent per year emissions reduction of either VOC or NO<sub>x</sub>.<sup>18</sup>

In the 2008 Ozone SRR, which is the set of regulations that governs the EPA's action here, RFP is defined in terms of percent reduction from the area's emissions in the baseline year, not in terms of the reductions necessary for attainment. In other words, for the 2008 ozone NAAQS, the RFP milestones represent the minimum progress that is required under the CAA and our regulations, not necessarily all of the reductions necessary to achieve attainment of the ozone NAAQS, which could vary largely from one nonattainment area to another.

The DFW area RFP demonstration in the Texas RFP submittal was developed for the DFW Serious nonattainment area<sup>19</sup> to meet the applicable requirements of the CAA and our 2008 Ozone SRR, not the Phase 2 rule for the 1997 ozone NAAQS. Specifically, we reviewed the RFP demonstration in the Texas RFP submittal for compliance with the requirements under 40 CFR 51.1110(a)(2)(i), which adapts the requirements under CAA sections 172(c)(2) and 182(b)(1) for Moderate areas, and 40 CFR 51.1110(a)(2)(ii), which adapts the requirements of CAA section 182(c)(2)(B) for Serious areas.<sup>20</sup> The requirements under 40 CFR 51.1110(a)(2)(i) and (ii) are cumulative and together they require a 15 percent reduction in emissions from the baseline year within six years after the baseline year and average emissions reductions of three percent per year for all remaining three-year periods after the first six-year period until the year of the area's attainment date. As explained in our October 2020 proposal, based on our evaluation, we found that the Texas RFP submittal for the DFW area provided for the percent reductions required under the 2008 Ozone SRR.<sup>21</sup>

Under the 2008 Ozone SRR, the RFP demonstration for the 2008 ozone NAAQS does not need to provide for the reductions needed for attainment. Thus, contrary to the commenter's assertion, the RFP demonstration for the DFW area can be severed from the attainment demonstration and control strategy and

can be independently approved, and we do so in this final rule by approving the RFP demonstration for the DFW area in the Texas RFP submittal while deferring action on the attainment demonstration.

*Comment:* The commenter asserts that there is no basis to conclude that the DFW RFP Plan meets the requirements for VOC emission reductions, as it relies on substitute reductions in emissions of NO<sub>x</sub> that have not been shown to be equivalent to the required VOC emission reductions.

*Response:* Our October 2020 proposal did not address how the NO<sub>x</sub> reductions in the DFW RFP plan are at least as effective as using VOC reductions in reducing ozone. Consequently, we published a December 2022 supplemental proposal, which addresses the NO<sub>x</sub> issue. Our December 2022 supplemental proposal describes in detail ozone chemistry in the DFW area and evaluates the use of NO<sub>x</sub> substitution in the Texas submittal. As described in our December 2022 supplemental proposal, the State's review of DFW ozone and NO<sub>x</sub> concentrations for each day of the week links levels of NO<sub>x</sub>, rather than VOC, with ozone levels, indicating that decreasing levels of NO<sub>x</sub> would result in decreasing levels of ozone. The State's ambient NO<sub>x</sub> and ozone data in the DFW area indicate that those areas of DFW with the highest ozone values are NO<sub>x</sub>-limited and there are no violating monitors in the DFW areas described as VOC-limited.<sup>22</sup> Our December 2022 supplemental proposal also describes a recent analysis by the EPA that points to the DFW area as NO<sub>x</sub>-limited.<sup>23</sup> Our December 2022 action proposes that Texas's use of NO<sub>x</sub> substitution in the DFW area is reasonable and appropriately implemented. Our December 2022 action also proposes to approve the NO<sub>x</sub> substitution provided in the Texas RFP submittal for the DFW area as consistent with CAA section 182(c)(2)(C). The comment period for the December 2022 supplemental proposal was open from December 20, 2022, to January 19, 2023. We did not receive public comments on our December 2022 supplemental proposal that address or otherwise

challenge the technical basis for NO<sub>x</sub> substitution in the DFW area.

