COMMENTS BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY REGARDING THE PROPOSED NONATTAINMENT AREA CLASSIFICATIONS AND STATE IMPLEMENTATION PLAN REQUIREMENTS FOR THE 2015 NATIONAL AMBIENT AIR QUALITY STANDARDS FOR OZONE DOCKET ID NO. EPA-HQ-OAR-2016-0202

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I. SUMMARY

On November 17, 2016, the United States (U.S.) Environmental Protection Agency (EPA) published in the *Federal Register* a proposed rule establishing nonattainment area classification thresholds and implementation requirements for the ozone National Ambient Air Quality Standard (NAAQS) that was promulgated on October 1, 2015. The proposed requirements pertain to state implementation plan (SIP) attainment demonstrations, reasonable further progress (RFP) and associated milestone demonstrations, reasonably available control technology (RACT), reasonably available control measures (RACM), major nonattainment new source review (NNSR), emission inventories, the timing of required SIP submissions, compliance with emission control measures in the SIP, and interprecursor trading (IPT) provisions.

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

II. COMMENTS

A. State Implementation Plan Concerns

A.1. It is unreasonable to expect or require states to resubmit all nonattainment SIP elements applicable to an area's classification upon revision of a NAAQS.

It is unclear exactly what the EPA is expecting states to resubmit, or why the EPA would need such information from states. The EPA has not identified any legal or practicable rationale for requiring states to resubmit information simply because a NAAQS has been revised. States already submit infrastructure SIPs within three years

of promulgation of a new NAAQS, which reaffirm that a state has all the required elements within its SIP. These include applicable requirements for current nonattainment areas. Previously submitted SIP revisions are already within the EPA's possession, and, if approved, are federally enforceable. It is irrational of the EPA to expect states to re-state information through yet another SIP submittal, when the EPA has already been provided with such information through normal SIP processes, and states reaffirm that they met all applicable requirements with the submittal of an infrastructure SIP.

A.2. The TCEQ supports Option 1 for revoking the 2008 ozone NAAQS and opposes Option 2.

The TCEQ supports revocation of the 2008 ozone NAAQS for all purposes in all areas one year after the effective date of designations for the 2015 ozone NAAQS. This approach is consistent with the EPA's approach for transitioning from prior ozone NAAQS, and it would ensure that only one NAAQS would apply to a given area, which would provide clarity to the requirements for nonattainment areas. The TCEQ also supports the retention of the EPA's current anti-backsliding approach, including the use of redesignation substitutes, which the EPA proposes would follow from finalization of Option 1 for revocation of the 2008 standard.

The TCEQ opposes the EPA's proposed option to require that the 2008 ozone standard remain in place for areas designated nonattainment for that standard until the area has been redesignated to attainment. This option would lead to confusion and unnecessary burden resulting from overlapping requirements in some nonattainment areas. For example, as the EPA points out in the preamble to the proposed rule, Option 2 could overburden metropolitan planning organizations in areas designated nonattainment for the 2008 and 2015 ozone standards by requiring them to potentially demonstrate transportation conformity using two sets of motor vehicle emissions budgets (MVEB) for different budget years and from SIP revisions submitted for two separate ozone standards. In addition, Option 2 could result in confusion among participants in state emissions banking and trading programs, resulting in an unnecessary use of limited state resources to clarify the role of the overlapping standards. Further, because the 2015 ozone standard is more stringent than the 2008 ozone standard, it is not clear that there would be any resulting environmental benefit for areas designated nonattainment for both NAAQS while potentially requiring multiple maintenance SIP revisions over a decade or more of time.

A.3. The EPA should provide additional guidance regarding SIP submission deadlines for all Federal Clean Air Act (FCAA)-required SIP submittals resulting from mandatory reclassifications.

As part of this proposed implementation rule, the EPA is proposing default submittal deadlines for RACT SIP revisions resulting from reclassification, including mandatory reclassification, as these deadlines were not addressed as part of the 2008 ozone standard SIP requirements rule. However, the EPA does not provide specific information in this proposal regarding deadlines for *all* FCAA required SIP submittals for reclassified areas, including attainment demonstration (AD) and RFP SIP revisions.

The EPA long held that an appropriate deadline for states with reclassified nonattainment areas to submit FCAA-required SIP revisions is one year from final

reclassification and followed this schedule for previous reclassifications of nonattainment areas until recently. The EPA continued to believe that a SIP submittal within one year of reclassification is reasonable when it proposed reclassification of marginal nonattainment areas for the 2008 ozone NAAQS in August 2015:

> We also note that we believe it is reasonable to provide states with a period of at least approximately 1 year after the reclassification is finalized to develop and submit the Moderate area SIP revisions. This provides time necessary for states and local air districts to finish their review of available control measures, adopt necessary attainment strategies, address other SIP requirements, and complete the public notice process necessary to adopt and submit SIP revisions.[1]

When the EPA finalized reclassifications for 2008 eight-hour ozone marginal nonattainment areas, however, it determined that SIP submittal by January 1, 2017 was appropriate because such a deadline would allow the SIP to be in place by the beginning of the attainment year. The result of this decision did not provide states with enough time to develop SIP revisions for the reclassified areas.

