

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52****[EPA-R06-OAR-2008-0420; FRL-8730-3]****Approval and Promulgation of Air Quality Implementation Plans; Texas; Dallas/Fort Worth 1-Hour Ozone Nonattainment Area; Determination of Attainment of the 1-Hour Ozone Standard****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

**SUMMARY:** The EPA has determined that the Dallas/Fort Worth (DFW) 1-hour ozone nonattainment area is currently attaining the 1-hour ozone National Ambient Air Quality Standard (NAAQS). This determination is based upon certified ambient air monitoring data that show the area has monitored attainment of the 1-hour ozone NAAQS for the 2004–2006 monitoring period. In addition, quality controlled and quality assured ozone data for 2007 and 2008 that are available in the EPA Air Quality System database show this area continues to attain the 1-hour ozone NAAQS. The requirements for this area to submit an attainment demonstration or 5% Increment of Progress (IOP) plan, a reasonable further progress (RFP) plan, contingency measures, and other planning State Implementation Plans (SIPs) related to attainment of the 1-hour ozone NAAQS are suspended for so long as the area continues to attain the 1-hour ozone NAAQS.

**DATES:** This final rule is effective on November 17, 2008.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R06-OAR-2008-0420. All documents in the docket are listed at [www.regulations.gov](http://www.regulations.gov). 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 and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://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 Freedom of Information Act (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 fee of 15 cents per page 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:** Ms. Carrie Paige, Air Planning Section (6PD-L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–6521, fax (214) 665–7263, e-mail address [paige.carrie@epa.gov](mailto:paige.carrie@epa.gov).

**SUPPLEMENTARY INFORMATION:**

Throughout this document, “we,” “us,” and “our” means EPA. This **SUPPLEMENTARY INFORMATION** section is arranged as follows:

- I. What Action Is EPA Taking?
- II. What Is the Effect of This Action?
- III. Final Action
- IV. Statutory and Executive Order Reviews

**I. What Action Is EPA Taking?**

We are determining that the Dallas/Fort Worth (DFW) 1-hour ozone nonattainment area is currently attaining the 1-hour ozone National Ambient Air Quality Standard (NAAQS). This determination is based upon certified ambient air monitoring data that show the area has monitored attainment of the 1-hour ozone NAAQS for the 2004–2006 monitoring period. In addition, quality controlled and quality assured ozone data for 2007 and 2008 that are available in the EPA Air Quality System databases show this area continues to attain the 1-hour ozone NAAQS.

The rationale for our action is explained in the Notice of Proposed Rulemaking (NPR) published on July 11, 2008 (73 FR 39897) and will not be restated here. No public comments were received on the NPR.

**II. What Is the Effect of This Action?**

Pursuant to our determination of attainment and in accordance with our Clean Data Policy<sup>1</sup>, this determination suspends the requirements for the DFW area to submit an attainment

<sup>1</sup> Our Clean Data Policy is set forth in a May 10, 1995 EPA memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, entitled “Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone Ambient Air Quality Standard”.

demonstration, a RFP plan, or in this case a 5% IOP plan, (40 CFR 51.905(a)), section 172(c)(9) and section 182(c)(9) contingency measures, and other SIPs related to attainment of the 1-hour ozone NAAQS for so long as the area is attaining the standard.

**III. Final Action**

We find that the DFW 1-hour ozone nonattainment area has attained the 1-hour ozone standard. Thus the requirements for submitting the attainment demonstration or 5% IOP plan, RFP plan, section 172(c)(9) and section 182(c)(9) contingency measures, and other SIPs related to attainment of the 1-hour ozone NAAQS are suspended for so long as the area is attaining the standard.

**IV. Statutory and Executive Order Reviews**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a “significant regulatory action” and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001). This action makes a determination based on air quality data, and results in the suspension of certain Federal requirements. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*).

Because this rule makes a determination based on air quality data, and results in the suspension of certain Federal requirements, it 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). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in

Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely makes a determination based on air quality data and results in the suspension of certain Federal requirements, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it determines that air quality in the affected area is meeting Federal standards.

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply because it would be inconsistent with applicable law for EPA, when determining the attainment status of an area, to use voluntary consensus standards in place of promulgated air quality standards and monitoring procedures that otherwise satisfy the provisions of the Clean Air Act. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*). Under Executive Order 12898, EPA finds that this rule involves a determination of attainment based on air quality data and will not have disproportionately high and adverse human health or environmental effects on any communities in the area, including minority and low-income communities.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule 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 December 15, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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 to reclassify the HGB area as a severe ozone nonattainment area and to adjust applicable deadlines 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, Intergovernmental relations, Nitrogen dioxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 8, 2008.

**Richard E. Greene,**

*Regional Administrator, Region 6.*

■ 40 CFR part 52 is amended as follows:

#### PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

#### Subpart SS—Texas

■ 2. Section 52.2275 is amended by adding paragraph (f) to read as follows:

##### § 52.2275 Control strategy and regulations: Ozone.

\* \* \* \* \*

(f) Determination of Attainment. Effective November 17, 2008 EPA has determined that the Dallas/Fort Worth (DFW) 1-hour ozone nonattainment area has attained the 1-hour ozone standard. Under the provisions of EPA's Clean Data Policy, this determination suspends the requirements for this area to submit an attainment demonstration or 5% increment of progress plan, a reasonable further progress plan, contingency measures, and other State Implementation Plans related to attainment of the 1-hour ozone NAAQS for so long as the area continues to attain the 1-hour ozone NAAQS.

[FR Doc. E8-24592 Filed 10-15-08; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 80

[EPA-HQ-2005-0036; FRL-8729-7]

RIN 2060-A089

### Control of Hazardous Air Pollutants From Mobile Sources: Early Credit Technology Requirement Revision

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

**ACTION:** Final rule.

**SUMMARY:** EPA is taking final action to revise the February 26, 2007 mobile source air toxics rule's requirements that specify which benzene control technologies a refiner may utilize to qualify to generate early benzene credits. This action will allow another specific benzene control technology, benzene alkylation, in addition to the four operational or technological changes specified in the current rule. This action also includes a general provision that allows a refiner to submit a request to EPA to approve other benzene-reducing operational changes or technologies for the purpose of generating early credits.

**DATES:** This final rule is effective on December 15, 2008.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-HQ-2005-0036. All documents in the docket are listed in the <http://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, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Eastern Standard Time, Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

#### FOR FURTHER INFORMATION CONTACT:

Christine Brunner, Office of Transportation and Air Quality, Assessment and Standards Division, Environmental Protection Agency, 2000 Traverwood, Ann Arbor, MI 48105; telephone number: (734) 214-4287; fax