*Comment:* The commenter provides numerous statements regarding the EPA's NO<sub>x</sub> Substitution Guidance,<sup>24</sup> contending that if the EPA intended to adopt the positions set forth in the NO<sub>x</sub> Substitution Guidance, the proposal would be arbitrary and capricious and contrary to law because of problems with the NO<sub>x</sub> Substitution Guidance. These comments assert generally that the NO<sub>x</sub> Substitution Guidance contradicts CAA section 182(c)(2)(C) by recommending a procedure that fails to demonstrate any equivalence between VOC and NO<sub>x</sub> reductions, relies on incorrect policy assumptions, and gives legal justifications that are without merit.

*Response:* Our proposed approval of the RFP plan's use of NO<sub>x</sub> substitution is compatible with the NO<sub>x</sub> Substitution Guidance, which, while non-binding and not having the force of regulation, provides a recommended procedure for substituting NO<sub>x</sub> emission reductions for VOC reductions on a percentage basis, consistent with the State's identified emissions reduction measures, and RFP milestones and requirements. As noted earlier in these responses and in our December 2022 supplemental proposal, our approval of the State's use of NO<sub>x</sub> substitution is supported by conditions in the DFW area and EPA analyses and is consistent with the requirements in CAA section 182(c)(2)(C). Comments relating solely to the NO<sub>x</sub> Substitution Guidance are outside the scope of this rulemaking action.

*Comment:* The commenter states that the EPA must disapprove the contingency measures. The commenter also asserts that the NO<sub>x</sub> contingency measures have not been shown to be efficient in reducing ozone concentrations.

*Response:* On January 29, 2021, the U.S. Court of Appeals for the District of Columbia Circuit ("D.C. Circuit") issued a decision in response to challenges to EPA's 2015 and 2018 rules implementing the NAAQS for ozone, (80 FR 12264 and 83 FR 62998 (December 6, 2018)). *Sierra Club, et al. v. EPA*, 985 F.3d 1055 (D.C. Cir. 2021). Among the rulings in this decision, the D.C. Circuit vacated EPA's interpretation of the CAA to allow states to rely on already implemented control measures to meet the statutory

<sup>22</sup> The phrase "NO<sub>x</sub>-limited" means that ozone concentrations are more sensitive to ambient NO<sub>x</sub> levels than to ambient VOC levels. Therefore, in a NO<sub>x</sub>-limited area, the formation of ozone is limited by the amount of NO<sub>x</sub> present and ozone concentrations are most effectively reduced by lowering NO<sub>x</sub> emissions, rather than lowering emissions of VOC. Additional VOC does not lead to the formation of more ozone in areas where the reaction is NO<sub>x</sub>-limited.

<sup>23</sup> These analyses are described in the December 2022 supplemental proposal and are posted in the docket for this action.

<sup>24</sup> NO<sub>x</sub> Substitution Guidance, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, December 1993, available at [https://www3.epa.gov/ttn/naaqs/aqmguide/collection/cp2/19931201\\_oaqps\\_nox\\_substitution\\_guidance.pdf](https://www3.epa.gov/ttn/naaqs/aqmguide/collection/cp2/19931201_oaqps_nox_substitution_guidance.pdf).

<sup>18</sup> See 40 CFR 51.1300(l).

<sup>19</sup> The DFW area was reclassified from Serious to Severe nonattainment for the 2008 ozone NAAQS (87 FR 60926, October 7, 2022). The RFP and other SIP requirements for the Severe nonattainment area will be addressed in a separate rulemaking action.

<sup>20</sup> 40 CFR 51.1110(a)(2) applies to the DFW area because DFW is an area with an approved 1-hour ozone NAAQS 15 percent VOC Rate of Progress (ROP) plan.

<sup>21</sup> 85 FR 68268, at 68274–68276.

requirements of section 172(c)(9) or 182(c)(9) for contingency measures in nonattainment plans for the ozone NAAQS (see 83 FR 62998, 63026–27). The EPA is reexamining the contingency measures portion of the Texas RFP submittal for the DFW area considering the D.C. Circuit decision. Therefore, we are not taking final action at this time on the contingency measures submitted as part of the May 13, 2020, Texas RFP submittal for the DFW area included in the October 2020 proposal. The EPA plans to address the contingency measures in a separate action.