When the EPA published its reclassification for the Houston-Galveston-Brazoria (HGB) 2008 eight-hour ozone marginal nonattainment area on December14, 2016, Texas was required to submit the required AD and RFP SIP revisions by January 1, 2017. The EPA is well aware of the significant time, effort, and resources required by states to develop SIP revisions. The EPA's failure to establish consistent and reasonable SIP submittal deadlines for reclassified areas, along with uncertainty caused by the Administrator's existing authority to adjust submittal deadlines in reclassification actions, can result in undue burdens on state and stakeholder resources, as occurred for Texas with the HGB reclassification.

The TCEQ requests that the EPA provide additional guidance to states regarding how it will approach mandatory reclassifications under the 2015 ozone NAAQS and establish submittal deadlines for all FCAA-required SIP revisions for reclassified areas, including areas receiving attainment date extensions, as part of the final implementation rule. The TCEQ recommends that the EPA provide at least one year from final reclassification for states to submit required SIP revisions.

B. Modeling Guidance

The EPA should finalize its modeling guidance to facilitate efficient use of limited state resources in program implementation.

The proposed rule refers to the EPA's "Draft Modeling Guidance for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze" (December 2014). It is inappropriate for a rule to rely on draft guidance when final guidance (https://www3.epa.gov/ttn/scram/guidance/guide/final-03-pm-rh-guidance.pdf April 2007), is also in effect. If the EPA prefers that states use the methods outlined in the draft guidance, the EPA should publish the final guidance no later than final

[1] "Determinations of Attainment by the Attainment Date, Extensions of the Attainment Date, and Reclassification of Several Areas Classified as Marginal for the 2008 Ozone National Ambient Air Quality Standards; Proposed Rule" 80 *Federal Register* 166 (August 27, 2015) p. 51999

designations to avoid wasting limited state resources on re-work that might be required due to changes between the draft and final guidance.

C. Reasonable Further Progress Requirements

C1. The TCEQ supports retaining the existing requirements from the 2008 ozone NAAQS implementation rule for the RFP baseline year. The TCEQ opposes requiring the year that an area is officially designated as nonattainment to be used as the RFP baseline year.

The TCEQ supports the EPA's proposal to retain the requirements in the current 2008 ozone NAAQS implementation rule for determining the RFP baseline year. The current rule allows states the flexibility to choose either the most recent triennial emissions inventory calendar year or an earlier alternate year to recognize prior investments in emissions reductions. As the transition from the 2008 to the 2015 ozone NAAQS occurs, retaining this flexibility will be important to ensure states can account for emissions reductions that occurred prior to the year an area is designated as nonattainment.

The TCEQ opposes a requirement for a specific year to be used as the RFP baseline year. Restricting the baseline year to a specific year potentially discourages local areas and states from implementing emissions reductions in advance of an area being designated as nonattainment. Additionally, the EPA should allow states the option of using a recent triennial emissions inventory year as the baseline year to minimize the amount of resources required to develop RFP SIP revisions. The EPA's Air Emissions Reporting Requirements rule requires states to develop a complete emissions inventory of all source categories every three years (triennially). Requiring an alternate RFP baseline year outside of a triennial emissions inventory year would require states to expend already limited resources to develop these emissions inventories for no demonstrable air quality benefit.

While the existing RFP baseline year requirements from the 2008 ozone NAAQS may result in inventories from different years being used for RFP and attainment demonstration SIP revisions, the existing requirements are still preferable to a requirement that the year an area is officially designated as nonattainment be used as the RFP baseline year. Allowing for the possibility of inventories for different years to be used provides flexibility to address unusual circumstances as needed.

C2. The EPA should clarify the milestone compliance demonstrations (MCD) reporting and submittal requirements, as required by the FCAA, and whether historical emissions inventory data can be used for MCD purposes if the historical data indicates the required RFP reduction was achieved in advance of the applicable milestone year.

The EPA is proposing that states demonstrate compliance for applicable RFP milestone dates (years) in terms of control measure requirements (e.g., percent implementation) in an approved RFP plan; the EPA would review these MCD obligations on a case-by-case basis to ensure the MCDs are specific and objective enough to evaluate actual reductions. The EPA's proposed requirements to address state obligations related to MCDs are unclear on:

- what additional information will be required in the RFP SIP to address RFP MCD obligations;
- what specific information will be required to be included in the RFP MCD;
- whether public notice will be required; and
- what the submission process for the RFP MCD will be.

