TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

July 24, 2019

Mr. Robert Todd
Infrastructure & Ozone Section
United States Environmental Protection Agency
Region 6
1201 Elm Street Suite 500
Dallas, Texas 75270

Re: Comments on Air Plan Approval; Texas; Dallas-Fort Worth Area Redesignation and Maintenance Plan for Revoked Ozone National Ambient Air Quality Standards; EPA-R06-OAR-2019-0213; FRL-9995-18-Region 6

Dear Mr. Todd:

The Texas Commission on Environmental Quality (TCEQ) appreciates the opportunity to comment on the United States Environmental Protection Agency's (EPA) proposed approval of revisions to the Texas State Implementation Plan (SIP) and determination that the Dallas-Fort Worth (DFW) area continues to attain the 1979 one-hour and 1997 eight-hour ozone National Ambient Air Quality Standards (NAAQS) and has met the federal redesignation criteria.

The TCEQ supports redesignation of the DFW area to attainment for the 1979 one-hour and 1997 eight-hour ozone NAAQS and approval of the SIP revisions for maintaining these standards through 2032 in this area.

If you have questions concerning our comments, please contact Ms. Donna F. Huff, with the TCEQ at (512) 239-6628 or by email at Donna.Huff@tceq.texas.gov.

Sincerely,

Toby Baker
Executive Director

Enclosure

COMMENTS BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AIR PLAN APPROVAL; TEXAS; DALLAS-FORT WORTH AREA REDESIGNATION AND MAINTENANCE PLAN FOR REVOKED OZONE NATIONAL AMBIENT AIR QUALITY STANDARDS

I. SUMMARY

On June 24, 2019, the United States (U.S.) Environmental Protection Agency (EPA) published in the *Federal Register* proposed approval of revisions to the Texas State Implementation Plan (SIP) and determination that the Dallas-Fort Worth (DFW) area continues to attain the 1979 one-hour and 1997 eight-hour ozone National Ambient Air Quality Standards (NAAQS) and has met the federal redesignation criteria. The notice also proposes termination of all anti-backsliding obligations for the DFW area for the 1979 one-hour and 1997 eight-hour ozone NAAQS and approval of the SIP revisions for maintaining these standards through 2032 in the DFW area.

The Texas Commission on Environmental Quality (TCEQ) provides the following comments on the proposed rule.

II. COMMENTS

A. General Comments

A.1. The EPA should redesignate the DFW area to attainment for the 1979 one-hour ozone and 1997 eight-hour ozone NAAQS.

As discussed further in these comments, redesignation to attainment complies with the plain language of the Federal Clean Air Act (FCAA) and would clearly eliminate any requirement for continued application of anti-backsliding obligations. Texas has met all applicable requirements for redesignation and those requirements have been (or will be upon finalization of this action) fully approved in the SIP. The DFW area should be redesignated to attainment for the 1979 one-hour and 1997 eight-hour ozone NAAQS. Full redesignation to attainment will provide clarity and certainty for the state as well as the public and regulated community in the DFW area. This is a common-sense approach that produces the best results, especially given limited air quality planning resources.

A.2. The EPA's past failure to provide for a legally valid mechanism for termination of anti-backsliding obligations for revoked NAAQS has created uncertainty. The EPA's reluctance to redesignate areas attaining a revoked NAAQS to terminate associated anti-backsliding requirements potentially creates severe economic consequences for the public, regulated industry, and states.

The EPA has a long, convoluted history of failed attempts at imposing and terminating anti-backsliding requirements for revoked standards. As a state partner under the FCAA, TCEQ complied with EPA rules and guidance that specified both the format and information States should submit to discharge state duties and obligations for revoked standards. Each EPA attempt has been based on the position that the EPA lacked authority to redesignate areas attaining a revoked NAAQS and therefore it had to create extra-statutory mechanisms to rid those areas of anti-backsliding requirements. In each instance, the proffered solution has been rejected by the D.C. Circuit Court of Appeals as lacking foundation in the FCAA.