*Comment:* The commenter contends that the motor vehicle emissions budgets must be consistent with attainment requirements as well as RFP requirements and in the absence of an approved attainment demonstration and control strategy, the RFP budgets must be disapproved. In support of this contention, the commenter cites selected portions of CAA section 176(c) and the EPA's transportation conformity rule. First, under section 176(c)(1)(B)(iii), the commenter notes that a Federal action cannot "delay timely attainment of any standard," and without an approved attainment demonstration and control strategy, which could require VOC and NO<sub>x</sub> emissions reductions beyond those required by section 182(c)(2)(C), there is no way to tell if a transportation plan, improvement program, or project will "delay timely attainment" of the 2008 ozone standards, even if it stays within the proposed RFP budgets. Second, the commenter notes that, under the EPA's rules for transportation conformity, the term "control strategy implementation plan revision" is defined as the "implementation plan which contains specific strategies for controlling the emissions of and reducing ambient levels of pollutants in order to satisfy CAA requirements for demonstrations of reasonable further progress and attainment."<sup>25</sup> For attainment plans (as opposed to maintenance plans), budgets are in part defined as "that portion of the total allowable emissions defined in the submitted or approved *control strategy implementation plan revision*."<sup>26</sup> Thus, the commenter argues that the budgets depend on the control strategy implementation plan revision, which must demonstrate both RFP and attainment.

In addition, the commenter notes that the particular budgets proposed for approval are derived from the projected on-road mobile source emissions

estimates in the attainment year (2020) emissions inventory upon which the attainment demonstration is based, and thus must be consistent with attainment requirements as well as RFP requirements. Because the EPA has not approved the attainment demonstration, including the projected attainment year emissions inventory, the commenter asserts that the EPA cannot approve the budgets that derive from that inventory.

*Response:* First, we acknowledge that the budgets are derived from the projected attainment year (2020) emissions inventory for the DFW Serious nonattainment area. However, year 2020 was both an RFP milestone year and the attainment year for the DFW area.<sup>27</sup> Therefore, the projected 2020 emissions inventory was the basis for both the RFP demonstration for that milestone year and for the attainment demonstration. As explained earlier in these responses, the RFP demonstration and attainment demonstration requirements are independent requirements under the 2008 Ozone SRR and thus, can be approved separately. In this final action, we are approving the budgets only for RFP purposes.

Second, we note that CAA section 176(c)(4)(B) obligates the EPA to promulgate, and periodically update, criteria and procedures for demonstrating and assuring conformity in the case of transportation plans, programs, and projects, and we have done so at 40 CFR part 93, subpart A ("Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Laws") (herein, "transportation conformity rule"). Our transportation conformity rule defines "motor vehicle emissions budget" as "that portion of the total allowable emissions defined in the submitted or approved control strategy implementation plan revision or maintenance plan for a certain date for the purpose of meeting reasonable further progress milestones or demonstrating attainment or maintenance of the NAAQS. . . ." <sup>28</sup> Further, among the criteria we must use when evaluating a budget for adequacy or approval, is the criterion at 40 CFR

<sup>27</sup> As mentioned earlier in this document, the DFW area was reclassified from Serious to Severe nonattainment for the 2008 ozone NAAQS. The attainment date for the Severe nonattainment area is July 20, 2027 (87 FR 60926). Therefore, and consistent with 40 CFR 51.1100(h), the attainment year ozone season for the DFW Severe nonattainment area is 2026. The RFP and other SIP requirements for the Severe nonattainment area will be addressed in a separate rulemaking action.

<sup>28</sup> See 40 CFR 93.101 (emphasis added).