The EPA's proposed regulations concerning MCDs are silent on the form and manner of submittal. The EPA should clarify who is required to submit the MCD (e.g., the Governor, an appointee of the Governor, the state's environmental regulatory agency, etc.) and whether the MCD has to be incorporated into an applicable SIP. If the EPA does not require the MCD to be submitted as a SIP revision, the EPA should specify whether public notice will be required for the state's MCD. Incorporating an MCD as a SIP revision or publishing an MCD and requesting formal public comments would impose significant resource burdens for states.

Depending upon MCD public notice and submission requirements, compliance dates for proposed control strategies may have to be advanced to meet these MCD obligations. This might limit or otherwise negatively impact a state's consideration of certain control strategies; for example, a state might not consider a strategy that could not be reasonably implemented in time for the state to assess percent implementation, prepare the MCD, and accept and respond to public comment on the MCD.

The EPA should also provide states with specific guidance on the technical requirements for the milestone compliance demonstration. If the EPA is going to impose monitoring or other resource-intensive requirements, the EPA should provide opportunities for the states to review and comment on proposed requirements.

The TCEQ supports the EPA's conclusion that emissions inventory data for the applicable RFP milestone year cannot be used for MCD purposes. Since the FCAA requires the MCD to be submitted no later than 90 days after the milestone year has ended, the applicable emissions inventory data for the milestone year cannot reasonably be used to fulfill state MCD obligations since this data will not be available before the deadline.

However, the EPA should clarify whether historical emissions inventory data can be used for MCD purposes. If historical emissions inventory data indicates the required RFP reduction was achieved in advance of the applicable milestone date, states should be able to use this data to satisfy MCD requirements. For states that select this option, the EPA could require additional emissions inventory data analyses for subsequent MCD submissions to ensure that the required MCD reduction was actually achieved.

D. Reasonably Available Control Technology/Measure Concerns

D.1. The proposed RACT implementation deadline does not provide enough compliance time for areas initially designated marginal and subsequently reclassified to moderate.

The EPA proposes a RACT implementation deadline of no later than the start of the ozone season of the attainment year or January 1st of the third year after the associated SIP revision submittal deadline, whichever is earlier. Although this implementation schedule may be reasonable for some reclassified areas, it may not be

possible for other such areas to meet these RACT compliance deadlines. For a reclassified area needing rulemaking to fulfill RACT requirements, a sufficient amount of time to conduct rulemaking and to provide for compliance planning for affected sources would have to be allotted. The EPA's proposed implementation schedule may not afford enough time for these considerations.

For example, a marginal nonattainment area receiving a one-year attainment extension that is then reclassified to moderate nonattainment at the beginning of the moderate area attainment year leaves an extremely limited amount of time for rulemaking and compliance planning for affected sources. This was the case for Texas' Houston-Galveston-Brazoria (HGB) area under the 2008 eight-hour ozone standard. In its proposed reclassification of the HGB nonattainment area, the EPA deemed less than one month a sufficient amount of time to comply with adopted RACT rules. The EPA also states in its proposal that it has the discretion to establish an alternate compliance date. However, when given the opportunity to set a reasonable RACT implementation deadline for sources affected by the HGB area RACT rulemaking, the EPA deemed less than one month a reasonable compliance deadline. However, Texas disagrees that one month is a reasonable expectation, especially given advancing attainment of the area is not a factor of consideration when evaluating RACT because the benefit of implementing RACT is presumed under the FCAA. RACT must be in place regardless of the emissions reductions achieved. While RACT and RACM have similar consideration factors like technological and economic feasibility, there is a significant distinction between RACT and RACM. A control measure must advance attainment of the area towards meeting the NAAQS for that measure to be considered RACM. Therefore, it is not imperative that the rules implemented to satisfy RACT obligations be implemented no later than the beginning of the attainment year ozone season. Rather, Texas supports the area's attainment date as the latest date a source may comply with RACT rules, consistent with the EPA's 2008 eight-hour ozone NAAQS SIP requirements rule RACT implementation deadline for reclassified areas of "no later than the outside attainment date" (80 FR 12264 and 80 FR 12268).

D.2. The proposed 24-month implementation deadline associated with new Control Techniques Guidelines (CTG) is unnecessary; rather, the EPA should continue to set SIP revision deadlines at the time of issuance of a new CTG, consistent with FCAA, §182(b)(2).

The EPA's rationale for proposing a 24-month SIP submission deadline in response to a new CTG is flawed. The 24-month deadline has been translated from the EPA's interpretation of the RACT submittal timing from the effective date of an area's initial designation under FCAA, §182(b)(2). However, the time frame from initial area designation to the submittal of a RACT analysis is substantively different from the potential time frame that may be necessary for a state to respond to a newly issued CTG. As noted in the preamble, the EPA may tailor the implementation timeframe to the particular technical considerations of the new CTG, consistent with the language of FCAA, §182. There is therefore no need for proposed §51.1312(a)(2)(iii), and it should not be finalized.