In the 1997 eight-hour ozone NAAQS Implementation Rule that revoked the 1979 one-hour ozone standard, the EPA determined that only certain Subpart 2 controls must be retained as FCAA, §172(e) anti-backsliding provisions by areas not attaining the revoked 1979 one-hour NAAQS.[1] States could remove other programs upon revocation, including New Source Review (NSR), FCAA §185 penalty fee provisions, and conformity demonstrations. In *South Coast I*, the D.C. Circuit ruled that these provisions were controls required by the FCAA.[2] While upholding the EPA's authority to revoke standards "so long as adequate anti-backsliding provisions are introduced" the EPA could not remove those provisions based merely on impracticality.[3] The D.C. Circuit explained in *South Coast I*, that the procedures to remove these anti-backsliding measures, in particular, 1979 one-hour NSR and FCAA, §185 penalties, must be clearly allowed under statute.[4] The *South Coast I* court remanded this rule for further proceedings. Over several years the EPA issued numerous memorandums and rulemakings to address how the anti-backsliding requirements must be addressed in eight-hour nonattainment area SIPs but provided little certainty to states.

For example, in 2010, the EPA issued guidance for removing FCAA, §185 penalty program requirements from severe and extreme nonattainment areas under revoked standards. Following that 'termination determination' guidance, Texas and several other states submitted termination determination letters to the EPA requesting termination of the 1979 one-hour ozone FCAA, §185 fee obligation. Before action was taken on Texas' request for the Houston-Galveston-Brazoria (HGB) area, that guidance was challenged, and again the D.C. Circuit found the EPA's action contravened the language of the FCAA. The D.C. Circuit rejected the EPA's argument in the fee program guidance that because it "no longer promulgates redesignations for the 1–hour standard because that standard has been revoked ... relief from the 1–hour fee program requirements under the terms of the statute is an impossibility, since the conditions the statute envisioned for relieving an area of its fee program obligation no longer can exist."[5] The D.C. Circuit then repeated its admonition from *South Coast I* that by ignoring the statute for the sake of expediency, the EPA has once again 'failed to heed the restrictions on its discretion set forth in the [Clean Air] Act."[6]

The EPA's next attempt, the so-called "redesignation substitute" suffered the same fate. Established in the 2008 eight-hour ozone NAAQS Implementation Rule[7] as another way for areas designated nonattainment for revoked standards to remove certain anti-backsliding requirements, this procedure is based on the criteria in FCAA section 107(d)(3)(E). But, rather than meeting all criteria in the statute for redesignation, the EPA only required the state substitutes to meet two of the five criteria listed in the Act. The EPA's argument was that it believed it did not have the authority to designate or redesignate an area once a standard is revoked. Following promulgation of the SIP Requirements Rule, Texas submitted redesignation

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[1] Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard - Phase I, 69 *Fed. Reg.* 23951, April 30, 2004, hereinafter referred to as the Phase I Rule.
[2] *South Coast v. EPA*, 472 F.3d 882 (D.C. Cir. 2007), *decision clarified on reh'g by* 489 F.3d 1245 (D.C. Cir. 2007), *cert. denied by* 128 S.Ct. 1065 (U.S. 2008), hereinafter referred to as *South Coast I*.
[3] *South Coast I*, 472 F.3d at 899.
[4] '[S]ection 172(e) does not condition its strict distaste for backsliding on EPA's determinations of expediency; EPA must determine its procedures *after* it has identified what findings must be made *under the Act.' South Coast I*, 472 F.3d at 903, *emphasis added.*
[5] *Natural Resources Defense Council v. EPA*, 643 F.3d at 311 *(D.C. Cir. 2011) citing to January 5, 2010 Memorandum from Stephen D. Page, Director, Office of Air Quality Planning & Standards to Regional Air Division Directors, at page 4.*
[6] *Natural Resources Defense Council v. EPA*, 643 F.3d at 323 *(D.C. Cir. 2011).*
[7] Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements, 80 *Fed. Reg.* 12264, March 6, 2015, hereinafter referred to as the SIP Requirements Rule.

