

**COMMENTS BY THE
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ) REGARDING THE
DETERMINATIONS OF ATTAINMENT BY THE ATTAINMENT DATE,
EXTENSIONS OF THE ATTAINMENT DATE, AND RECLASSIFICATION OF
SEVERAL AREAS CLASSIFIED AS MODERATE FOR THE 2008 OZONE NATIONAL
AMBIENT AIR QUALITY STANDARDS; TEXAS
EPA DOCKET ID NO. EPA-HQ-OAR-2018-0226**

I. PROPOSAL SUMMARY

On November 14, 2018, the United States (U.S.) Environmental Protection Agency (EPA) published in the *Federal Register* a proposed determination that the Dallas-Fort Worth (DFW) and Houston-Galveston-Brazoria (HGB) areas failed to attain the 2008 eight-hour ozone National Ambient Air Quality Standard (NAAQS) by the applicable deadline of July 20, 2018. This results in a reclassification by operation of law to the designation of “serious.” This action proposes to require that Texas must submit state implementation plan (SIP) revisions to the EPA 12 months after the effective date of the final reclassification notice. These SIP revisions would be required to meet the Federal Clean Air Act (FCAA) statutory and regulatory requirements that apply to 2008 ozone NAAQS nonattainment areas reclassified as serious.

Under the serious area plan requirements of FCAA, Section 182(c) and 40 Code of Federal Regulations (CFR) 51.1108, states with ozone nonattainment areas classified as serious are provided two years from the date of designation to submit a SIP revision complying with the serious ozone nonattainment plan requirements. For areas designated nonattainment for the 2008 ozone NAAQS and originally classified as serious, that deadline was July 20, 2016. Because this date has already passed, the EPA proposes that SIP revisions, not including the Reasonably Available Control Technology (RACT) SIP revision, will be due 12 months after the effective date of the final reclassification notice. The action also proposes that implementation of SIP-driven applicable controls occur no later than 12 months after the effective date of the final reclassification notice. The reclassified areas will then be subject to the serious area requirement to attain the 2008 ozone NAAQS no later than July 20, 2021.

II. COMMENTS

The proposed SIP submittal deadline of 12 months from the effective date of the final reclassification notice will be challenging for Texas to meet. To ensure the completion of critical technical SIP elements that are both time and labor intensive, including photochemical modeling performance evaluations and on-road mobile source inventory development, the TCEQ recommends a SIP submittal deadline of 18 months from the effective date of the final reclassification notice.

While the TCEQ acknowledges that the proposed SIP submittal date of 12 months from the effective date of the final reclassification notice is consistent with the EPA’s standard practice, the TCEQ also notes that significant time, effort, and resources will be required to develop these SIP revisions to address additional planning requirements under a serious classification, and that the proposed submittal deadline will be challenging to meet. In Texas, both the DFW and HGB areas are proposed for reclassification to serious nonattainment, which will require the TCEQ to develop and submit attainment demonstration and reasonable further progress SIP

revisions concurrently, with increased SIP requirements under the serious classification, for both areas.

The TCEQ disagrees with the proposed 12-month implementation deadline for all reasonably available control measures (RACM), including RACT, necessary for demonstrating attainment for the HGB and DFW reclassified nonattainment areas.

In the 2008 eight-hour ozone standard SIP requirements rule (80 FR 12282), the EPA indicates that

“for areas newly redesignated to nonattainment, the RACT SIP is due 2 years from the effective date of designation, and the implementation deadline is January 1st of the 5th year after the effective date of designation.”

Clearly, the EPA’s own SIP requirements rule intended to give newly designated areas a reasonable amount of time to both submit SIP revisions and implement RACT. This same standard should apply to areas that are newly redesignated to a higher classification. Although the TCEQ would generally agree that measures necessary to advance attainment should be implemented by the beginning of ozone season in the attainment year, the compressed timeline for attainment for these reclassified areas does not provide a reasonable amount of time for the state to evaluate controls, conduct rulemaking, and give affected sources sufficient time to implement control requirements.

The TCEQ disagrees with the proposed August 3, 2020 RACT implementation deadline for the HGB and DFW reclassified nonattainment areas and recommends adjusting this deadline to allow affected entities to comply with RACT no later than the attainment deadline of July 20, 2021.

The EPA has proposed August 3, 2020 as both the SIP submission deadline and implementation deadline for RACT not otherwise needed to demonstrate attainment. The EPA chose this date as the SIP submission deadline to align with the due date for SIP submissions associated with the 2015 eight-hour ozone NAAQS. However, the HGB and DFW areas are classified as marginal for the 2015 eight-hour ozone NAAQS and are therefore not required to submit RACT SIP revisions under the 2015 ozone NAAQS by August 3, 2020, thus making this date arbitrary for these areas.

The EPA’s rationale for making August 3, 2020 the concurrent RACT SIP submission deadline and RACT implementation deadline is the compressed time frame for serious nonattainment areas to meet the July 20, 2021 attainment deadline. However, the EPA proposed elsewhere in this action that RACT necessary for attainment purposes must be implemented by start of the ozone season in the attainment year, or January 1, 2020. It is therefore arbitrary to require concurrent implementation of RACT by the proposed August 3, 2020 SIP submission deadline, since by definition, these would be RACT provisions not necessary for attainment.

The TCEQ recommends that the EPA set a RACT implementation deadline of July 20, 2021, which is the attainment deadline for the HGB and DFW serious nonattainment areas. The attainment deadline of July 20, 2021 is well within the five-year time frame (by January 1 of the fifth year after designation) that was allowed for areas originally classified as moderate or higher, which for newly designated areas would be January 1, 2024. This date would also allow newly affected entities a reasonable amount of time to comply with RACT requirements.

While it is a less preferable option, the EPA should at least allow states a full 24 months from the effective date of the final reclassification notice for RACT implementation.

The TCEQ does not agree that FCAA, §182(i) clearly allows the EPA to adjust required SIP submittal deadlines in order to align deadlines that are applicable for different ozone NAAQS, nor has the EPA demonstrated that accelerating RACT deadlines for the 2008 ozone NAAQS is necessary or appropriate.

The EPA proposes that states submit SIP revisions for any RACT not otherwise needed for attainment purposes by August 3, 2020 despite the fact that §182(b)(2) provides a 24-month schedule for compliance. The EPA based this date on authority in FCAA, §182(i), which provides that the Administrator may adjust deadlines for reclassified areas “to the extent such adjustment is necessary or appropriate to assure consistency among the required submissions.” The EPA noted that it was interpreting “consistency among the required submissions” to allow for considerations for various ozone NAAQS that are being implemented simultaneously; however, the EPA neglected to assess this flexibility in the context of the full language of FCAA, §182(i), which is clearly allowing this flexibility only for the NAAQS-specific requirements that are applicable to the area as reclassified.

Additionally, simply because an area is designated nonattainment for both the 2015 ozone NAAQS and the 2008 ozone NAAQS is not justification for advancing deadlines applicable for the 2008 ozone NAAQS. If RACT is not necessary for attainment of the 2008 ozone NAAQS there is no justification for requiring submittal of the RACT SIP revision prior to the attainment date for the area, which in this case is July 20, 2021. A more reasonable approach is to let states determine whether to submit the RACT revision earlier than the statutory 24 months if they choose to do so based on their specific resource constraints and plan development burdens associated with meeting the 2008 and 2015 ozone NAAQS deadlines.