D.3. The opportunity to submit an FCAA, §179B demonstration should not be limited to nonattainment areas adjoining international borders.

The EPA stated in the SIP requirements rule for the 2008 ozone NAAQS that FCAA, §179B was not limited to nonattainment areas adjoining international borders (80 FR 12294). However, in the proposed SIP requirements rule for the 2015 ozone NAAQS the EPA is requesting comments on whether §179B should be limited to nonattainment areas adjoining international borders (81 FR 81304). The TCEQ's position is that the §179B petition process should be available to any nonattainment area, even if the area is not directly adjacent to an international border. There is no language in §179B that limits a state's ability to petition the administrator to just nonattainment areas adjoining international borders. The EPA has no legal basis for denying a state the opportunity for making a demonstration under §179B merely because the state's nonattainment area is not directly geographically connected to an international border, nor may the EPA arbitrarily reject such a demonstration solely based on geographic distance. Furthermore, the EPA does not apply any such geographic connection limitation for the purposes of interstate transport. The EPA does not limit FCAA, §110(a)(2)(D)(I) obligations to upwind states that adjoin a downwind state with a receptor area. In fact, the EPA has routinely linked upwind states to downwind receptors that are significantly distant from the upwind state. For example, in the EPA's recent Cross State Air Pollution Rule Update, the EPA identified Texas as significantly contributing to ozone nonattainment in Sheboygan County, Wisconsin, approximately 900 miles from the Texas border. It is irrational for the EPA to apply one geographic standard for interstate transport and another far more restrictive standard for international transport of the same criteria pollutant.

D.4. The EPA should not finalize the proposed §51.1309 requiring states to demonstrate that all RACM have been implemented in accordance with FCAA, §172(c)(1) for ozone nonattainment areas classified as marginal for the purposes of §179B.

The EPA should not finalize the language in proposed §51.1309 that would require the implementation of RACM for marginal areas that submit a §179B demonstration to avoid mandatory reclassification. FCAA §172(c)(1) requires implementation of all RACM, including RACT. However, marginal ozone nonattainment areas are not generally required to implement RACT requirements under Subpart 2 of Part D Title 1 of the FCAA. Requiring a marginal area submitting a §179B demonstration to implement RACT requirements would therefore be above and beyond the stated requirements of Subpart 2. There is no language in §179B to support the EPA's new interpretation that states must implement controls "not to attainment level, but to a level below the current level." The plain language of §179B requires states to establish that the area "would have attained the national ambient air quality standard for ozone by the applicable attainment date, but for emissions emanating from outside the United States." This language in no way indicates that states must implement controls beyond those needed for attainment. This interpretation would also lead to the situation in which a marginal nonattainment area that is impacted by international emissions is held to a higher standard than another marginal nonattainment area that is not. The EPA would be penalizing states for seeking regulatory relief for marginal nonattainment areas that would not have been required to implement controls but for the impact of international emissions; regulatory relief that the EPA has specifically stated would be available to states to help address issues with background ozone. In the preamble for the 2015 ozone NAAQS final rule, the EPA stated that statutory and regulatory relief may include relief from the more stringent requirements of higher

nonattainment area classifications through international transport provisions (80 FR 65436). However, the EPA is now proposing to require that those same more stringent requirements of higher classifications be implemented for marginal ozone nonattainment areas in order for a state to seek the relief provided by the international transport provisions of §179B.

The EPA has stated that Subpart 1 of Part D of the FCAA allows them to require the implementation of RACM for these areas; however, it is clear that Subpart 2 of Part D does not require RACM for a marginal ozone nonattainment area. The EPA cannot ignore the clear language of Subpart 2, which specifically applies to ozone nonattainment areas, in order to impose more stringent requirements than would otherwise be required of any other marginal ozone nonattainment area. The plain language of §179B allows areas that would have attained the standard by their applicable attainment date "but for emissions emanating from outside the United States" to have their plans approved. The EPA should not attempt to circumvent the clear intent of this language that an area meeting all other applicable requirements would have met the standard by the attainment date if it was not negatively impacted by international transported emissions. For a marginal nonattainment area, all other applicable requirements does not include RACM or a RACT demonstration.

Additionally, applying FCAA §172(c)(1) to marginal ozone nonattainment areas under §179B results in implementation issues and conflicts with other FCAA provisions. Control measures identified as RACM must be implemented no later than the beginning of the attainment year ozone season in order to allow the control measure to be in place a full ozone season before the attainment date. Assuming the EPA makes the effective date of designations December 31, 2017, then the attainment date for marginal areas would be December 31, 2020 and RACM would need to be implemented no later than the beginning of ozone season 2020. In order to implement RACM with any reasonable amount of time for compliance with an implementation deadline of beginning of ozone season 2020, states would be forced to evaluate possible control measures, perform any necessary modeling to evaluate the ozone reduction potential, and propose and adopt rules within 12 to 18 months after designations, far in advance of the deadlines prescribed by the FCAA. Even worse, if the effective date of designations is in the middle of the 2020 ozone season, the RACM would be required to be implemented by the beginning of ozone season 2019. With regard to RACT, the EPA states that the general RACT component of §172(c)(1) would also be applied to §179B marginal areas (81 FR 81304). The only RACT requirement for marginal nonattainment areas is the obligation prescribed in §182(a)(2)(A) to correct any pre-1990 FCAA RACT deficiencies. The EPA has previously interpreted this provision consistent with the plain language of the FCAA and there is no indication in this proposed rule to alter this interpretation. The EPA's interpretation to apply RACT to marginal areas is contrary to the plain language of §182 of the FCAA, which clearly only requires RACT to implemented for moderate and higher nonattainment classifications.

D.5. The EPA should not finalize the language in proposed §51.1312(c) that would require SIP revisions to include "other control measures" on sources located outside the nonattainment area but located within the state. The TCEQ disagrees with the EPA's interpretation that the language regarding "other control measures"

in FCAA §172(c)(6) requires states to consider controls on sources outside of a designated nonattainment area.

FCAA, §172(c)(6) does not give the EPA authority to require imposition of "other control measures" outside of a designated nonattainment area as part of an attainment demonstration. Although the EPA contends the "other control measures" provision under FCAA, §172(c)(6) is not directly a part of RACM, it clearly is treated synonymously with a RACM demonstration since the EPA claims that failure to consider and require reasonable control measures for all sources within the state's jurisdiction may preclude the expeditious attainment of a NAAQS in the area. FCAA, §172(c)(6) in no way indicates that an analysis considering reasonable control measures for sources beyond the nonattainment area but within the state's jurisdiction is necessary or required as the EPA implies in its interpretation. Further, §172(c)(6) specifies "other measures" are to provide for attainment of a NAAQS by the applicable attainment date, not that such measures must help an area attain the NAAQS as expeditiously as practicable. The EPA seems to conflate RACM obligations and other measure implementation under §172(c)(6). Section 172 is found in Part D of the FCAA; and it is limited to plan requirements for nonattainment areas. Although states may have broader authority to regulate air emissions within its borders than the EPA, any such authority to require states to impose control requirements necessary for a nonattainment area to reach attainment is not conferred by §172 of the FCAA. Any possible imposition of controls outside a nonattainment area to help such an area attain the NAAQS would be appropriate for states to consider on a case-by-case basis, but it should be at the option of states to require more stringent controls than those required by the FCAA.

D.6. The EPA should clarify proposed §51.1308(d) regarding which nonattainment areas are required to implement controls.

While the EPA's proposed rule language for §51.1308(c) makes clear that the provisions of that subsection apply to attainment demonstrations required pursuant to §51.1308(a) or (b), proposed §51.1308(d) does not have the same specificity and could be interpreted as requiring states to implement control measures for all nonattainment areas regardless of classification or any other provisions in the proposed rule. The first sentence of §51.1308(d) should be written as follows: "For each nonattainment area *for which an attainment demonstration is due pursuant to paragraph (a) or (b) of this section*, the state must provide for implementation of all control measures needed for attainment as expeditiously as practicable." Consistent with §51.1308(c), the TCEQ's proposed modification makes clear that the requirements of §51.1308(d) are only applicable to nonattainment areas for which an attainment demonstration is due, which is the purpose of §51.1308.

E. Interprecursor Trading Comments

E.1. The EPA should revise the proposed rule to allow states to continue implementing an EPA-approved rule that includes case-by-case approval from both the state and the EPA for all IPT projects.

The TCEQ currently implements case-by-case approval of IPT in accordance with 30 Texas Administrative Code (TAC) §101.306(d) and §101.376(g), which require both TCEQ and EPA approval of IPT projects. Previous versions of these IPT provisions were

approved by the EPA for inclusion into the Texas SIP and the most recent revisions to these IPT provisions were submitted to the EPA in June 2015. The EPA should revise the proposed rule to allow states to continue implementing an EPA-approved IPT rule already included as part of an AD SIP revision without including IPT provisions as part of the NNSR SIP.

The EPA should also clarify if it is necessary for area-specific default ratios and specific modeling used to determine the ratios to be included in a state rule, or would inclusion in the SIP and agency-specific guidance be sufficient for implementation.

E.2. The TCEQ disagrees with the proposed requirement for an evaluation of an EPA-approved IPT program every three years. This is a misuse of limited state air quality protection resources.

The EPA has proposed for consideration a requirement that the air agency periodically review an area-specific default ratio that is included in its EPA-approved ozone IPT program to ensure the default ratio continues to be valid for the area. The EPA's proposal would require the air agency to submit new modeling to confirm that the default ratio is still appropriate at least every three years from the air agency's prior plan submission including a default area-specific IPT ratio, since it coincides with RFP milestone dates and periodic area-specific emissions inventory submission deadlines. If the EPA does include a requirement for an agency to periodically evaluate an area-specific IPT ratio, the TCEQ suggests that the evaluation be no more frequent than when the agency revises the photochemical modeling included as part of an attainment demonstration SIP for that nonattainment area.

The TCEQ also requests that the EPA clarify if the evaluation would require an NNSR SIP amendment, even if it is determined that no changes are needed. The EPA should also clarify that any future changes to an area-specific IPT ratio would not impact previously-approved IPT projects. The TCEQ notes that, if area-specific ratios and modeling are included in an agency's rule, periodic program evaluations may potentially require resource intensive rule amendments every three years.

E.3. States with multiple nonattainment areas should have the flexibility to choose multiple IPT approaches.

In the proposed rule, the EPA does not address the possibility that states with multiple nonattainment areas may require different IPT approaches for the different nonattainment areas. For example, it might be preferable to establish an area-specific default ratio in a relatively homogenous nonattainment area such as the Dallas-Fort Worth nonattainment area, while in large heterogeneous nonattainment areas such as HGB, establishing a single IPT ratio may be neither feasible nor desirable. The EPA should clarify that states retain the flexibility to use differing IPT approaches in different nonattainment areas.

E.4. The EPA should revise the proposed rule and draft IPT Technical Guidance Document (TGD) to clearly indicate there is no minimum IPT ratio.

The EPA's proposed rule in 40 CFR §51.165(a)(11)(i) requires the area-specific default ratio and the case-by-case ratio used for individual permits to be determined using an air quality model and technical demonstration substantiating an equivalent or greater air quality benefit for ozone in the nonattainment area. The rules do not appear to

require that an equivalent or greater amount of volatile organic compounds (VOC) or nitrogen oxides (NO_x) credits to be used to offset an emission increase in the other precursor unless required by the area-specific or case-by-case modeling and technical demonstration. However, the draft TGD indicates that an IPT project in a NO_x-limited area would require NO_x credits at a 1:1 ratio to offset VOC emission increases. The EPA's proposed rules and TGD do not offer any justification as to why it would be necessary for the IPT to include an equivalent mass if the air quality model used and the technical demonstration substantiate an equivalent or greater air quality benefit for ozone in the nonattainment area with the use of fewer credits. The TCEQ does not agree that it is necessary for the EPA to establish a minimum IPT ratio and supports the use of the IPT ratio determined by the air quality model and technical demonstration substantiating an equivalent or greater air quality benefit for ozone in the nonattainment area. The TCEQ requests the EPA revise the proposed rules in 40 CFR §51.165(a)(11)(i) and the draft IPT technical guidance to clearly indicate that there is no minimum IPT ratio.

E.5. The EPA should revise the draft IPT TGD to address credits from mobile sources.

The TGD requires the applicant to model the credits at the location where they were generated. However, the guidance does not seem to consider credits generated from mobile sources, which will not have a single point of generation. The EPA should revise the proposed guidance to address how mobile source credits would be modeled.

E.6. The TCEQ supports EPA's efforts to provide guidance on addressing the complexities of IPT and encourages the EPA to make the TGD stronger, more understandable and more useful by adopting demonstrated aspects of the Texas IPT trading program and addressing the specific concerns raised below.

In addition to addressing the impacts of IPT on the air quality of a nonattainment area, the EPA should also ensure that the integrity of an area's attainment demonstration (if applicable) is not affected. The TCEQ addresses this issue with the following two specific criteria.

- The relative ozone impact of the project emission sources and credit emissions sources are quantified against the latest attainment demonstration modeling for the area, i.e., applicants are required to use the modeling platform, specifically the emissions inventory and meteorology, used in the latest attainment demonstration modeling submitted to the EPA for the nonattainment area.
- Permit applicants are required to perform a design value test that ensures that no regulatory monitor with a design value approaching the standard will experience an increase in its projected future design value. This measure is necessary to ensure that a given project will not adversely impact the overall air quality or the area's regulatory design value.

On page 7 of the TGD, item 2 addresses case-specific ratios and suggests that air agencies develop a database of modeled impacts associated with precursor emissions from typical industrial point sources within the area of interest. This requirement is both confusing and unnecessary. In case-specific ratios, the details of the actual project and the actual credits to be used are known and an IPT ratio can be established by modeling the actual project source(s) and credit source(s).