substitutes for HGB and DFW for both the 1979 one-hour and 1997 eight-hour ozone NAAQS. Last year, after the EPA approved those substitutes, the D.C. Circuit vacated the Implementation Rule on this procedure stating: "The Clean Air Act unambiguously requires nonattainment areas to satisfy all five of the conditions under 7407(d)(3)(E) before they may shed controls associated with their nonattainment designation."[8]

A subsequent challenge to the EPA's 2018 approvals of the HGB and DFW redesignation substitutes based on the after-arising grounds of the *South Coast II* decision is pending in the Fifth Circuit, prompting Texas' submission of the redesignation request and maintenance plan that is the subject of this proposal. Due to the uncertainty caused by the EPA's previous attempts to remove anti-backsliding obligations for revoked standards, Texas seeks the full redesignation that the FCAA requires when the criteria in section 107(d)(3)(E) are met. The EPA fails to identify any provision in the FCAA that prohibits it from redesignating areas once a standard is revoked, but clearly, the EPA cannot refuse to comply with its statutory obligations, including its obligation to approve the removal of applicable anti-backsliding obligations under revoked standards.

Certainty on the issue of how the EPA must act to remove anti-backsliding requirements is an absolute necessity for states, potentially impacted regulated businesses, and citizens. There are potential increased costs for goods and services that result from continued implementation of anti-backsliding measures, as well as potential losses in economic growth for affected areas.

As part of this comment package, the TCEQ is including a copy of comments submitted on November 1, 2017 in response to the proposed renewal of Information Collection Request (ICR) 2347.02 for the implementation of the 2008 ozone NAAQS. As noted in the attached comment letter from 2017, state air quality planning agencies dedicate significant resources to SIP-related activities. The attached 2017 comments describe how the fiscal impact of SIP activities vary by the type of action, demonstrating that even simple actions supporting a revoked standard re-direct limited state resources from other efforts with more potential for air quality value. In a large, economically diverse state like Texas, even modest SIP-related actions can be expected to demand thousands of hours of staff resources, costing hundreds of thousands of limited state dollars. Continued implementation of programs required for revoked, less stringent standards is costly and takes resources away from states and localities that are necessary to meet more stringent standards.

B. Authority to Alter Nonattainment Designations Post Revocation

The EPA continues to have authority to redesignate areas from "nonattainment" to "attainment" post-revocation of a NAAQS. However, if the EPA determines that it does not have authority to redesignate areas to attainment post-revocation, the EPA clearly has authority to determine that an area has met all redesignation requirements necessary for termination of anti-backsliding requirements.

At the time the EPA promulgated the eight-hour ozone NAAQS in July 1997, the EPA issued a rule (40 CFR §50.9(b)) providing that the 1979 one-hour standard would no longer apply to an area once it determined that the area had attained the 1979 one-hour NAAQS.[9] This process became known as "revocation" of the 1979 one-hour NAAQS. The EPA interpreted that provision to mean that once the 1979 one-hour standard was revoked, the area's 1979 one-hour

[8] *South Coast Air Quality Management District v. EPA*, 882 F.3d 1138 *(D.C. Cir. 2018)*, hereinafter referred to as *South Coast II*.
[9] National Ambient Air Quality Standards for Ozone; Final Rule, 62 *Fed. Reg.* 38856, July 18, 1997.

ozone designation and classification no longer applied. With the revocation of the 1979 one-hour ozone NAAQS, the EPA began stating that it would no longer make findings of failure to attain or reclassify areas for revoked standards.[10] However, the EPA provided no rationale supporting why they would no longer do so.