93.118(e)(4)(iv) that requires budgets, when considered together with all other emissions sources, to be consistent with applicable requirements for RFP, attainment, or maintenance (*whichever is relevant to the given implementation plan submission*).<sup>29</sup>

Thus, under our transportation conformity rule, the EPA can approve motor vehicle emissions budgets if we find them consistent, when considered together with all other emissions sources, with the applicable requirements for RFP or attainment; it is not required that the budget be consistent with RFP and attainment but only that they are consistent with the requirement that is relevant for purposes of the SIP. In this instance, the relevant requirements are those for RFP, not attainment, and we are approving the budgets as consistent with those requirements, not the attainment requirements, consistent with the transportation conformity rule.<sup>30</sup> This interpretation has been upheld by the Ninth Circuit in *Natural Resources Defense Council v. EPA*, 638 F.3d 1183 (9th Cir. 2011). In this case, the petitioners similarly argued that the CAA and the EPA's implementing regulations require the EPA to consider attainment data when determining the adequacy of budgets for milestone years,<sup>31</sup> but the Ninth Circuit agreed with the EPA that the EPA's transportation conformity rule provides otherwise. More specifically, the court agreed with the EPA that, for a milestone year, a budget need only demonstrate RFP toward the ultimate goal of attainment.<sup>32</sup>

On June 3, 2020, EPA posted the availability of the DFW area NO<sub>x</sub> and VOC budgets on EPA's website for the purpose of soliciting public comments, as part of the adequacy process.<sup>33</sup> The comment period closed on July 3, 2020, and we received no comments. EPA's adequacy review of Texas's submitted budgets indicates that the budgets meet

<sup>29</sup> See 40 CFR 93.118(e)(4)(iv) (emphases added).

<sup>30</sup> The commenter claims that the EPA's adequacy determination is irrelevant for purposes of whether the EPA can approve the motor vehicle emissions budgets (MVEBs), because the EPA has stated that its adequacy review "should not be used to prejudice EPA's ultimate approval or disapproval of the SIP." The EPA agrees that the adequacy determination is based on a cursory review of the SIP submittal when it is made prior to action on the SIP submittal itself. However, today's adequacy determination is based on the EPA's complete review, and approval, of the RFP demonstration for the DFW area within the Texas RFP submittal.

<sup>31</sup> *Natural Resources Defense Council v. EPA*, 638 F.3d 1183, 1191 (9th Cir. 2011).

<sup>32</sup> Id.

<sup>33</sup> See <https://www.epa.gov/state-and-local-transportation/adequacy-review-state-implementation-plan-sip-submissions-conformity>.

<sup>25</sup> 40 CFR 93.101 (emphasis added).

<sup>26</sup> Id. (emphasis added).

the adequacy criteria set forth by 40 CFR 93.118(e)(4), as follows:

- *The submitted control strategy implementation plan revision or maintenance plan was endorsed by the Governor (or his or her designee) and was subject to a State public hearing:* The SIP revision was submitted to EPA by the Chairman of the Texas Commission on Environmental Quality, who is the Governor's designee.
- *Before the control strategy implementation plan or maintenance plan was submitted to EPA, consultation among federal, State, and local agencies occurred; full implementation plan documentation was provided to EPA; and EPA's stated concerns, if any, were addressed:* Texas conducted an interagency consultation process involving EPA and the U.S. Department of Transportation, the Texas Department of Transportation and the DFW area Metropolitan Planning Organization. All comments and concerns were addressed prior to the final submittal.
- *The motor vehicle emissions budget(s) is clearly identified and precisely quantified:* The budgets were clearly identified and quantified in Texas's submittal and presented in Table 6 of our October 2020 proposal. The budgets are presented again in this final action in Table 1.
- *The motor vehicle emissions budget(s), when considered together with all other emissions sources, is consistent with applicable requirements for reasonable further progress, attainment, or maintenance (whichever is relevant to the given implementation plan submission):* The 2020 budgets apply a safety margin derived from surplus emissions reductions from the 2020 RFP demonstration and are therefore larger than the on-road mobile source inventory for 2020. However, the DFW RFP plan demonstrates that these budgets are consistent with reasonable further progress when considered with all other source categories for the 2020 RFP milestone year. The 2020 budgets were developed with appropriate data inputs for the 2020 milestone year, including vehicle miles of travel, speeds, and emissions factors.
- *The motor vehicle emissions budget(s) is consistent with and clearly related to the emissions inventory and the control measures in the submitted control strategy implementation plan revision or maintenance plan:* The budgets were developed from the on-road mobile source inventories, including all applicable state and Federal control measures. Inputs related to inspection and maintenance and fuels

are consistent with Texas's Federally approved control programs.