On page 7 of the TGD, the first full paragraph asserts that "[it] would not be appropriate to model the credit source emissions and stack release at the same location as the project source unless those are actually co-located in the post-construction scenario." The TCEQ disagrees with EPA's assertion because, once a credit is banked, it can be used anywhere in the nonattainment area, and as such, its value should be a function of where it will be used, not where it was generated. Tying a credit to a particular location makes its value dependent upon the type of trade it is involved in; in intra-precursor trading the value of a credit is determined by the market irrespective of its point of origin but in IPT the value of a credit might be strongly influenced by the location of the associated reduction. This disparity lends uncertainty to the credit market and may discourage some companies from making emission reductions for the purpose of generating credits.

On page 8 of the TGD, item 3 addresses quality assurance and interpretation and appropriateness of resulting ratios. It is not appropriate to disallow counting of ozone reductions near a source of NO_x emissions because the reaction between nitric oxide and ozone retains the oxygen molecule which later can re-form ozone through the reverse reaction. The net effect is to shift ozone spatially (and temporally). Simply shifting the location and timing of ozone would only be problematic if it were to affect a monitor with a design value close to the standard. As stated earlier, the EPA should include the additional safeguard to quantify impacts on monitor values in its guidance instead of arbitrarily excluding predicted ozone benefits from the calculation. The TCEQ also notes that the EPA's description of reduced ozone concentrations near a source as an "air quality disbenefit" is self-contradictory.

On page 8 of the TGD, equations (1) and (2) are mathematically incorrect, and the discussion is confusing. The calculation is simplified if applicants first calculate ozone impact per ton of each precursor (i.e. the *sensitivity* to each precursor) by simply dividing the modeled ozone impacts by the tons of NO_x and VOC. If these are denoted as $S(NO_x)$ and $S(VOC)$, respectively, then the trading ratios can be expressed as ratio of NO_x to VOC = $S(VOC)/S(NO_x)$ and ratio of VOC to NO_x = $S(NO_x)/S(VOC)$.

F. Emissions Reporting and Ozone Transport Regions

The proposed change to the Air Emissions Reporting Requirements (AERR) point source emissions inventory requirement concerning reporting thresholds for NO_x emissions sources (50 tons per year [tpy]) in an ozone transport region (OTR) is a substantive, unexplained change in EPA policy that contradicts current EPA regulations, policy, and guidance. The EPA should withdraw this portion of the AERR point source reporting thresholds proposal and clarify in the final 2015 ozone NAAQS implementation rule that the major stationary source threshold for NO_x sources in OTRs is 100 tpy, unless the source is also located within an ozone nonattainment area with a serious or higher nonattainment classification, in which case the relevant major source threshold would apply.

The EPA is proposing updates to the emissions inventory reporting thresholds for point sources listed in the AERR. Many of these updates reflect major stationary source thresholds established in other parts of Title 40 of the Code of Federal Regulations e.g., Part 70, State Operating Permit Requirements. The EPA states in the proposal, "[...] these proposed revisions are technical corrections, and we are not

proposing or accepting comment on any substantive revisions to the AERR itself" (81 FR 81298).

However, contrary to EPA's above statement, the EPA does appear to be proposing one unexplained substantive change. In the proposed updates to the AERR, the EPA is proposing to lower the point source emissions inventory reporting requirement for NO_x emissions sources located in OTRs. Although Texas is not currently located in an OTR, the possibility exists that the EPA could add Texas to an OTR in the future.

Specifically, the EPA is proposing to establish the point source emissions inventory reporting threshold at **50 tpy** for NO_x sources located in both a moderate ozone nonattainment area and an OTR. Whereas the other AERR point source emissions inventory reporting thresholds for point sources align with major stationary source thresholds, this new threshold appears contrary to the definition of major stationary source in 40 CFR §51.165 as well as published EPA policy and guidance, which have stated the major stationary source threshold for either sources of NO_x emissions located in moderate ozone nonattainment areas or for sources of NO_x emissions located in OTRs is **100 tpy** (reference: https://www.epa.gov/ozone-pollution/development-specific-elements-each-major-sip-types; https://www3.epa.gov/region1/airquality/noxract.html; https://www.epa.gov/general-conformity/de-minimis-emission-levels).

The EPA provides no explanation or rationale for adding this new point source emissions inventory reporting threshold at a lower level than current major stationary source thresholds. In the preamble to the proposed rule, the EPA states the changes to the AERR point source emissions inventory reporting requirements are to align the AERR requirements with existing major source thresholds. However, FCAA, §184 pertaining to OTRs establishes the major stationary source threshold for sources of VOC emissions located in an OTR as 50 tpy; §184 does not contain a requirement or provision that the major stationary emissions threshold for VOC emissions sources also applies to NO_x emissions sources. Although FCAA, §182(f)(1) requirements for ozone nonattainment areas state that §182 requirements for major stationary sources of VOC emissions also apply to NO_x emissions sources, FCAA, §182(f)(1) specifically limits the application of these provisions to major stationary sources as defined in FCAA, §302 and to major stationary sources located in areas classified as serious, severe, or extreme ozone nonattainment, not to major stationary sources in OTRs.

Similarly, the requirements of 40 CFR §51.165 do not define a major stationary source threshold for NO_x emissions sources located within both a moderate ozone nonattainment area and an OTR; the listed major stationary source threshold for NO_x emissions sources in OTRs are 100 tpy. The EPA states in the proposal that the 50 tpy point source emissions inventory reporting requirement for NO_x emissions "applies the same definition noted above in 40 CFR 70.2 and 40 CFR 71.2" (81 FR 81298). However, the CFR sections cited only establish VOC major source thresholds within an OTR, and not NO_x major source emissions thresholds within an OTR. Therefore, there is no regulatory or statutory requirement for a more stringent major stationary source threshold for NO_x emissions sources located in both a moderate ozone nonattainment area as well as an OTR.

If EPA establishes a new AERR reporting threshold for point source emissions inventories that does not align with existing major stationary source thresholds, the

EPA could unintentionally create confusion and uncertainty regarding the major source threshold for NO_x emissions sources located in either moderate ozone nonattainment areas, OTRs, or both. Consequently, the EPA should withdraw the proposed NO_x point source emissions inventory reporting threshold for sources located in an OTR from the AERR by deleting it from Table 1 of 40 CFR 51, subpart A, appendix A, since it is does not align with the other major source thresholds in Table 1 as defined in statute or regulation. The EPA should also clarify in the final 2015 ozone NAAQS implementation rule that the major stationary source threshold for NO_x sources in OTRs is 100 tpy, unless the source is also located within an ozone nonattainment area with a serious or higher nonattainment classification, in which case the relevant major source threshold would apply.

G. Wildland Fire Emissions

The TCEQ supports the proposed change that measures to reduce emissions from wildland fires need not be included as RACM in SIP documentation.

The EPA has previously recommended that agencies consider RACM for wildfires and managing emissions from prescribed fires. However, measures such as smoke management programs and basic smoke management practices are outside the purview of the TCEQ and are more appropriately addressed by agencies such as the Department of the Interior and the Forest Service.

The TCEQ agrees that it would be neither effective policy nor technically appropriate to recommend that control measures for wildland fire be adopted into the SIP as enforceable measures and credited for emissions reductions. Instead, we support the recommendation that ozone nonattainment plans not expressly account for expected air quality changes resulting from changes in wildland fires or climate change. As proposed, modeling should assume that wildland prescribed fire and wildfire emissions in the attainment year will be equal to and have same temporal and geographic patterns as baseline year. Accounting for the impact of wildfire emissions on air quality should occur through the Exceptional Events Rule, and the TCEQ urges the EPA to approve such demonstrations as expeditiously as practicable.

H. Transportation and General Conformity

The EPA should revoke the 2008 ozone standard for all purposes in all areas one year after designations are final for the 2015 ozone standard to provide for clarity, certainty, and efficient implementation of conformity requirements.

For transportation and general conformity purposes, revoking the 2008 ozone standard for all purposes in all areas one year after designations are final for the 2015 ozone standard would ensure that there is no period during which conformity would not apply for areas designated nonattainment or maintenance for the 2008 and 2015 ozone standards. Additionally, it would not overburden affected metropolitan planning organizations and local, state, and federal consultative review agencies by requiring them to potentially determine transportation conformity using two sets of motor vehicle emissions budgets (MVEB) for different budget years and from SIP revisions submitted for two separate ozone standards.

The EPA provides very little information concerning implementation of transportation and general conformity requirements under its second proposed option to revoke the

2008 ozone standard for designated attainment areas one year after designations are final for the 2015 ozone standard and upon redesignation to attainment of that standard for areas designated nonattainment at the time of initial revocation. This second option could potentially and unnecessarily burden states and entities subject to transportation or general conformity requirements. The EPA's proposed second option leaves it unclear whether:

- states would be required to submit MVEBs to fulfill reclassification SIP requirements for the previous 2008 ozone NAAQS;
- areas designated as nonattainment for both the 2008 and 2015 NAAQS would be required to demonstrate transportation conformity to adequate/approved MVEBs for both standards;
- maintenance plans for the previous 2008 NAAQS would be required to contain MVEBs for conformity purposes;
- actions triggering general conformity requirements in a nonattainment area for both the 2008 and 2015 NAAQS would be subject to the more stringent de minimis threshold between the two classifications; and
- projected emissions for an action undergoing general conformity analysis would be compared to emissions from the most recent, approved SIP revision for the area; to the most recent, approved SIP revisions (if available) for both the 2008 and 2015 NAAQS; or to the most recent, approved SIP revision with the most conservative, applicable emissions budgets.