The EPA's authority to revoke a NAAQS is not provided specifically by the FCAA. The EPA has interpreted the FCAA as having a "gap" and therefore allowing EPA discretion to assert authority to revoke a NAAQS, which has been upheld by the D.C. Circuit Court of Appeals.[11] Similarly, the FCAA does not require that anti-backsliding obligations apply to nonattainment areas when the EPA strengthens a NAAQS, but the D.C. Circuit has also upheld the EPA's authority to require anti-backsliding measures for revoked standards that are replaced by more stringent standards.[12] If the EPA interpreted revocation as limiting its authority to effectively implement all statutory rights and obligations, including the rights of states to be redesignated to attainment, it would cause an absurd result – potentially requiring states to implement anti-backsliding measures in perpetuity. Additionally, it would subvert one of the foundational principles of the FCAA – restricting the right of states to be freed from obligations that apply to nonattainment areas upon the states achieving the primary purpose of Title I – to attain the NAAQS. Similarly, redesignation to attainment promotes the fulfillment of state obligations under the FCAA regarding the NAAQS – this completes any anti-backsliding obligation under §172(e). If the EPA's proposed interpretation is correct, it also eviscerates the right granted to states under the FCAA, §175, to have areas redesignated to attainment if they meet all statutory requirements for redesignation.

The EPA acknowledges that *South Coast II's* holding that the EPA is required to reclassify (for a revoked standard) an area to a higher classification may undercut the EPA's interpretation that it lacks authority to *redesignate* an area for the same revoked standard. The FCAA makes no distinction between revoked or effective standards regarding EPA's authority to redesignate. While not required to represent the best interpretation of the statute, the EPA's interpretation (that it lacks authority) must be a reasonable one and "based on a permissible construction of the statute."[13] In the EPA's proposed interpretation it has not identified any statutory or judicial foundation; nor can it rely on Congress' silence on this distinction to create a so-called 'gap' that is within the EPA's discretion to close through some other means, particularly where any gap has been caused by the EPA, not Congress.

Reading the FCAA section granting authority for designations generally, it is apparent that Congress intended the same procedures be followed regardless of the status of the NAAQS in question. FCAA, §107(d) provides the EPA's general designation authority for newly promulgated or revised NAAQS. Section 107(d)(3)(D) specifies that "[w]ithin 18 months of receipt of a complete State redesignation submittal, the Administrator *shall* approve or deny such redesignation." Section 107(d)(3)(A) specifically says that the Administrator may redesignate "at any time." Section 107(d)(3)(E) provides the only restrictions on the Administrator's authority to redesignate – specifically that "[t]he Administrator may not promulgate a redesignation of a nonattainment area...to attainment unless..." states have met all specified elements, as described in the proposal notice. Nothing in section 107 creates differing procedures when the EPA revokes a standard or qualifies its mandatory duty to act on redesignation submittals from states. Where a statute speaks expressly regarding a duty, the EPA may not ignore the express statutory language.

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[10] Phase I Rule.
[11] *South Coast I.*
[12] *South Coast I.*
[13] *South Coast I* at 894.

The EPA proposes to find that Texas meets all five section 107(d)(3)(E) redesignation criteria. Texas supports this finding. Because the FCAA does not prohibit EPA action on state redesignation submittals once a standard is revoked, and in fact, expressly requires EPA action, the proper and reasonable course of action is for the EPA to follow the express statutory language and redesignate the DFW area to attainment for the 1979 one-hour and 1997 eight-hour ozone NAAQS. Additionally, to lift certain anti-backsliding requirements, redesignation is statutorily required. A finding that an area meets the redesignation criteria may not be sufficient to terminate anti-backsliding obligations that, according to the Act, can only be removed through redesignation.

However, if the EPA instead determines that it does not have authority to redesignate areas after revocation of a NAAQS, Texas agrees, in the alternative, that a finding that the submittal meets the statutory criteria for redesignation, terminates the anti-backsliding obligations for the DFW area associated with those revoked NAAQS. This "functional" redesignation would be the only recourse for states to remove anti-backsliding obligations if the EPA chooses not to redesignate areas to attainment for revoked standards. "Functional" redesignation would necessarily have to terminate all anti-backsliding obligations to keep states' rights whole under the FCAA's cooperative federalism structure, as discussed elsewhere in these comments.

C. Authority to Revise Nonattainment Listings in the Part 81 tables

The EPA has authority to, and should, revise the designation listings in 40 CFR Part 81 to better reflect the status of applicable anti-backsliding obligations for areas.

As discussed elsewhere in these comments, at the time the EPA promulgated the eight-hour ozone NAAQS in July 1997, the EPA decided to revoke the 1979 one-hour ozone standard and interpreted revocation to mean that once the 1979 one-hour standard was revoked, the area's 1979 one-hour ozone designation no longer applied.[14] The EPA has interpreted the designation table in 40 CFR Part 81 for revoked standards to merely provide a codification of designation status for purposes of anti-backsliding.[15] The EPA revised the Part 81 tables to indicate the areas where the 1979 one-hour standard was revoked and retained the classifications in place on the effective date of the eight-hour NAAQS designation for purposes of the anti-backsliding regulations at that time. The EPA stated that the "purpose of the tables is to identify the areas subject to the anti-backsliding provisions." The EPA further stated that "[s]ince the anti-backsliding provisions apply based on an area's status as of the time of designation for the eight-hour standard, this regulatory provision should indicate that the modified tables in subpart C of part 81 will reflect each area's status as of that time."[16] The EPA clearly asserted and utilized its authority to modify the Part 81 tables to indicate the revocation status of the 1979 one-hour ozone standard and has continued this practice for the 1997 eight-hour standard.

If retaining the Part 81 tables is an administrative convenience (presumably maintained under the EPA's general authority), then the EPA also has general authority to make clarifying changes to provide appropriate public notice regarding the current applicability status of anti-backsliding obligations. Continued authority over the Part 81 table notations is necessary to avoid absurd results and promote public understanding of applicable requirements. Another option would be to convert the table from referring to nonattainment, attainment, or

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[14] Phase I Rule at 23954.
[15] Identification of Ozone Areas for Which the One-hour Standard Has Been Revoked and Technical Correction to Phase I Rule, 70 *Fed. Reg.* 44470, August 3, 2005.
[16] *Id* at 44472.

unclassifiable to referring to "anti-backsliding measures apply" or "anti-backsliding measures do not apply" to promote public understanding of what measures are required for revoked standards.

D. Motor Vehicle Emission Budgets (MVEBs) for the 2008 Ozone NAAQS

D.1. The EPA should consider expanding its rationale for not acting on the MVEBs in the SIP revision to include federal transportation conformity regulations.

Horizon year MVEBs were included in this SIP revision to ensure a complete and approvable maintenance plan for the revoked 1979 one-hour and 1997 eight-hour ozone NAAQS, which includes MVEBs for the last year of the maintenance plan. The TCEQ is aware of the EPA's position, as stated in its November 2018 transportation conformity guidance,[17] that transportation conformity for the 1997 eight-hour ozone NAAQS need not be demonstrated in an area that is designated nonattainment for the 2008 and/or 2015 eight-hour ozone NAAQS. Although it was not included in the guidance document, the TCEQ infers that the EPA would take the same position concerning the 1979 one-hour ozone NAAQS. Given that position, the TCEQ supports the EPA's decision to take no action on the maintenance MVEBs related to the revoked 1979 one-hour or 1997 eight-hour ozone NAAQS.

The TCEQ suggests that the EPA also consider, as it did in its November 2018 guidance, that the transportation conformity regulations in 40 CFR §93.109(c) state that a regional emissions analysis for conformity is only required for a nonattainment area until the effective date of revocation of the applicable NAAQS. Regardless of whether an area is subject to transportation conformity requirements under a more stringent standard, the conformity regulation at 40 CFR §93.109(c) provides sufficient justification for determining not to act on the MVEBs in this SIP revision.

D.2. The TCEQ appreciates the EPA's clarification that MVEBs for the 1979 one-hour ozone NAAQS are unnecessary since the DFW area already demonstrates conformity to the more stringent 2008 ozone NAAQS.

In the proposed action, the EPA noted that it was taking no action on the MVEBs submitted by the TCEQ for the 1979 one-hour ozone standard, since the DFW area already demonstrates conformity to the more stringent 2008 ozone NAAQS. The TCEQ submitted MVEBs for the 1979 one-hour ozone NAAQS in an abundance of caution since EPA has not yet issued rules in response to the D.C. Circuit's decision in *South Coast II*. Affirming that 1979 one-hour MVEBs and 1979 one-hour conformity determinations are no longer required is consistent with the D.C. Circuit's clarification of *South Coast I*, issued in June 8, 2007[18], confirming that its decision was not intended to establish a requirement that areas continue to demonstrate conformity under the 1979 one-hour ozone standard for anti-backsliding purposes. This is also consistent with the fact that the EPA made no changes in response to *South Coast I* to 40 CFR §51.905(e)(3), part of the Phase I Implementation Rule, that established that 1979 one-hour ozone conformity determinations would no longer be required one year after the effective date of revocation of the 1979 one-hour ozone standard.

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[17] EPA, 2018. Transportation Conformity Guidance for the South Coast II Court Decision, EPA-420-B-18-050, November 2018.
[18] *South Coast I.*

Attachment:

November 1, 2017 TCEQ Comments on the

Proposed Renewal of Information Collection Request 2347.02

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

November 1, 2017

Environmental Protection Agency
EPA Docket Center
Air and Radiation Docket
Mail Code: 2821T
1200 Pennsylvania Avenue, NW
Washington, DC 20460-001

Re: Docket ID No. EPA–HQ–OAR–2010-0885

Dear Sir or Madam:
The Texas Commission on Environmental Quality (TCEQ) appreciates the opportunity to comment on the proposed renewal of Information Collection Request (ICR) 2347.02 for the implementation of the 2008 ozone National Ambient Air Quality Standard (NAAQS), as published in the *Federal Register* on October 2, 2017.

Detailed comments on the notice and associated materials are enclosed. If there are any questions concerning the TCEQ's comments, please contact Mr. Steve Hagle, P.E., Deputy Director, Office of Air, at 512-239-1295 or steve.hagle@tceq.texas.gov.

Sincerely,

Richard A. Hyde, P.E.
Executive Director

Enclosure

cc: Guy Donaldson, EPA R6
Mary Stanton, EPA R6

COMMENTS BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY REGARDING AGENCY INFORMATION COLLECTION ACTIVITIES; PROPOSED COLLECTION; COMMENT REQUEST; IMPLEMENTATION OF THE 2008 OZONE NATIONAL AMBIENT AIR QUALITY STANDARDS FOR OZONE; STATE IMPLEMENTATION PLAN REQUIREMENTS, EPA ICR NO. 2347.03 EPA DOCKET ID NO. EPA-HQ-OAR-2010-0885

I. Summary

On October 2, 2017, the United States Environmental Protection Agency (EPA) published in the *Federal Register* a notice announcing that it is planning to submit to the Office of Management and Budget a request to renew an existing approved Information Collection Request (ICR) 2347.02, Implementation of the 2008 National Ambient Air Quality Standards (NAAQS) for ozone. This ICR, which pertains to the 2008 eight-hour ozone NAAQS, is scheduled to expire on January 31, 2018. The EPA is soliciting comments on specific aspects of the proposed information collection with regard to additional state implementation plan (SIP) activities under the 2008 eight-hour ozone NAAQS during the period from February 1, 2018 through January 31, 2021.

II. Comments

Estimating the Burden

The proposed cost associated with the EPA's estimated burden to implement additional SIP activities under the 2008 ozone NAAQS during this time period is too low, without clarification or alternative estimates.

The EPA has indicated that the 2008 ozone NAAQS will be revoked upon finalization of the 2015 ozone standard. If this happens as expected, there should be no additional burden to states in developing SIP submittals for the 2008 ozone standard during the ICR period from February 1, 2018 through January 31, 2021, as long as no states are required to prepare additional SIP revisions to address antibacksliding obligations or for areas reclassified to higher classifications for the 2008 ozone standard. However, there could be responsibilities and costs for activities that remain applicable for the revoked standard, which the EPA has not estimated.

If the 2008 ozone NAAQS is not revoked or revocation is delayed, then the Texas Commission on Environmental Quality (TCEQ) disagrees with the methodology that the EPA used to account for the estimated agency burden in fulfilling the SIP activities associated with eight-hour ozone nonattainment as published in the *Information Collection Request, Supporting Statement for the Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements; Information Collection Request Renewal, EPA ICR #2347.03, July 7, 2017.*

The EPA assumes that an area's 2008 ozone SIP submittal already includes most of the elements that would be required for a bump-up in classification status. However, to meet EPA guidance requirements, developing the required SIP elements for a higher classification would require a full re-analysis of each required planning element. The TCEQ performed a rough estimate of the burden associated with the reclassification of an ozone nonattainment area. A description of the burden for each element for a 2008 eight-hour ozone nonattainment area being reclassified from moderate to serious is as follows:

- Reasonably Available Control Technology – The EPA is correct that some reasonably available control technology (RACT) requirements may have already been fulfilled through prior SIP submissions, such as certain control technique guideline (CTG) RACT requirements, which would decrease some of the burden associated with a new RACT SIP submittal. However, a reclassification to a higher ozone nonattainment classification results in more stringent major source thresholds for RACT analyses. If a nonattainment area were reclassified from moderate to serious ozone nonattainment, the major source RACT

threshold would be lowered from 100 tons per year (tpy) to 50 tpy. Sources previously classified as minor in prior SIP submissions may become major sources by the reclassification. In this specific case, while most counties included in the Dallas-Fort Worth and Houston-Galveston-Brazoria 2008 ozone nonattainment areas were previously at classifications of serious or higher, Wise County has only been classified as moderate. Additionally, new sources not covered under existing RACT requirements may have begun operations since the prior RACT analysis. Emissions inventory and major source RACT analyses would still be required even if all CTG RACT requirements have been previously met. Rulemaking to implement RACT for applicable sources could also be required, which includes assessment of emission inventory data, stakeholder input, rule development, rule publication and response to comment, rule adoption, and submittal of SIP revisions to the EPA with all supporting information. These activities typically involve 1,400 hours of labor and result in costs of $58,408.

- Reasonable Further Progress (RFP) SIP –The requirements for a serious ozone nonattainment area under this standard include attaining the standard by the end of calendar year 2020. For an area to be reclassified to serious, the TCEQ would be required to update the emissions inventory projected out to 2020 and re-calculate the milestone years with the new emissions inventory. These emission inventory updates and revisions to the milestone years would be required to be submitted to the EPA as a SIP revision, which would require data analysis, stakeholder input, data assessment (including impacts to motor vehicle emission budgets), publication and response to comment, adoption and submittal of SIP revisions to the EPA with all supporting information. These activities typically involve 7,000 hours of labor and result in costs of $292,040.
- Attainment Demonstration SIP –The TCEQ would need to conduct additional photochemical modeling with updated emissions inventory inputs going out to 2020 instead of 2017. In addition to a new RACT SIP submittal, a reasonably available control measure (RACM) analysis would also still be required as part of the attainment demonstration. A RACM analysis is necessary to evaluate control measures beyond RACT that might help advance attainment of the standard. Control measures that will advance attainment and meet all other RACM criteria are required to be implemented, which could also result in rulemaking. An updated attainment demonstration would be required to be submitted to the EPA as a SIP revision, which would require potential control strategy development, data analysis, stakeholder input, data assessment, publication and response to comment, adoption and submittal of SIP revisions to the EPA with all supporting information. These activities typically involve 40,000 hours of labor and result in costs of $1,668,800.

On page three of section 1 under Abstract/Executive Summary of the support document for the ICR, it states that the EPA anticipates an additional 62,000 hours for the financial burden for state governments. In section 6 of the support document under Estimating Respondent Burden, Texas is listed with an estimated additional burden of 2,500 hours during the stated time period for the Dallas-Fort Worth area and 2,500 hours for the Houston-Galveston-Brazoria area, but the document provided no detailed justification for the activities and associated costs. For the reasons stated above, the TCEQ recommends that a more realistic estimate of burden associated with continued implementation of the 2008 ozone standard be developed. Contingent on the activities described above, the burden *in each* Texas nonattainment area alone, based on current average salary projections, would be as follows:

- Range between 45,000 to 50,000 hours of labor; and
- Result in an estimated total cost of $2,019,248 for work.