- *Revisions to previously submitted control strategy implementation plans or maintenance plans explain and document any changes to previously submitted budgets and control measures; impacts on point and area source emissions; any changes to established safety margins (see 40 CFR 93.101 for definition); and reasons for the changes (including the basis for any changes related to emission factors or estimates of vehicle miles traveled):* The submitted RFP plan establishes new 2020 budgets to ensure continued progress towards attainment of the standards; therefore, this criterion is not applicable in this circumstance. In light of our responses to the comments and for the reasons provided in the October 2020 proposal and December 2022 supplemental proposal, we are taking final action to approve the RFP demonstration and the related motor vehicle emissions budgets and are finding that the budgets are adequate for transportation conformity purposes.

TABLE 1—RFP MOTOR VEHICLE EMISSIONS BUDGETS FOR DFW [In tons per day]

Year	NO <sub>x</sub>	VOC
2020 .....	107.25	62.41

**III. Final Action**

We are approving revisions to the Texas SIP that address the RFP requirements for the DFW Serious ozone nonattainment area for the 2008 ozone NAAQS. Specifically, we are approving the RFP demonstration and associated motor vehicle emissions budgets. We are also notifying the public that EPA finds the budgets for NO<sub>x</sub> and VOC for the DFW area are adequate for the purpose of transportation conformity. Within 24 months from May 24, 2023, 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. Environmental Justice Considerations**

As stated in our December 2022 supplemental proposal and for informational purposes only, EPA reviewed demographic data, which provides an assessment of individual demographic groups of the populations living within the 10-county DFW ozone nonattainment area (Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise counties). EPA then compared the data

to the national average. The results of the demographic analysis indicate that, for populations within Collin, Dallas, Denton, Ellis, Kaufman, and Tarrant counties, the percent people of color (persons who reported their race as a category other than White alone (not Hispanic or Latino)) is higher than the national average (ranging from 46.1 to 75.4 percent versus 43.1 percent). For populations within Johnson, Parker, Rockwall, and Wise counties, the percent people of color (persons who reported their race as a category other than White alone (not Hispanic or Latino)) is lower than the national average (ranging from 19.7 to 35.9 percent versus 43.1 percent). Within people of color, the percent of the population that is Black or African American alone is higher than the national average in Dallas, Ellis, Kaufman, and Tarrant counties (ranging from 14.4 to 23.8 percent versus 13.6 percent) and lower than the national average in the other six DFW counties (ranging from 1.8 to 11.9 percent versus 13.6 percent). Within people of color, the percent of the population that is American Indian/Alaska Native is lower than the national average in all 10 of the DFW counties (ranging 0.7 percent to 1.2 percent versus 1.3 percent). Within people of color, the percent of the population that is Asian alone is higher than the national average in Collin, Dallas, and Denton counties (ranging from 7.0 to 17.5 percent versus 6.1 percent) and lower than the national average in the other seven DFW counties (ranging from 0.6 to 6.0 percent versus 6.1 percent). Within people of color, the percent of the population that is Native Hawaiian and Other Pacific Islander alone is higher than the national average in Johnson County (0.5 percent versus 0.3 percent), equal to the national average in Tarrant County (0.3 percent), and lower than the national average in the other eight DFW counties (0.1 percent versus 0.3 percent). Within people of color, the percent of the population that is two or more races is equal to the national average in Collin County (2.9 percent) and lower than the national average in the other nine DFW counties (ranging from 2.0 to 2.8 percent versus 2.9 percent). Within people of color, the percent of the population that is Hispanic or Latino is lower than the national average in Collin and Parker counties (ranging from 14.0 to 15.8 percent versus 18.9 percent) and higher than the national average in the other eight DFW counties (ranging from 20.0 to 41.4 percent versus 18.9 percent). The percent of people living in poverty in Dallas County is higher than the

national average (13.7 percent versus 11.6 percent) and lower than the national average in the other nine DFW counties (ranging from 4.8 to 10.5 percent versus 11.6 percent).<sup>34</sup>

This final action does not add new rules to the SIP but demonstrates ongoing reductions of ozone precursor emissions, as required by the CAA. Information on ozone and its relationship to negative health impacts can be found at <https://www.epa.gov/ground-level-ozone-pollution>.<sup>35</sup> We expect that the continuing emission reductions demonstrated in this action will generally be neutral or contribute to reduced environmental and health impacts on all populations in the 10-county DFW ozone nonattainment area, including people of color and low-income populations. Further, there is no information in the record indicating that this action is expected to have disproportionately high or adverse human health or environmental effects on a particular group of people.

#### V. Statutory and Executive Order Reviews

Under the Clean Air Act, 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 Clean Air Act. 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);
- 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, 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 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).

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address "disproportionately high and adverse human health or environmental effects" of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies." EPA further defines the term fair treatment to mean that "no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies."

The TCEQ did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA performed an EJ analysis, as is

described above in the section titled, "Environmental Justice Considerations." The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. In addition, there is no information in the record upon which this decision is based inconsistent with the stated goal of E.O. 12898 of achieving EJ for people of color, low-income populations, and Indigenous peoples.

This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. 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 June 23, 2023. 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, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: April 17, 2023.

**Earthea Nance,**

*Regional Administrator, Region 6.*

For the reasons stated in the preamble, the Environmental Protection Agency 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(e), the table titled "EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP" is amended by adding the entry "Reasonable Further

<sup>34</sup> Demographic data from the U.S. Census Bureau: <https://www.census.gov/quickfacts/fact/table/US/PST045222>.

<sup>35</sup> See also, 80 FR 65292 (October 26, 2015).

Progress (RFP) Plan and RFP Motor Vehicle Emission Budgets for 2020” 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
Reasonable Further Progress (RFP) Plan and RFP Motor Vehicle Emission Budgets for 2020.	Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant and Wise Counties, TX.	3/4/2020	4/24/2023 [Insert Federal Register citation].	

[FR Doc. 2023-08436 Filed 4-21-23; 8:45 am]  
BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

[EPA-HQ-OPP-2022-0921; FRL-10846-01-OCSPP]

**Oxirane, 2-Methyl-, Polymer With Oxirane, Ether With 1,2,3-Propanetriol (3:1); Tolerance Exemption**

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes an exemption from the requirement of a tolerance for residues of oxirane, 2-methyl-, polymer with oxirane, ether with 1,2,3-propanetriol (3:1); minimum average number molecular weight 6,000 Daltons (CAS Reg. No. 9082-00-2) when used as an inert ingredient in a pesticide chemical formulation. Delta Analytical Corporation on behalf of Borchers Americas, Inc., submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of oxirane, 2-methyl-, polymer with oxirane, ether with 1,2,3-propanetriol (3:1) on food or feed commodities when used in accordance with these exemptions.

**DATES:** This regulation is effective April 24, 2023. Objections and requests for hearings must be received on or before June 23, 2023 and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA-HQ-OPP-2022-0921, is

available at <https://www.regulations.gov> or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460-0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room and the OPP Docket is (202) 566-1744. For the latest status information on EPA/DC services, docket access, visit <https://www.epa.gov/dockets>.

**FOR FURTHER INFORMATION CONTACT:** Daniel Rosenblatt, Registration Division (7505T), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; main telephone number: (202) 566-1030; email address: [RDfrNotices@epa.gov](mailto:RDfrNotices@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this action apply to me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

*B. How can I get electronic access to other related information?*

You may access a frequently updated electronic version of 40 CFR part 180

through the Office of the Federal Register’s e-CFR site at <https://www.ecfr.gov/current/title-40>.

*C. Can I file an objection or hearing request?*

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2022-0921 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before June 23, 2023. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b), although the Office of the Administrative Law Judges, which houses the Hearing Clerk, encourages parties to file objections and hearing requests electronically. See [https://www.epa.gov/sites/default/files/2020-05/documents/2020-04-10\\_-\\_order\\_urgening\\_electronic\\_service\\_and\\_filing.pdf](https://www.epa.gov/sites/default/files/2020-05/documents/2020-04-10_-_order_urgening_electronic_service_and_filing.pdf).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA-HQ-OPP-2022-0921, by one of the following methods.

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI